

Can human and labor rights commitments in EU preferential trade arrangements be used to eliminate sexual harassment of women farm laborers in agriculture in Kenya, Morocco, Italy, and Spain?

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A 2018 article in *The Atlantic* characterized sexual harassment in U.S. agriculture as “an epidemic.”¹ The article is only partially correct. Sexual harassment of women laboring in agriculture is an epidemic not only in the U.S. but globally. It is a systemic problem endemic to agriculture throughout the world, made worse in many respects by the expansion of export agriculture on a global scale.

Strawberries and tomatoes consumed by Danes, the Dutch, and Germans are picked by women in Morocco, Spain, and Italy. Flowers purchased for girlfriends and moms at the local grocery store in Manchester or Utrecht are cultivated, picked, and packed by women in Kenya, Uganda, and Ethiopia.

¹ Ramchandani, Ariel, “There’s a Sexual-Harassment Epidemic on America’s Farms,” *The Atlantic*, January 29, 2018. Available at <https://www.theatlantic.com/business/archive/2018/01/agriculture-sexual-harassment/550109/>.

A problem caused in part and worsened by globalization should have a solution in globalization, should it not? Women workers and their allies in North America have utilized complaint mechanisms in labor provisions in the North America Free Trade Agreement (NAFTA) and its successor, the United States Mexico Canada Agreement (USMCA) to advocate for improvement in their working conditions.

This paper explores whether women laboring in agriculture in Italy, Spain, Morocco, and Kenya can use labor provisions under EU law and in EU trade arrangements to similarly advocate to eliminate sexual harassment and sexual violence in their workplaces. While EU preferential trade arrangements with Kenya and Morocco contain references to the ILO Declaration and social protection, they do not contain relevant and robust mechanisms that could be used to eliminate sexual harassment in agriculture in Kenya and Morocco.

The 2000 Cotonou Agreement between the EU and countries in Africa, the Caribbean, and Pacific (ACP) as amended in 2005 and 2010 contains a mechanism that may afford some protections to women exposed to sexual harassment and violence in agriculture. The text of the post-Cotonou Agreement, scheduled to be signed in Samoa in Spring 2022, contains new robust provisions related on decent work and gender equality which may make it a useful advocacy tool for women laboring in agriculture and their allies. Despite the fact that they are EU citizens, Romanian women laboring in agriculture in Sicily, Italy do not seem to have much recourse against systemic sexual harassment and sexual violence perpetrated by their employers.

Part 1 sets forth international legal human and labor rights standards prohibiting sexual harassment under CEDAW and relevant ILO standards. Part 2 discusses the extent of sexual harassment in agriculture in tomato greenhouses in Italy, strawberry fields in Spain, the strawberry sector in Morocco, and the cut flower industry in Kenya. Part 3 will outline relevant provisions in EU regional law and EU preferential trade arrangements to determine whether they might serve as a means for eliminating sexual harassment and sexual violence against women agricultural workers.

I. Legal frameworks governing women's human and labor rights in agriculture

Working women's rights under globalization combine fundamental human rights like the right to live and be free from gender-based violence, freedom from discrimination, and freedom of speech, thought and association with economic rights like the right to a decent wage in work or to access to resources to run a business and labor rights like the right to equal pay for work of equal value.

These rights are so intertwined as to be practically indistinguishable. Women denied a decent wage or equal pay for work of equal value may be unable to sustain themselves and their families – leading to a violation of their fundamental human right to live. Similarly, women denied the fundamental right to freedom of speech, thought and association are unable to speak out individually or together to achieve higher wages or access to resources to run a business, thereby denying them the means to sustain themselves and their families, leading to a violation of their right to live and be free from violence.

A. CEDAW General Recommendation on Violence Against Women (2017)

The prohibition of gender-based violence is a principle of customary international law. Launched by the Committee on the Elimination of Discrimination Against Women (CEDAW) on 14 July 2017, General Recommendation No. 35 on Gender-Based Violence Against Women delineates women’s human right to be free of sexual violence. The 2017 Recommendation replaces and updates CEDAW’s General Recommendation 19 on Violence Against Women, adopted in 1992. General Recommendation 19 stated that violence which is directed against a woman or that affects women disproportionately is a violation of women’s human rights. Based on the practice of States parties between 1992 and 2017, the prohibition of gender-based violence evolved into a principle of customary law.²

Despite legal and policy advances in the elimination of gender-based violence between 1992 and 2017, gender-based violence remains pervasive in all countries of the world, with high levels of impunity.³ The CEDAW Committee “considers that gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated.”⁴

The multiple forms of gender-based violence identified by the CEDAW Committee include acts or omissions intended or likely to result in death. They also include forms of physical, sexual, psychological, or economic harm – as well as harassment and threats of harm.⁵ The Committee specifically mentioned the workplace as a sphere of human activity where gender-based violence takes place.⁶

States parties to the Convention on the Elimination of Discrimination of Women (CEDAW) have a general obligation to pursue all appropriate means “and without delay” a policy of eliminating discrimination against women, including gender-based violence against women.⁷ This obligation includes the requirement to take appropriate measures to prevent, investigate, prosecute, punish, and provide reparation for acts of gender discrimination by private actors, organizations, and enterprises. “This includes by corporations operating extraterritorially.”⁸

The CEDAW Committee recommends that States Parties encourage businesses and transnational corporations to adopt policies and protocols to eliminate gender-based violence against women, including in the workplace. “This should entail protocols and procedures addressing all forms of gender-based violence that may occur in the workplace or affect women workers, including effective and accessible internal complaints procedures that do not exclude recourse to law enforcement authorities.”⁹

² CEDAW General Recommendation, para. I.2.

³ CEDAW General Recommendation, para. II.6.

⁴ CEDAW General Recommendation, para. II.10.

⁵ CEDAW General Recommendation, para. II.14.

⁶ CEDAW General Recommendation, para. II.20.

⁷ CEDAW General Recommendation, para. III.21.

⁸ CEDAW General Recommendation, para. III.24(b).

⁹ CEDAW General Recommendation, para. IV.39.

B. ILO Convention 190 on Violence and Harassment at Work

The rights to be free from discrimination based on gender (ILO Convention 111) and to equal pay for work of equal value for women and men (ILO Convention 100) are considered to be core labor rights under the International Labor Organization (ILO) 1998 Declaration on Fundamental Rights and Freedoms at Work.

The ILO International Labor Conference adopted ILO Convention 190 on Violence and Harassment at Work on 21 June 2019. ILO Director-General Guy Ryder wrote, “Violence and harassment in the world of work remains pervasive, affecting all countries, occupations and work arrangements. It manifests in different forms and contexts. It deprives people of their dignity and is incompatible with decent work and social justice.”¹⁰ ILO Convention 190 defines gender-based violence and harassment as “violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.”¹¹ The Convention applies to all sectors of work, including the informal sector and in rural areas.¹² It applies not only in the workplace, but in employer-provided accommodation and transportation, and while commuting to and from work.¹³ ILO Convention 190 requires member states that ratify the Convention to adopt and implement laws and policies to prohibit and sanction gender-based violence in the workplace.¹⁴ This obligation specifically includes, “ensuring effective means of inspection and investigation of cases of violence and harassment, including through labour inspectorates or other competent bodies.”¹⁵

Italy is one of ten countries that have ratified ILO Convention 190 as of January 2022. The Convention will enter into force in Italy on 29 October 2022.

II. Case studies: Sexual harassment in agriculture in Spain, Italy, Morocco, and Kenya

International organizations like UN Women and the ILO have highlighted the pervasiveness of sexual harassment and sexual violence in agriculture around the world.¹⁶ The risk for sexual harassment, sexual violence, bullying, demands for sexual favors in exchange for jobs and rides to work, and rape is high in agriculture due to a number of factors. These include:

¹⁰ International Labour Organization, *Eliminating Violence and Harassment in the World of Work: ILO Convention No. 190, Recommendation No. 206, and the accompanying Resolution*, 2019, p. i. Available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_721160.pdf.

¹¹ ILO Convention 190 on Violence and Harassment, Art. 1(1)(b).

¹² ILO Convention 190 on Violence and Harassment, Art. 2(2).

¹³ ILO Convention 190 on Violence and Harassment, Art. 3, particularly Arts. 3(e) and 3(f).

¹⁴ ILO Convention 190 on Violence and Harassment, Art. 4.

¹⁵ ILO Convention 190 on Violence and Harassment, Art. 4(2)(h).

¹⁶ See UN Women, *Sexual Harassment in the Informal Economy: Farmworkers and domestic workers*, 2020. Available at <https://www.unwomen.org/en/digital-library/publications/2020/09/discussion-paper-sexual-harassment-in-the-informal-economy-farmworkers-and-domestic-workers>. Henry, Carla, and Jacqueline Adams. "Spotlight on sexual violence and harassment in commercial agriculture lower and middle income countries." *Geneva: International Labour Organization* (2018).

isolation on farms where agricultural workers both work and live, lack of education, informal labor relationships mediated by labor contractors or “gang masters,” long distances from home requiring travel (either in-country or outside one’s country), unequal power relations between men and women – and, for women who labor outside of their home countries – lack of familiarity with local cultures and customs, inability to speak the language, and work visas that depend on the employer’s good favor. What stands out about the case studies discussed below is not their differences, but how similar the working conditions are for women in every instance.

A. Migrant women working in tomato and strawberry greenhouses of Italy and Spain

Agriculture is a leading labor market sector in both Italy and Spain.¹⁷ Italy and Spain are the two EU nations with the greatest number of migrant workers in agriculture, with significant participation of migrant women working in agriculture.¹⁸ A significant number of migrant women laboring in strawberry and tomato greenhouses in the Ragusa, Sicily, Italy come from the EU member state Romania. The majority of migrant women in Spain’s strawberry fields in Andalusia come from Romania, Poland, and Morocco.¹⁹

Although Romania became a member state of the European Union in 2007, the collapse of the country’s economic system and high levels of poverty are strong push factors causing Romanian women to migrate to other EU member states as a strategy for economic survival.²⁰ The extreme poverty they are escaping – and their status as mothers – puts Romanian women who migrate to Sicily to engage in agricultural labor at severe risk for labor exploitation and sexual abuse.²¹ Although female Romanian migrant farm laborers are not prohibited from bringing their children with them because they are EU citizens not subject to strict visa requirements, some male employers use the children as a means to extract sexual favors out of their mothers – for example, a supervisor who extracted sexual favors out of one of his female employees in exchange for driving her children to school.²²

Strawberry farmers in the Spanish region of Andalusia have been using “origin contracts” to hire workers from Morocco on a seasonal basis since 1999.²³ Origin contracts were also the mechanism used to hire workers from Poland and Romania before these countries became EU member states in 2004 and 2007. Women are preferred in Andalusia’s strawberry sector because

¹⁷ Palumbo, Letizia, and Alessandra Sciarba. *The vulnerability to exploitation of women migrant workers in agriculture in the EU: The need for a human rights and gender based approach*. 2018, p. 18.

¹⁸ Palumbo & Sciarba, 2018, p. 21.

¹⁹ *Id.*

²⁰ Palumbo, Letizia, and Alessandra Sciarba. “Vulnerability to Forced Labour and Trafficking: The case of Romanian women in the agricultural sector in Sicily.” *Anti-Trafficking Review* 5 (2015), p. 4.

²¹ Palumbo & Sciarba, 2015, p. 5.

²² Palumbo & Sciarba, 2015, p. 5.

²³ Hellio, Emmanuelle, “‘We don’t have women in boxes’ Channeling seasonal mobility of female farmworkers between Morocco and Andalusia.” *Seasonal Workers in Mediterranean Agriculture*. Routledge (2014), p. 142.

their “delicate hands” are more suitable to harvesting strawberries.²⁴ While the majority of workers in Andalusia’s strawberry fields are Romanian and Polish women, Moroccan women have been frequently favored by at least one major farm (Fresdeloc) because of its strawberry interests in Morocco.²⁵

Origin contracts are a legal form of temporary, seasonal employment for Moroccan women laboring on Andalusian strawberry farms. Despite the fact that their contracts are “legal” and they are formally protected by labor laws, however, Moroccan women are reluctant to complain about working conditions because their contracts may be terminated or not renewed.²⁶ Signing a contract does not always mean that a woman will be called to Spain to work, however, since Andalusian farmers sign contracts with more women than they require to bring in the harvest.²⁷

Isolation – both physically on farms owned by their employers and thousands of miles from home in communities where their first language is not spoken – and the need of a job puts migrant women working in agriculture in Italy and Spain at risk of sexual exploitation and rape by their supervisors. If they complain, they risk losing their homes and their livelihoods, with little risk of prosecution of the perpetrators.²⁸

B. *Women working in Morocco’s strawberry sector*

Strawberry cultivation for export was introduced in Morocco as part of the 2008 Green Morocco Plan (GMP).²⁹ It is estimated that about 20,000 workers are employed in Morocco’s strawberry sector – 75-90% of them women – on farms and in processing factories and pack houses cultivating, picking, and process strawberries.³⁰ The strawberry sector in Morocco is characterized by power asymmetry at the international level, with Moroccan farmers’ dependency on international investors – and at the employment level, with women workers subject to unequal power of male supervisors and transporters.³¹

Employment relationships in Morocco’s strawberry sector are predominantly informal and precarious, characterized by third party intermediaries who contract workers and transport them to the fields in unsafe, overloaded vehicles.³² Women employed in Morocco’s strawberry sector work up to 10-11 hours per day during the high season, are frequently not paid the

²⁴ Hellio, 2014, p. 142.

²⁵ *Id.*

²⁶ Hellio, 2014, pp. 150-151.

²⁷ Hellio, 2014, p. 151.s

²⁸ See Müller, Pascale & Stefania Prandi, “Rape in the Fields,” *Correctiv*, 30 April 2018.

Available at <https://correctiv.org/en/top-stories/2018/04/30/rape-in-the-fields/>.

²⁹ Thérout-Séguin, Julie. "Intersectional analysis of women workers in the strawberry sector of Morocco." *Women in Agriculture Worldwide: Key issues and practical approaches* (2016), p. 210. Nieto, Juana Moreno. "Labour and gender relations in Moroccan strawberry culture." *Seasonal Workers in Mediterranean Agriculture*. Routledge (2014), p. 198.

³⁰ Thérout-Séguin, 2016, p. 210.

³¹ Thérout-Séguin, 2016, p. 216; Nieto, 2014, p. 202.

³² Thérout-Séguin, 2016, p. 210.

minimum wage, and do not receive overtime rates as prescribed by law. While workers in the fields tend to be young (below the legal working age of 15) and with a low level of education, women working in the packing sheds tend to be older and married, with the ability to read and write.³³ Unlawful child labor and other forms of exploitation in the strawberry sector is facilitated by the absence of labor inspectors in the fields.³⁴ Seasonal workers are excluded from social security coverage and employers frequently do not register eligible workers in the national social security fund.³⁵

Sex stereotyping and sexual harassment are common in Morocco's strawberry sector. Women are selected for work in the strawberry sector based on gender stereotypes – that women's hands are more suitable to harvesting delicate fruits like strawberries. Roles for women and men are clearly divided, with women harvesting strawberries, packing fruit into boxes, and cutting stems off of fruit to be frozen for export. Male roles include owner, supervisor, and truck driver. Bullying and harassment of women by men during is frequent, as it is seen as "normal" for male supervisors to yell at women "since the work is supposedly easy for them. If they do not work fast enough it is because 'they are being lazy and because women like to chat all the time' ...".³⁶

Sexual harassment – including *quid pro quo* demands from supervisors and transporters in exchange for selection for jobs – is also a frequent occurrence. Women and men are transported in vehicles carrying 30-55 people, increasing the risk of harassment and assault of women during transport to and from work. "Transporters or supervisors will offer better conditions to some women expecting sexual favors in return."³⁷ Rejection of these advances leads to not being selected for work and other adverse impacts on the job. "Harassment contributes to the hardship of the work on the strawberry farms, but a lot of women do not dare to denounce it for fear of losing their job or losing their family's respect."³⁸

C. Women working in Kenya's cut flower industry

The cut flower industry in the Lake Naivasha area in Kenya began with small flower farms in the 1950s and 1960s and began expanding and attracting foreign investment in the 1980s.³⁹ It is estimated that at least 60,000 people work in the cut flower industry in the Lake

³³ Nieto, 2014, pp. 206-207.

³⁴ Nieto, 2014, p. 206.

³⁵ Thérout-Séguin, 2016, p. 211.

³⁶ Thérout-Séguin, 2016, p. 215.

³⁷ Thérout-Séguin, 2016, p. 216.

³⁸ Thérout-Séguin, 2016, p. 216.

³⁹ Kabiru, Joseph G., Paul N. Mbatia, and Edward K. Mburugu. "Emerging conditions of labour in the cut flower industry in Kenya." *Int. J. Educ. Res* 6 (2018): 1-12, p. 1. Lowthers, Megan. "On institutionalized sexual economies: Employment sex, transactional sex, and sex work in Kenya's cut flower industry." *Signs: Journal of Women in Culture and Society* 43.2 (2018): 449-472, p. 449.

Naivasha area, migrating from other parts of Kenya and living in unplanned settlements along Moi Road.⁴⁰ The majority of these workers are women.⁴¹

Tasks in the cut flower industry tend to be segregated by sex, with men performing tasks considered to be risky or physically demanding such as spraying pesticides, irrigating, and working the night shift.⁴² Women tend to work in labor intensive tasks and those involved with the cosmetic quality of the flowers, which include picking, packing, and other processing activities. Both women and men work as supervisors on flower farms.⁴³ Despite this, women tend to be hired for temporary, casual positions which leaves them vulnerable to gender discrimination, sexual harassment, and other forms of sexual violence.⁴⁴

Lowthers identified a continuum of sexual commerce associated with women's casual labor in the cut flower industry. Women often supplement their low wages from work on flower farms with part-time sex work at night. They are also on occasion forced to provide sexual favors to managers and recruiters in order to obtain work on flower farms and keep their jobs.⁴⁵ "From the perspective of female labor migrants, employment sex had become a normalized aspect of obtaining employment in the cut flower industry, often even anticipated and expected."⁴⁶ Refusal to engage in sex with supervisors can lead to immediate dismissal.⁴⁷

III. Provisions in EU Law and Preferential Trade Agreements

The EU accession process requires new member states to meet legal benchmarks through adoption of the *acquis communautaire*, including standards related to gender equality and workplace protections. After the Lisbon Treaty was adopted in 2007, the European Union began to utilize preferential trade agreements with non-EU partners to promote human rights and decent work. More recently, the European Parliament and other EU institutions launched a series of information-gathering and policy development processes to make EU trade policy more gender sensitive.

A. EU Regional Law on Sexual Harassment

Sexual harassment is considered to be a breach of the principle of equal treatment between men and women and constitutes discrimination based on sex under EU Law. Article 21 of the Charter of Fundamental Rights of the European Union prohibits discrimination based on sex and other grounds. Article 23 of the Charter requires that equality between women and men shall be ensured in all areas, including employment, work, and pay. The Equal Treatment Directive (Directive 2002/73/EU, updated and "recast" by Directive 2006/54/EC) prohibits discrimination based on sex and other grounds in the areas of employment, vocational training,

⁴⁰ Kabiru, Mbatia, & Mburugu, 2018, p. 2; Kuiper, Gerda. *Agro-industrial Labour in Kenya: Cut Flower Farms and Migrant Workers' Settlements*. Springer, 2019, p. 15.

⁴¹ Kabiru, Mbatia, & Mburugu, 2018, p. 2.

⁴² Kuiper, 2019, p. 212.

⁴³ *Id.*; Lowthers, 2018, p. 456.

⁴⁴ Lowthers, 2018, pp. 456-457.

⁴⁵ Lowthers, 2018, p. 458, 459.

⁴⁶ Lowthers, 2018, p. 460.

⁴⁷ Lowthers, 2018, p. 461.

and promotions. EU member states are required to transpose the provisions of the Equal Treatment Directive into their national laws.⁴⁸ Critics have observed that the legal definition of sexual harassment under the EU Equal Treatment Directive does not extend to the concept of *quid pro quo* sexual harassment (the demand for sexual favors in exchange for employment or favorable treatment at work).⁴⁹

On 26 October 2017, the European Parliament issued Resolution No. 2017/2897(RSP) (2018/C 346/25) on combating sexual harassment and abuse in the EU. The Resolution called on the European Commission to submit a proposal for an EU Directive prohibiting all forms of violence against women and girls and of gender-based violence. The Resolution also called on the EU Commission to put forward a comprehensive strategy on all forms of gender-based violence, including sexual harassment.⁵⁰

B. EU-EAC Economic Partnership Agreement and EU-Morocco Association Agreement

Trade relations between the EU and Kenya and Morocco are governed by, respectively, the EU-EAC Economic Partnership Agreement (EU-EAC EPA) and the EU-Morocco Association Agreement.

The European Union and five nations in the East African Community (Burundi, Kenya, Rwanda, Tanzania, and Uganda) finalized negotiation of an Economic Partnership Agreement in October 2014. Kenya is the only EAC nation to both sign and ratify the EU-EAC Economic Partnership Agreement, which it did in September 2016.⁵¹ The agreement has not entered into effect because only one other country signed it (Rwanda) and no other countries – including South Sudan, which became the sixth member of the EAC in 2016 – ratified it. In February 2021, the EAC member states and the EU agreed politically to allow the EPA to enter into effect between the EU and individual countries.⁵² The EU and Kenya subsequently launched Strategic Dialogue in June 2021.

Article 108 of the EU-EAC EPA establishes a “Consultative Committee” to promote dialogue and cooperation between representatives of the member state governments, private sector, and civil society (academics and social and economic partners). Members of the Consultative Committee may engage in dialogue and cooperation on all matters under the EPA, as long as they arise in the context of the implementation of the agreement. Unlike modern EU

⁴⁸ Latcheva, Rossalina. "Sexual harassment in the European Union: A pervasive but still hidden form of gender-based violence." *Journal of interpersonal violence* 32.12 (2017): 1821-1852, pp. 1822-1823.

⁴⁹ Latcheva, 2017, pp. 1823-1824.

⁵⁰ European Parliament resolution of 26 October 2017 on combating sexual harassment and abuse in the EU (2017/2897(RSP)) (2018/C 346/25).

⁵¹ European Commission DG Trade, “The European Union and the Republic of Kenya launch strategic dialogue and engage towards implementing the East African Community Economic Partnership Agreement,” 22 June 2021. Available at <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2279>.

⁵² *Id.*

preferential trade agreements like the EU-Korea PTA, the EU-EAC does not have a sustainable development chapter or dedicated labor provisions.⁵³

The EU-Morocco Association Agreement entered into force on 1 March 2000. In 2021, the EU approached Morocco about modernizing the agreement.

Title VI of the EU-Morocco Association Agreement governs cooperation between the EU and Morocco in social and cultural matters. Chapter 1 of Title VI accords Moroccans working in EU member states and nationals of EU member states working in Morocco equal treatment and social rights.⁵⁴ These rights do not extend to nationals of signatory parties who are residing or working illegally in the territory of their host country.⁵⁵ Chapter II of Title VI calls on Morocco and the EU to engage in dialogue on “any social matter which is of interest to them.”⁵⁶ Specific topics listed include achieving progress in the equal treatment and integration of Moroccan and EU Community members in the territories of their host countries; migration; illegal immigration; and schemes or programs to encourage equal treatment of Moroccan and Community nationals.⁵⁷ With respect to women, Morocco and the EU committed to engage in cooperative programming “promoting the role of women in the economic and social development process through education and the media in step with Moroccan policy on the matter.”⁵⁸

In 2014, Oxfam partnered with local women’s groups in Morocco to adopt a program of Transformative Leadership for Women’s Rights (TLWR) so that women working in the strawberry sector could achieve their goals of having their rights respected, ending violence and harassment, reducing gender stereotypes, and educating European importers to influence strawberry producers to adopt and implement respectful practices for workers.⁵⁹ Women in the strawberry sector also wanted to keep young girls in school in order to have the education and skills to claim their rights.⁶⁰ This program was funded in part by the European Union.

C. The Cotonou Agreement (2000-2021) and Post-Cotonou Agreement (2021-2041)

The Cotonou Agreement is a framework agreement governing relations between the European Union and 79 nations in Sub-Saharan Africa, the Caribbean, and the Pacific (ACP), many of them former European colonies. The Cotonou Agreement between the EU and ACP nations entered in effect in 2000 and was amended in 2005 and 2010. It grew out of the Lomé

⁵³ Martens, Deborah, Jan Orbie, Lore Van den Putte, and Yentyl Williams. "Civil society meetings in EU trade agreements: recommendations and lessons for EPAs." *ECDPM Briefing Note* (2016), p. 3.

⁵⁴ EU-Morocco Association Agreement, Arts. 64-65.

⁵⁵ EU-Morocco Association Agreement, Art. 66.

⁵⁶ EU-Morocco Association Agreement, Art. 69(1).

⁵⁷ EU-Morocco Association Agreement, Art. 69.

⁵⁸ EU-Morocco Association Agreement, Art. 71(1)(c).

⁵⁹ Thérout-Séguin, 2016, pp. 220, 221.

⁶⁰ Thérout-Séguin, 2016, p. 221.

Agreements 1-4 between the EU and ACP nations beginning in 1975, described in 2011 as “the most advanced model of North-South development cooperation yet devised.”⁶¹

In Article 9 of the Cotonou Agreement, the signatories under to promote and protect fundamental human rights, including civil and political, economic, and social rights.⁶² Based on his reading of the agreement’s Preamble, in which parties express that they are “anxious to respect basic labor rights taking account of the principles laid down in the relevant conventions of the ILO,” Kenner asserts that “social rights” includes labor rights.⁶³ In Article 50, titled “Trade and Labor,” signatory nations reaffirm their commitment to internationally recognized core labor rights as defined by the International Labor Organization – in particular, freedom of association and the right to collectively bargain, the abolition of forced labor, the elimination of the worst forms of child labor, and non-discrimination with respect to employment.⁶⁴

The Cotonou Agreement contains procedures for political dialogue which, if exercised against a signatory nation found to have not fulfilled its human rights obligations under the agreement, can lead to suspension of benefits deriving from the agreement.⁶⁵

The Cotonou Agreement was set to expire in February 2020. Member states agreed to extend the term of the agreement until 30 November 2021. Negotiation of post-Cotonou Agreement was finalized and initialed by in April 2021. The new agreement is scheduled to be signed in Samoa in Spring 2022 and will be referred to as the Samoa Agreement.⁶⁶ The Samoa Agreement’s term will be 2021-2041. The Negotiated Agreement contains more robust labor rights provisions than the Cotonou Agreement, for example Article 33 on Decent Work, in which the signatories reaffirm their commitment to achieving full and productive employment and decent work for all women and men.⁶⁷ Signatory states also agree to ratify the ILO’s core labor conventions and to promote safe and secure workplaces and implement occupational safety and health measures in both the formal and informal economy.⁶⁸

The post-Cotonou Agreement also introduces a robust provision on Gender Equality. Under Article 10 of the agreement, titled “Gender Equality,” the signatories obligate themselves

⁶¹ Kenner, Jeff. “Labor Clauses in EU Preferential Trade Agreements—An Analysis of the Cotonou Partnership Agreement.” *Preferential trade agreements: A law and economics analysis* (2011): 180-209, p.

⁶² The Cotonou Agreement, Art. 9(2).

⁶³ Kenner, 2011, location 4933 [Kindle version].

⁶⁴ The Cotonou Agreement, Art. 50(1).

⁶⁵ The Cotonou Agreement, Art. 96.

⁶⁶ Morgan, Elizabeth, “OACPS/CARIFORUM & EU: What’s Happening Now?” *The Jamaican Gleaner*, 10 November 2021. Available at <https://jamaica-gleaner.com/article/commentary/20211110/elizabeth-morgan-oacpscariforum-eu-whats-happening-now>.

⁶⁷ Negotiated Agreement text initialed by the EU and OACPS chief negotiators on 15th April 2021 {the “Samoa Agreement”), Art. 33(1). Available at https://ec.europa.eu/international-partnerships/system/files/negotiated-agreement-text-initialled-by-eu-oacps-chief-negotiators-20210415_en.pdf.

⁶⁸ The “Samoa Agreement,” Arts. 33(2), 33(3).

to “adopt and strengthen enforceable legislation, legal frameworks and sound policies, programmes and mechanisms to ensure girls’ and women’s equal access to, equal opportunities in, equal control over, and full and equal participation in, all spheres of life, on an equal footing with boys and men.”⁶⁹ Critically, the signatories commit themselves to “undertake to prevent, combat and prosecute all forms of sexual and gender-based violence and discrimination in the public and private spheres, including trafficking and sexual exploitation and abuse.”⁷⁰

IV. Findings and discussion

Agricultural labor can be truly dangerous for vulnerable women looking for work in Spain’s strawberry fields, tomato greenhouses in Italy, the flower industry in Kenya, and the strawberry greenhouses in Morocco. There is nowhere they can have respite from the danger when they are working on farms – not in their homes, not in the vehicles in which they are transported to work, not at work. They must submit to demands for sexual favors in order to get a job and in order to keep a job. If they complain or report perpetrators to the police, they risk losing not only their job but a place to stay – with little expectation that the perpetrator will be punished. As demonstrated by Megan Lowther’s research, some women decide that if they are going to have to submit to having sex with men for free in order to get low paid short term informal jobs with no future, why not get paid a decent amount of money to engage in sex work full-time?

Law at the regional level in the EU provides surprisingly little recourse for EU citizens who migrate from poorer regions of the EU to engage in agricultural labor and encounter sexual harassment and sexual violence in the fields. Although modern EU free trade agreements like the EU-Korea PTA and the EU-Canada Comprehensive Economic and Trade Agreement (CETA) have dedicated labor provisions and sustainable development commitments, older generation PTAs like the EU-EAC Economic Partnership Agreement (EPA) and the EU-Morocco Association Agreement do not. This limits their utility as mechanisms of advocacy for female farm laborers who suffer sexual harassment and sexual violence at work. On the other hand, social dialogue mechanisms in older generation EU PTAs do provide a forum for discussing and addressing sexual harassment and sexual violence against female farm workers in Morocco and Kenya. Particularly, provisions in the EU-Morocco AA may provide a forum for social dialogue to address workplace issues faced by female Moroccan farmworkers laboring in strawberry fields in both Spain and Morocco. Finally, new decent work and gender equality provisions and the Article 96 procedures in the post-Cotonou Agreement may serve as a means for advocating on behalf of female migrant farmworkers in Morocco and Kenya and other countries than fall within the agreement’s scope.

⁶⁹ The “Samoa Agreement,” Art. 10(2).

⁷⁰ The “Samoa Agreement,” Art. 10(4).