

## CONCORD concerns on the upcoming review of the Cotonou Partnership Agreement

Currently, Member States of the EU and the ACP are preparing their negotiation positions in view of the second review of the Cotonou Partnership Agreement (CPA). According to CONCORD, the European NGO confederation for relief and development, this process is not without consequences for the quality of the relationship between the EU and the ACP states nor for the way the EU supports development in ACP countries.

Every five years the CPA is reviewed but, to date, no evaluation has been undertaken of the implementation, functioning and impact of the agreement during the first two 5-year periods. It is therefore difficult to link the review of the agreement with lessons learnt from its implementation.

Although we believe a regular revision is justified, as provided for by the Agreement, our concerns lie with overloading the CPA with new political priorities which could undermine the primacy of the essential elements contained in article 9. We fear that the EU's desire to reflect all on-going political priorities and processes in which it is engaged at EU and OECD level or at regional level with the African Union or the RECs, risks dismantling the CPA and overburdening it. Reciprocity and equal responsibility expected from partners are idealistic objectives that are difficult to achieve when the two partners are basically unequal and when one of them is supported financially by the other. As long as reinforcement of the capacity and political weight of the ACP group is not guaranteed, loading more obligations in the CPA should be handled with care as it can lead to more inequality and dependency and put in danger the confidence between the parties.

Above all, the way the revision process is taking place is of particular importance. In contrast to our experience during the first review, we call for a more transparent and open process that takes into account the views of parliaments and civil society actors - as was the case when the Cotonou Agreement was first established in 2000.

### 1. NO SETBACK FOR THE PARTNERSHIP BETWEEN THE EU AND THE ACP STATES

During the negotiation process the European Commission and the EU Member States – themselves not always ready to compromise – put enormous pressure on their ACP partners. New political priorities, easily perceived as new conditionalities, reform of the management structures and weak financial promises are all ingredients of such pressure.

One particular concern is the fact that the Joint Africa-EU Strategy orientations and priorities are increasingly integrated in the Cotonou Partnership Agreement. In particular the EC clearly has an objective to reinforce the role of the African Union as an actor in the CPA, particularly in a way that would transform the EDF into a funding source and instrument for the EU-Africa strategy (including aid to non ACP countries). This would also weaken the all-ACP/EU institutions while upgrading the political role of and dialogue with regional (Africa, Caribbean and Pacific) and sub-regional (RECs) institutions.

It is clearly the intention of the EU to legitimize the use of the regional and intra-ACP envelop in the 10<sup>th</sup> EDF to support the implementation of the Africa-EU Strategy partnerships in the long term through pan-African programmes and facilities. Consequently, the political dimension of the CPA is leaning towards convergence with the orientations set up in the EU-Africa Strategy; this results in additional priorities coming on top of existing ones in the CPA. The outcome might be a long list of issues and commitments to be addressed on an equal footing by both parties without taking account of:

- The fact that the EU has developed consensual strong positions reflecting its own interests on those issues while the ACP group (or even the AU) has not reached that level of political consensus. Examples of existing EU

positions: the EU security Strategy, the EU conclusions on security and development and on fragile states, the EU migration pact etc... As a result, the EU is in a powerful position to impose its views and priorities on these issues on its ACP partners.

- The fact that it puts additional obligations on limited and often overburdened or malfunctioning ACP capacities (border control, police, administration, legal services,...) that are not able to cope with all EU concerns and may have other priorities in terms of security and governance.
- The fact that by making ACP states accountable to EU imposed political priorities, commitments and visions, democratic policy making and ownership in the ACP countries is weakened rather than promoted. This risk is reinforced by the fact that the policy dialogue is closely linked with the aid programming and monitoring as illustrated by the governance incentive tranche mechanism.
- The marginalisation of the political interests and specific development needs of the partner Caribbean and Pacific countries which encourage political leaders of these regions to see the signature of an Economic Partnership Agreements as the only way to maintain a close cooperation with the EU.
- The dividing effect on an already not very cohesive ACP group of the multiplication of regional and sub-regional institutions and dialogue processes (EU-Cariforum dialogue, Troika meetings with African RECs, regional parliamentary assemblies) without any support for political coordination.

## **2. A REVIEW THAT RESPECTS OWNERSHIP AND PARTICIPATION THROUGH A TRANSPARENT AND DEMOCRATIC PROCESS ON BOTH SIDES**

Considering the fundamental principles of partnership, participation, and ownership entrenched in the Cotonou Partnership Agreement, we expect the European institutions and its Member States to be more transparent and coherent within the dialogue processes taking place at different levels. The way the first revision of the CPA was negotiated on both sides did not promote democratic ownership and participation. Again today, the European Parliament, MS parliaments and ACP parliaments are not fully informed and many actors lack the necessary information concerning calendars and content. These actors should be able to fully engage in the process.

Drawing lessons from the annual reviews and mid-term reviews of the implementation of the agreement at country and regional levels and compiling them into a general public report on the cooperation to date would certainly represent a great improvement in terms of transparency. It could be usefully complemented by a joint EU-ACP assessment of the political dialogue and both documents could then guide the review process. In the absence of such an assessment process, the whole review seems to be only dictated by political interests without any consideration for the effective achievement of the objectives, principles and essential elements of the agreement.

We also believe that both the Joint Parliamentary Assembly and the Development Committee of the European Parliament should have a scrutiny role in the programming and reviewing of the CSPs. In particular, the future prerogatives of the European Parliament in line with the expected new EU Treaty or a possible budgetisation of the EDF should in no way be pre-empted by new provisions entered in the revised Cotonou Agreement.

Moreover, involving national parliaments in the programming exercise and in the 2010 Review is of great importance to enhance democratic legitimacy and ownership.

A better involvement of civil society in the EU and in the ACP countries in the process will not only enhance transparency and democratic legitimacy, but also enable citizens to hold their governments to account. CSOs, and their capacity-building and awareness-raising abilities, should be recognized as development and advocacy actors in their own right so they can keep on playing their political role as watchdogs vis-à-vis the European Commission, EU Member States and ACP States, in the course of the negotiations of the Review in 2010.

Civil Society actors within the EU and the ACP reaffirm the value of being a group sharing common visions on international challenges. Therefore, they believe the regular and frequent meetings of the joint ACP-EU institutions provided for in the CPA (such as the JPA) are much needed. They should be fixed in frequency to make the process more transparent and to give citizens the possibility to hold their governments and parliamentarians to account.

### **3. THE REVIEW SHOULD NOT JEOPARDISE THE POLITICAL DIALOGUE**

So far, the political dialogue is mainly used in the context of the aid relationship through the aid programming process or the application of article 96. ACP member states have not been in the position to use the full potential of the political dialogue that is gradually being replaced by other dialogue processes taking place at pan-African and sub-regional levels.

Under these conditions, why should the CPA political dialogue integrate all new and often circumstantial political initiatives taken by the EC/EU? Shouldn't the review rather reflect the way the policy dialogue and cooperation between the ACP states and the EU has evolved in the last 5 years? If this policy dialogue proves to have been unproductive or did not make significant progress because of the EUs preference for addressing political issues at another level and taking into account the absence of unified and proactive position from the ACP group, a serious and honest debate between the two parties should be initiated on the content and quality of the dialogue. The objective could be to identify those issues that can be best addressed at each level of cooperation and dialogue instead of overburdening the CPA with all sorts of new priorities which have emerged through other fora (OECD, the joint EU-Africa Strategy, ...) or which are unilaterally imposed by the EU. For example we fail to see why the article 13 on migration should be revised to reflect the EU-Africa dialogue on migration which is not part of the CPA. Or is the objective to legitimise the use of EDF resources to support border control and/or open the door for new aid conditionality based on re-admission agreements. The same comments apply to the reference to fragile states or new priorities in the sector of security that are on top of the EU agenda but have not been part of the dialogue with the ACP partners so far but emerged in other political contexts.

In general, the political dimension of the CPA, and the way the EC is planning to revise it, is exclusively centred on security, stability, and migration control and governance performances of the ACP. Such an approach has legitimised the utilisation of the EDF for non ODA eligible expenditures in the areas of security - best illustrated by the African Peace Facility. Member States however still account for 100% of the EDF as ODA in their annual reports. The EDF exists for the development of the ACP countries so it should not be used for costs that do not have poverty eradication as immediate objectives. The political dialogue should not be misused to introduce aid mechanisms such as the governance incentive tranche which came about with no consultation and participation and hence no enhancement of domestic accountability in ACP countries.

Climate change, food security and agriculture policies, disaster risk reduction, management of natural resources and access to raw material, tax evasion and financial crisis, all issues that presently strongly determine the context in which ACP countries evolve and on which coordinated policies and actions at international level are so important, seem absent from the debate.

Fragility is a major challenge to sustainable development, stability and peace. The EU states that it is aware that it should improve its response to fragility but the problem with this concept is the lack of a clear and shared definition and of the criteria applied to define the concept of fragility. Moreover the work on fragile states remains, for the time being, a one way process lead by the EU/OECD with very little contribution and participation from ACP countries to the point that some of the countries which are considered to be fragile by the EU refuse to be recognised as such.

There is a clear need to develop a dialogue with the ACP partners in order to establish clear guidelines on the definition and the criteria, on who will finally have the responsibility to classify a situation as fragile and with which consequences. The ACP partners should be clearly involved in the identification of these definitions and criteria and should be allowed to contribute to the identification of the right approach in different situations of fragility.

### **4. NEGOTIATE EPAs THAT ARE COHERENT WITH AND SUPPORTIVE OF EXISTING ACP REGIONAL INTEGRATION INITIATIVES**

The recent initiatives and focus on regional integration as a tool to support development are questionable: while regional integration was the initial objective of the EPAs and while Cotonou Partnership Art 34 (2) states that regional markets should have been the building and stepping stones on which to built EPAs – the EC public consultation on this matter was launched as late as spring 2008 - after the 31 December 2007 deadline. Now, the process is reversed. Interim EPAs and in particular their incoherent liberalisation schedules (multiplicity of divergent tariff-elimination commitments) and rules of origin are fragmenting existing regional markets and lead to new border controls. This needs to be corrected. A level of intra-regional and inter-regional ACP trade flows should be an agreed criterion that qualifies or exempts countries

from EPA commitments that prove harmful to regional integration initiatives. Before implementing liberalisation commitments, individual ACP countries that have signed Interim EPA should clearly assess the implications the agreement will have for the implementation of a regional EPA.

It is on the basis and trust of spirit of the CPA that ACP countries have engaged in EPA negotiations. However, in 2009, the majority of the ACP countries have not yet initialled nor signed an interim or comprehensive EPA. And it may well be that individual or regional groupings of ACP countries decide not to initiate or sign an EPA in the near future. Relations with these ACP countries remain fully subject to the CPA provisions.

So far it is not clear what will happen with fundamental principles that are enshrined in the CPA and that affirm special and differential treatment to ACP countries, that provide legal basis for CSO involvement in economic and trade policy making, that affirm that EPAs should be built on existing regional initiatives, that cooperation on trade related issue is a valid means to promote transparency, and are not required to be part of an international binding trade agreement with its own jurisprudence outside the Cotonou Partnership Agreement.

For these reasons we believe that a revision process on economic and trade cooperation should be allowed to progress at its own and slower pace and not be tackled in this general review. This is also justified and foreseen in Article 95 (3) on the Duration of the agreement and revision clause: " 3. The Community and the Member States on the one hand and the ACP States on the other, shall notify the other Party not later than 12 months before the expiry of each five-year period of any review of the provisions they desire to make with a view to a possible amendment of the Agreement. *This shall not apply, however, to the provisions on economic and trade cooperation, for which a special review procedure is provided for*".

## 5. HOW WILL THE REVIEW INCREASE DEVELOPMENT EFFECTIVENESS?

The CPA clearly puts poverty eradication as a first priority and objective in the agreement. A further strengthening of the commitments to achieve the MDGs is therefore very much encouraged. However we also believe that overarching issues like climate change, combating HIV/Aids and human rights should be addressed more comprehensively. This refers to the preamble of the CPA and should by no means however mean adding extra conditionalities.

We are also of the opinion that the principles and conditions of Policy Coherence for development should be clarified in the CPA. Considering its present content, reviewing article 12 on Policy Coherence is certainly a necessity provided it reflects the spirit of the EU treaty and European Consensus on Development, contains provisions for monitoring and enforcing the full application of the PCD principles and recognises the main responsibilities of the EU side, as promoter of the PCD principle at both Union and Member States level. ACP partners should be encouraged to commit to the same principle at domestic level but the responsibility of implementing EU Treaty provisions on PCD initially lies with the EU .

Moreover it is definitely the "effectiveness of the development policies and processes" that is at stake in PCD and not the "effectiveness of cooperation" as it often is presented.

Bearing in mind the transformations affecting European official development aid following the adoption of the Paris Declaration and its follow-up in Accra, with commitments to pursue new practices and policies, we believe these issues also need to be taken up in the revision. Real improvement on Aid Effectiveness will however only materialise if all principles of the Paris Declaration and priority concerns of both EU and ACP sides are equally addressed and put into practice.

In theory the CPA contains the building blocks for an effective development cooperation but its basic principles and good intentions do not (always) materialise in practice.

Adding a few sentences relating to the Paris declaration in the text of the CPA without improving the practice is certainly not enough to transform it into an example of effective cooperation in the full understanding of the Paris Declaration.

In the context of the aid effectiveness debate, the EU focuses its efforts on budget support and division of labour between donors but tends to pay little attention to essential issues such as democratic ownership or mutual accountability that perfectly reflect the spirit of the CPA.

The EU champions budget support as a main funding modality under the CPA. We believe, however, that the European institutions also need to consider alternatives to budget support in order to maintain a variety of aid modalities that take into account the diversity of contexts among the ACP countries.

Mechanisms and guaranties should be put into place to ensure that budget support is genuinely used with a view to achieve the Millennium Development Goals and promote democratic ownership and accountability. The priorities identified should be clearly owned and orientated on people's needs and democratic control mechanisms, by parliamentarians and elected local representatives, should be reinforced.

For example, division of labour will only deliver on its promises if it is carried out in conjunction with radical measures to improve democratic ownership and alignment and in the absence of political conditionalities. In line with the principles of partnership and ownership of the CPA, any reference to division of labour among donors should include a provision on the role of the ACP states in leading the process at their national level.

In the name of aligning the EDF with the budget and in the framework of untying of aid, it is intended to modify public procurement rules. We urge the negotiating parties to maintain the ACP preference and the possibility for ACP governments to define the conditions of public procurements in a way that supports the country's development objectives and the utilization of local human resources and enterprises.

This paper has been prepared by the Cotonou Working Group of CONCORD.

Brussels, April 2009