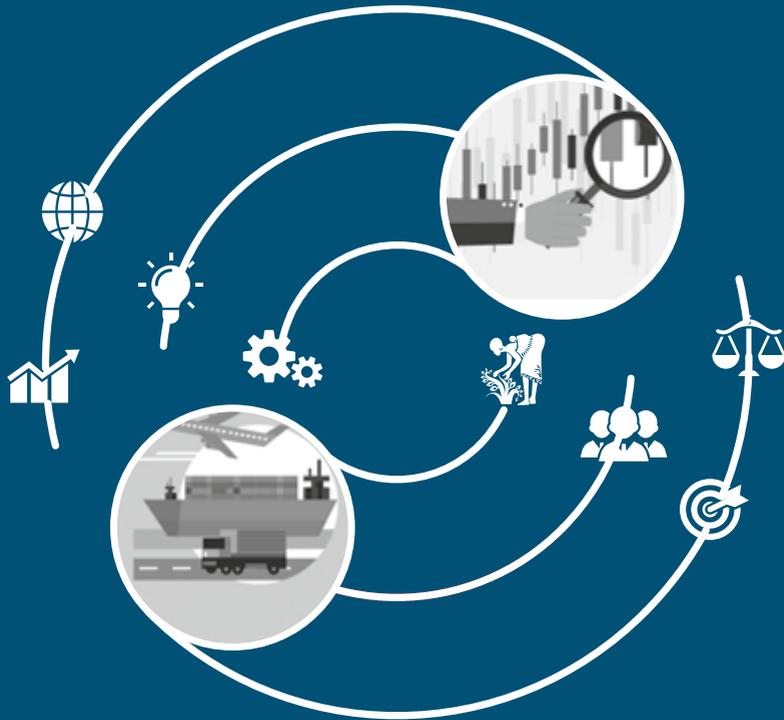


Report

The Continental Free Trade Area (CFTA) in Africa – A Human Rights Perspective



United Nations
Economic Commission for Africa

**FRIEDRICH
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STIFTUNG**
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Preface

The African Union Assembly launched the continental free trade area negotiations at the 25th Ordinary Summit of Heads of State and Government on 15 June 2015 in Johannesburg, South Africa. This decision marked a significant step towards advancing Africa's regional integration and development agendas.

Discussions around the Continental Free Trade Area (CFTA) have paid minimal attention to the important human rights implications of the CFTA, which are likely to be significant. The liberalisation of trade can have differential impacts on various socio-economic groups due to unequal access to assets, credit and economic opportunities. Women and informal cross-border traders face particularly acute challenges to participating in welfare-enhancing trade. Different types of workers can face differential impacts of trade liberalisation, depending on their skill-level or sector of employment. Agricultural trade liberalisation raises particular concerns for adverse impacts on agricultural livelihoods and food security.

The CFTA offers a window of opportunity for African countries to boost intra-African trade, to diversify, structurally transform, and meet the important human rights objectives and poverty-related goals the continent is committed to under its Agenda 2063 – of which the CFTA is a flagship project – and the global Agenda 2030.

Against this background, the Economic Commission for Africa, the Friedrich-Ebert-Stiftung Geneva office and the Office of the United Nations High Commissioner for Human Rights decided to commission an ex-ante human rights impact assessment of the CFTA.

The timing of the assessment is important, because it comes at a time of rising scepticism towards regional integration and trade agreements and rising populist anti-trade attitudes in Europe and in the US. These manifestations of anti-globalisation sentiments have largely been driven by peoples' concerns that the benefits of trade and globalization have not been fairly distributed. There is a growing effort by civil society and others around the world to scrutinise the details of trade agreements to ensure fairness and equity.

As an ex-ante human rights impact assessment initiated during the preparatory period of the CFTA negotiation process, this study provides a unique opportunity to present the findings and analysis during the negotiations and thus to contribute to a positive, robust and human-rights consistent outcome.

This human rights impact assessment, like others, advocates for the prioritization of concerns of all members of society and their human rights, in the negotiating, drafting and eventual implementation of the CFTA agreement through inclusive, consultative and participatory processes. It demonstrates the value of a rights-based approach and the opportunity it provides for meeting the sustainable development goals and strengthening accountability of economic actors. Initial screening and scoping exercises were carried out to narrow the focus of the assessment on the vulnerable groups that are at most likely to be adversely affected by the CFTA – women, youth, informal cross-border traders and rural producers. The assessment’s focus was also narrowed by focussing on the human rights impacts of elements to be covered in the first phase of negotiations – liberalisation of trade in goods and services – and attaching less attention to investment, competition policy and intellectual property issues which are scheduled for the second phase.

Several important messages emerge from the report. Ensuring broad consultation and participation in the CFTA negotiations and implementation is crucial. This will not be possible without increased efforts by policymakers and negotiators to reach out to all stakeholders and ensure that the voices of vulnerable and marginalised groups are heard and taken into account.

Given that governments have obligations to mobilise resources for human rights purposes, the full breadth of implications of tariff reductions must be considered with utmost care. Governments should embark on gradual liberalization that allows protection especially for vulnerable groups and in key areas such as food security. This should entail temporary exclusion lists and special safeguards which permit limiting imports in times of crisis or against sudden import surges. Economic development is a dynamic process. Member States should be very cautious not to limit their policy space for the future and resist CFTA provisions that could undermine their ability to implement future measures to ensure that all human rights, including the right to development, are protected, respected and fulfilled.

Adjustment mechanisms will need to be designed in a range of areas including re-skilling and training, social protection, and short-term financial assistance. The overall impact of the CFTA must be monitored over time, not only in terms of economic results, but also in terms of its impact on the enjoyment of all human rights for all Africans. Ongoing monitoring and evaluation will be key to ensuring that the CFTA policies continue to respond to economic, social and development needs as circumstances change, and adapt when they do not yield human rights- consistent impacts.

We recommend the analysis and policy messages of this report to African policy-makers, academia, development partners, civil society, human rights activists and other key stakeholders in Africa's quest for human rights consistent regional integration and development.

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Acronyms and abbreviations

3ADI	African Agribusiness and Agro-industries Development Initiative
ACHPR	African Charter on Human and Peoples' Rights
AfDB	African Development Bank
AfT	Aide for Trade
AIDA	Accelerated Industrial Development of Africa
African Commission	African Commission on Human and Peoples' Rights
AU	African Union
BIAT	Boosting Intra-African Trade, as in Action Plan for Boosting Intra-African Trade
Banjul Charter	African Charter on Human and Peoples' Rights
CAADP	Comprehensive African Agricultural Development Programme
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEN-SAD	Community of Sahel-Saharan States
CFTA	Continental Free Trade Area
CRC	Convention on the Rights of the Child
CSO	civil society organization
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
ECA	Economic Commission for Africa
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
FAO	Food and Agricultural Organization
FES	Friedrich-Ebert-Stiftung
FISP	Farm input subsidy program
FTA	Free trade agreement
GDP	gross domestic product
GTAP	Global Trade Analysis Project
GVCs	Global value chains
HRIA	Human rights impact assessment
IAIA	International Association for Impact Assessment
ICBT	informal cross-border traders
IGAD	Intergovernmental Authority for Development
ICESCR	International Covenant on Economic and Social Rights
ILO	International Labour Organization
LDC	Least developed country
M&E	Monitoring and evaluation
NGO	Non-governmental organization
NTB	Non-tariff barrier
NTM	Non-tariff measure
NHRI	National Human Rights Institution
OHCHR	Office of the United Nations High Commissioner for Human Rights

PIDA	Programme for Infrastructural Development in Africa
RECs	Regional Economic Communities
RTA	Regional trade agreement
RVC	Regional value chain
SACU	South African Customs Union
SADC	Southern African Development Community
SAM	Social accounting matrix
SDGs	Sustainable Development Goals
SPS	Sanitary and phytosanitary, as in SPS measures
STR	Simplified trade regime
TBT	Technical barriers to trade
TFTA	Tripartite Free Trade Area
UMA	Union du Maghreb Arabe
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
WAEMU	West African Economic and Monetary Union
WTO	World Trade Organization

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Executive summary and policy priorities

Background

The negotiations leading up to the continental free trade area (CFTA) present a unique opportunity to improve the livelihoods of millions of African people. The jobs and wealth that the CFTA can bring about have the potential to contribute significantly to alleviating poverty, creating jobs and promoting equality. The CFTA is more than a trade agreement. Its wide scope – covering trade in goods, trade in services, investment, competition policy and intellectual property rights – provides a platform to facilitate the inclusive structural transformation of African countries, contributing to the attainment of Africa's Agenda 2063 and the global Agenda 2030.

But trade agreements and economic integration do not necessarily lead to fair and sustainable outcomes. Assessing the distributional impacts of an agreement such as the CFTA is therefore crucial to ensure that human rights and trade are complementary.

A human rights approach is particularly important today, as the world witnesses rising scepticism towards trade and investment liberalisation. This scepticism has been driven to a large extent by peoples' concerns that the benefits of trade and globalisation have not been distributed fairly, and underlines the need to avoid such a scenario in Africa. It will thus be necessary to take active steps to ensure that the gains from productivity and welfare improvements that the CFTA can usher in are equitably distributed.

With this backdrop an ex-ante human rights assessment of the likely impacts of the CFTA was conducted. The organizations brought together their comparative strengths on trade policy, economic modelling, human rights, employment and social protection to create a multi-disciplinary team well-equipped to conduct the assessment.

This assessment applies human rights standards and tools to assist in identifying human rights concerns in the negotiation, design, implementation and monitoring of the CFTA, with a view to supporting the creation of a robust agreement that is responsive to the needs of the continent's peoples.

The African trade landscape

Intra-African trade has risen significantly over the last twenty years, but still remains low. ECA modelling exercises indicate that establishing the CFTA will significantly boost intra-Af-

rican trade, particularly when implemented alongside trade facilitation measures. Projected increases in intra-African trade are highest for industrial products, which demonstrates the role the CFTA can play in driving Africa's structural transformation. Continental tariff liberalisation also offers potential for agriculture in particular, the sector which serves as the main life resource for the majority of Africans, and for which intra-African trade is particularly under-exploited.

Figure 1: Envisaged scope of the CFTA

<p>Protocol establishing the Continental Free Trade Area</p>	<ul style="list-style-type: none"> • Agreement on trade in goods • Agreement on trade in services • Rules and procedures on dispute settlement
<p>Parts and appendices under negotiation</p>	<ul style="list-style-type: none"> • Liberalization of trade (imports and export duties, and rules of origin) • Movement of persons and economic operators • Customs cooperation, trade facilitation and transit • Non-tariff barriers • Technical barriers to trade • Sanitary and phyto-sanitary measures • Trade remedies and safeguards • Exceptions (general and security exceptions, balance of payments) • Agriculture, fisheries and food security • Technical assistance, capacity building and cooperation • Complementary policies (special export zones, capacity building and cooperation)
<p>Phase 2 negotiations</p>	<ul style="list-style-type: none"> • Agreement on Intellectual Property Rights • Agreement on competition policy • Agreement on investment

Africa's commitment to equity, sustainable development and human rights

African countries will be negotiating and implementing the CFTA in the context of other national, regional and international legal and policy commitments. For the CFTA to be successful it must be consistent with the economic justice and human rights values that are embodied in the sustainable development agenda that Africa has set for itself. These values are set out in Agenda 2063, the African Charter on Human and Peoples' Rights, and other international human rights treaties that all African countries are parties to.

Agenda 2063 emphasises the continent's aspiration to entrench human rights, democracy, gender equality and the rule of law. It also articulates other human rights priorities such as poverty eradication, promotion of health, education and skills, sanitation and other basic services, as well as sustainable and long-term stewardship of resources. Similar objectives are reflected in the sustainable development goals (SDGs), and in countries' national laws and policies.

Distributional and human rights impacts of the CFTA

The human rights approach reminds us that placing too much reliance on conventional economic measurements of economy-wide potential gains arising from liberalisation can overshadow adverse distributional impacts. The CFTA will impact different socio-economic groups differently due to existing patterns of discrimination, unequal access to resources, credit and/or economic opportunities. Those who are already most vulnerable are at risk of being adversely impacted by the CFTA.

This assessment applies human rights tools to assist in identifying social, equity and human rights issues in the negotiation, design, implementation and monitoring of the CFTA, with a view to supporting creation of a robust agreement that is responsive to the needs of the continent's peoples. This HRIA, undertaken from the outset of the CFTA negotiation process, seeks to provide negotiators with evidence and policy recommendations from which to develop an inclusive and cohesive CFTA. It identifies what features negotiators should include in the CFTA's institutional and structural mechanisms in order to ensure that the CFTA can operate consistently with human rights and sustainable development principles. It also identifies complementary policy measures that will be needed alongside the CFTA to maximise the benefits of trade liberalisation and ensure an equitable distribution of these benefits.

The HRIA of the CFTA

In order to identify areas where the CFTA has potential to promote or undermine human rights, and thus to provide meaningful recommendations to those charged with negotiating and implementing the CFTA, this HRIA asked the following five questions:

- Which CFTA-related measures are most likely to affect the vulnerable groups identified?
- What kinds of human rights impacts might follow from the measures identified?
- What steps can States negotiating the CFTA undertake in order to maximise the benefits of a CFTA and minimise potential adverse effects on human rights?
- What follow-up steps, including monitoring, reporting and can most usefully ensure that CFTA mechanisms support human rights?
- What can be learnt from the process of the CFTA negotiations so far in terms of enhancing democratic principles and developing inclusive trade and investment policy in Africa?

This HRIA recognises that all human rights are interrelated and interdependent, but chose to focus in particular on the rights to work, social security, an adequate standard of living and food. In gathering evidence and carrying out analysis to answer the questions, the HRIA team has paid particular attention to the situation of women, small-scale farmers and informal cross-border traders.

The recommendations emerging from this HRIA will help to inform the CFTA negotiations, as well as African policy decisions in the subsequent implementation and monitoring phases. In addition, it is hoped that the assessment triggers an earnest dialogue on trade, social and environmental impacts of the CFTA, and motivates civil society groups to engage actively during the remaining negotiation process as well as afterwards.

Priority policy recommendations

A number of policy recommendations emerge from the work carried out under this HRIA. Some of these recommendations are for CFTA negotiators; those that warrant particular attention are presented below.

In addition, this HRIA identifies recommendations for measures to complement the CFTA. These include ensuring coordination and policy coherence between governmental bodies at the national and continental levels, development of infrastructure, supporting connectivity and value chains, promoting the right to work and social protection, facilitating free movement of persons, promoting women's rights and anticipating responses to climate change.

Recommendations to CFTA negotiators

1. Ensure broad consultation and participation in the CFTA negotiations and implementation

All the relevant actors – national governments, regional economic communities and those hosting international negotiating fora – should take steps to ensure effective and meaningful participation. The Draft Strategic Framework of the CFTA emphasises the importance of ensuring that the negotiating process is inclusive, participatory and consultative with all stakeholders, particularly civil society groups at the national, sub-regional and continental levels. Ensuring that a wide range of views and impacts are taken into account prior to the conclusion of the agreement will contribute to a robust, inclusive and sustainable CFTA.

Member States should make provision for mechanisms at the national level through which to consult stakeholders and ensure their views are fully taken into consideration. Those consulted should include agricultural producer and farming associations, consumer bodies, chambers of commerce and industry, specific-industry associations, professional associations, standard-setting bodies, parliaments and parliamentarians, the media, as well as NGOs, particularly those working in the field of environment, labour rights, gender or youth-related issues, and academia. Mechanisms for participation and consultation must acknowledge that some vulnerable and disadvantaged actors – small private sector operators, women and rural populations, for instance – may find it hard to make their voices heard. Proactive measures must thus be taken to reach these vulnerable groups.

In addition, a participatory process can be meaningful and effective only when the participating stakeholders are well aware of essential information required to make informed decisions. This highlights the need to reach out to marginalised groups and enhance information dissemination on the CFTA, including via local radio or social media.

2. Collect data

Ensuring that the institutional and structural mechanisms for implementation and oversight of the CFTA respond to the need of the continent's people will require knowledge of the situation of those people with regard to a range of economic and social indicators. For this, data is essential.

A human rights approach pays attention to the situation of the most vulnerable and disadvantaged. It thus points to the need for collection of data that is disaggregated by sex, age, location, ethnicity, participation in the informal economy, or other relevant factors. Such data is an important resource for governments and an essential basis for the elaboration of clearly

stated and carefully targeted policies. As well as informing how the CFTA is designed, data will be essential for defining the types of actions necessary to address any potentially adverse outcomes in the transition towards the CFTA. Research for this HRIA finds that important actors in Africa's economy and economic integration, such as women or informal cross-border traders, are insufficiently acknowledged in available data.

Gathering disaggregated data can be time-consuming and costly. International assistance and cooperation through human rights channels and Aid for Trade (AfT) can help to develop adequate data-collection, consultative and monitoring processes.

3. Integrate and address disaggregated effects of trade and investment measures

The impacts of trade and investment liberalisation are not distributed evenly between or within countries – recent economic modelling of the CFTA confirm this. A human rights approach requires governments to take into account the different needs of different sectors of the population, paying attention to the most disadvantaged and vulnerable amongst these – and offer a conceptual framework and operational tools to help them do so. Data collection, as emphasised above, is key to this.

The CFTA process provides African countries with an opportunity to integrate potential disaggregated effects of trade liberalisation. This will require ensuring that impacts of the proposed trade and investment provisions are measured in a disaggregated way, and taking steps to prevent and/or mitigate any likely adverse effects of liberalisation. Flanking measures will need to be designed to help leverage the full scope of possible benefits and support adversely affected groups. A continental simplified trade regime (STR), for example, would allow small informal traders to better take advantage of the CFTA through providing them with elements such as simplified customs documents, a common list of goods that qualify for duty free status, and assistance in completing customs procedures. Direct AfT towards trade facilitation would also help to ensure that vulnerable groups can benefit from the new trading opportunities brought about by the CFTA.

4. Explicitly recognise women

Human rights obligations require States to take steps to ensure that women's rights are respected by law as well as to eliminate discrimination, inequalities, and practices that negatively affect women's rights. All African countries have voluntarily signed up to international legal instruments to this end. Gender equality is shown to lead to faster economic growth, lower rates of poverty, increased female labour force participation, and better health outcomes for women and children. Most governments however – in rich and poor countries alike

– treat economic policies as “gender-neutral” even though they tend to be “gender-ignorant.” Economic modelling, empirical work, and policy analysis have shown that trade policies do not necessarily have the same impact on men and women and that gender relations and differences themselves can influence trade policy outcomes.

Research for this impact assessment found that women’s high participation in the agriculture sector and in the informal economy, as well as their unpaid labour, is insufficiently recognised. African governments must analyse the possible differential impact of CFTA provisions on women and men, and design flanking measures to ensure that there is not an increase in de facto discrimination against women. Accommodating women at border crossings through the CFTA would also help to curb the ill-treatment that women informal cross-border traders face in particular.

5. Fully estimate potential revenue gains and losses

At the aggregate level the CFTA is expected to amount to a relatively small trade shock since intra-African trade accounts for only 13.6 per cent of total African imports and the CFTA is expected to contain exclusion lists and safeguard provisions. That said, continental liberalisation will still contribute to a reduction in tariff revenues, particularly for African countries that are heavily reliant on trade tariffs on intra-African imports as a source of government revenue.

Given that governments have obligations to mobilise resources for human rights purposes – such as education and social protection - the full breadth of implications of tariff reductions must be considered with utmost care. This is particularly relevant since studies in Africa and elsewhere suggest that other developing countries have found it difficult to replace tariffs with revenue from domestic sources.

6. Engage in paced, layered, targeted liberalisation

Governments should embark on gradual liberalisation that allows protection especially for vulnerable groups and in key areas such as food security.

Exclusion list provisions would allow Member States to select a specified number of tariff lines to be temporarily excluded from tariff liberalisation, enabling them to protect vulnerable groups such as women, food insecure populations, indigenous groups or cross-border traders. One reference for establishing an exclusion list could be the list of strategic agricultural commodities that African countries were called on to protect at the 2006 Abuja Food Security Summit, which were identified based on their importance to the African Food basket, the relative expenditure of foreign exchange to import them, and their untapped production po-

tential on the continent. Exclusion lists also provide valuable tools for reducing the negative impact of tariff liberalisation on tariff revenues.

In addition, negotiators should provide for the use of anti-dumping, countervailing and safeguard measures for taking remedial action against imports which are causing material injury to a domestic industry, particularly in the agricultural sector. The CFTA trade remedy provisions must be designed in a way that ensures they are accessible to least developed countries (LDCs).

7. Maintain policy space

Economic development is a dynamic process. African countries must be cautious not to limit their “policy space” for the future – they should resist CFTA provisions that could undermine the ability for government to implement future measures to ensure that human rights are respected, protected and fulfilled. In the agriculture sector, for instance, governments should maintain policy space to promote agricultural development that meets the needs of small-scale agricultural producers as well as maintaining and strengthening domestic food production capacity.

8. Ensure adjustment mechanisms

Even if the CFTA adopts an inclusive pro human rights approach, as with any other trade agreements, it is bound to leave some people worse off. Human rights do not preclude change, but require that changes be part of a deliberate strategy towards fulfilment of human rights. Human rights call for likely impacts to be monitored and discrimination be avoided. To this end, a number of CFTA adjustment mechanisms will need to be established to ensure that vulnerable groups and those adversely affected by the structural and regulatory changes brought about by the CFTA, are able to benefit from the agreement over time.

To help compensate those adversely impacted by the CFTA, negotiators should establish a compensatory fund to provide short-term financial support and medium-term re-skilling and training, to support transitions to new activities and sectors of employment. Regional AfT could support the financing of such a fund. CFTA negotiators should also include in the CFTA an article on labour issues that references not only binding ILO instruments, but also to non-binding instruments, in particular Recommendations 202 and 204. These instruments recognise that social protection is an important tool to promote equal opportunity and gender and racial equality, as well as to support the transition from informal to formal employment. These recommendations are particularly relevant to informal cross-border traders.

9. Monitor and evaluate CFTA impacts

The CFTA will include its own mechanisms for monitoring and evaluating its implementation. This should incorporate the monitoring of the distributional and human rights impacts of CFTA. Another mechanism could also be envisaged, either through an in-depth exercise similar to this HRIA, or within an existing human rights body, to focus specifically on the evolving level of human rights enjoyment in Africa as impacted by the new trade and investment environment.

Monitoring can help identify what adjustment, compensatory or flanking measures might be needed in case of adverse human rights impacts related to the CFTA. It is also important for accountability, which is a key human rights principle. Monitoring and evaluation should be accessible not only to economic operators and governmental entities but also to other interested parties. Monitoring can be a time-consuming and costly task. Governments might wish to seek technical and financial assistance, whether through Aid for Trade or via human rights sources, to build capacity and help conduct monitoring and evaluation.

Achieving the CFTA's objectives will require the removal of a long list of non-tariff barriers (NTBs) that create obstacles to intra-African trade. An NTB mechanism should be established within the CFTA to facilitate the reporting, monitoring and elimination of NTBs. Such a mechanism would allow traders to report NTBs to national officials who must take action to remove the barriers and report on their removal.

Chapter I

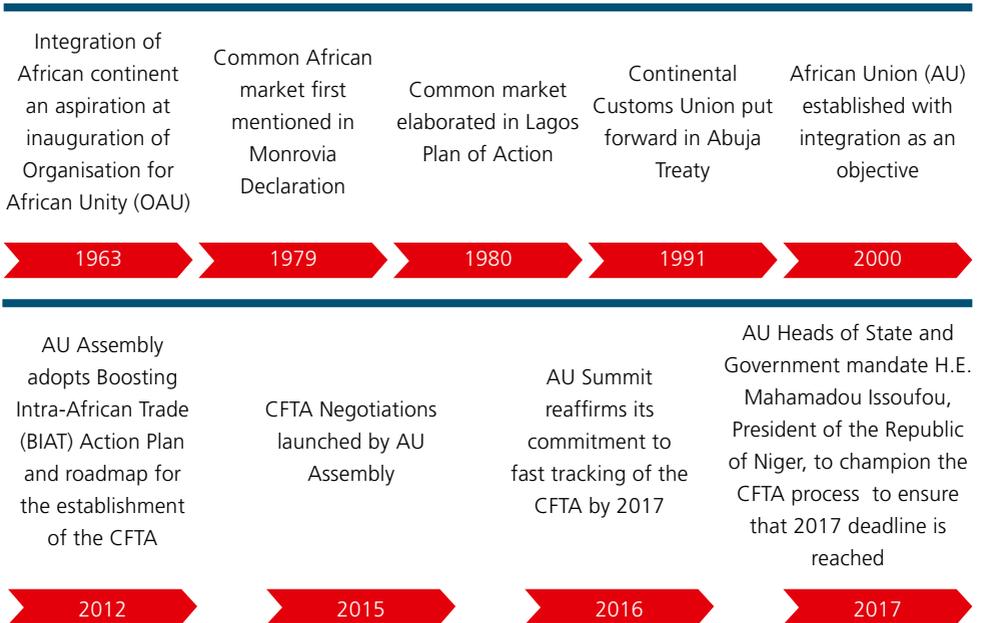
The Continental Free Trade Area in Context

A Introduction to the CFTA

In January 2012, the African Union decided to fast-track the establishment of the Continental Free Trade Area, (CFTA) with the main aim of boosting intra-African trade.¹ The CFTA is seen as a stepping stone in the long-term objective of establishing an African Economic Community.² Since independence, African leaders have been saying that integration is a core element of their development strategies.³

The negotiations on the CFTA were launched in July 2015 and the first Phase of negotiations scheduled to finish by October 2017.⁴ The CFTA envisages the creation of a single market with free movement of goods, services, capital and natural persons, as a way of promoting social and economic development in Africa.⁵ Its implementation would result in tariffs and non-tariff barriers on the trade of most goods and services among African countries being eliminated, bringing together 55 African countries with a total population of more than one billion people and a combined gross domestic product of more than USD 1.2 trillion.⁶

Figure 2: CFTA in the Context of African Integration



Objectives of the CFTA

- *Create a single continental market for goods and services, with free movement of business persons and investments, and thus pave the way for accelerating the establishment of the Continental Customs Union and the African customs union.*
- *Expand intra-African trade through better harmonisation and coordination of trade liberalisation, as well as the creation of better facilitation regimes and instruments across RECs and across Africa in general.*
- *Resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.*
- *Enhance competitiveness at the industry and enterprise level through exploiting opportunities for scale production, continental market access and better reallocation of resources.*

Source: <https://www.au.int/web/en/ti/cfta/about> (accessed 27 February 2017)

CFTA negotiations cover a broad scope of issues, and are divided into two phases. Phase I covers trade in goods and trade in services. Issues negotiated relating to goods include tariff reductions, non-tariff barriers, rules of origin, customs cooperation, trade remedies, standards and technical barriers to trade. Investment is scheduled for negotiation during the second Phase along with other issues like competition policy, intellectual property rights and movement of business persons (economic operators).

The CFTA's first priority is to broaden Africa's economic and market space. It has other priorities such as addressing supply-side constraints, weak productive capacities and infra-structural bottlenecks. Indeed, many view the CFTA as more than a free trade agreement. It is perceived as a platform that can facilitate a process of inclusive structural transformation of African countries, contributing to meeting Africa's Agenda 2063 vision and helping Africa to progress towards implementing the Sustainable Development Goals.⁷ If it is well-designed, the CFTA will present a unique opportunity to bring enhanced growth and increased opportunity to millions of African citizens.

The AU Assembly "recognises that the promotion of intra-African trade is a fundamental factor for sustainable economic development, employment generation and effective integration of Africa into the global economy."

Source: Decision on boosting Intra-African trade and fast tracking the continental free trade area doc. Ex.CI/700(xx)

The CFTA can empower African countries in their trade relations. Over the years, trade agreements have increasingly shifted away from the World Trade Organization (WTO) towards

bilateral and mega-regional agreements. This shift risks Africa being excluded from important decisions that frame international trade since Africa is not party to many of the emerging mega-regional agreements.

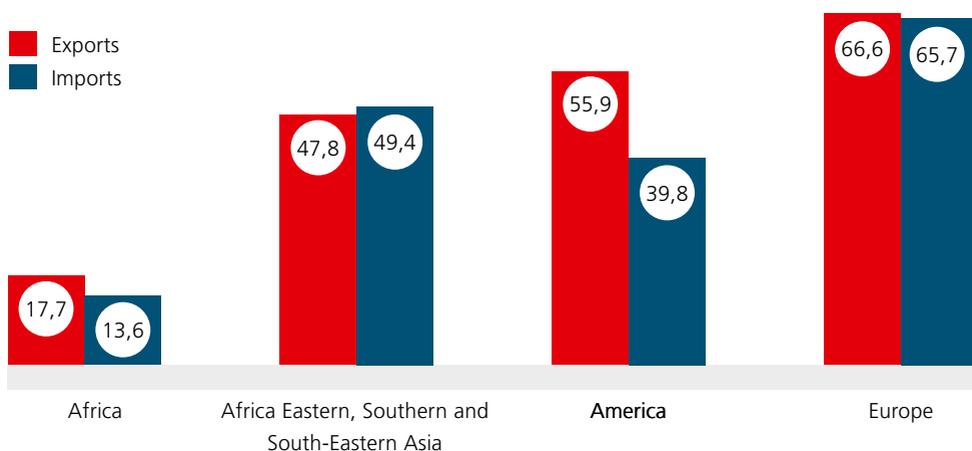
The CFTA presents the continent with the opportunity to redress the vulnerabilities of Africa's economies within the global economic order, which manifest in and are deepened by the imbalances of the WTO and other multilateral and bilateral trade agreements.⁸ It can thus play a key role in increasing integration, combating poverty, and achieving African countries' development goals.

To better understand the CFTA's potential it is useful to consider current patterns, opportunities and challenges relating to African trade and investment.

B The trade landscape in Africa

Africa's share in total world exports is under 3 per cent,⁹ and is concentrated in primary, agricultural, and food products.¹⁰ African manufacturing production and exports have declined since the 1980s in terms of volume, diversity and sophistication.¹¹ The existing structure of commodity specialization in Africa has placed the continent at a long-term disadvantage not only for cumulative terms of trade losses but also for loss of assurance in the continent's capacities, and for growth.¹²

Figure 3: Intra-regional trade as a percentage of total trade, 2015



Source: UNCTAD stat 2015

The continent's export markets are relatively more diversified and industrialised than markets outside the continent,¹³ and therefore offer significant opportunity for industrial upgrading. In 2014, manufactured goods accounted for 41.9 per cent of intra-African exports compared to only 14.8 per cent of Africa's exports outside the continent.¹⁴

It is notable that notwithstanding the challenges facing intra-African trade, there is a dynamism to it. Between 2004 and 2014, the total value of African manufactured exports more than doubled from US\$50.9 billion to US\$106.0 billion. African countries are increasingly exporting manufactures to one another – 33.7 per cent of Africa's total manufacturing exports were destined for other African countries in 2014, compared to only 19.1 per cent in 2004.

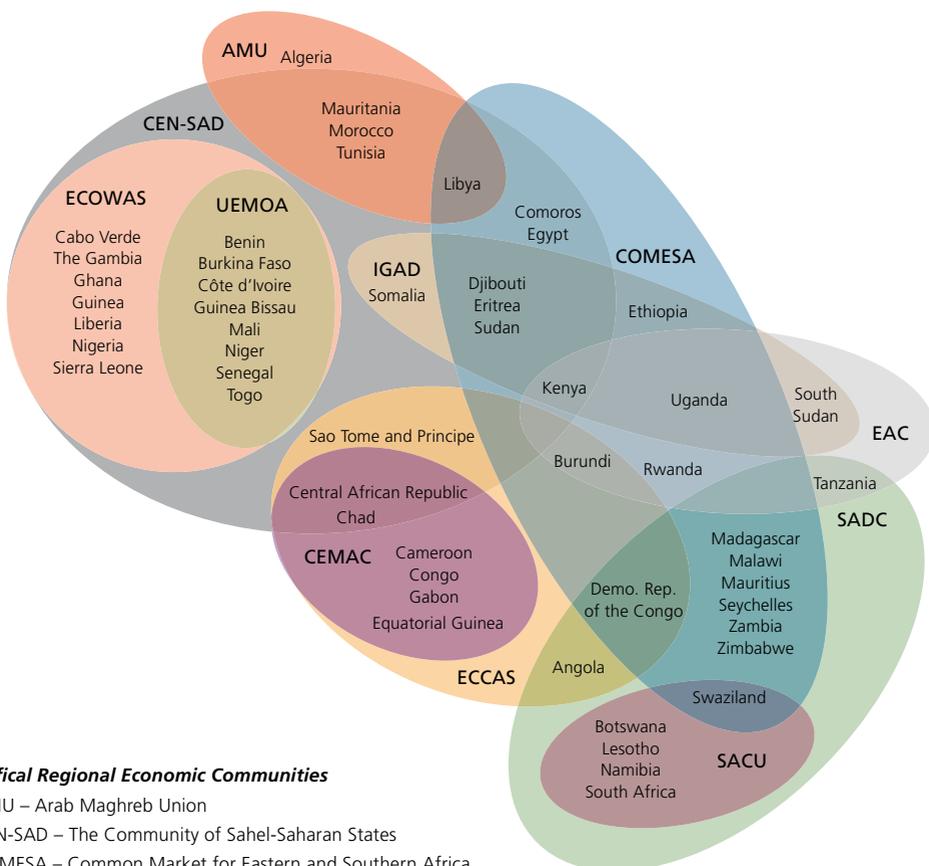
Although intra-African trade has risen significantly over the last twenty years, it still remains low when compared to other regions. Intra-African exports and intra-African imports were 17.7 per cent and 13.6 per cent respectively in 2015, compared to 66.6 per cent and 65.7 per cent for intra-European exports and imports in Europe.¹⁵

Both tariffs and non-tariff barriers (NTBs) pose obstacles to African trade. Tariff structures are complex and heterogeneous. NTBs remain significant even though African countries have reduced them over recent years. NTBs take multiple forms, such as lengthy customs procedures, overly burdensome sanitary and phytosanitary measures, product standards, and licensing requirements. Lack of infrastructure is also a problem. These factors particularly affect agriculture and food products, which are subject to stringent sanitary and phytosanitary standards. As these products are perishable, delays in the export/import process can be more costly than for other categories of products, as they can result in the loss of the merchandise.¹⁶

C African regional trade arrangements

There are many arguments in favour of regional trade arrangements in Africa. Amongst these, regionalism is often regarded as necessary to aggregate bargaining power to negotiate with powerful trading partners like the EU, as well as to develop African companies' capacity to build economies of scale, which will help them compete in international markets.¹⁷

Figure 4: Regional Economic Communities



Official Regional Economic Communities

- AMU – Arab Maghreb Union
- CEN-SAD – The Community of Sahel-Saharan States
- COMESA – Common Market for Eastern and Southern Africa
- EAC – East African Community
- ECCAS – Economic Community of Central African States
- ECOWAS– Economic Community of West African States
- IGAD – Intergovernmental Authority on Development
- SADC – Southern African Development Community

Source: www.howwemadeitinafrica.com/tfta-intra-regional-trade-africa/

Sub-Regional Arrangements

- CEMAC – Central African Economic and Monetary Community
- SACU – Southern African Customs Union
- UEMOA – West African Economic and Monetary Union

The AU recognises eight Regional Economic Communities (RECs): Common Market for Eastern and Southern Africa (COMESA), Community of Sahel-Saharan States (CEN-SAD), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority for Development (IGAD), Southern African Development Community (SADC), Union du Maghreb Arabe (UMA).

Source: <https://www.au.int/web/en/organs/recs> (accessed 26 April 2017)

In Africa the principles which guide CFTA negotiations recognise RECs as building blocks for the CFTA. The AU has recognised eight such RECs across Africa for this purpose. The tripartite agreement (TFTA) among the COMESA, EAC and SADC which aspires to create a free trade area among these three RECs aims to be a catalyst for launching the CFTA. This tripartite arrangement combines 26 African countries with a combined population of 530 million people and a total GDP of USD 630 billion, representing over 50 per cent of Africa's economic output.¹⁸ The road towards regional integration is not straightforward, however, and to date, progress within the eight RECs has been made at different paces.¹⁹ The RECs thus differ in degree to which the CFTA can build on their trade liberalization experiences.²⁰

The regional trade agreements (RTAs) within the RECs are generally more than simply trade treaties. They form regimes that reflect a broad set of goals,²¹ providing a framework for initiatives such as joint ventures or initiatives in areas including trade, investment and capital; while also extending further into transport, security, electricity supply, labour movement and management of common resources such as river basins.²² Although it may be argued that RECs were not created for the promotion of human rights, there is an inextricable link between human rights and a primary objective of the RECs: improving the standard of living.²³

D Boosting intra-African trade

The Action Plan for Boosting Intra-African Trade (BIAT) is the sister programme to the CFTA. Like the CFTA, it aims at deepening Africa's market integration and using trade to serve more effectively as an instrument for the attainment of rapid and sustainable socio-economic development. The BIAT and CFTA initiatives are complementary – the former focussing on the supply side constraints to intra-African trade, and the latter more on the market access demand side constraints.

Changes in economic structure will be important for Africa to create good jobs and to reduce the continent's vulnerability to shocks and declining commodity prices.²⁴ Structural change – the movement of workers from low productivity to high productivity employment – can be a key driver of economic growth and a source of "good" jobs. In Asia, the movement of workers from lower to higher productivity sectors, as well as from lower to higher productivity activities within the same sector, over the last two decades has increased the overall rate of economic growth and led to rising household incomes. Over the same period in Africa though, structural change has moved in the opposite direction: labour has shifted from higher to lower productivity employment, reducing overall growth and slowing the pace of poverty reduction.²⁵ It will be essential to develop value chains across Africa as well to ensure that

intra-African trade includes higher value products from African Union member States and in such a way as to offer opportunities for all sectors of the continent's population.

At the aggregate level, the CFTA is expected to amount to a relatively small trade shock since (a) intra-African trade accounts for only 13.6 per cent of total African imports, (b) most intra-African trade is between proximate countries and much of this flows through existing REC FTAs; and (c) the CFTA is expected to contain exclusion list and safeguard provisions. However, the adjustment costs of the CFTA could be significant for certain vulnerable groups, such as displaced workers, women and informal traders, and African countries that are particularly reliant on tariffs from intra-African imports as a source of government revenue. Generally, it is the economically weaker countries, including the least developed, the landlocked and small economies, that face greater risks of being negatively impacted by tariff cuts leading to the loss of tariff revenue.²⁶

Table 1: Summary of Impact Studies of the CFTA¹⁰

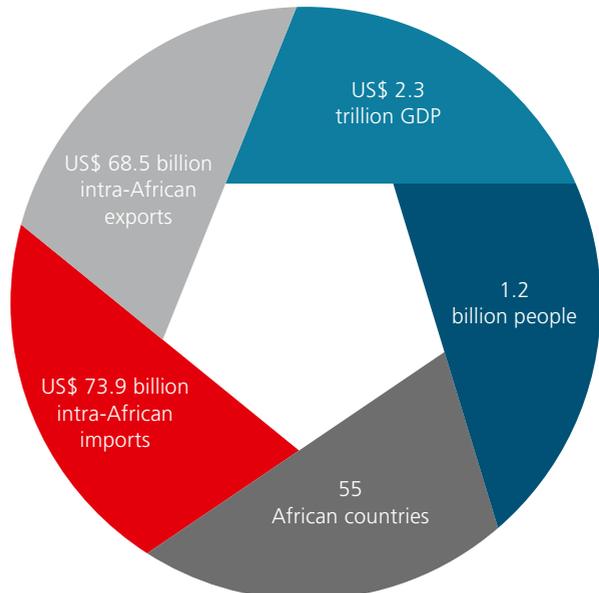
Authors	Model	Scenario	Results
Mevel & Karingi (2012)	MIRAGE, GTAP 7 SAM (based on data for 2004), MAcMap HS6v2, reference group weights	100% tariff liberalisation + 50% trade costs liberalisation	Tariff reduction only > +0.2% welfare, +50% intra-African trade. Incl. trade cost reduction: + 1% welfare; x 2 intra-African trade; all countries modelled gain welfare
Depetris Chauvin Ramos and Porto (2016)	Mirage-e, GTAP 8.1 SAM (based on data for 2007), MAcMap HS6, reference group weights, microsimulation	100% tariff liberalisation; 50% NTM reduction; 30% transaction cost reduction	By 2030: +1% GDP (tariffs only); +6% GDP (tariffs + NTMs + transaction costs). Almost all countries +ve or zero GDP effect whatever scenario. Welfare gains +ve for all if and only if NTM reduction; up to +2.66% by 2027 for maximalist scenario. Microsimulation shows pro-poor welfare effects.
ILO & UNCTAD (2013)	MIRAGE recursive dynamic, GTAP 7 (based on data for 2004)	CFTA in goods	+50% intra-African trade
Mureverwi (2016)	Gdyn model, GTAP 8.1 (based on data for 2007)	CFTA in goods	Substantial welfare goods for 15 out of 17 African countries/regions; significant losses for one (Zimbabwe)

Some considerations about tariffs

Many countries in Africa and other parts of the world have taken decades to recover revenue following trade liberalisation or have not fully recovered.²⁷ Increased business activity and trade brought about by the CFTA may help to offset tariff revenue losses through, for instance, higher taxable corporate revenues. Other forms of taxation can be used to raise revenue, but their potential may be limited for many African countries due to the size of the informal economy, which is difficult to tax directly; and due to the challenges of setting up an effective tax administration body. Some suggest replacing tariff revenues with Value Added Tax (VAT), but from a human rights perspective VAT may not be acceptable, as, like any tax system that has regressive effects, it can impact the poor harder than the rich.²⁸ Even though CFTA is not expected to cause a huge reduction in revenues from tariffs, these tariffs may remain an important means of raising revenue for some African countries. Foregoing such an important source of State revenue goes against States' obligation to mobilise resources for the progressive realisation of human rights – unless States can be absolutely certain that the revenue can be recouped elsewhere, and in a non-discriminatory way.²⁹

It must also be noted that, if economic modelling has predicted positive outcomes for trade liberalisation, this modelling creates a controlled world that does not necessarily replicate the real world. For example, models often proceed from assumptions such as perfect competition and full employment that are not present in the real world.³⁰ In addition, trade theory might suggest positive economic outcomes for countries liberalising trade, but politics, competing interests and priorities, tend to shape trade negotiations, limiting the potential that theory suggests.

Figure 5:
Significance of the CFTA



Source: UNCTAD stat 2015

In any event, to gain from trade, African countries would need to put in place trade facilitation measures in parallel to the CFTA, to address the non-tariff barriers that hamper intra-African trade.³¹ Effective implementation of the BIAT initiative (that includes clusters on trade facilitation and infrastructure) will help support inclusive gains from the CFTA. Economic modelling of the ECA finds that gains from the CFTA are significantly higher when the CFTA is implemented alongside trade facilitation measures.³²

Infrastructure development is an integral part of trade facilitation.³³ The flagship strategy for infrastructure is the 2010 Programme for Infrastructure Development in Africa (PIDA). This covers Africa's essential infrastructure needs in the areas of energy, ICT, transport and transboundary water, and is an example of the way in which investment in infrastructure, integration and trade goals are being pursued simultaneously.

E Development, trade, and human rights commitments in Africa

The African countries will be negotiating and implementing the CFTA in the context of their other international legal and policy commitments. The main development aspects are presented here; these and human rights aspects are discussed in more detail in Chapter IV.

African Union Member States have committed to ambitious sustainable development agendas at the continental and global levels, most notably Agenda 2063. The African Union adopted Agenda 2063: The Africa We Want in 2015.³⁴ This wide-ranging action plan seeks to “build a prosperous and united Africa based on shared values and a common destiny”³⁵ through the attainment of seven aspirations.

Our aspirations for the Africa we want

- 1. A prosperous Africa based on inclusive growth and sustainable development;*
- 2. An integrated continent, politically united, based on the ideals of Pan Africanism and the vision of Africa's Renaissance;*
- 3. An Africa of good governance, respect for human rights, justice and the rule of law;*
- 4. A peaceful and secure Africa;*
- 5. An Africa with a strong cultural identity, common heritage, values and ethics;*
- 6. An Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children; and*
- 7. Africa as a strong, united, resilient and influential global player and partner.*

Source: Agenda 2063, 2015

Agenda 2063 was the basis for African countries' input to the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs), a set of global goals adopted in 2015. Both Agenda 2063 and the SDGs recognise the key role that trade can play in alleviating poverty, achieving sustainable development, and enabling the fulfilment of human rights. Agenda 2063 highlights the fast-tracking of the CFTA as essential to an integrated and thriving continent,³⁶ while references to trade policy and trade-related measures feature in at least six of the 17 SDGs (Goals 2, 8, 9, 10, 14 and 17), covering such areas as reforming distortions in world agricultural markets, the improvement of Aid for Trade (Aft), and special and differential treatment for developing countries.³⁷

Agenda 2063 emphasises the continent's aspiration to entrench human rights, democracy, gender equality and the rule of law. Agenda 2063 also articulates other human rights priorities such as poverty eradication, promotion of health, education and skills, sanitation and other basic services, as well as sustainable and long-term stewardship of resources.³⁸ Similar priorities are reflected in the SDGs, and in countries' national laws and policies.

African policy commitments of ensuring food security and eliminating poverty dovetail neatly with African human rights commitments, expressed in regional and international human rights treaties as well as through the REC agreements, as discussed below and in Chapter IV. More broadly, these policy commitments echo human rights ideals which regard poverty not merely as lack of income, but an inability to live in dignity and in enjoyment of basic rights and freedoms.³⁹ From this vantage point, remedying poverty requires addressing the barriers and obstacles to satisfying basic needs, such as discrimination.

The 2004 Pretoria Declaration on Economic, Social and Cultural Rights in Africa recalls similar principles, stating that "the African Union, its Member States, international and national organizations and non-state actors should fully recognise human rights as a fundamental objective of development and that development has to achieve the full realisation of all human rights. Economic, social and cultural rights should therefore be integrated into development planning and implementation so that African needs and aspirations are fully addressed."⁴⁰

From the trade and human rights perspective, it will be important to remove discriminatory barriers that, for example, favour big business and disfavour small-scale farmers, such as high costs of registering a business. The removal of such barriers is consistent with the protection of the right to development in the African Charter on Human and Peoples Rights (also known as the Banjul Charter) which aims to effectively tackle multiple dimensions of poverty

and deprivation including decent work, education, health care, food security and income security. An end to these multiple dimensions of poverty and deprivation is also embraced in the African Union's Agenda 2063.⁴¹

Regional integration and human rights mutually reinforce one another in binding legal commitments and regional institutions for their implementation. Far from being mutually antagonistic, they are now mutually interdependent and overlap in defining the scope and functions of sovereign territoriality in Africa.⁴²

At a regional level, several of the RECs demonstrate their commitment to human rights. Examples of this are provided in Chapters II and IV. Suffice here to say that the SADC Charter of Fundamental Social Rights emphasises the rights to employment and social protection, and COMESA and ECOWAS commit to improving the quality of life of their citizens. ECOWAS has adopted a General Convention on Social Security, which inter alia provides for retired migrant workers from an ECOWAS Member State to exercise the right to social security in their native country. In addition, several RECs have established or are crafting legal instruments to facilitate intra-regional human mobility, which will have positive human rights consequences, as discussed further in Chapter V.⁴³

¹ Decision on boosting intra-African trade and fast tracking the Continental Free Trade Area (...), assembly of the African Union, Eighteenth Ordinary Session, 29 – 30 January 2012 (accessed 5 March 2017).

² Abuja Treaty signed on 3 June 1991 and entered into force on 12 May 1994.

³ Soininen, I. 2014. The Continental Free Trade Area: Current State of Play, Policy Brief 01, Saana Institute.

⁴ Decision on the launch of Continental Free Trade Area negotiations Doc. Assembly/AU/11(XXV) (accessed 5 March 2017).

⁵ ECA. 2012. Assessing Regional Integration in Africa V – Towards an African Continental Free Trade Area, 21 <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Assessing%20Regional%20Integration%20in%20Africa%20-%20Towards%20an%20African%20Continental%20Free%20Trade%20Area.pdf> (accessed 30 March 2017).

⁶ Ajumbo, G. & Briggs, I. 2015. Taking Stock of the proposed Continental Free Trade Area.

⁷ UNCTAD, African Continental Free Trade Area: Developing and Strengthening Regional Value Chains in Agricultural Commodities and Processed Food Products, http://unctad.org/en/PublicationsLibrary/webditc2016d4_en.pdf (accessed 10 March 2017).

⁸ Adedze, Cornelius. 2016. CFTA blues as Africa hastens to establish Free Trade Area, African Agenda Volume 19(2), 2016, <http://www.twnafrica.org/africanagenda/Agenda%2019.2%20new.pdf> (accessed 10 March 2017).

⁹ UNCTADStat data for 2016.

¹⁰ UNCTADStat data for 2016.

¹¹ Page, John. 2016. Why Intra-African Trade Matters: Working Locally to Go Global, https://www.brookings.edu/wp-content/uploads/2016/07/01_working_locally_page.pdf (accessed 11 March 2017).

¹² ECA. 2012. Assessing Regional Integration in Africa V – Towards an African Continental Free Trade Area, xv <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Assessing%20Regional%20Integration%20>

in%20Africa%20-%20Towards%20an%20African%20Continental%20Free%20Trade%20Area.pdf (accessed 30 March 2017).

¹³ Mevel, Simon & Karingi, Stephen. 2013. Towards a Continental Free Trade Area in Africa – A CGE Modelling Assessment with a Focus on Agriculture; in: Cheong, D. et al. 2013. Shared Harvests: Agriculture, Trade and Employment. International Labour Office and United Nations Conference on Trade and Development, 283–284.

¹⁴ ECA. Forthcoming. Smart industrialization through trade in the context of Africa's transformation.

¹⁵ UNCTADStat data for 2015.

¹⁶ Mevel, Simon & Karingi, Stephen. 2013. Towards a Continental Free Trade Area in Africa – A CGE Modelling Assessment with a Focus on Agriculture; in: Cheong, D. et al. 2013. Shared Harvests: Agriculture, Trade and Employment. International Labour Office and United Nations Conference on Trade and Development, 287.

¹⁷ Page, John. 2016. Why Intra-African Trade Matters: Working Locally to Go Global, https://www.brookings.edu/wp-content/uploads/2016/07/01_working_locally_page.pdf (accessed 10 March 2017).

¹⁸ Assessing Regional Integration in Africa V – Towards an African Continental Free Trade Area, 21 <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Assessing%20Regional%20Integration%20in%20Africa%20-%20Towards%20an%20African%20Continental%20Free%20Trade%20Area.pdf> (accessed 30 March 2017) It must also be noted that while the TFTA was agreed to in 2015, it has still to garner even a single of the 14 ratifications required for it to come into force, as delays in negotiations have hampered agreements on a core document to ratify. <https://www.howwemadeitinafrica.com/tfta-intra-regional-trade-africa>.

¹⁹ Mevel, Simon & Karingi, Stephen. 2013. Towards a Continental Free Trade Area in Africa – A CGE Modelling Assessment with a Focus on Agriculture; in: Cheong, D. et al. 2013. Shared Harvests: Agriculture, Trade and Employment. International Labour Office and United Nations Conference on Trade and Development, 281.

²⁰ *ibid*, 285.

²¹ Gathii, James T.2011. African Regional Trade Agreements as Legal Regimes, Cambridge University Press.

²² *ibid*, 5.

²³ Forere, Malebakeng. 2011. The relationship between the right of access to education and work, and sub-regional economic integration in Africa, 11 *Afr. Hum. Rts. L.J.* 588 2011, 593.

²⁴ Page, John. 2016. Why Intra-African Trade Matters: Working Locally to Go Global, https://www.brookings.edu/wp-content/uploads/2016/07/01_working_locally_page.pdf (accessed 10 March 2017).

²⁵ *ibid*.

²⁶ United Nations Conference on Trade and Development (UNCTAD). 2015. The Continental Free Trade Area: Making it work for Africa. Policy Brief No.44, December 2015.

²⁷ Cagé J, Gadenne L. 2012. The Fiscal Costs of Trade Liberalisation. Working Paper, Harvard University and Paris School of Economics.

²⁸ Sepulveda, Magdalena C. 2014. UN Human Rights Council – Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona (2014). www.ohchr.org/EN/Issues/Poverty/Pages/Annual-Reports.aspx (accessed 9 March 2017).

²⁹ Kassim, Lanre. 2016. The Revenue Implication of Trade Liberalisation in Sub-Saharan Africa.

³⁰ Watkins, Kevin.2008. "Agricultural Trade, Globalization, and the Rural Poor 155–180; in: von Braun, Joachim & Diaz-Bonilla, Eugenio. 2008. Globalization of Food and Agriculture and the Poor. Washington. IFPRI and Oxford University Press; pp. 162–163; Capaldo, Jeronim. 2014. The Trans-Atlantic Trade and Investment Partnership: European Disintegration, Unemployment and Instability.

³¹ ECA & ESCAP. 2015. Joint UN Regional Commissions Survey on Trade Facilitation Implementation and Paperless Trade: Africa Report.

³² ECA. 2012. Assessing Regional Integration in Africa V – Towards an African Continental Free Trade Area, 21 <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Assessing%20Regional%20Integration%20in%20Africa%20-%20Towards%20an%20African%20Continental%20Free%20Trade%20Area.pdf> (accessed 30 March 2017).

³³ *ibid*.

- ³⁴ African Union Commission. 2015. Agenda 2063 Framework Document – The Africa We Want. <http://www.un.org/en/africa/osaa/pdf/au/agenda2063-framework.pdf> (accessed 1 March 2017).
- ³⁵ AU. About Agenda 2063. <https://www.au.int/web/en/agenda2063/about> (accessed 1 March 2017).
- ³⁶ Ibid, 12.
- ³⁷ Sommer, L. & Luke, D. 2016. Priority Trade Policy Actions to Support the 2030 Agenda and Transform African Livelihoods, 1 http://www.ictsd.org/sites/default/files/research/trade_and_poverty.pdf (accessed 9 March 2017).
- ³⁸ AU. 2015. Agenda 2063 – The Africa We Want (Popular Version) <http://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf> (accessed 1 March 2017).
- ³⁹ OHCHR. 2002. Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies <http://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf> (accessed 7 March 2017).
- ⁴⁰ Ibid, Article 12.
- ⁴¹ Economic and Social Council. Statement adopted by the CESC (2001), 2.
- ⁴² Odinkalu, Chidi A. 2011. Regional integration and human rights in Africa, cited in: Forere, Malebakeng. 2011. The relationship between the right of access to education and work, and sub-regional economic integration in Africa, 593.

Chapter II

The rationale for a human rights impact assessment

A Consistency with CFTA objectives and negotiating principles

As noted in Chapter I, one of the CFTA's objectives is to promote sustainable and inclusive social and economic transformation of African States. The CFTA builds on the Abuja Treaty, in which African States declare their adherence to the principles of solidarity, inter-state co-operation, accountability and economic justice.¹ The Protocol on the CFTA² is expected to recognise the importance of international security, democracy, human rights and the rule of law. These objectives, principles and provisions allow for detailed examination of the possible distributional and human rights impacts of the CFTA, which can be achieved through a human rights impact assessment (HRIA).³

The rule of law and development have a significant interrelation and are mutually reinforcing, making it essential for sustainable development at the national and international level.

Source: UN, SDG 16 Facts and Figures, www.un.org/sustainabledevelopment/peace-justice

This builds on the RECs, most of which undertook to achieve their objectives against the backdrop of the promotion and protection of human rights in accordance with the African Charter on Human and Peoples' Rights, such that the African Charter has been viewed as a basis for common regional human rights standards and a normative framework for the RECs.⁴ Several of the RECs courts of justice and tribunals have held States accountable to the African Charter, thus implying that these human rights provisions are binding in the RECs. The marriage between human rights and economic integration has long been argued by scholars in the field. For example, Ebobrah relates the reason that the African RECs extended their mandate to human rights to the fact that the realisation of economic integration can succeed better in stable and conflict-free political environments.⁵

Macro-economic policies should facilitate and not retard access to and enjoyment of economic, social and cultural rights by individuals or peoples.

Source: African Charter. 2011. Guidelines and Principles on Economic, Social and Cultural Rights, para 40

B An inclusive and just CFTA will be a robust CFTA

It is increasingly recognised that for trade and investment agreements to be politically and economically sustainable, they must take into account their broader impacts, as well as their impacts on different sectors of the population. Measuring or predicting overall growth – of an economy or of volumes of trade – does not always fully reflect the range of impacts of a trade agreement on the well-being of different sectors of trading partners' populations, or on their economic or social impacts over the longer-term.⁶ Thus, for the CFTA to be successful – in the initial buy-in stages and in the implementation stage – it must be consistent with the economic justice and human rights values embodied in the sustainable development agenda that Africa has set for itself in Agenda 2063, in the African Charter on Human and Peoples' Rights as well as by signing up to international human rights treaties.

Many Africans have long been sceptical of globalization and around the world we are witnessing rising scepticism towards trade and investment liberalisation. This brings into even sharper focus the need to take active steps to ensure that the gains from productivity and welfare improvements that the CFTA can usher in are equitably distributed, and just as importantly, that they are seen as being equitably distributed.

HRIAs constitute a tool to help States fulfil their human rights obligations, avoid unintended consequences of trade and investment agreements, and achieve nationally established human development goals.

Source: De Schutter, Olivier. 2011. Guiding principles on human rights impact assessments of trade and investment agreements, 13 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf (accessed 5 April 2017)

The World Bank is amongst many who have noted that putting human rights at the centre of economic decisions adds quality to economic growth.⁷ Human rights focus immediate attention on distributional issues and help to identify flanking measures in times of economic adjustment. This is important as it has been demonstrated that inequality leads to less stable, less efficient economic systems that stifle economic growth whilst limiting the participation of all members of society in the labour market.⁸ Moreover, when individuals and communities feel disenfranchised, it can spark social tensions, political instability and conflict.⁹

C Human rights provides insights into the distribution effects of the CFTA

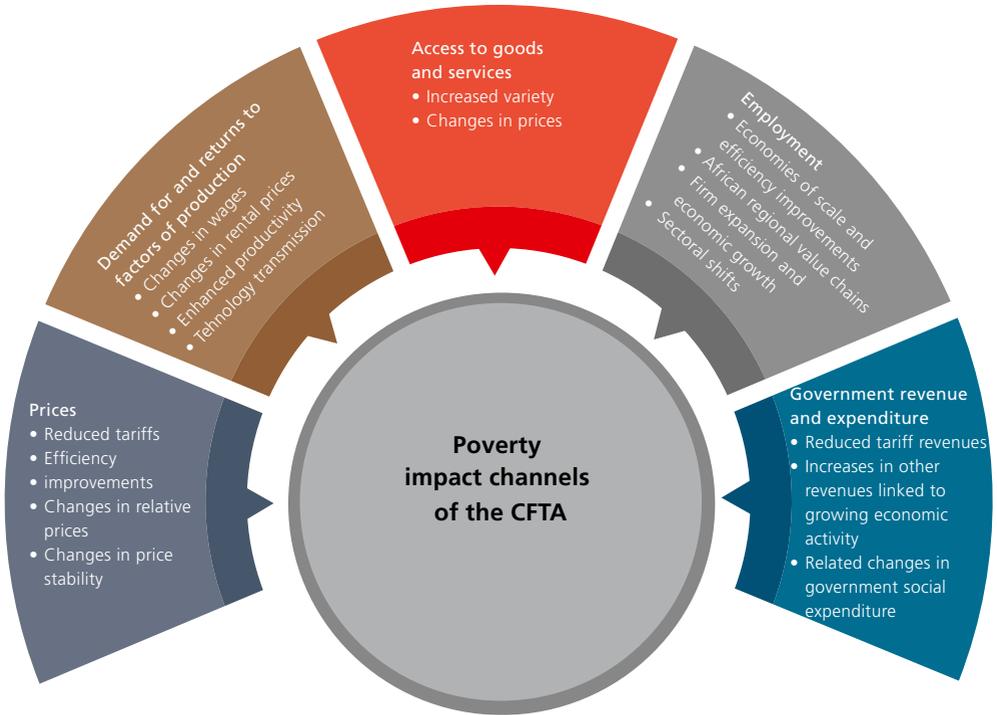
Results from economic modelling indicate that deepened regional integration in Africa through establishment of wider free trade areas would benefit the continent. Such reforms are projected to increase exports, real wages and income for all categories of workers for

Africa as a whole. Moreover, the analysis suggests that the larger the reform the greater the associated gains.¹¹

However, the human rights approach reminds us that placing too much reliance on conventional economic measurements of economy-wide potential gains arising from liberalisation can overshadow the adverse distributional impacts for those at the bottom of the economic ladder, who are often women, informal traders or small-scale agricultural producers.

It has long been demonstrated - through formal economic modelling, empirical work, and policy analysis – that trade policies do not necessarily have the same impact on men and women and that gender relations and differences themselves can influence trade policy outcomes.¹² Women have often been adversely affected by liberalisation policies because of gender biases in education and training, inequalities in the distribution of income and resources, and unequal access to credit, land and technology. Trade liberalisation can create new jobs but can also exacerbate existing inequalities and worsen women's economic and social status.¹³ HRIAs put people at the centre of trade policy. They provide tools to help disaggregate the likely impacts of liberalisation and to pinpoint useful interventions. They can highlight good practices, and assist governments identify potential winners and losers from increased trade and related structural changes and regulatory frameworks. Human rights offer procedural tools and legal reference points for assessing impacts of proposed new economic policies and measures.

Figure 6: Poverty impact channels of the CFTA



HRIAs turn social imperatives into legal rights and obligations

Source: Walker, Simon. 2009. The Future The Future of HR Impact Assessments of Trade Agreements, 198

As poverty impact assessments have demonstrated, there are several channels through which increased trade openness can affect an economy, particularly including its poor people, such as through effects on the prices of goods and services that the poor consume and produce, effects on the demand for and returns to factors of production that the poor can offer, such as labour, or transition costs, resulting in the need for social protection mechanisms. The Global Poverty Report 2001 concluded that “comprehensive trade reform can help reduce poverty when it is part of a set of reforms that improve the domestic macroeconomic and investment climate, enhance infrastructure and technology, and contribute to the provision of knowledge and skills.”¹⁴

Per capita GDP is a profoundly inadequate proxy for the issues of development most relevant to people's lives, including access to adequate food, availability of clean drinking water, and opportunities for education and health care.

Source: Fukuda-Parr, Sakko et al. 2008. Measuring the Progressive Realization of Human Rights Obligations: An Index of Economic and Social Rights Fulfillment

It is also a human rights obligation incumbent on African governments to take positive steps to attenuate or suppress conditions that perpetuate discrimination. This includes ensuring non-discrimination by focussing particular attention on the situation of the most vulnerable and marginalised members of society over time. Doing so can yield economic benefits. For instance, facilitating women's participation in labour markets or in business is shown to have multiplier effects in terms of the overall development impact, as women typically devote a larger portion of their incomes than men to the health and education of their families, which enhances human capital.¹⁵

As will be discussed in Chapter IV, addressing discrimination can assist States in defining what policy steps can help move towards progressive realisation of human rights, what must be done to avoid retrogression from human rights goals, and how to ensure resources are mobilised and used for human rights. It also reminds of the importance of ensuring participation, transparency and accountability for economic policies.

According to economic modelling, in some countries the CFTA is pro-poor (e.g. Burkina Faso), while in others it is pro-rich (e.g. Cameroon, Nigeria); in some countries, the CFTA benefits male-headed households proportionately more than female headed households (e.g. Nigeria), while the reverse happens elsewhere (e.g. Burkina Faso, Ethiopia); in some economies (e.g., Cote d'Ivoire), rural households are benefitted to a larger extent than urban ones, while in others (e.g. Cameroon, Madagascar), urban households benefit more.

Source: Chauvin, Nicolas et al. 2016. Trade, Growth, and Welfare Impacts of the CFTA in Africa

Given the differences in productive and competitive strengths among African Union Member States, the benefits of liberalisation are likely to be unequal.¹⁶ The CFTA should acknowledge this and provide for special and differential treatment for the countries which will less easily benefit from the CFTA. However, it must be emphasised that a HRIA is concerned with the most disadvantaged people in both rich and poor countries.

D A human rights impact assessment can usefully inform CFTA negotiation and implementation

As well as making economic sense, applying the human rights framework is a legal obligation: all African countries have agreed to abide by human rights standards, as they have all ratified at least one of the major human rights treaties. All African countries except Morocco and South Sudan have ratified the African Charter on Human and Peoples' Rights, all but four African countries have ratified the International Covenant on Economic, Social and Cultural Rights, all but two African countries have ratified the Convention on the Elimination of All Forms of Discrimination Against Women and all have ratified the Convention on the Rights of the Child.

A HRIA of a trade agreement, like this one, can be used to gather evidence of potential human rights impacts, to influence negotiations as well as to provide a platform to civil society groups to advocate for equitable, poverty-reducing and human rights-consistent outcomes. Its utility includes avoiding unintended adverse effects of CFTA provisions, identifying necessary compensatory measures, strengthening inclusive governance processes, reducing opposition to trade agreements and preventing litigation around human rights issues. It is also a tool to encourage compliance with human rights obligations.

The greatest benefit of guaranteeing enforceable rights is the assurance it gives to people that effective mechanisms for adjudicating violations or threatened violations of their rights are available. ... The absence of such mechanisms gives the impression that resort to extra-legal means, such as armed rebellion, is the only way to improve one's condition or challenge governmental abuse and neglect.

Source: Agbakwat, Shedrack C. 2002. Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights, 181

A major purpose of this HRIA is to apply human rights tools to assist in identifying social, equity and human rights issues in the negotiation, design, implementation and monitoring of the CFTA, with a view to supporting the creation of a robust agreement that is responsive to the needs of the continent's peoples. This HRIA, undertaken from the outset of the CFTA negotiation process, seeks to provide negotiators with evidence and policy recommendations from which to develop inclusive and cohesive trade policy. It identifies what features negotiators should include in CFTA's institutional and structural mechanisms in order to ensure that the CFTA can operate consistently with human rights and sustainable development principles.

It will also identify complementary policy measures that will be needed alongside the CFTA to maximise the benefits from trade liberalisation and ensure an equitable distribution of these benefits. Early identification of potential winners and losers from liberalised trade and investment and related structural changes can provide the information necessary for governmental officials to design the flanking measures needed to facilitate the economic and social transitions for successful implementation of the trade-related changes that CFTA aspires to.

In 2012, the UN Special Rapporteur on Extreme Poverty recommended States keep in mind their international human rights commitments when “designing all policies, including international trade, taxation, fiscal, monetary, environmental and investment policies.”¹⁷

¹ Treaty establishing the African Economic Community, adopted in Abuja, Nigeria on 3 June 1991 and entered into force on 12 May 1994. Also called the “Abuja Treaty”. Available at <https://www.au.int/web/en/treaties/treaty-establishing-african-economic-community>; 30 International Legal Materials 1241 (1991), Article 3.

² The CFTA text will probably take the form of a Protocol to the Treaty establishing the African Economic Community.

³ Erasmus, G. 2015. The new Principles for Negotiating the Continental FTA. Stellenbosch: tralac.

⁴ Forere, Malebakeng. 2011. The relationship between the right of access to education and work, and sub-regional economic integration in Africa, 594.

⁵ quoted in Forere, Malebakeng. 2011. The relationship between the right of access to education and work, and sub-regional economic integration in Africa, 590.

⁶ Hannan, Swarnali A. 2016. The Impact of Trade Agreements: New Approach, New Insights, IMF Working Paper WP/16/117, 2016, <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/The-Impact-of-Trade-Agreements-New-Approach-New-Insights-43956> (accessed 10 March 2017).

⁷ The World Bank. 2012. Human Rights and Economics: Tensions and Positive Relationships. http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/Report_Development_Fragility_Human_Rights.pdf (accessed 4 May 2017).

⁸ Stiglitz, Joseph E. 2012. The Price of Inequality: How Today’s Divided Society Endangers our Future. New York: W.W. Norton & Company, Inc.

⁹ UN. 2013. Inequality Matters. Report of the World Social Situation 2013. <http://www.un.org/esa/socdev/documents/reports/InequalityMatters.pdf> (accessed 4 May 2017).

¹⁰ ECA (Economic Commission for Africa), AUC (African Union Commission), and AfDB (African Development Bank). 2017. Assessing Regional Integration in Africa VIII: Bringing the CFTA About. United Nations Publications.

¹¹ Mevel, Simon & Karingi, Stephen. 2012. Deepening Regional Integration in Africa: A Computable General Equilibrium Assessment of the Establishment of a Continental Free Trade Area followed by a Continental Customs Union, <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Knowledge/Deepening%20Regional%20Integration%20in%20Africa%20A%20Computable%20General%20Equilibrium%20Assessment%20of%20the%20Establishment%20of%20a%20Continental%20Free%20Trade%20Area%20followed%20by%20a%20Continental%20Customs%20Union.pdf> (accessed 4 May 2017).

¹² Cagatay, Nilufer. 2001. Trade, Gender and Poverty. <http://atwww.undpkm.org/content/dam/aplaws/publication/en/publications/poverty-reduction/poverty-website/trade-gender-and-poverty/TradeGenderandPoverty.pdf> (accessed 4 May 2017) and Beneria, Lourdes. 2003. Gender, Development and Globalization: Economics as if all people matter.

¹³ Higgins, K. 2013. Gender and Free Trade Agreements: Best Practices and Policy Guidance. <http://www.nsi-ins.ca/wp-content/uploads/2013/03/2013-Gender-and-FTAs-Best-Practices-and-Policy-Guidance.pdf> (accessed 5 May 2017)

¹⁴ Report prepared by the IMF, World Bank, and four regional development banks for the G8 Summit in July 2001, quoted in: McGill, Eugenia. 2004. Poverty and Social Analysis of Trade Agreements: A More Coherent Approach? *Boston College International and Comparative Law Review*, 371.

¹⁵ Higgins, K. 2013. Gender and Free Trade Agreements: Best Practices and Policy Guidance. www.nsi-ins.ca/wp-content/uploads/2013/03/2013-Gender-and-FTAs-Best-Practices-and-Policy-Guidance.pdf (accessed 5 May 2017).

¹⁶ Balassa, B. 1961. *The Theory of Economic Integration*. Homewood, Illinois: Richard D. Irwin; Balassa, B. & Toutsjesdijk, A. 1975. Economic integration among developing countries. *Journal of Common Market Studies*, 14 (1), 37-55; Viner, J. 1950. *The Customs Union Issue*. New York: Carnegie Endowment for International Peace.

¹⁷ Sepulveda, Magdalena C. 2014. UN Human Rights Council – Guiding principles on extreme poverty and human rights. http://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf (accessed 9 March 2017).

Chapter III

Methodology of this Human Rights Impact Assessment

A Theory and Practice of HRIAs

Impact Assessment is defined by the International Association for Impact Assessment (IAIA) as a “structured process for considering the implications, for people and their environment, of proposed actions while there is still an opportunity to modify (or even, if appropriate, abandon) the proposals.”¹ Assessments have long been carried out to gauge the social, environmental, poverty impacts of policies or programmes.

Human rights impact assessments share the characteristics of other types of impact assessments. Their specificity, though, is that they (1) are explicitly based on the normative human rights framework, (2) include human rights in the process of the impact assessment as well as the analytical framework, (3) involve human rights actors, (4) contribute to developing the capacities of duty-bearers and rights-holders, (5) emphasise transparency and access to information and (6) take an inter-sectorial approach and favour international policy coherence.²

Guiding Principles for human rights impact assessments (HRIAs) of trade and investment agreements have been developed in the UN context. These emphasise that such HRIAs should use a human rights approach, characterised *inter alia* by independence, transparency, inclusive participation, and actual input into the negotiation process.³

Although there is no universally agreed methodology, HRIAs of trade-related agreements tend to go through the key steps of preparation, screening, scoping, evidence-gathering, consultations, analysis, recommendations, presentation of results, and further evaluation and monitoring. HRIAs are often iterative, with many of the steps being undertaken in parallel.

B Process of the CFTA HRIA

1. Preparation, screening and scoping

This HRIA was initiated in September 2014 and an Issues paper⁴ was prepared which was discussed during a multi-stakeholder workshop organised by ECA in Addis Ababa, in April 2015, during which the 40 participants, including AU representatives, gave the green light to the HRIA and elaborated on the next steps in the process.

The purpose of the screening and scoping stages are to narrow the focus of the HRIA. This is essential as it is not feasible to cover all the human rights issues at stake, nor all the trade measures to be covered by a CFTA. The screening stage built on the Issues paper to identify those trade measures in the CFTA that are more likely to have significant impacts on the enjoyment of human rights and therefore warrant assessment. The Issues paper had identified concerns around agriculture and employment and subsequent consultations confirmed these areas as the primary focus of this HRIA.

In 2015, the HRIA steering group – including ECA and FES – commissioned James Gathii, expert on international trade law and on African regional integration, to prepare a scoping study. This study was based on a review of literature as well as consultations with a broad cross-section of stakeholders within the African Union Commission, African Union Member States, the private sector and NGOs. The scoping study – published in June 2016⁵ – highlighted for future study potential risks posed by the CFTA in three main areas 1) agriculture, 2) decent work and quality jobs and 3) movement of individuals in the informal services sector.

After publication of the scoping paper, the steering group held a meeting in Geneva in July 2016, with representatives from ECA, international organizations and NGOs as well as new team members entrusted with carrying out the HRIA. Participants in that meeting determined the areas of focus of the HRIA as well as which groups would be analyzed. Indeed, trade policy impacts may be experienced differently by groups in particular sectors or regions, by producers and consumers, and on the basis of class, gender, ethnicity, age, and other factors.⁶ The meeting also recalled that, like most trade and investment agreements, the CFTA can affect actors directly (traders, producers, farmers, etc) and indirectly (for instance investment liberalisation can affect traditional land rights). Initial stakeholder analysis conducted by the steering group at this stage resulted in the decision to focus on women, youths and rural food producers, as these are the groups most vulnerable to any adverse effects of the CFTA.

The HRIA team was composed of James Gathii (responsible for the agro-manufacturing case study) Kim Burnett (responsible for the case study on agricultural livelihoods), Chris Nshimbi (responsible for the case study on informal cross-border traders) and Caroline Dommen (responsible for methodology and for the overall compilation of the HRIA).

2. Evidence-gathering, consultations and analysis

From late 2016, the HRIA deepened the human rights analysis of likely CFTA provisions on the vulnerable groups identified above. The HRIA team carried out three case studies on

(1) informal cross-border trade, (2) agricultural livelihoods and (3) agro-manufacturing as well as considering the negotiating process.

The methodology for this assessment comprised a combination of desk research, interviews with stakeholders and experts, case studies and peer review. The desk research looked at impacts of other trade agreements in the areas covered by this HRIA. It also included an extensive review of literature relating to human rights, regional trade integration, economic policy, agriculture, employment and gender issues. For Chapter V on informal cross-border traders, for instance, in-depth analysis of existing migration and human mobility-related conventions, policies and practices at the international and African continental level as well as in Africa's regional economic communities and Member States was conducted. Relevant scientific publications and policy reports were also thoroughly reviewed.

In addition, the case studies draw on field work, as well as surveys of qualitative and quantitative evidence related to the specific topic. Rather than undertake its own quantitative research, the HRIA team reviewed available data and studies undertaken by international organizations, NGOs, academics and others.

The HRIA team implemented a consultation plan with various stakeholders to inform the HRIA. This included calls for inputs from civil society and National Human Rights Institutions (NHRIs), OHCHR field presences, staff of organizations like the International Labour Organization (ILO), the Food and Agriculture Organization (FAO), the UN Conference on Trade and Development and the UN Development Programme. The team members drew on the feedback from these stakeholders and met with a range of actors from civil society, business and inter-governmental organizations. Semi-structured interviews were held with some stakeholders as well as experts on HRIA. A range of expert opinions were sought from academics, policy-makers and practitioners in grassroots civil society organizations on matters pertaining to trade policy, migrant workers in Africa, labour law and practice and women's rights. The choice of respondents for the HRIA exercise was based on expertise, policy portfolio and experience in the field. Purposive and snowballing sampling techniques were conducted in the method.

In parallel, ECA organised a number of consultative events with non-governmental actors during the CFTA negotiations, enabling some civil society views to be reflected and engaging African policy-makers in calls for an inclusive CFTA. The human rights impact assessment team also held consultations, as well as validation and verification meetings, with civil society groups, country delegates and academics. The preliminary findings of the assessment were

presented at side events at the Africa Trade Forum in Addis Ababa, Ethiopia in November 2016 and at the Conference of Ministers in Dakar, Senegal in March 2017. This provided an opportunity to engage trade policy-makers, civil society, academics and other relevant stakeholders on the key areas of concern in the HRIA.

3. Recommendations and presentation of results in the final report

Drafting of the final report based on the case study findings began in March 2017. Given the tight schedule of the CFTA negotiations, and in order to maximise the possibility for this HRIA to inform the negotiations, a Policy Brief with nine of the most salient recommendations emerging from the work undertaken thus far was produced in May 2017. The Policy Brief was used as an input into the Assessing Regional Integration in Africa (ARIA) Report on “Bringing the CFTA About,”⁷ and was shared with trade negotiators at the June 2017 CFTA Negotiating Forum. The draft of this final report has been peer reviewed by key experts in the fields covered. A key function of an ex ante assessment is to influence the negotiations; the pace of CFTA negotiations being so swift justified early sharing of preliminary recommendations with negotiators.

As this is an ex ante assessment, the final terms of the agreement were not known before concluding the impact assessment. For this reason many of the issues raised in this HRIA are hypotheticals. These hypotheticals are grounded in assumptions based on the content and operation of regional and global trade and investment arrangements, and have been adjusted whenever possible according to information that came out in the process of the negotiations as well as developments in other related fora.

4. Monitoring and evaluation

As noted earlier, one important role of a human rights impact assessment is to identify what should be monitored and evaluated in the future not only to develop awareness of the human rights situation of vulnerable groups identified in the assessment, but also to appreciate the extent to which the HRIA's recommendations are taken into account.

As discussed in Chapter X, many impact assessments – like this one – lack much of the initial baseline data on which to assess whether trade liberalisation will leave particular groups worse or better off. This HRIA thus points to possible indicators against which to gather data which will contribute to monitoring the level of enjoyment of human rights of the groups identified over time.

This is all the more important as not all the impacts of the entry into force of a trade or investment agreement can be anticipated. Therefore, ex ante human rights impact assessments can usefully be complemented by human rights impact assessments performed ex post, once the impacts are measurable. Human rights impact assessments are indeed often conceived of as an iterative process which should, ideally, take place on a regular basis, for instance, every three or five years.⁸

It follows from this that HRIAs can usefully suggest which monitoring and evaluation mechanisms can best serve to provide ongoing evidence as to the evolving situation of vulnerable groups identified, and what steps can be taken with the CFTA to promote, and avoid undermining, human rights.

C. Research Questions

The present impact assessment sets out to identify areas where the CFTA has particular potential to promote or undermine human rights. The purpose of doing so is to provide recommendations to CFTA negotiators regarding the content of the agreement, as well as to shape human rights-consistent CFTA implementation and monitoring processes.

Obviously trade and trade policy are not the only factors which will influence the livelihoods, employment and food situation of those considered in this human rights impact assessment. A vast range of other factors will intervene; these could include climate (e.g. drought), political situation (e.g. change in a country's political leadership, or conflict in the region), changing consumer preferences, global changes in prices of raw materials, domestic investment in employment or education.

This HRIA is undertaken with the awareness that pathways of cause and effect are not easily discernable: establishing a causal link between a specific trade intervention and a human rights outcome is a difficult task. For these reasons this HRIA does not embark on the precarious task of seeking to establish a causal chain. Rather it sets out to ask whether the CFTA sets out measures that can reasonably be expected to progressively improve the enjoyment of human rights and in particular the right to food, the right to work and women's rights.⁹ It proceeds from the assumption that getting the relevant trade intervention right is one amongst several necessary conditions for respecting, protecting and fulfilling human rights.

Getting the trade measure right is one important step towards ensuring that countries mobilise their resources in such a way that all – without discrimination – can enjoy food secu-

erty, decent work and when they need it, social security. The human rights-consistent process that this requires will contribute to building stronger, more inclusive and cohesive societies in Africa.

In order to identify areas where the CFTA has potential to promote or undermine human rights and thus provide meaningful recommendations to those charged with negotiating and implementing the CFTA, this HRIA asks the following five questions. In gathering evidence and carrying out analysis to answer the questions, the HRIA team has borne in mind the focus on disadvantaged and marginalised groups identified during the scoping and screening stages of the HRIA: women, small-scale farmers and informal cross-border traders.

- Which CFTA-related measures are most likely to affect the vulnerable groups identified?
- What kinds of human rights impacts might follow from the measures identified?
- What steps can States negotiating the CFTA undertake in order to maximise the benefits of a CFTA and minimise potential adverse effects on human rights?
- What follow-up steps, including monitoring and reporting, can most usefully ensure that CFTA mechanisms would support human rights?
- What can be learnt from the process of the CFTA negotiations so far in terms of enhancing democratic principles and developing inclusive trade and investment policy in Africa?

¹ Fortuny, Loreley. 2017. Impact Assessment. <http://www.iaia.org/wiki-details.php?ID=4> (accessed 13 March 2017).

² Duong, Thu. 2015. Human Rights Impact Assessment of Trade Agreements: Analysis and Critiques of Methodology, 40; Walker, Simon. 2009. The Future of Human Rights Impact Assessments of Trade Agreements, 10-11; and De Schutter, Olivier. 2011. UN Human Rights Council - Guiding principles on human rights impact assessments of trade and investment agreements, U.N. Doc. A/HRC/19/59/Add.5, 5.

³ De Schutter, Olivier. 201. UN Human Rights Council - Report of the Special Rapporteur on the Right to Food, U.N. Doc. A/HRC/19/59/Add.5, 4.

⁴ The issues paper is available at www.ohchr.org/Documents/Issues/Globalization/IssuesPaper_Addis_Ababa2015.pdf.

⁵ Gathii, James T. 2016. Scoping Study: Designing the Continental Free Trade Area (CFTA): An African Human Rights Perspective. http://www.fes-globalization.org/geneva/documents/2016/2016_05_HRIA%20of%20the%20CFTA_Publication.pdf

⁶ McGill, Eugenia. 2004. Poverty and Social Analysis of Trade Agreements: A More Coherent Approach? Boston College International and Comparative Law Review, 371

⁷ ECA. 2017. Assessing Regional Integration in Africa VIII: Bringing the CFTA About. United Nations Publications.

⁸ De Schutter, Olivier. 2011. UN Human Rights Council - Guiding principles on human rights impact assessments of trade and investment agreements, U.N. Doc. A/HRC/19/59/Add.5, para 3.3.

⁹ For more on this approach, see Balakrishnan, Radhika & Elson, Diane. 2008. Auditing Economic Policy in the Light of Obligations on Economic and Social Rights, Essex Human Rights Review Vol. 5 No, 9.

Chapter IV

Methodology of this Human Rights Impact Assessment

A Introduction

African States are party to a wide range of human rights treaties, including the African Charter on Human and Peoples' Rights (ACHPR)¹, and treaties adopted under the auspices of the United Nations, such as the International Covenant on Economic and Social Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).²

African States have also expressed their commitments to human rights in the Abuja Treaty establishing the African Economic Community, the AU Constitutive Act and in REC treaties such as the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC) and the East African Community (EAC).³ As noted in Chapters I and II, these commitments are echoed in a range of policy documents such as Agenda 2063 and the Sustainable Development Goals. It follows that the States currently negotiating the CFTA have committed to respecting, protecting and fulfilling human rights.

Figure 7: All human rights impose a combination of negative and positive duties on States



In 2000, 53 African heads of State adopted the AU Constitutive Act, in which they express their determination "to promote and protect human and people's rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law." The Act states, inter alia, that the objectives of the African Union include promotion and protection of human and people's rights, and encouraging international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights.

Constitutive Act of the African Union. 2000. www.achpr.org/instruments/au-constitutive-act (accessed 29 March 2017)

Many rights may be implicated by changes to the trading structure in the continent. Relevant human rights for assessment could include the rights to self-determination, non-discrimination, health, food, development, to benefit from scientific progress, to access information, to participate in decision-making and many more. It could focus on workers' rights, farmers' rights, the rights of women, of children, of minorities and of indigenous groups, or the human rights obligations of private business actors. Whilst recognising that all human rights are interdependent and interrelated,⁴ this impact assessment has chosen to consider the potential impacts of the proposed CFTA by reference to a limited set of rights, in order to keep the analysis focused and to a manageable scope. It focuses primarily on the right to work, the right to an adequate standard of living, the right to food and women's rights. Before moving to discussion of these rights, it is important to recall some general human rights principles.

Human rights are interdependent and interrelated. The realisation of one right often depends, wholly or in part, upon the realisation of others. For instance, realisation of the right to food may depend, in certain circumstances, on enjoyment of the right to work or of the right to social security.

Of primary importance is the fact that realisation of human rights requires respect for a number of procedural principles, such as the rights to information, to freedom of expression, to participation in decision-making and in public affairs, and the right to effective remedies. These principles and their application to the CFTA process are discussed in Chapter VIII; it must also be stressed though, that they also underpin all other human rights.

In contemporary Africa, a government's legitimacy is largely a function of its ability to guarantee and protect the ESCR of its people.

Shedrack C. Agbakwat. 2002. Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights, 5 Yale Hum. Rts. & Dev. L.J., 177, 179

B General human rights principles

All human rights impose a combination of negative and positive duties on States. These duties can be understood via the “respect, protect and fulfil” framework. The duty to respect requires that States refrain from interfering directly or indirectly with the enjoyment of economic, social and cultural rights. The duty to protect requires the State to take positive measures to ensure that non-state actors such as multi-national corporations, local companies, private persons, or armed groups do not violate economic, social and cultural rights. The duty to fulfil requires States to take positive steps to advance the realisation of economic, social and cultural rights.⁵

These obligations imply obligations of **conduct**, and obligations of **result**. The obligation of conduct requires action reasonably calculated to realise the enjoyment of a particular right. The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard.⁶

To audit the obligation of conduct in the context of trade agreements, it is important to investigate whether the government conducted impact assessments to determine who would be the likely winners and losers before concluding the agreement.

If the likely losers were groups already subject to discrimination and inequality, did the government ensure that the trade agreement was modified to protect them? Or failing modification of the trade agreement did the government introduce other measures to compensate them for their losses?

To assess the obligation of result, indicators are required on the situation of disadvantaged social groups before and after the trade liberalisation (employment, incomes, nutrition, health etc). Compliance with obligations is questionable if the State failed to make an impact assessment, and failed to introduce safeguards or compensatory measures to protect discriminated groups from losses, and if the situation of such groups worsens after trade liberalisation.⁷

Human rights law recognises that it may not be possible for a State to realise economic, social and cultural rights (such as the right to food or the right to work) immediately. But some obligations are immediate: these include taking steps towards the progressive realisation of human rights, ensuring respect for minimum core elements of human rights, preventing discrimination in the enjoyment of human rights and monitoring progress towards realisation.⁸

Progressive realisation acknowledges that the full enjoyment of human rights will not come in a day, but demands that, every day, it comes a little closer.⁹

Progressive realisation

States are required to take steps towards progressive realisation of economic, social and cultural rights. Progressive realisation is linked to the resources available to a country. In the African context, lack of resources may be a hindrance. However, a State party to the African Convention or the ICESCR is under an obligation to mobilise resources, and “to invest its resources in the best way possible to attain the progressive realisation” of human rights.¹⁰ If a country lacks resources at the domestic level for full realisation of human rights, it can – and indeed must – turn to international cooperation and assistance.¹¹

Taking steps involves devising specific strategies and programmes and implementing legislative measures targeted deliberately towards the full realisation of the rights set out in the human rights instruments that a particular country has ratified. The obligation to take steps entails a prohibition on retrogression, that is, of measures that directly or indirectly lead to backwards steps in the enjoyment of human rights.

States enjoy a margin of discretion in selecting the means to carry out their obligations for economic and social rights, but they must pay regard to the following key points:

- *the requirement for progressive realisation*
- *the use of maximum available resources*
- *the avoidance of retrogression*
- *the satisfaction of minimum essential levels of economic and social rights*
- *equality and non-discrimination*
- *participation, transparency and accountability.¹²*

Source: Balakrishnan and Elson. 2008. Auditing Economic Policy

Non-discrimination

Human rights norms prohibit discrimination on any grounds, including race, ethnic group, colour, gender, language, religion, political opinion, national and social origin, economic status or birth.¹³

Any discrimination against individuals in their access to or enjoyment of economic, social and cultural rights on any of the prohibited grounds is a violation of the African Charter.¹⁴

In the context of the CFTA negotiations, it is worth recalling three points about non-discrimination. First, discrimination can be direct or indirect. Indirect discrimination occurs where the effect of certain requirements, conditions or practices has an adverse impact disproportionately on one group or other.¹⁵ Second, human rights and attention to non-discrimination help us direct our attention to the most disadvantaged and marginalised groups in society, i.e. to those who are often least visible in policy-making. Third, there are some situations in which States may have to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination.¹⁶

Obligation to monitor

The essential first step towards promoting the realisation of economic, social and cultural rights is diagnosis and knowledge of the existing situation.¹⁷ Effective monitoring is an obligation States have by virtue of having ratified human rights treaties. States party to the African Charter, for instance, have undertaken to file periodic reports to the African Commission on Human and Peoples' Rights (hereafter African Commission) on steps taken to realise all the rights protected in the Charter.¹⁸ Monitoring should assess both the steps taken and the results achieved. The usefulness of monitoring has been echoed in the SDGs, particularly target 17.19 which calls for developing measurements of progress on sustainable development that complement gross domestic product. As discussed further in Chapter X, a human rights approach calls for data to be disaggregated, for instance on the basis of prohibited grounds of discrimination. Efforts to monitor the domestic situation and particularly that of the most disadvantaged and marginalised members of society will be useful to States in devising inclusive and sustainable policies. This echoes the desirability for trade and trade-related policies and measures to be based on awareness of their likely impacts.

Accountability and access to remedies

Human rights are inseparable from the notion of accountability. Accountability can involve accounting for one's actions, (i.e. being transparent about one's own activity), or being held accountable in case of damage, (i.e. access to remedy). If human rights duty-bearers do not comply with human rights processes as well as standards, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other mechanism, such as those offered by many of the human rights treaties. The right to a remedy is a core tenet of human rights. Accountability is closely related to rule of law.

Economists who apply the human rights framework to economic policy remind us that the above principles can be used as a framework for auditing economic policy.¹⁹

Sustainable Development Goals

Target 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

Target 16.6 Develop effective, accountable and transparent institutions at all levels,

Target 16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels

Target 16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

C The right to an Adequate Standard of Living

Legal basis and scope

The right to an adequate standard of living is enshrined in Article 11, ICESCR and reiterated in the CRC. The right to an adequate standard of living requires, at a minimum, that everyone shall enjoy the necessary subsistence rights: adequate food and nutrition, clothing, housing and the necessary conditions of care when required.²⁰ The African human rights framework does not set out a separate right to an adequate standard of living, but Article 4 of the Charter on the right to life envisages a broader protection and Articles 14–18 of the Charter includes commitments by the parties that protect rights to achieve an adequate standard of living. The right is also recognised, for instance, in the Guidelines for national periodic reports under the African Charter.²¹ The rights to social security and to social protection, discussed below, are also directly related to the right to an adequate standard of living.

In purely material terms, an adequate standard of living implies living above the poverty line.²² A range of human rights bodies have considered the question of poverty. Importantly, a human rights perspective looks not just at resources but also at the capabilities, choices, security and power needed for the enjoyment of an adequate standard of living and other fundamental civil, cultural, economic, political and social rights.²³ A poverty lens emphasises the need to pay particular attention to the “situation of women, children and other vulnerable groups living in extreme poverty.”²⁴

Other relevant commitments

The Abuja treaty has as an objective to promote economic, social and cultural development and the integration of African economies in order to increase economic self-reliance and promote endogenous and self-sustained development. Agenda 2063 provides that Africa shall be a prosperous continent, with the means and resources to drive its own development,

with sustainable and long-term stewardship of its resources and where African people have a high standard of living, and quality of life, sound health and well-being. For its part, the SADC treaty's first objective includes "equitable economic growth", poverty alleviation towards its eradication and enhancing the "standard and quality of life of the people of Southern Africa and support[ing] the socially disadvantaged through regional integration."²⁵

At the international level, SDG 1 calls on States to eradicate extreme poverty for all people everywhere, currently measured as people living on less than \$1.25 a day. It also moves beyond a focus on income poverty and calls for halving poverty in all its dimensions, building resilience to shocks through social protection systems and the need to address equal rights to economic resources. Agenda 2063 includes poverty eradication through investing in skills, improvement of incomes and creating jobs and providing basic necessities of life.²⁶

D The Right to Work and Social Security

Legal basis and scope

Article 15 of the African Charter guarantees that every individual shall have "the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work." The corresponding provisions at the global level are Articles 6 – 9 of the ICESCR. Most are parties to the 1958 ILO Convention concerning Discrimination in Respect of Employment and Occupation (No. 111) and many have ratified the 1964 Employment Policy Convention (No. 122).²⁷ All African States are also required to respect core labour standards, which are considered binding on all States. They are thus bound by principles relating to freedom of association and collective bargaining, elimination of forced or compulsory labour, abolition of child labour and elimination of discrimination in respect of employment and occupation.²⁸

The right to work should not be understood as an absolute and unconditional right to obtain employment. Rather, the State has the obligation to facilitate employment through the creation of an environment conducive to the full employment of individuals within society under conditions that ensure the realisation of the dignity of the individual.²⁹

The right to work includes the State obligation to adopt and implement a national employment strategy and plan of action based on and addressing the concerns of all workers and the unemployed.

Source: African Commission's Principles and Guidelines

Employment should be understood both in terms of wage employment and self-employment. The African Commission and the UN Committee on Economic, Social and Cultural Rights (Committee, or CESCR) have provided more details on the content of the right to work,³⁰ recalling that the general human rights principles (non-discrimination, non-retrogression, to take steps, to monitor and to provide access to remedies) noted above apply. For those whose work is likely to be adversely affected by trade commitments, States are obliged to ensure access to vocational guidance and training that would enable them to obtain alternative employment.

The Committee has specified that, like all human rights, the right to work imposes three types or levels of obligations on States: the obligations to respect, protect and fulfil.³¹ It has also stated that work as specified in the Covenant must be decent work. The ILO defines decent work as involving opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.³²

The obligation to respect the right to work requires States to refrain from interfering directly or indirectly with the enjoyment of that right; States must not destroy a person's opportunity to earn his or her living. The obligation to protect requires States to take measures that prevent third parties from interfering with the enjoyment of the right to work. The obligation to fulfil includes the obligations to provide, facilitate and promote that right: States must provide the opportunity to earn one's living to each person who currently does not have this opportunity for instance through vocational training programmes. States should adopt appropriate legislative, administrative, budgetary, judicial and other measures to ensure the full realisation of the right to work, including striving for full employment.

Sources: UN CESCR, General comment No. 18. 2005. THE RIGHT TO WORK, Article 6 of the International Covenant on Economic, Social and Cultural Rights, paragraph 22,³³ Circle of Rights, The Right to Work and Rights at Work, <http://hrlibrary.umn.edu/edumat/HRIP/circle/modules/module10.htm> (accessed 29 March 2017)

Specific elements of the right to work that the African Commission has identified include adopting and implementing a national employment strategy, providing technical and vocational guidance and training programmes, ensuring that educational systems prepare young people with skills necessary to obtain initial employment, ensuring the right of everyone to equitable and satisfactory conditions of work, fair remuneration and reasonable limitation of working hours, including for those working in the informal sector. Similar undertakings can be seen at a regional level in the SADC Charter of Fundamental Social Rights.³⁴

The right to work is closely linked to the right to social security. This is clearly recognised by the African Commission. It requires States to, inter alia, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families, take effective measures to fully realise the right of all persons to social security, including social insurance, and ensure that the social security system provides for the coverage of the nine principal branches of social security, including sickness, unemployment and maternity.³⁵

The right to social security can be derived from a joint reading of a number of rights guaranteed under the Charter including (but not limited to) the rights to life, dignity, liberty, work, health, food, protection of the family and the right to the protection of the aged and the disabled. In addition it is strongly affirmed in international law.

Source: African Commission on Human and Peoples' Rights, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights

The ILO refers to the right to the social protection as a human right because when social protection is available to workers, it helps to “prevent and reduce poverty, inequality, social exclusion and social insecurity.”³⁶ ILO Recommendation 202 reaffirms that social protection, along with employment promotion, is an economic and social necessity for development and progress.³⁷ Recommendation 202 extends coverage to various workers and producers including informal workers and the self-employed; subsistence workers; construction workers; bonded labour, sex workers and migrant workers. This recommendation sets out guidelines to help countries establish and maintain social protection floors as well as implement these floors in national strategies for the extensions of social security that progressively secure higher levels of protection to as many people as possible.³⁸

Other relevant commitments

Several of the RECs echo the rights to employment and social protection. The SADC Charter of Fundamental Social Rights states that “Member States shall create an enabling en-

vironment so that every worker in the region shall have a right to adequate social protection and shall, regardless of status and the type of employment, enjoy adequate social security benefits. Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance.”³⁹ Similarly, the ECOWAS Treaty emphasises the need for social security and encourages Member States to harmonise their labour laws and social security legislations.⁴⁰

The creation of decent jobs is consistent with the African Union’s Agenda 2063, the National Employment Policies of African governments,⁴¹ and the SDGs with respect to decent work, as well as their endorsement of a systemic social protection approach to globalisation. The African Union’s Specialized Committee on social development, labour and employment has embraced the ILO’s approach on social protection,⁴² which aims “to promote productive economic activity and entrepreneurship, with sustainable enterprises and access to decent employment opportunities” including for those in the rural economy.⁴³

SDG 8 calls for sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, while SDG target 1.3 calls for the implementation of nationally appropriate social protection systems and measures for all, including social protection floors.

E The Right to food

Legal basis and scope

The right to food is clearly recognised by the African Commission on Human and Peoples’ Rights, although the right is not set out in the African Charter as such. The “right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation” and an “inherent part of the rights to life, health and the right to economic, social and cultural development” the Commission has said.⁴⁴ Moreover, the right is recognised in the CRC, to which all African States are party. Seven African countries have constitutionalised the right to food explicitly, and several others can be argued to have an implicit constitutional right to food as part of other rights.⁴⁵

The most detailed exposition of the right to food is found in the CESCR’s General Comment on the topic. This provides that “the right to adequate food is realised when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”⁴⁶

In addition to the general human rights principles (non-discrimination, non-retrogression, to take steps, to monitor and to provide access to remedies) that apply, the General Comment specifies that the right to adequate food implies ensuring the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights. It notes that the concept of adequacy is particularly significant in relation to the right to food since it serves to underline a number of factors which must be taken into account in determining whether particular foods or diets that are accessible can be considered the most appropriate under given circumstances: the precise meaning of adequacy is, to a large extent, determined by prevailing social, economic, cultural, climatic, ecological and other conditions. The General Comment also highlights the notion of sustainability, as intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations. It is worth noting that the General Comment specifies that availability refers to the possibilities either for feeding oneself directly from productive land or other natural resources; or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.

Other relevant commitments

The elimination of hunger, food insecurity and poverty are all features of Agenda 2063.⁴⁷ The SDGs also reflect right to food concerns: SDG 2 calls for an end to hunger by 2030, and includes a mandate for sustainable agricultural production.⁴⁸

African governments have made other commitments to the right to food. In 2014, for instance, African Union members adopted the Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods.⁴⁹ In this, they commit to rural and agricultural development, ending hunger and halving poverty by 2025, increasing agricultural investment, and enhancing resilience of livelihoods and production systems to climate variability and other related risks, with a specific emphasis on vulnerable groups such as women, youth, smallholders, pastoralists and fisherfolk.⁵⁰

Chapter 8 of the Abuja Treaty commits members of the African Economic Community (EAC) to rural and agricultural development as well as food security through several explicit provisions, such as the reduction of losses in food production, the conclusion of agreements on food security at the regional and continental levels or protection of regional and continental markets primarily for the benefit of African agricultural products.

F Women's rights

Legal basis and scope

Women's rights are clearly protected under international law. The African Charter prohibits discrimination, including on the basis of sex, and obliges State Parties to eliminate all forms of discrimination against women and to ensure the protection of the rights of women. The 2003 Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) is the dedicated source of African legal obligations regarding women.⁵¹ It provides, inter alia, that State Parties shall take all appropriate measures to promote women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce poverty among women. It also requires States to take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes, and to ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.⁵² The Maputo Protocol contains almost identical provisions as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which all African countries except two have ratified.

*Because women are the poorest and most disadvantaged group in many countries, the promotion and protection of women's rights is central to achieving fair and sustainable development.*⁵³

Most notably, these instruments require States to take positive action to address inequalities between women and men and to ensure women can exercise and enjoy their rights.⁵⁴ The ICESCR also requires that States party to the Covenant take positive measures to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights. The CESCR has often reiterated the need for positive steps to prevent against gender-based discrimination.

Rural women are particularly vulnerable to discrimination: with few exceptions, on every gender and development indicator for which data are available, rural women fare worse than rural men and urban women and men, and rural women disproportionately experience poverty and exclusion. In 2016 the UN Committee that supervises implementation of CEDAW adopted a General Recommendation specifically intended to guide State Parties on the implementation of their obligations with respect to rural women.⁵⁵

Other relevant commitments

Member States and the AU have expressed their aspiration to see gender issues take centre stage and be mainstreamed throughout Africa. The AU has developed an AU Gender Policy.⁵⁶ The COMESA Treaty specifically addresses the role of women in development, calling for the creation and sustenance of an enabling environment for these economic actors, and expresses full recognition of the significant contribution of women who operate in the informal sector to the process of socioeconomic transformation.⁵⁷

Both the SDGs and Africa's Agenda 2063 give a prominent place to the need to achieve gender equality and empower all women and girls.⁵⁸

African countries and their governments have recognised that the vision for 'The Africa We Want' cannot be achieved until and unless women enjoy their full rights as equal partners in development.

Source: Chiwara, Letty. 2016. Women's Rights in Africa, 20 http://www.ohchr.org/Documents/Issues/Women/WRGS/WomensRightsinAfrica_singlepages.pdf (accessed 30 March 2017)

¹ African Charter of Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3/Rev.5, reprinted in 21 ILM 58 (1981), entered into force 21 Oct. 1986. Only South Sudan and Morocco have not signed and ratified the African Charter on Human and Peoples Rights.

² The United Nations (UN) treaties and African treaties are mutually reinforcing in Africa, Art. 60 African Charter. See also Forere, Malebakeng. 2011. The relationship between the right of access to education and work, and sub-regional economic integration in Africa, 593.

³ Kufuor, Kofi Oteng. 2010. The African Human Rights System – Origin and Evolution, Palgrave Macmillan, 99–100.

⁴ AU. African Charter, Preamble; Pretoria Declaration 2004, Preamble. See also Circle of Rights, module 28, the African Commission on Human and Peoples' Rights and ESC Rights, <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module28.htm> (accessed 26 March 2017).

⁵ African Commission. 2011. Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, para 4-12 www.achpr.org/instruments/economic-social-cultural (accessed 29 March 2017).

⁶ UN CESCR. 1999. General Comment 3 – The Nature of States Parties' Obligations; Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

⁷ Balakrishnan, Radhika & Elson, Diane. 2008. Auditing Economic Policy in the Light of Obligations on Economic and Social Rights, Essex Human Rights Review Vol. 5 No, 17.

⁸ See generally African Commission. 2011. Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, para 4–12 www.achpr.org/instruments/economic-social-cultural (accessed 29 March 2017).

⁹ Balakrishnan, Radhika & Elson, Diane., Patel, Raj. 2008. Rethinking Macro Economic Strategies from a Human Rights Perspective – Why MES with Human Rights II, African Women's Development Fund Repository, 7.

¹⁰ Ssenyonjo, Manisuli. 2012. Economic, Social and Cultural Rights in the African Charter; in Ssenyonjo, Manisuli (ed.): The African Regional Human Rights System, Leiden, Boston: Martinus Nijhoff, 83.

¹¹ ICESCR Article 2. See also African Commission. 2011. Guidelines and Principles on Economic, Social and Cultural

Rights in the African Charter on Human and Peoples' Rights, para 13 www.achpr.org/instruments/economic-social-cultural (accessed 29 March 2017).

¹² Balakrishnan, Radhika & Elson, Diane. 2008. Auditing Economic Policy in the Light of Obligations on Economic and Social Rights, *Essex Human Rights Review* Vol. 5 No .

¹³ See for instance African Charter, ICESCR, CEDAW, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 2, www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf (accessed 30 March 2017).

¹⁴ African Commission. 2011. Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, para 19 www.achpr.org/instruments/economic-social-cultural (accessed 29 March 2017).

¹⁵ *ibid*, para 1

¹⁶ UN CESCR. 2009. General comment No. 20. Non-discrimination in economic, social and cultural rights, para. 9.

¹⁷ UN CESCR. 1989. General comment No. 1. Reporting by States parties, para. 3.

¹⁸ African Commission. 2011. Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, para 50 www.achpr.org/instruments/economic-social-cultural (accessed 29 March 2017).

¹⁹ Balakrishnan, Radhika & Elson, Diane., Patel, Raj. 2008. Rethinking Macro Economic Strategies from a Human Rights Perspective - Why MES with Human Rights II, African Women's Development Fund Repository, 5.

²⁰ Icelandic Human Rights Centre. The Right to an Adequate Standard of Living www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-an-adequate-standard-of-living (accessed 30 March 2017).

²¹ African Commission. 1989. Guidelines for National Periodic Reports, paras 31-33, http://www.achpr.org/instruments/guidelines_national_periodic_reports (accessed 25 May 2017).

²² Icelandic Human Rights Centre. The Right to an Adequate Standard of Living. www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-an-adequate-standard-of-living (accessed 30 March 2017).

²³ OHCHR. Human rights dimension of poverty. www.ohchr.org/EN/Issues/Poverty/DimensionOfPoverty/Pages/Index.aspx (accessed 30 March 2017).

²⁴ OHCHR. Special Rapporteur on Extreme Poverty and Human Rights. www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx (accessed 30 March 2017).

²⁵ SADC Treaty, Article 5 1(a).

²⁶ AU. 2015. Agenda 2063 – The Africa We Want (Popular Version) <http://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf> (accessed 1 March 2017)

²⁷ The ILO social security conventions are also important, however their level of ratification by African countries is low; only 7 African States have ratified the Social Security (Minimum Standards) Convention, 1952 (No. 102) and 8 have ratified the Equality of Treatment (Social Security) Convention, 1962 (No. 118).

²⁸ ILO. 1998. Declaration on Fundamental Principles and Rights at Work. <http://www.ilo.org/declaration/lang--en/index.htm> (accessed 30 March 2017).

²⁹ African Commission. 2011. Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, para 58 www.achpr.org/instruments/economic-social-cultural (accessed 29 March 2017).

³⁰ *ibid*, paras 56-59. UN CESCR. 2006. General Comment No. 18. The Right to Work. See also Pretoria Declaration on Economic, Social and Cultural Rights in Africa.2004. www.achpr.org/instruments/pretoria-declaration (accessed 28 March 2017).

³¹ UN CESCR. 2006. General Comment No. 18. The Right to Work, paras 22-28.

³² ILO. Decent Work. www.ilo.org/global/topics/decent-work/lang--en/index.htm (accessed 30 March 2017).

³³ General Comments are considered to be authoritative interpretations of the provisions of the Covenant.

³⁴ SADC, Charter of Fundamental Social Rights.

³⁵ African Commission. 2011. Guidelines and Principles on Economic, Social and Cultural Rights in the African

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- ⁴⁶ UN CESCR. 1999. General Comment 12. The Right to Adequate Food. E/C.12/1999/5.
- ⁴⁷ AU. 2015. Agenda 2063 – The Africa We Want (Popular Version), para 13 and 72. See also Paras 9, 66(c) and (d), 67 stressing the need to eradicate poverty. <http://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf> (accessed 1 March 2017).
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Chapter V

Informal Cross-Border Traders

A Introduction

The informal trade sector and the actors therein are often obscured from mainstream views and operate in a sphere that generally falls outside the State's gaze and outside of the official statistics that are analysed in academic and official trade literature.¹ The informal cross-border trade sector has been selected for analysis from a human rights perspective because it significantly contributes to regional integration, and is essential to livelihoods of some of Africa's most vulnerable people, particularly youth and women. This chapter focuses on the impact the CFTA agreement may have on a range of rights of people involved in informal cross-border trade.²

Informal cross-border trade accounts for approximately 70 per cent of the economy in many African countries outside of North Africa.³ It contributes 30-40 per cent of total intra-regional trade in the SADC region and approximately 40 per cent in the COMESA region. Such trade is a source of income for approximately 43 per cent of Africa's population⁴ and provides income-earning opportunities for large numbers of unemployed people, including women and youth.

B Key features

Before considering the potential impact of the CFTA on the human rights of informal cross-border traders (ICBTs), there is a need to illustrate the role that these economic actors play on the African continent. This will bring into sharp focus the need for the CFTA to come up with policies that uphold the rights of informal cross-border traders.

Informal cross-border trade

The actual impact of informal cross-border trade on the economy is difficult to measure because of its invisibility in official statistics; yet there is a lot we do know. The informal economy employs a significant number of people in most of Africa, constituting over 66 per cent of work outside the agricultural sector in the continent.⁵ Of this, self-employment takes the greater share of 70 per cent over waged employment. Street vendors and home-based workers constitute the two largest sub-groups of the informal workforce, informally employing 84 per cent of women non-agricultural workers and 63 per cent of male non-agricultural workers.⁶ Informal employment is generally a larger source of employment for women than men in Africa.

The informal sector contributes about 55 per cent of Sub-Saharan Africa's GDP and 80 per cent of the labour force. Nine in 10 rural and urban workers have informal jobs in Africa and most employees are women and youth. The prominence of the informal sector in most African economies stems from the opportunities it offers to the most vulnerable populations such as the poorest, women and youth. Even though the informal sector is an opportunity for generating reasonable incomes for many people, most informal workers are without secure income, employment benefits and social protection.⁷

A substantial portion of people in the informal economy operate as informal cross-border traders. Women constitute the majority of informal cross-border traders, accounting for approximately 70 per cent of the informal trade sector in some countries.⁸ Informal trading is especially important for women, some of whom head households, and who may be excluded from the formal economy as a result of gender bias and historical inequities. For these women, informal cross-border trade might be not only their source of income, but also a source of direct benefits in terms of gender equality, empowerment and family livelihoods.⁹ Informal cross-border trade in the SADC region is credited with helping to reduce poverty at the household level.¹⁰

Informal cross-border trade is fluid and efficient when compared with formal trade in Africa. In the Southern African region average custom delays can be up to 12.1 days – the longest in the world. In contrast, researchers observing a line of ICBTs in Malawi and Botswana, were told by customs officials that all would make it through in several hours on average.¹¹

Informal cross-border traders trade in a wide range of goods and services including agricultural products (such as maize), manufactured goods (processed foods, cloth, electronics, car spares) or services (bicycle and car repairs, barbershops, artisanal work). They perform the unrecognised and unappreciated role of distributing products created in formal organizations,¹² and make positive contributions to the economy.

Despite this, informal cross-border trade is often viewed as an illegal commercial undertaking.¹³ These traders allegedly engage in tax evasion, corruption, violation of health and phytosanitary requirements, and illegal trade in arms and contraband. Whilst not denying that some do engage in undesirable illegal activities, we do know that for the most part, informal cross-border traders are dealing in legitimate goods. The perception of illegality accentuates the realities relating to the lack of recognition of informal cross-border trade in policy circles.

With the exception of COMESA, the EAC and a handful of their Member States, many governments in Africa do not pay attention to informal cross-border trade even though it is a significant source of employment.¹⁴ Because of this lack of recognition, informal cross-border trade is generally not integrated into national or regional economic development agendas. African countries are characterised by a dearth of reliable data on key indicators of labour markets, migration and the informal economy.¹⁵ This affects production of reliable and accurate labour market information and hinders efforts to monitor and evaluate progress on poverty and employment.

A handful of African countries, including Uganda, Kenya, and Rwanda have started to collect data on informal trade; but this is yet to change attitudes of policymakers across the continent. Rwanda has integrated informal cross-border trade into its development and trade agendas.¹⁶ The Rwandan government considers this a key sector for implementing its economic development and poverty reduction strategy.¹⁷

Informal cross-border traders

Informal cross-border traders are a dynamic and diverse group. The evidence suggests that the most vulnerable include women, unemployed youth, and retrenched workers from the formal sector of the economy who cannot be re-employed.¹⁸ A considerable number of people in the informal cross-border trade sector reside in borderlands, most of which are located in marginal and outlying areas of their respective countries, as well as in poor urban areas.¹⁹ Many are partially literate or illiterate; it is a challenge for them to read, understand and complete the numerous mandatory customs forms and procedures at borders.

Interview data obtained in Johannesburg, South Africa, and various borders in Eastern and Southern Africa, reveals that informal cross-border traders owned shops in their countries of origin and in those to which they exported goods. For example, some informal cross-border traders from Zimbabwe owned shops in Johannesburg, in addition to those in the Zimbabwean cities of Bulawayo and Harare.²⁰ Because the informal cross-border traders travelled a great deal for purposes of buying and ordering stock, they reported having employed other people – about four people on average – to run their shops on their behalf. This shows that the revenues generated through informal cross-border trade are often shared among many people.

Responses to interview questions to informal cross-border traders in Eastern and Southern Africa overwhelmingly showed that they suffered various forms of abuse and harassment at the hands of State authorities and agents such as police, as well as other actors. This corroborates findings on the challenges faced by informal cross-border traders across the

continent.²¹ Most border officials do not treat informal cross-border traders with respect or in the same manner that they deal with the so-called formal economic actors. Informal traders were regularly treated like criminals and illegals, insulted and; at some border posts, told to go back to their countries of origin. Informal cross-border traders' precarious conditions result in some having to pay bribes to corrupt officials. This also suggests a positive correlation between the perception of illegality of informal cross-border traders' activities and the way they are treated by State agents.

Some border officials ask informal cross-border traders to pay duties on commodities, especially agricultural, that should not attract any levies.²² Such officers abuse their authority and take advantage of the informal cross-border traders' limited understanding of the law and customs requirements and procedures. In some instances, authorities deliberately imposed delays on completion of formal procedures for the informal cross-border traders in order to force the informal cross-border traders to pay bribes.²³

Even when not subject to abuse, the lengthy administrative procedures and complex customs documents that are required even for small consignments of goods, can be problematic. Through RECs, some countries have developed a simplified trade regime. However, even there, informal cross-border traders express the hope that the authorities will build appropriate infrastructure such as markets and storage facilities, toilets, and lodging facilities near borders to facilitate trade and improve their operating environment and conditions.²⁴

COMESA and the EAC have introduced a simplified trade regime (STR) to ensure that informal cross-border traders adhere to rules of origin of the goods in which they trade. With the STR, participating countries exchange tariff concessions on products originating from within the regional economic community. Through the STR, informal cross-border traders are provided with simplified Certificates of Origin by customs officials as the traders exit the country from which they are importing; a Common List of goods that qualify for the simplified trade regime; simplified customs documents as they enter the country to which they are exporting; and assistance in completing customs documents, clearing procedures, and answering trade-related queries from trade information desk officers at the borders. Officials within the area refer to those who use the STR scheme as "small-scale traders" rather than informal traders. As cross-border traders operating within the STR are, in fact, no longer trading informally, customs officials have no legal reason to take measures against them.

A significant number of informal cross-border traders operate in urban areas. For example, many from the Democratic Republic of the Congo, Ethiopia, Ghana, Malawi, Mozam-

bique, Nigeria, Somalia, United Republic of Tanzania, Zambia and Zimbabwe are known to operate in Johannesburg, South Africa.²⁵ The conditions and spaces in which these actors operate in host countries are precarious.²⁶ Their migration and/or immigration status can expose them to discrimination, exploitation, hostility and xenophobia.²⁷ They are often subject to tough policing as part of immigration control and xenophobic attacks by some members of the public.²⁸ A study of migrant traders in Johannesburg has shown that they were specifically targeted and subjected to raids and confiscation of their wares.²⁹

Women constitute the majority of informal cross-border traders³⁰ and are particularly susceptible to hostility by border officials,³¹ gender discrimination and violence such as sexual harassment and rape, beatings, and stripping. Women cross-border traders have reportedly been asked for sexual favours in exchange for the right to cross the borders.³²

The CEDAW Committee has expressed concern about the low level of women in formal employment in some African countries and the concentration of women in the informal sector with no legal protection, social security or other benefits, and the lack of nation-wide micro-credit programmes. It has for instance recommended that Angola provide a regulatory framework for the informal sector, with a view to providing women in this sector with access to social security and other benefits.³³

Many informal cross-border traders live in precarious conditions. They are often exposed to unsafe or unhygienic working conditions and incidences of child labour are rife, along with lack of unionisation for adult workers. Informal cross-border traders' incomes tend to be insufficient for meeting both present needs including food, water, health and children's educational fees, in addition to future needs that would require regular contributions into pension or retirement funds. The difficulties they face in accessing credit from formal lending institutions to finance and grow their businesses into well-paying and sustainable ventures, for instance, limits their ability to meet today's needs and simultaneously save for the future³⁴ as well as limiting their full potential to productively contribute to African economies.

C Possible impacts of CFTA on informal cross-border traders

Issues concerning informal cross-border trade straddle migration, social protection, employment policy and trade. By recognising ICBT and adapting its rules to this economic reality, the CFTA has the potential to ease the work of informal cross-border traders. This would contribute to protecting their human rights but also help to enhance economic activity, promote employment, sustain livelihoods and facilitate economic integration across the continent.

Conversely, inadequate attention in the CFTA to this economic sector could have a range of negative impacts on the human rights of informal cross-border traders.

Analysis

Impacts on right to work, social security and to an adequate standard of living

As discussed in Chapter IV, African States are bound by the right to work.³⁵ This obligates governments to facilitate employment through the creation of an environment conducive to full employment. African States are also bound to uphold the right to social security. Whilst human rights law acknowledges that not all States will be able to implement these rights immediately, it does require them to take concrete, deliberate and targeted steps towards their realisation. States also have an immediate and general obligation to eliminate discrimination in law and practice in the enjoyment of human rights.³⁶

The rights to work and to an adequate standard of living of informal cross-border traders, and particularly women traders, may be particularly vulnerable to developments within the CFTA. One such example of this would be if, as barriers to formal-sector trade come down, the formal sector crowded out informal trade. Whilst this could offer opportunities (the creation of new jobs would help some currently in the informal sector transition to more formal, recognised trade in the formal sector), informal traders might find the economic space in which they operate being increasingly occupied by formal traders. Competition from the formal sector under the CFTA could threaten to disrupt livelihoods of informal cross-border traders and for those that might continue operating in this sector. Unskilled and illiterate informal cross-border traders may also face significant challenges in transitioning to the activities offered in the formal sector.

The implementation of the CFTA could thus adversely affect facilitating employment and the creation of a conducive environment for employment, compromise coping strategies and reinforce work-and income related discrimination against informal cross-border traders.

The Commission has taken the view that ‘the right to work, in a broad sense, implies the right to enter employment, and the right not to be deprived of employment unfairly’. It follows, therefore, that unfair deprivation of employment ... constitutes a clear violation of the right to work under Article 15 of the African Charter.

Moreover, with the economic changes and production shifts that would be expected with the CFTA, there might be a change in who is involuntarily unemployed. The CFTA risks marginalising those who were not on the margins of the economy before, and who may not have a coping strategy. This provides a further reason as to why the CFTA should pay due attention to informal cross-border traders and possible transitions of workers between formal and informal sectors in small-scale cross-border trade.

Trade agreements tend to favour the formal economy over informal trade. Formal traders can benefit from economies of scale and improve productivity in a way that informal traders cannot as noted above. Currently, national policies are not supportive of the informal sector and informal cross-border traders function in an inappropriate and challenging regulatory and policy environment. Benefits of development and economic policies such as employment and wage policies are only received by those in the male-dominated formal sector.³⁷ Women engaged in the informal sector face stiff competition from big economic players and male counterparts who are favoured economically and socially.³⁸

Another way non-acknowledgment of the features of informal cross-border trade in the CFTA could adversely affect the rights of the traders concerned would be if it resulted in human rights-inconsistent discrimination against these traders on the basis that they are informal. If there is an increased preference given to formal traders, the invisibility of the informal cross-border traders may be increased. One effect could be to perpetuate challenges faced by informal traders, and especially women, in accessing capital to finance their businesses. While formal trading houses are better financed and can easily access loans from credit providers, informal cross-border traders are often turned away because they lack collateral and are too small. In addition, informal cross-border traders' revenue-generating opportunities could be adversely affected from "lack of trade facilitation, corruption and insecurity, and limited knowledge, education and business management skills,"³⁹ all opportunities that the CFTA's supporting flanking measures could well provide to those who operate in the formal sector.

For example, without a simplified trade regime to support small and informal traders with meeting the documentation and procedural requirements at borders, they risk being excluded from sharing in the gains from the CFTA. Formal traders will benefit from reduced tariff costs, whereas informal traders who are unable to comply with formal requirements will continue to face bribes at informal border crossings. In addition to constituting discrimination, this risks harming the livelihoods of small-scale informal traders who may no longer be able to compete with the formal sector, and with limited assets and transferable skills will find it difficult to adapt and find gainful employment in the formal sector.

The informal sector is crucial to poverty reduction. It tends to have a more equitable distribution of income that is more labour intensive (albeit possibly at lower productivity) and also supports more livelihoods for a given level of economic activity. But with little social protection and often viewed as “illegal,” actors in this sector remain vulnerable.

The CFTA can also adversely impact the ability of informal cross-border traders to enjoy an adequate standard of living. As noted earlier, informal cross-border trade is important to many livelihoods across Africa.⁴⁰ In the absence of policies that promote the activities of informal cross-border traders in the CFTA, these actors risk being squeezed out of the cross-border trading space, perpetuating inequality, poverty and deprivation among such economic actors and their dependents. The CFTA could also have a negative impact on informal cross-border traders’ access to social protection and right to social security if it does not adequately reflect their needs.

While avoiding the potential negative impacts noted above, the rights to work and to an adequate standard of living of informal cross-border traders, and particularly women traders could be enhanced positively through the CFTA. A single market for goods, services and the free movement of natural persons, which are amongst the primary objectives of the CFTA, could make it simpler for these small-scale traders to carry out their trade. CFTA-related trade facilitation measures could also make their trade less costly and more efficient. Customs cooperation, mutual administrative assistance and border agency cooperation foreseen under the CFTA could also significantly ease small-scale trade. The “one-stop” border post implemented in some African countries is one example of this.⁴¹ It converts a two-stop border between neighbouring countries into one crossing point that is jointly managed by the two countries and, therefore, removes the duplication of the clearance procedures for goods and people.

The efficiency that results from streamlining procedures by implementing the one-stop border post concept is evident at the Chirundu border post bordering Zambia and Zimbabwe. With approximately 270 trucks a day, Chirundu is one of the most utilised inland points of entry/exit between Eastern and Southern Africa.⁴² Before the one-stop border was implemented, Chirundu was characterised by slow processing of goods and people: on average, transit time for northbound traffic ranged from 26 to 46 hours, while traffic heading south took between 6 to 17 hours. Under the one-stop border post, northbound trucks or traders are checked and cleared only once by the Zambian authorities, while the Zimbabwean authorities clear those that are southbound. Now transit times for trucks have reduced to only 2 hours via ordinary processing, while fast-track preclearance takes around 15 minutes.⁴³

Some studies have demonstrated that the CFTA is likely to result in better livelihood security overall in Africa because it will have a strong, positive impact on intra-African trade, industrial development and real incomes.⁴⁴ In addition to enhancing their opportunities to derive an income from their work, CFTA policies designed with the realities of informal cross-border trade in mind could help to eradicate the tag of illegality around these traders, leading to better treatment and alleviating the problems of harassment and corruption they face.

Another area, which could contribute significantly to enhancing positive impacts of the CFTA, is removing obstacles to the free movement of people, specifically informal cross-border traders for the purpose of work and ensuring an adequate standard of living. The right to freedom of movement in Article 12 of the African Charter on Human and Peoples' Rights within the borders of a State and international human rights instruments is ratified by many African States. Going further, the AU, through the Abuja Treaty, encourages member countries to gradually remove obstacles to the free movement of persons, capital, goods and services, and to give their citizens the right of residence and establishment in other States within the envisaged African Economic Community.

Some of the RECs encourage migration, having either drafted or brought into force regional migration protocols that should promote free movement of people. ECOWAS' Protocol on Free Movement of Persons, Residence and Establishment speaks to the promotion of cross-border activities of female and youth informal cross-border traders in the region. This and subsequent ECOWAS instruments guarantee rights of entry, residence and establishment for citizens of the community.⁴⁵ ECOWAS authorities have adopted two documents to ease cross border movement:⁴⁶ a standardised ECOWAS Travel Certificate and a uniform ECOWAS passport (designed to eventually replace national passports, adopted in 2000).⁴⁷

FTA: Free Trade Area

CU: Customs Union

SM: Single Market

EMU: Economic Monetary Union

Table 2: Status of regional economic integration by REC

REC	FTA	CU	SM	Countries having implemented freedom of movement protocol	EMU
EAC	√	√	√	3 out of 5	X
COMESA	√	√	X	Only Burundi has ratified	X
ECOWAS	√	√	X	All 15	X
SADC	√	X	X	7 out of 15	X
ECCAS	√	X	X	4 out of 11	√*
CENSAD	X	X	X	Unclear	X
IGAD	X	X	X	No protocol	X
AMU	X	X	X	3 out of 5	X

Source: Adapted from ECA.2016. *Assessing Regional Integration in Africa VII: Innovation, Competitiveness and Regional Integration*, ECA, 20

* Note: Only 6 members (i.e. Economic and Monetary Community of Central Africa - CEMAC) of the 11 members of ECCAS are members of the EMU.

Similarly, the Protocol on the Establishment of the EAC Common Market⁴⁸ makes provisions for the right to freedom of movement within the EAC.⁴⁹ In addition to promoting the free movement of goods, services and capital, the protocol provides for cross-border movement of different categories of citizens of Member States including cross-border traders, workers and the self-employed. These provisions are accompanied by regulations regarding free movement of persons, free movement of workers,⁵⁰ the right of establishment and the right of residence.⁵¹

The RECs' trade agreements contain provisions for natural persons of Member States, as service providers, to enter and sometimes reside in territories of other Member States for purposes of providing services there. Freedom of movement measures within the RECs are a positive development although not all have been implemented satisfactorily and some are vulnerable to economic and political pressures.⁵² With regard to informal actors, however, they leave a lot to be desired: they are seldom crafted with people engaged in informal cross-border activities in mind. Legislation and policy tends to be limited to protecting movement of business persons or skilled workers, not of low-skilled, semi-skilled or unskilled traders, nor those outside the formal sector. Agreements on trade in services can cater to the needs of

lower-skilled workers as demonstrated by Uganda's experience, which has made provision for the protection of lower-skilled workers within the context of its commitments under the East African Community Common Market Protocol.⁵³

CFTA discussions around movement of persons have focused so far on formal trade and ignored issues relating to the freedom of movement of informal cross-border traders. Without addressing these issues, the CFTA risks making it more difficult for informal traders to legally cross borders for trade purposes.

In practice, many informal cross-border traders use temporary entry provisions to travel between their own country and neighbouring ones for their trade.⁵⁴ This lack of legitimisation and, sometimes, criminalisation of informal cross-border traders, though merely a perception in most instances, clearly potentially marginalises them and limits their free movement, infringing on their human rights. A special travel document would also be essential to harnessing informal cross-border traders' potential to contribute to economic integration, trade and human rights.

Right to security of person

The right to security of person is protected by a range of international instruments. The International Covenant on Civil and Political Rights outlines the right, specifying also that all persons are entitled without any discrimination to the equal protection of the law.⁵⁵ The Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides that every woman shall be entitled to respect for her life and the integrity and security of her person.⁵⁶

As noted above, informal cross-border traders are often subjected to abuse and harassment, contrary to human rights standards agreed to by African States. Women are particularly vulnerable. Sexual abuse by border officials is a not-uncommon violation of their right to security of person; officials reportedly demand sexual favours from female informal cross-border traders in exchange for letting them cross a border.⁵⁷

As experience with one-stop border posts and the STR has shown, if the CFTA ushers in new, facilitated measures for small-scale cross-border traders, it could go a long way to protecting them from abuse of their rights at the hands of customs personnel, the police or other officials as is currently the case. Conversely, if the CFTA ignores informal cross-border traders it could risk entrenching a situation which exposes them to a range of human rights abuses. Accommodating women, and facilitating border crossings through the CFTA could help

curb the ill-treatment that particularly women informal traders face. This could be achieved through policies or provisions that could be built into mechanisms for reporting, monitoring and eliminating non-tariff barriers (NTBs) to continental trade. In this way, the informal traders could officially report incidences of harassment and their grievances along with other NTBs, as discussed below.

D Recommendations

CFTA negotiators should ensure that individuals who seek to make a living through cross-border trade are provided opportunities through legislation and practice that facilitates their ability to derive a livelihood from their work, their right to freedom of movement and to be protected from the risks to which they are exposed in terms of abuse, discrimination or lack of social protection. There is a real opportunity for the CFTA policy framework to usher in policies that will create a win-win-win situation for the traders, for continental integration and for economic development. This section sets out some recommendations to this end.

Acknowledge and develop understanding about the informal cross-border trade sector

To ensure that informal cross-border traders, and by extension the many actors in the wider informal economy, are not left out of the evolving African trade regime, the authorities in AU Member States should acknowledge that the informal economy exists along with the activities of informal cross-border traders.⁵⁸ Using an alternative terminology to refer to these traders (small-scale traders for instance) and implementing official policies to support them would help to eradicate the perception of illegality around those cross-border traders who are dealing in legal goods and services. This could go a long way towards better treatment and respect of their human rights as well as to enhance trade and economic integration.

Another important step is to develop better knowledge of the sector through data collection. African States would do well to devise methods for collecting data and ensure routine collection, for the purpose of establishing databases on the informal economy. Such databases could then be made available to policy-makers. The data could provide bases upon which to provide financial and non-financial assistance to informal cross-border traders and other actors in the informal economy such as credit, business advisory and extension services, and market information.

As discussed in Chapters IV and X, such data collection is part of the obligation to monitor human rights in order to ensure that policies can be deliberately targeted at the progressive realisation of human rights. The usefulness of monitoring has been reiterated in the

SDGs, which call for measurement of development-related matters. Rwanda and Uganda have already begun to collect data on informal trade, indicating that this is possible in Africa.

By 2020, enhance capacity building support to developing countries, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.

Source: SDG 17. 18

Within the CFTA, policy-makers need to consider policies that support the activities of informal cross-border traders, and to consider the possible effects planned policies could have on informal sector actors as well as on lower-skilled traders. In particular, it could be useful to undertake studies in parallel to the CFTA negotiations, for instance, to identify which measures might directly or indirectly impact cross-border traders, how to manage possible increased competition from the formal sector as barriers to formal-sector trade come down, or the transition of these traders from the informal to the formal sector.

Support the employment-creating role of cross-border trade

Along the same lines as the recommendation above, policy-makers could usefully study the employment-creating role of cross-border trade, taking into account the role of the formal and the informal sectors, and the way that trade-related policy changes could lead to movement between these two sectors. Knowing more about these aspects could help support and facilitate the employment-creating potential in this sector, which could be enhanced as barriers to intra-African trade come down.

Ensure adequate social protection

CFTA negotiators should include an article on labour issues in the CFTA, and this should refer to ILO Recommendations 202 and 204⁵⁹ which recognise that social protection is an important tool to promote social inclusion and gender and racial equality as well as support the transition from informal to formal employment. These recommendations are particularly relevant to informal cross-border traders as they recommend inter alia that Member States' social protection extension strategies should apply to persons both in the formal and informal economy and that such strategies should support the growth of formal employment and the reduction of informality.⁶⁰

The fact that such provisions exist at regional levels demonstrates that this is a possibility. The SADC Charter of Fundamental Social Rights, for example, emphasises rights to employment and social protection and stipulates that workers in the region shall have a right to adequate social protection and to enjoy adequate social security benefits regardless of status and the type of employment.⁶¹

Facilitate free movement of persons

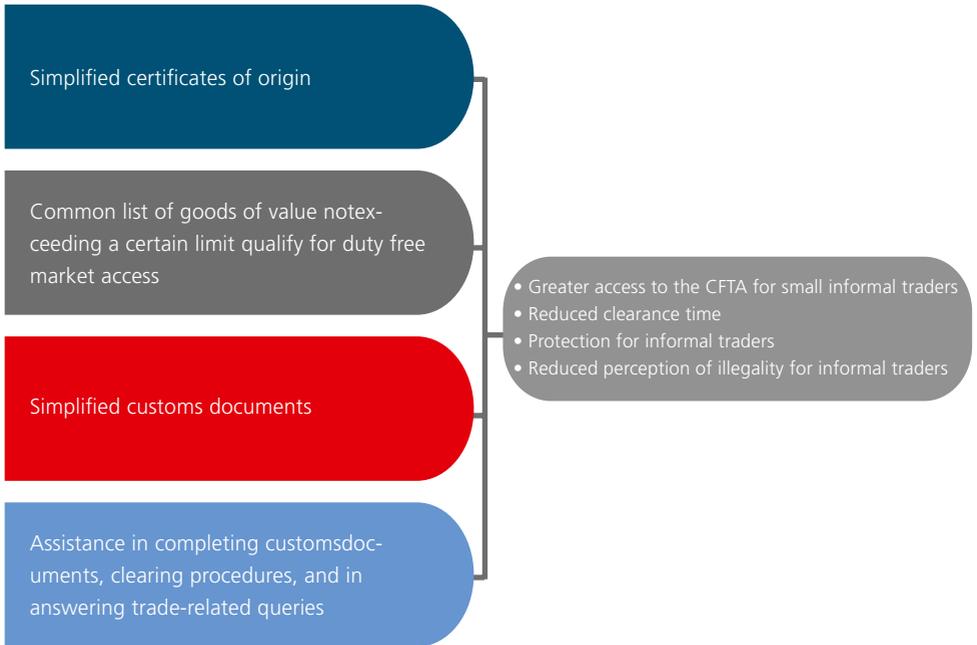
CFTA negotiators ought to be mindful of the commitment AU Member States have made in the Abuja Treaty to allow free movement of people within the African Economic Community, undertaking to ensure the gradual removal, among Member States, of obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment. The case has been made for the right of entry of any African into any African country, provided they are not wanted on criminal charges unrelated to informal cross-border trade.⁶²

Modest first steps to this end could include (1) ensuring that definitions of categories of natural persons involved in trade in services are broad enough to include informal traders and lower-skilled workers and (2) introducing travel documents and special visas for informal or small-scale informal traders. A possibility for the latter would be the creation of a laminated ID card for frequent informal traders to use along with passports instead of immigration stamps so that they do not have to buy several expensive passports a year.⁶³ CFTA negotiators should give careful thought to how the relevant provisions should be crafted to address ongoing challenges in the RECs regarding free movement of persons and workers.

Develop a continent-wide Simplified Trade Regime

The CFTA could usefully build on RECs' experiences with the Simplified Trade Regime (STR). A 2010 assessment of the operation of the STR between Zambia, Malawi and Zimbabwe (under COMESA auspices) found that customs officials and informal cross-border traders surveyed were happy with the STR.⁶⁴ Evidence from COMESA and the EAC shows that the expansion of the STR would help integrate informal cross-border traders into regional trade strategies and contribute to intra-regional trade.⁶⁵

Figure 9: Continental Simplified Trade Regime for Informal Traders



The list of goods covered under a CFTA STR should be extended beyond the COMESA STR list – which only covers a relatively small number of products – and should include manufactured goods. The STR could be further supported through reducing the costs of licenses and certificates, and strengthening communication and information on CFTA policy and customs requirements and procedures – so that informal traders are adequately informed and not taken advantage of by corrupt border officials. Through encouraging formalisation, a CFTA STR will contribute to higher government revenues which could be channelled towards increased public spending in areas crucial for human rights, and help to offset losses in tariff revenues that could result from the CFTA.

Moreover, deliberate effort should be dedicated to disseminating knowledge about a CFTA STR amongst key stakeholders – at present informal cross-border traders are frequently unable to access existing STR benefits because of a low level of awareness of the STR and its functioning.⁶⁶

Address Non-Tariff Barriers

Given CFTA's priority attention to reducing NTBs, training could be provided in the CFTA context, to provide technocrats and small-scale cross-border traders with better knowledge to enable them identify and deal with non-tariff barriers. Thus informal cross-border traders would not only advocate for the reduction of the non-tariff barriers as they face them at borders, but also be empowered to participate with Member States in the commitment to deepening integration. At the same time this would provide objectively verifiable indicators of improved knowledge among traders and border officials on policies and issues regarding cross-border trade. This practice could be developed within a CFTA NTB mechanism (discussed in Chapter IX). It could also include cooperation with bodies experienced in human rights monitoring, to ascertain whether small-scale cross-border traders are subjected to barriers or requirements that have not been provided for by law. This would play a valuable awareness-raising role whilst protecting human rights.

Other measures to ease the border formalities and procedures and benefit informal cross-border traders as well as formal traders, such as one-stop border posts, will be valuable. In the context of CFTA negotiations and related processes, policy dialogues might usefully be instigated to build understanding of cross-border dynamics and contribute to harmonisation of customs and border procedures. These could include informal cross-border traders, NGOs, governments, immigration and other border officials and State agencies as well as human rights bodies.

Set up infrastructure in border areas

States should consider constructing infrastructure in border areas, including markets and storage facilities, lodging, water and sanitation. This will facilitate informal cross-border trade and traders who lack capacity to erect or access such structures. The poor physical environment in which informal cross-border traders operate at the borders indicates the need for support from governments and/or the private sector to finance infrastructure development projects, in order to improve conditions for such traders.

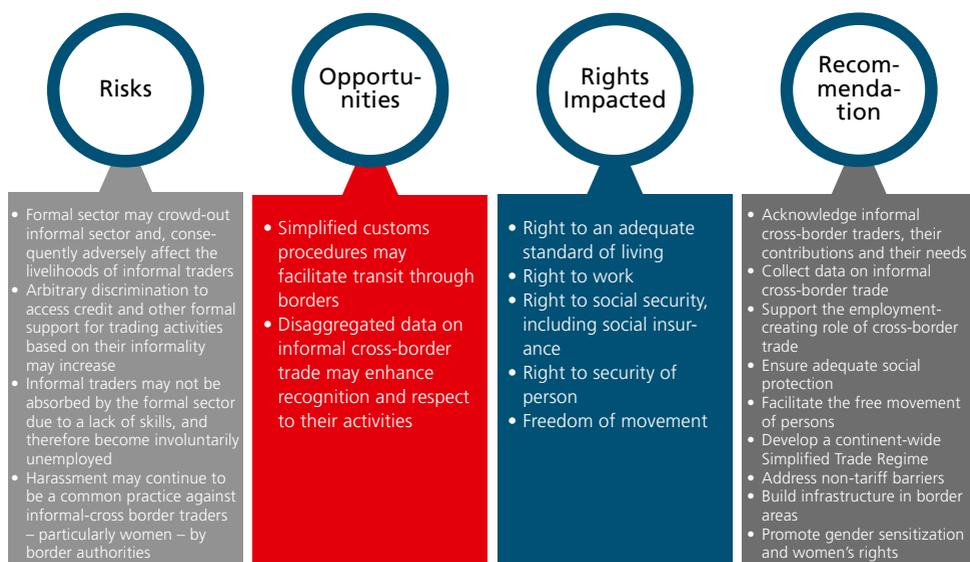
Promote gender sensitisation and women's rights

Gender-based violence and harassment of traders should be strongly addressed. This may not be a matter for the CFTA per se, but should be given priority consideration by policy-makers, possibly in the context of BIAT and in cooperation with human rights bodies. Rights awareness campaigns and training should be provided to border agencies and officials, as well as members of the public who operate in the same space as informal cross-border traders. In accordance with human rights law, strong measures should be taken against per-

petrators of sexual crimes, particularly rape. Women ICBTs should be provided easy means to report cases of gender-based violence.

Gender issues should be explicitly considered in the CFTA policy regime and national labour and trade policies should integrate the specific needs of women cross-border traders. States should implement policies at the national level that enable women to be adequately informed or trained to understand their rights – both human rights and rights relating to trade. Women should also be considered separately when governments provide skills training or entrepreneurship promotion programs such as support to business start-up, management and financial literacy and access to finance (beyond microcredit or rotating savings clubs). This will also facilitate an increase in women’s participation in decision-making in matters concerning cross-border trade.

Figure 8: CFTA and Informal Cross-Border Traders



¹ Turner, S. (2013). Under the state’s gaze: Upland trading-scapes on the Sino-Vietnamese border, *Singapore Journal of Tropical Geography*, 34: 9–24.

² In this chapter the “informal sector” refers to cross border activities that are not regulated by the State in the same way the formal sector is.

³ McLachlan, Gavin. 2005. Wire Craft and Urban Space: A case study of the wire art trade in South Africa. 41st International Planning Congress 2005: Making Space for the Creative Economy. Bilbao, Spain.

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Chapter VI

Small-scale farmers and the right to food

A Introduction

The agricultural population in Africa stands at 530 million people, and is expected to exceed 580 million by 2020. Those relying on agriculture account for 48 per cent of the total African population¹ (almost 70 per cent in East Africa). Over the last 30 years, the agricultural sector has continued to absorb a large proportion of the working population, a feature unique to African agriculture in comparison to the rest of the world. Half of all new entrants to Africa's working population have turned to agriculture, whereas in Asia, only 30 per cent of new entrants do. In the developed world, the number of farmers is declining.²

Most of Africa's hungry live in rural areas. Therefore, preserving and boosting agricultural livelihoods, particularly for small-scale farmers, pastoralists, and fisherfolk, alongside rural development is essential to assuring the right to food. Promoting and supporting agriculture over the long-term is also essential in order for Africa to be able to feed its population in the coming decades. Africa has the potential to significantly increase its food production, and will need to because of its rapidly growing population. Small-scale farmers contribute to this increase in food production, which in turn can improve livelihoods. Sustainable agricultural livelihoods are and will be central to guaranteeing the right to food as well as other human rights in Africa.

A significant part of intra-African trade is in agricultural products.³ The AU has noted that an important potential benefit of the CFTA is increased food security through the reduction of barriers to trade in agricultural products among African countries. Clearly, the CFTA is likely to affect patterns of agriculture production and trade within Africa.⁴

Given the importance of agriculture for the continent, this HRIA presents two case studies on possible human rights impacts of CFTA provisions affecting the sector. The first, set out in this chapter, looks at the right to food of small-scale rural producers, paying particular attention to women, who are amongst the continent's most vulnerable people. The next chapter will focus primarily on the right to work and the livelihoods involved in the agro-manufacturing sector. There are strong connections between these two chapters, particularly given the potential for progression from subsistence and small-scale farming to more advanced and higher value added agro-manufacturing.

B Small-scale farming: key features

In Africa, excluding North Africa, 80 per cent of farmland is managed by small-scale producers, who produce about 80 per cent of the region's food. Similarly, in North Africa, small-scale agriculture provides 80 per cent of production.⁵ More than other continents, Africa is dominated by family farms with agricultural production quite dependent on family labour.⁶ The most vulnerable populations to food insecurity often live in rural areas and are involved in food production (either as small-scale producers or labourers) – but cannot afford to purchase what they produce.⁷ Small-scale farmers represent 50 per cent of the world's hungry.⁸ Landless populations represent another 20 per cent, and pastoralists, fisherfolk and forest users represent an additional 10 per cent.⁹

Women, who make up a large share of small-scale producers, also make up a large portion of the world's hungry. Women in Africa (excluding North Africa) have the highest average agricultural labour force participation rates in the world at almost 50 per cent of the agricultural labour force;¹⁰ in some parts of Africa this rate is well above 50 per cent.¹¹ These women work primarily in small-scale production; however, they receive a significantly lower share of income in comparison to men in the same sub-sector. Depending on the country, the rural wage gap between men and women in Africa is estimated to be 15–60 per cent. Although women are involved in production of both cash and subsistence crops, research indicates that they are primarily responsible for household food production in several regions – up to 80 per cent in some parts of Africa. Women often produce lower yields. This is in part because they lack access to and control over productive resources, including land.¹² Even if they do own the land, they tend to be more time-poor than men due to family responsibilities. Women often have less access to financing and inputs than men and are often neglected by agricultural extension services.¹³

Lack of market infrastructure contributes to the vulnerability of small-scale farmers, as many producers are forced to sell low and buy high. This happens when producers are forced to sell their production immediately post-harvest because of inadequate storage facilities, resulting in a market glut that drives down prices and creates low returns. This is followed by a scarcity as a limited number of buyers control distribution on markets, and producers pay high prices, creating unfavourable terms of exchange.¹⁴

Many African countries have the potential for increased food self-sufficiency but lack the agricultural development at present to actualise that self-sufficiency. Agricultural sectors in many countries have struggled from the urban bias of development policies and investment priorities of the 1970s and 1980s, and from structural adjustment and agricultural liberalisa-

tion policies of the 1980s and 1990s.¹⁵ Many countries are grappling with ecological degradation and the mounting impacts of climate change. Countries that are landlocked have been besieged by conflict, or have been more fiercely impacted by climate change, face even higher challenges in strengthening their food productivity.

As early as 2003 the Comprehensive Africa Agriculture Development Programme (CAADP), which set ambitious goals for agricultural investment and growth, recognised the potential of an agriculture-led approach to development. AU Member States have pledged to invest a minimum of 10 per cent of budgetary resources to the agricultural sector, for food security and empowerment of smallholder farmers, and the G-8 renewed donor commitments to CAADP in 2009.¹⁶ Despite this, African governments reduced their spending on agriculture from an average of 4.5 per cent of total expenditure in 2001 to 2.5 per cent in 2012.¹⁷ This amount has since risen,¹⁸ however, which permits optimism as to the priority decision-makers will give to agriculture in the CFTA and related processes.

Urban poor populations make up the additional 20 per cent of the world's hungry.¹⁹ The urban poor are primarily net food consumers and are less likely to be involved in food production. As urbanisation accelerates, there is a reasonable expectation that the urban poor will represent a growing proportion of those vulnerable to food insecurity, and it is important to pay due attention to their needs when designing trade and investment policies. At the same time, urban growth increases food demand and this new demand can create opportunities for rural producers to improve their livelihoods by connecting them to urban consumers (assuming the value chains are connected and good rural-urban links are in place.)²⁰ These are important considerations for CFTA negotiators to bear in mind from a right to food perspective, however for reasons of space this chapter focuses on the right to food of those engaged in food production in rural areas.

C CFTA provisions likely to affect agriculture

CFTA negotiations are still underway, and will certainly result in provisions that significantly affect the agriculture sector. This section presents some of the measures that are likely to be included. Although investment liberalisation will be included in the CFTA and can have significant impacts on the right to food, this chapter and the next focus on trade.

Elimination or reduction of tariffs, duties and other financial charges: The reduction and elimination of these are likely to be a key part of the agriculture-related CFTA trade reforms. In general, agricultural products have maintained higher tariff rates across time in both developed and developing countries.²¹ Intra-African agricultural trade tends to experi-

ence higher levels of protection than trade for other sectors.²² At the same time, African countries tend to apply lower tariffs or charges to imports from other African countries than for imports from other parts of the world, at 12.4 per cent versus 19.8 per cent (respectively).²³

Elimination or reduction of quantitative restrictions: Quantitative restrictions, most commonly import quotas and export bans, are applied to control the amount of a product sold on domestic markets. Limiting imports helps to constrain competition on domestic markets, while limits on exports help keep key products on domestic markets and/or keep prices low.

Rules on non-tariff barriers (NTBs): NTBs, which include a wide range of measures such as sanitary and phytosanitary (SPS) measures, government procurement, and customs processes,²⁴ are a significant obstacle to intra-African trade. The CFTA agreement is expected to include a commitment by Member States to remove existing NTBs and refrain from imposing any new NTBs. The CFTA agreement will also include a chapter on technical barriers to trade (TBT) and SPS, which is expected to require Member States to cooperate in the harmonisation and implementation of TBT and SPS measures.

The CFTA will include measures to offset adverse impacts of liberalisation. These include:

Exclusion lists: The CFTA will include lists of products that can be excluded from liberalisation. These will have various functions, for example protection of food insecure populations and small industries, or reducing the revenue shock for African countries heavily reliant on tariff revenue from intra-African trade.²⁵

Trade remedies and safeguards: Trade remedies are tools that allow governments to take remedial action against imports which are causing material injury to a specific sector within a country. They can be divided broadly into anti-dumping measures (countervailing measures) and safeguards. Countervailing measures may be applied when an imported product is being “dumped” (that is, sold abroad for less than its ‘normal’ price). Import safeguards are often implemented through tariffs, quotas and bans. They can protect domestic products that are designated as important for a country’s food security and which are vulnerable to competition on global markets. The objective of safeguard measures is to provide a temporary remedy while facilitating adjustment of the sector adversely affected by increased imports.

Developing countries and less developed countries (LDCs) very infrequently resort to the application of trade remedies, because to do so is technically onerous. The CFTA can therefore add value by either incorporating flexibilities into trade remedy provisions to ease their use by LDCs or by supporting such countries in developing the necessary trade remedy regimes.

Trade facilitation: It is expected that the CFTA, like the BIAT, will emphasise trade facilitation. Trade facilitation aims to harmonise and simplify trade documentation and procedures to expedite the movement of goods across borders. This will help to reduce transaction costs, as well as find common, African solutions to trade problems.²⁶

In 2012, the average time to export and import in Africa was the highest of all regions in the world, at 31.5 and 37.1 days, respectively.²⁷

D Possible impacts of liberalisation on rural food producers

After recalling the key elements of the human rights framework that informs its analysis, this chapter will discuss some of the main aspects of trade liberalisation and their relationship to the right to food. It will highlight the main risk areas identified from a human rights perspective and the potential of the CFTA to effect positive change.

Analysis

This chapter assesses the potential for the CFTA to adversely and positively affect the right to food by reference to the availability, accessibility and adequacy framework, bearing in mind the general human rights obligations to ensure non-discrimination, to take steps, to monitor and to provide access to remedies, as presented in Chapter IV. The impacts of trade on food security and livelihoods is often measured on an aggregate basis, yet we know that the impacts of trade on the right to food are not distributed evenly. Impacts are not gauged on a country's entire population, but rather by the impacts on those amongst the most vulnerable and food insecure: small-scale food producers in rural areas, particularly women.²⁸

General considerations about trade liberalisation and the right to food

The positive potential of the CFTA to support agriculture-related policies that favour the right to food, particularly for women, is complex and multi-faceted. To say that trade liberalisation offers risks and opportunities for human rights may sound trite, but it does state the wide range of impacts, views, and experiences of trade liberalisation and the right to food.²⁹ Whether agricultural liberalisation and agricultural trade contribute to the realisation of the right to food remains contested.

To briefly broaden the focus of this discussion, it is worth recalling that whilst some see agricultural liberalisation as essential to agricultural and economic development,³⁰ others

contend that there is little historical precedent to support that agricultural trade liberalisation generates inclusive development.³¹

While there are strong arguments for economic diversification and reducing the importance of agriculture in domestic economies – the “structural transformation” envisioned in the AU’s Agenda 2063 – there are many challenges to fulfilling this transition. Whether from a human rights or any other perspective, agriculture plays too prominent a role in the economies of most African countries and the livelihoods of their populations to risk having trade displace domestic producers without adequate flanking measures. Transition must thus be deliberate, rather than a reaction to unanticipated disruptions to agricultural production and livelihoods. A changing global economy (including factors such as increased automation) and the necessity to take climate change into account further heighten the importance about deliberate planning for necessary transition, taking into account a broad range of aspects of structural transformation, including the need to respect, protect and fulfil human rights.

A recent meta-analysis of the research literature examining the relationship between agricultural liberalisation and food security showed that evidence is inconclusive. In almost equal measure, some research showed that liberalisation is linked to increased food security, some showed links to decreased food security and some yielded mixed results. Where the analysis was able to link agricultural liberalisation to increased food security, it is difficult to determine if the improvement was a result of liberalisation or other policies.³²

This suggests that trade is not a first-best approach to ensuring the right to food. The FAO makes a nuanced argument that trade itself is not a “fix” for addressing food security, but nor should we view it as a necessary threat: “Trade...poses challenges and risks that need to be considered in policy decision-making. General and unqualified assertions about trade “hurting” or “helping” food security should be considered with caution, and the nature of the variables and links behind these assertions must be scrutinised carefully.”³³

Since the 2007-2008 food price crisis, the conversation on trade and agriculture has become much more nuanced. It is less widely accepted that trade liberalisation is necessarily beneficial. Credit is given to agricultural trade when it is done right; that is, when scope, pace and sequencing of trade liberalisation and necessary complementary measures are thought through based on a country’s individual context, instead of through the pursuit of full and instantaneous liberalisation.³⁴ But there are legitimate concerns that done poorly, liberalisation can undermine food security.

It follows that almost any CFTA provision or measure affecting agriculture could have positive or negative consequences for the right to food, depending on how it is designed and implemented and what complementary measures accompany it. This chapter and the next each have one section on possible opportunities and another on possible risks from liberalisation. Sometimes however a possible risk inherent in an opportunity is presented in the opportunities section. Any apparent contradictions stem from the differences in views and circumstances surrounding a given measure.

General considerations about prices

Vulnerable groups can have competing interests. Getting agricultural prices “right” from a right to food perspective is an enormous challenge. This is because of the disparities between the needs of poor net food consumers for low food prices and the needs of producers for higher food prices.³⁵ High food prices can be an indicator of food being less affordable to many poor households in Africa. But low food prices can mean that producers and agricultural labourers are not able to earn enough to be able to purchase sufficient food for themselves, and may lack the incentive to invest or produce.

Lower prices for producers could, however, provide incentives for shifting production to more efficient or productive activities, driving African countries’ structural transformation. However, many small-scale farmers lack the sufficient skills and capital to make this kind of shift – which highlight the need for support in the adjustment phase.

A focus on food prices alone will disadvantage either producers or consumers; any reforms that lead to a change in food prices need to consider how vulnerable populations are impacted by these changes, and must be accompanied by measures to help support whichever groups are expected to face poverty or food insecurity as a result. Providing a sustainable livelihood for producers while ensuring food is affordable for other poor consumers will be one of the greatest challenges for ensuring that agricultural policies contribute to realisation of the right to food.

Possible adverse impacts

Affecting availability of food – domestic production capacity

Moving food from food surplus regions to food deficit regions can be an important mechanism to ensure food security. Yet it is important to note that many regions and countries experiencing food deficits have the capacity to produce a larger share of their own food domestically, and doing so would boost livelihoods of their rural populations. Agricultural

liberalisation has a history of undermining domestic production capacities: it has tended to increase the export of cash crops while also increasing imports of food crops that displace domestic production.

ECOWAS agriculture policy aims for food security by tilting the balance from traditional cash crops to regionally consumed food crops. However government support to the agricultural sector has been directed to cash crops that generate cash earnings which can easily be captured as rents by business and political elites, especially when State-owned enterprises are in charge of marketing and export operations.

Source: Bossuyt, Jean. 2016. Political economy of regional integration in Africa. The Economic Community of West African States (ECOWAS) Report. <http://ecdpm.org/wp-content/uploads/ECDPM-2016-Political-Economy-Regional-Integration-Africa-ECOWAS-Report.pdf> (accessed 4 April 2017)

Availability and accessibility of food in countries dependent on imports can be strongly affected by external production, investment and consumption decisions. Factors such as climatic conditions, conflict or sudden export controls can all contribute to production and trade disruptions that can undermine food security for import dependent countries.³⁶ If trade results in fewer suppliers because of greater market concentration, this can also increase vulnerability to imports³⁷ conversely though, liberalisation could create more import options, therefore diversifying the sources of imports and reducing risk from sudden shocks in another country.

In practice, one often witnesses smaller countries with less developed agricultural sectors or weaker infrastructure struggle to compete with larger ones. Poor performance of smaller countries' agriculture sector and production capacity tends to result whilst larger countries become regionally dominant, as has been observed in the Southern Africa region.³⁸

The right to food of small-scale agricultural producers are best promoted when food imports are complementary to strong domestic agricultural production. This helps to ensure a stable and diversified supply of food on markets as well as strong domestic agricultural sectors and livelihoods. By improving links between rural and urban areas, domestic food production can also enhance availability of food for urban populations. If domestic production capacities are substituted with imports, as we see signs of in some Southern African countries, it risks increasing vulnerability to food insecurity particularly for those rural populations who are already vulnerable. This highlights the crucial importance for negotiators to ensure that trade liberalisation measures are accompanied by a priority focus on domestic production, storage and processing capacity as well as infrastructure development throughout the continent.

Data suggest that imports can detract from the focus needed on the causes of limited agricultural development and food security, and even displace domestic production by replacing it with imports from other countries. Mozambique for example is a low-income food deficit country with potential for food self-sufficiency, but struggling with agricultural development.³⁹ Agriculture accounts for a quarter of GDP. It remains the core economic activity for most Mozambicans, with an estimated 86 per cent of the people depending on agriculture as their primary means of subsistence. However, the sector is dominated by low-productivity subsistence farming which is in need of new technology and investment. The country still imports a significant share of its food, mainly rice to supply urban centres. Agricultural exports have grown steadily, encouraged by a liberalised trade regime. Although cash crops, including sugar cane, tobacco, cotton and cashew, account for a small proportion of total area cultivated, they represent the majority of agricultural exports.⁴⁰

The 2007-08 global food crisis highlighted just how vulnerable net food importers are on international markets. The crisis highlighted the vulnerabilities of food importing countries to the vagaries of competing interests on international markets⁴¹ and showed how price shocks undermine food availability as well as accessibility for hundreds of millions of poor people around the world.⁴² The CFTA could mitigate this vulnerability if it reduces African import dependence on global markets. But if it results in a concentration of production in some African countries and a dependence on African imports in others, then it could recreate this vulnerability at the continental level.

In 2016, as the Southern African region struggled with production shortfalls from drought and many countries were more dependent on imports, Zambia imposed a short-term export ban on maize, given fears that the country would not have sufficient food to feed its own population. The droughts that have undermined regional agricultural production for almost five years have also caused South Africa to increasingly turn to imports to meet food supplies. As a result, South Africa's exports of maize declined 60 per cent as of June 2014, compared with the previous year,⁴³ and the country was projected to be a net importer of food in 2016, with imports coming primarily from Mexico.⁴⁴

Some African experience of liberalisation and access to food

In SADC, 31 per cent of agricultural imports come from other SADC countries.⁴⁵ In the Southern African region, trade in agricultural goods is higher than for the rest of Africa, so we can look to experience in SADC and SACU to better understand possible impacts of increased agricultural trade through the CFTA.

Southern African countries employ various approaches to protect and support their agricultural sectors, depending on their capacity to finance support. Botswana provides financial support to agriculture; Lesotho, Swaziland and Namibia have a much lower capacity to do so.⁴⁶ To protect sensitive products, Swaziland and Botswana have used import quotas on products like dairy and poultry; other SADC Members have relied on different protective measures, including higher tariffs for basic food products, minimum prices, export licenses, peak tariffs, import bans or import licenses.⁴⁷ In contrast, the failure of ECOWAS and the West African Economic and Monetary Union (WAEMU) to implement agricultural trade protections such as high tariffs has limited their capacity to address food insecurity, suggesting that all-inclusive liberalisation can undermine the right to food.⁴⁸

Despite the relatively large levels of agricultural trade in the Southern African region, chronic food insecurity remains a major issue for many countries. In Malawi, more than 90 per cent of the rural population are small-scale producers. Agriculture constitutes about 30 per cent of GDP, half of export earnings, and employs about 80 per cent of the population.⁴⁹ Yet more than 1.6 million people in rural areas were expected to be at risk of food insecurity in 2012 and 2013.⁵⁰ In 2016, when the region was hit by one of the worst droughts in decades, that number catapulted to 50 million as the nation struggled to secure enough maize to feed the population.⁵¹ In Malawi, rural female-headed households have been particularly badly affected in recent years, possibly driven by liberalisation. Women are increasingly engaged in ganyu (casual work) for longer periods which has knock-on effects in reducing the time they can put into their own food production.⁵²

While responsible for many successes, Malawi's Farm Input Subsidy Programme (FISP) programme has been less successful in targeting young women, landless farmers, and small-holder farmers.⁵³ Food insecurity is persistent in Zambia because of variable food production levels and inadequate agricultural development and infrastructure. Subsistence farmers struggle even in times of surplus because of their limited capacities. Poverty and the inability to purchase food is also a major issue.⁵⁴ In countries like Malawi and Zambia, agricultural supports for seeds and inputs are credited for advancing agricultural development among small-scale producers.⁵⁵

Exacerbate inequality and discrimination

The benefits of the CFTA may not be captured by the most vulnerable unless accompanied by the agricultural and institutional development needed to ensure that small-scale producers have the capabilities to participate in markets and are competitive. This is particularly true for producers in landlocked countries, which tend to struggle with disadvantages because their

markets are often limited to poorer neighbours.⁵⁶ Without these capabilities, the benefits of the CFTA could very likely be unequally distributed, with some countries and producer groups capturing the benefits, while others are disadvantaged by their limited abilities to compete.

Human rights require us to look at distribution between countries and within countries. Within countries, we know that the impacts of liberalised trade on the right to food are not distributed evenly. Models tend to aggregate findings that do not measure the distribution or disaggregation of benefits and losses; with agricultural trade, this often overlooks the negative impacts on small-scale food producers.⁵⁷ Agricultural trade has seen uneven distribution of benefits to the poor, and has demonstrated a tendency to benefit larger farmers, while smaller farmers often emerge as net losers⁵⁸ – exacerbating existing inequalities and discrimination in society. CFTA measures that result in a decrease in the incomes of the poorest segments of the population – even if average incomes for the overall population increase – would be inconsistent with human rights obligations to progressively realise human rights and to ensure non-discrimination.

Countries with higher levels of gender equality have higher rates of economic growth and lower rates of poverty

AFDB, 2013

There is a widespread assumption that trade policies and agreements are class, race and gender neutral, but in fact they tend to be blind when it comes to these important issues. Gender is a key factor in the complex relationship between trade, growth and development. Trade liberalisation may disproportionately have adverse effects on women, who tend to dominate agricultural production and serve as the main provider of food security among households. If the changes leave women worse off than they were prior to the CFTA, the agreement would be inconsistent with human rights obligations to eliminate discrimination against women. There is thus a crucial need to ensure that trade liberalisation does not undermine women's rights, and supports the gender equality agenda. First and foremost, this requires the explicit recognition of women's contribution to the economy through both their productive and their unpaid reproductive work.

Meanwhile, harmonisation policies to improve the efficient movement of goods across borders are only useful to those producers who can reach borders, and who have the capacities to meet standards. Small-scale and poorer producers with fewer resources for on-farm

investment can struggle to meet standards set through harmonisation; SPS measures often favour larger farmers, and tend to disadvantage small, low-income countries.⁵⁹

As noted in a recent ECA publication,⁶⁰ powerful groups tend to have more sway over policy processes than those from more disadvantaged and marginalised groups. The interests of and impacts on the latter – who are precisely often those who need the most protection – can easily be overlooked in trade negotiations. Small-scale farmers, for instance, are often in areas remote from the locus of decision-making and may be hindered from making their voices heard by lack of time, resources or low education levels.

Moreover, if CFTA does result in lower tariff revenues, then governments may be forced to lower public investment in crucial areas such as agriculture, infrastructure or education that are particularly important to the continent's rural population.⁶¹

Positive potential of the CFTA

Reduced tariffs = reduced food prices

Reducing or eliminating tariffs and quantitative restrictions such as quotas can reduce the price of food, facilitating the right to food through easier accessibility of food. Tariffs provide important revenue to governments as discussed in Chapter I, but they also increase the price of food on domestic markets, affecting the affordability of food for those unable to produce their own food in sufficient quantities. Tariffs can also hamper competition on domestic markets, which can foster inefficiencies in production and marketing, negatively impacting livelihoods as well as long-term agricultural development.

Improved productivity

Healthier competition can also help to incentivise producers and investors to invest in agriculture, providing new jobs, while lowering food prices and raising production. Raising production is important for many reasons. One is that Africa is expected to see population increases of about 42 million people annually, to reach a total population of 2.4 billion people by 2050.⁶² Africa has the necessary arable land and labour capacity to be self-sufficient in food, and African crop production has been growing. Yet productivity growth has been low, at a rate below population growth. Many observers suggest that productivity in Africa has lagged compared to global levels due to factors such as low economic development, persistent poverty and poor infrastructure.⁶³

Counterweight to intra-regional food shortages

Whilst 52 per cent of the world's remaining arable land is in Africa,⁶⁴ most of it is concentrated in just eight countries. Meanwhile, a number of the remaining countries contain large rural populations clustered in remarkably small areas.⁶⁵ As such, facilitating and increasing agricultural trade through the CFTA can benefit countries which lack the capacity to produce enough food to feed their populations. It can also benefit those who face greater production instability due to climatic, conflict, or other reasons, by moving food from countries with surpluses, to countries with production deficits.

Trade in food security products can help to mitigate the impact of agricultural supply shocks that may increasingly occur as a result of climate-induced weather volatility.⁶⁶

Continental trade in staple food crops specifically can help relieve dependence on global markets, which are vulnerable to extreme price volatility, evidenced in the 2007-2008 food crisis.⁶⁷

Whilst a larger African free trade area could play a role in meeting food needs when domestic supply is lacking, it would require both availability of food surpluses, and the ability for those surpluses to be stored and transported efficiently. These infrastructural issues remain challenges in many parts of Africa. Landlocked countries may lack adequate transport infrastructure for instance.

The CFTA and the BIAT Action Plan can contribute. These offer an opportunity to devise continent-wide measures to encourage infrastructure development, as well as investment in extension services, irrigation, concessional lending, provision of technology, and support of property rights, especially for women. In so doing, they could improve productivity as well as enhance trade. These could in turn have positive effects on the right to food and on other human rights indicators such as poverty reduction and gender equality. "These kinds of developmental policies can redefine the rural economy and the agricultural sector, to sustain production – including of industrial raw materials – as the basis for manufacturing and thereby for structural transformation."⁶⁸

Contribute to economic transformation

The potential for increased agricultural trade through the CFTA does bring with it the possibility of improving realisation of the right to food. One way is through its potential con-

tributions to the continent's economic development by prioritising market access for African producers, processors and traders, as discussed in the next chapter.⁶⁹ This can improve their livelihoods, whilst reducing Africa's large food import bill and creating income that can be directed to realisation of the human rights of those who might be adversely affected by liberalisation.

In 2015 African countries spent about US\$63 billion on food imports. A very small share of this is accounted for by intra-African trade. If current trends continue, the African Development Bank estimates that Africa's food import bill will reach US\$110 billion by 2025.⁷⁰ At the same time the continent holds 52 per cent of all the arable land left to feed the world.⁷¹ This land should be used to expand agricultural production to supply African consumers.

Increased intra-African agricultural trade through the CFTA is considered integral to the continent's structural transformation, and the transition to a more diversified, industrialised economy. New market opportunities for African food producers, processors and traders can contribute to more robust economic development in other sectors, as some view rural and agricultural development as a necessary precursor for broader economic development.⁷²

Moreover, agricultural trade liberalisation within Africa can contribute to the agricultural development needed to effectively compete on the global market.

E Recommendations

The factors outlined above point to the need to proceed with caution and with careful advance consideration of possible – negative and positive – effects of agricultural trade liberalisation. The objective of these recommendations is to draw negotiators' attention to particular points requiring attention to ensure that the CFTA promotes, protects and guarantees the right to food of those dependent on agriculture for their livelihoods.

Consider the right to food when negotiating tariff lines and exclusion lists

Ideally, negotiators should identify and seek the necessary reductions and increases for each agricultural tariff line relative to each product's significance to the right to food, and with particular attention to its importance for women. This would require determining which products require protections in the short-to medium term and which ones can benefit from open markets, so that negotiations can be carefully targeted. The CFTA will permit Member States to define lists of products that can be excluded from liberalisation. These lists could be used to meet food security and agricultural development objectives.

CFTA negotiators can draw from the experience of many African Union Member States who, as members of the G33 in the WTO, put forward a WTO proposal on Special products that could be shielded from liberalisation commitments. Another reference for determining the relevant tariff lines or exclusion lists could be the list of strategic agricultural commodities that African countries were called on to promote and protect at the 2006 Abuja Food Security Summit. These were identified based on their importance to the African Food basket, the relative expenditure of foreign exchange to import them, and their untapped production potential on the continent.⁷³ They include rice, legumes, maize, cotton, oil palm, beef, dairy, poultry and fisheries products at the continental level, and cassava, sorghum and millet at the sub-regional level.⁷⁴ Countries' individual tariff lines must of course be adapted to include those agricultural products identified at the national level, and should be determined through transparent and participatory consultation processes recommended below and in Chapter VIII.

States could also turn to ECA, FAO or other specialised bodies to seek advice as to how best to define States' exclusion lists or to negotiate individual tariff lines to ensure food security goals.⁷⁵

This careful consideration of tariff lines contrasts with generalisations about agricultural liberalisation, and is required to assure that the scope, pace and sequencing of liberalisation is done right to determine where producers and consumers will benefit from more open markets, and where open markets might negatively impact the right to food.

Trade remedies and safeguards

Identifying sensitive products in terms of their importance from the right to food perspective, and permitting implementation of special protections under exigent circumstances will be essential to ensuring the right to food. Any CFTA provision on trade remedies and safeguards should explicitly recognise a country's right to apply measures when necessary to protect food security, in addition to threats of injury to domestic producers. Negotiators should ensure that the CFTA includes guidelines for development of trade remedy policy as well as capacity building in the area of trade remedies for those countries, particularly LDCs, with less experience in this area.

Maintain and develop domestic production

Governments should maintain policy space to promote agricultural development that promotes and protects small-scale agricultural production as well as maintain and strengthen domestic food production capacity. Some agricultural products or geographical areas may require more long-term protection until production becomes more competitive and agricultural development more advanced. Negotiators might therefore want to include this in a CFTA

provision on complementary policies specifically directed to production of food for domestic consumption. There is scope for this through BIAT and PIDA.

In countries like Malawi and Zambia, agricultural supports for seeds and inputs are credited for advancing agricultural development among small-scale producers.⁷⁶ CFTA negotiators must ensure that these types of support can continue in order to increase agricultural productivity and the right to food.

Maintain policy space

The CFTA should provide national policy space for governments to invest in research and development, extension services and infrastructure (particularly storage, transport and processing facilities) tailored to meet the needs of women and vulnerable groups, in order to support their food production capabilities as well as the rights of those who depend on the agricultural sector and for whom a transition to other sectors would be difficult. This might include allocating revenue from agricultural tariffs in a transparent manner to sustainable agricultural development, targeting the vulnerable producers identified above so they can better access and compete on markets, as well as applied to programs to support transitions for producers seeking to exit agriculture, and to other food security and food assistance programmes.

Collect data about the needs of the most vulnerable

Countries have not always, in the past, set forward their individual trade policy as a response to a deep understanding of their national context, although doing so can yield more responsive and robust policies. African countries have an opportunity in this CFTA negotiation process to explicitly consider the potential disaggregated effects of trade liberalisation and integrate these into the rules governing agricultural trade. This would result in more sustainable and inclusive social and economic development.

Adequate data-collection will be essential to assess the right to food needs of vulnerable groups, and from there determine the best trade policy-responses to incorporate into CFTA-related commitments. Particular attention must be paid to collecting information about women's participation in agriculture, as a proportion of this work may be unpaid and thus inadequately reflected in countries' balance sheets.

Provide capacity building

Some agricultural producers would benefit from training and other support to improve their productivity and ensure that they do not lose out from the structural transformation

that the CFTA can bring. Capacity building will be necessary: policy-makers must consider what priority skills will be needed and how best to equip people with these skills. Negotiators should ensure the creation of adjustment and compensatory funds for this purpose, as discussed in Chapter IX.

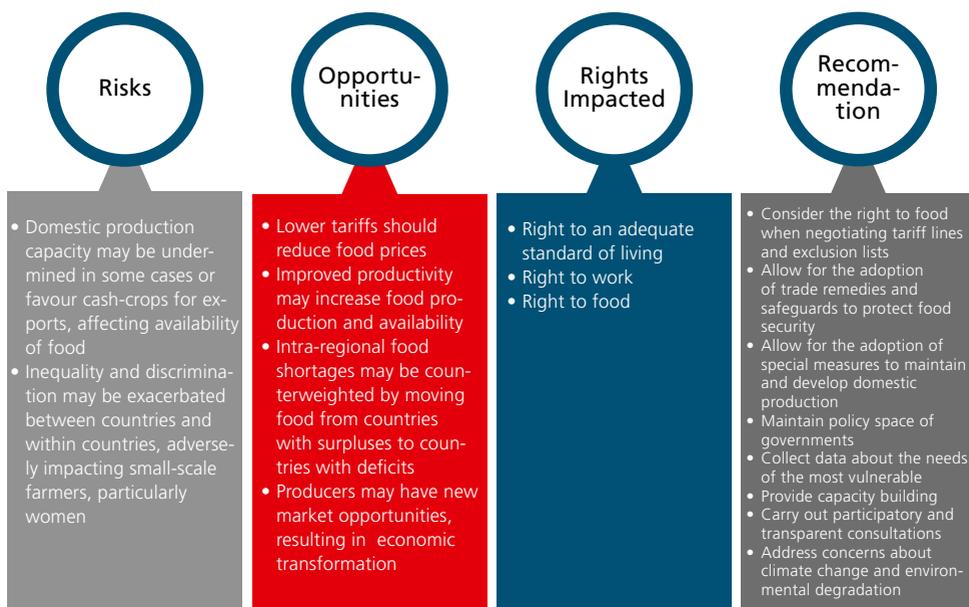
Ensure consultations, participation and transparency

The importance of multi-stakeholder consultations prior to negotiations is reinforced by the need to develop a set of agriculture trade and investment-related policies that are suited to each country's situation. To achieve this, trade officials must engage in a transparent and accountable participatory process that engages with all stakeholders. These might include poor food consumers, producers, particularly women and small-scale producers, the agricultural industry and ministries tasked with agricultural and rural development.

Address concerns about climate change and environmental degradation

Given the high level of vulnerability for the African agricultural sector to climate change, the CFTA should include explicit exemption safeguarding climate policies from CFTA trade obligations.

Figure 10: CFTA and small-scale farmers and the right to food



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- ² NEPAD. 2013 Agriculture in Africa –Transformation and outlook, 15 <http://www.un.org/en/africa/osaa/pdf/pubs/2013africanagricultures.pdf>, (accessed 2 May 2017).
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- ⁴ Draft Framework, Road Map and Architecture for Fasttracking the Continental Free Trade Area (CFTA).
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- ⁶ NEPAD. 2013 Agriculture in Africa –Transformation and outlook, 25 <http://www.un.org/en/africa/osaa/pdf/pubs/2013africanagricultures.pdf>, (accessed 2 May 2017).
- ⁷ De Schutter, Olivier. 2009. Promoting and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 11. UN Doc. A/HRC/10/5/add.2; FAO. 2012. Smallholders and Family Farmers - Factsheet. http://www.fao.org/fileadmin/templates/nr/sustainability_pathways/docs/Factsheet_SMALLHOLDERS.pdf (accessed 3 May 2017).
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- ¹² FAO. Women and Hunger: 10 Facts. <https://www.wfp.org/our-work/preventing-hunger/focus-women/women-hunger-facts> (accessed 6 May 2017). ActionAid. 2015. Delivering Women Farmers' Rights. Policy Brief, 2. www.actionaid.org/sites/files/actionaid/delivering_on_women_farmers_rights.pdf, (accessed 5 May 2017)., see also AfDB. 2015. Economic empowerment of African women through equitable participation in agricultural value chains. https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Economic_Empowerment_of_African_Women_through_Equitable_Participation_in_Agricultural_Value_Chains.pdf (accessed 6 May 2017).
- ¹³ McGill, Eugenia. 2004. Poverty and Social Analysis of Trade Agreements: A More Coherent Approach? 27 Boston College International and Comparative Law Review, 371. https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Economic_Empowerment_of_African_Women_through_Equitable_Participation_in_Agricultural_Value_Chains.pdf (accessed 6 May 2017).
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- ¹⁵ Bryceson, Deborah F. 2002. The Scramble in Africa: Reorienting Rural Livelihoods, World Development 30.5; 725–739.
- ¹⁶ The Declaration of the 2006 Abuja Summit on Food Security in Africa calls for the promotion of collaborative partnerships for expanded trade in agricultural and food commodities within Africa's RECs. These commitments are reiterated in the 2003 Maputo Declaration, as well as in the 2014 Malabo Commitments that supplemented the Comprehensive African Agricultural Development Program (CAADP).
- ¹⁷ Mbabazi, Jennifer et al. 2015. Transforming Africa's Agriculture to Improve Competitiveness. http://www3.weforum.org/docs/WEF_ACR_2015/ACR_Chapter2.1_2015.pdf (accessed 10 May 2017).
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- ²⁰ Graziano da Silva, José & Fan, Shenggen. 2017. Strengthening rural-urban linkages to end hunger and malnutrition. <http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/131087/filename/131298.pdf> (accessed 9 May 2017).
- ²¹ UNCTAD. 2013. Key Statistics and Trends in Trade Policy. http://unctad.org/en/PublicationsLibrary/ditctab20132_en.pdf (accessed 9 May 2017).
- ²² UNECA. 2012. Boosting Intra-African Trade: Issues Affecting Intra-African Trade, Proposed Action Plan for boosting intra-African Trade and Framework for the fast tracking of a Continental Free Trade Area, 46 and 59; agricultural tariffs are just over 17 per cent, compared at just over 12 per cent for non-agricultural tariffs. 46 and 59. http://www.uneca.org/sites/default/files/uploaded-documents/ATPC/issues_affecting_intra-african_trade_proposed_action_plan_for_biat_and_framework_for_the_fast_tracking_en.pdf (accessed 9 May 2017).
- ²³ Mevel, Simon & Karingi, Stephen. 2013. Towards a Continental Free Trade Area in Africa – A CGE Modelling with a focus on Agriculture; in: Cheong, D. et al. 2013. Shared Harvests: Agriculture, Trade and Employment. International Labour Office and United Nations Conference on Trade and Development, 286.
- ²⁴ Technical barriers to trade are also a major non-tariff barrier, and can be applied to food trade, but is not discussed in this chapter. Technical barriers can cover restrictions on production inputs and methods (e.g. specific chemicals or use of genetically modified organisms).
- ²⁵ ECA. 2017. Assessing Regional Integration in Africa VIII: Bringing the CFTA About. United Nations Publications, Chapter 7. An important point to note though is that intra-African trade is extremely concentrated, so even a small exclusion list can significantly limit liberalisation.
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- ²⁷ Mevel, Simon & Karingi, Stephen. 2013. Towards a Continental Free Trade Area in Africa – A CGE Modelling with a focus on Agriculture; in: Cheong, D. et al. 2013. Shared Harvests: Agriculture, Trade and Employment. International Labour Office and United Nations Conference on Trade and Development, 287.
- ²⁸ De Schutter, Olivier. 2009. Promoting and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 8. UN Doc. A/HRC/10/5/add.2
- ²⁹ Clapp, Jennifer. 2015. Food security and international trade – Unpacking disputed narratives. <http://www.fao.org/3/a-i5160e.pdf> (accessed 9 May 2017).
- ³⁰ World Bank. 2007. World Development Report 2008: Agriculture for Development. Washington DC: The World Bank; Anderson, Kym & Ernesto Valenzuela. 2007. Do Global Trade Distortions Still Harm Developing Country Farmers. Review of World Economics; 143; 108-139. ECA & AU. 2007. Economic Report on Africa 2007: Accelerating Africa's Development through Diversification, Addis Ababa: UNECA.
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- ³² McCorrison, Steve et al. 2013. What is the evidence of the impact of agricultural trade liberalisation on food security in developing countries. <http://www.cabi.org/Uploads/CABI/about-us/Scientists%20output/Agri-liberalisation-systematic-review.pdf> (accessed 10 May 2017). It bears noting that most of the studies within the meta-analysis are based on aggregate measurements, and not the household or sub-national level, including the rural-urban divide.
- ³³ Clapp, Jennifer. 2015. Food security and international trade – Unpacking disputed narratives. <http://www.fao.org/3/a-i5160e.pdf> (accessed 9 May 2017).
- ³⁴ McCorrison, Steve et al. 2013 use these words. This position is also supported in Chang's (2009) comprehensive look at agricultural trade throughout history.
- ³⁵ Simson, Richard & Vanessa T. Tang. 2016. Food Security in ECOWAS, 159-178; in Fanta, Emmanuel, Shaw, Timothy M. and Vanessa T. Tang (Eds.) Comparative Regionalism for Development in the 21st Century: Insights from the Global South Rout. But as discussed below, this could be a positive step towards structural transformation.
- ³⁶ Clapp, Jennifer. 2015. Food security and international trade – Unpacking disputed narratives, 7. <http://www.fao.org/3/a-i5160e.pdf> (accessed 9 May 2017).

³⁷ *ibid.*

³⁸ See for instance Sandrey et al. 2011. Agricultural Trade and Employment in South Africa. OECD Working Paper. <http://www.oecd-ilibrary.org/docserver/download/5kg3nh58nvq1-en.pdf?expires=1499179663&id=id&ac-name=guest&checksum=AC5B20AD33F0029580365E7A795C4035> (accessed 8 May 2017).

³⁹ WFP. Country Profile Mozambique. <https://www.wfp.org/countries/mozambique> (accessed 7 May 2017).

⁴⁰ WTO. 2017. Mozambique TPR Report. https://www.wto.org/english/tratop_e/tptr_e/s354_e.pdf (accessed 28 May 2017).

⁴¹ Clapp, Jennifer. 2015. Food security and international trade – Unpacking disputed narratives. <http://www.fao.org/3/a-i5160e.pdf> (accessed 9 May 2017); Guo, Lisa and Rojas, David. 2010. The Global Food Crisis; in: Clapp, Jennifer & Cohen, Marc. *Yale Human Rights and Development Journal*: Vol. 13 : Iss. 2 , Article 8.

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⁴⁵ By comparison, only about 15 per cent of Africa's food and agricultural raw materials are imported from within Africa. ECA & AU. 2012. Boosting Intra-African Trade: A key to agricultural transformation. Issues Paper with Background: Challenges and Opportunities in intra-African Trade in Agricultural Commodities www.au.int/en/sites/default/files/newsevents/workingdocuments/13861-wd-issue_paper_joint_ministerial_conference_trade_and_agriculture_2012.pdf

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Chapter VII

The right to work and the agro-manufacturing sector

A Introduction

This chapter focuses on agro-manufacturing and pays particular attention to small-scale and household-level producers. Agro-manufacturing is the processing of raw materials and of intermediate agricultural, forestry and fishery products. In this work, we will consider agricultural products.

As noted in Chapter VI, this sector has been chosen for analysis from a human rights perspective due to the importance of agriculture for economic growth and poverty reduction in Africa,¹ and particularly as farming, small-scale agro-processing and retailing are important sources of women's incomes.² The analysis in this chapter is based on the assumption that the CFTA will result in in-depth regional integration.

Agro-manufacturing employs between 60 to 70 per cent of employed persons in many regions in Africa. In West Africa, it generates 30-40 per cent of GDP. Notwithstanding its importance, it lacks value addition in many African countries. It does have enormous potential however, not just in its capacity to add value to agricultural products and natural resources, but also to harness the potential of the rural workforce, and to enhance their livelihoods, including unemployed youth.

The potential for increased agricultural trade through the CFTA brings with it the opportunity to progressively enhance enjoyment of human rights across the continent. Among the most obvious are its potential contributions to the continent's economic development by prioritising market access for African producers, processors and traders.³ This can then contribute to more robust economic development in other sectors, as, bearing in mind the provisos discussed in Chapter VI, rural and agricultural development are often seen as a precursor for broader national economic development. Indeed, increased intra-regional agricultural trade through the CFTA is seen as part of the continent's structural transformation, and the transition to a more diversified, industrialised economy.⁴

A substantial body of the literature finds that agriculture-led growth has greater impact on poverty reduction than non-agriculture-led growth.

Transforming Africa's Agriculture to Improve Competitiveness, 2015

B Agro-manufacturing in Africa: key features

Agriculture is hugely important in Africa, yet the level of value addition and crop processing of agricultural commodities remains low.⁵ Agro-manufacturing is a major element of the 2008 Action Plan for the Accelerated Industrial Development of Africa (AIDA),⁶ and the 2010 African Agribusiness and Agro-industries Development Initiative (3ADI).⁷ Much agro-manufacturing in Africa is small-scale which makes it hard for African agro-manufacturing to compete with global firms. In West Africa, for instance, “most of the processing of agricultural products is done by medium or small-scale units (bakeries, traditional beverages, workshops) and most is informal.”⁸ The informal agro-manufacturing sector employs about 76 per cent of employees in WAEMU.⁹

C Agricultural trade measures likely to be included in the CFTA

Based on experience with previous trade agreements, and as described in Chapter VI, this chapter assumes that CFTA will include provisions such as reductions of tariffs and of non-tariff barriers related to agricultural goods. Trade remedies and trade facilitation will also be included. CFTA negotiators will likely consider that increased agricultural productivity and enhanced agro-manufacturing will result from increased and significant investments in agriculture and agro-manufacturing – rather than merely from increased liberalisation of the intra-African market – and thus include complementary measures in the agreement.

D Possible impacts of CFTA liberalisation on the Right to Work

Analysis

This impact assessment seeks to gauge possible impacts of the CFTA by paying particular attention to the situation of the most vulnerable and disadvantaged sectors of Africa’s population. This chapter focuses in particular on the potential for the CFTA to affect the rights to work and to social security. It explores the extent to which CFTA-related measures can promote full employment, enhance access to work and to an adequate standard of living and facilitate transition of workers from one sector to another or within the same sector. Throughout, it bears in mind the general human rights obligations to ensure non-discrimination, to take steps towards the progressive realisation of human rights, to monitor and to provide access to remedies, as presented in Chapter IV.

Possible adverse impacts of the CFTA

Displacement of jobs, transitioning and precarious employment

Trade theory often assumes that those who lose their jobs from new trading patterns will instantaneously transition to a new sector, but this assumption has limited real-world validity.

This is especially true of small-scale operators who lack transferable skills, and who may have other obligations that do not allow for mobility and transition and as such may not be able to find alternative employment.¹⁰ The effects of trade on employment vary at the country level, depending on factors such as asset distribution, on the type of trade (bilateral, multilateral or regional) as well as on the sector and skill-set of workers.¹¹

CFTA negotiators should carefully consider which sectors the new continental free trade area might adversely affect and where new strengths and priorities lie. Agricultural production in some African countries may be displaced by imports from others, or new trading patterns. Without a clear sense of which sectors agricultural producers would transition to, or how, the CFTA could very likely exacerbate unemployment and undermine the right to work.

Changes in the Fruit and Vegetable Market Sector in Kenya in the 1990s

As export market opportunities opened up for Kenya's fruit and vegetable sub-sector in the 1990s, small-scale production was displaced by large-scale farms¹² and small-scale farmers who were unable to supply this market lost their incomes. Commercial farming provided employment for landless women, and processing plants, particularly in urban areas employed young single women. However, commercial farming has increased risks to worker health as a result of pesticide handling and application.¹³ Whilst commercialisation of vegetable and fruit production can provide new employment, it often produces only casual employment in the food and transport sectors. These jobs are unlikely to have pension, material, annual leave or sickness benefits.

High dependence on processing plant employment is subject to the high seasonality of these jobs. These jobs also provide little to no opportunity for skill development and upward job mobility.¹⁴ These gender differentiated outcomes are inconsistent with African States' obligations to ensure that they do not discriminate against women.

If the CFTA is designed primarily as an ambitious liberalisation agreement, particularly on goods and services, as alluded to in the Guidelines approved for negotiating it, it may risk making the agro-manufacturing sector in AU Member States with weak agro-manufacturing even more vulnerable to large agro-manufacturers. This could mean that these small firms are unable to take advantage of producing higher value products which would enable them to provide employment and enhance incomes, particularly for small-scale operators. These adverse outcomes are particularly likely if the modalities adopted in such an ambitious liberalisation agenda require immediate implementation, or require general rather than specific and tailored commitments that take into account particularly vulnerable small-scale producers and farmers. As noted above, much processing of agricultural products in Africa takes place in medium or small-scale units.¹⁵ Exposing these to sudden competitive pressures, instead of

first ensuring they move from low to high productivity, is likely to have adverse impacts on employment and thus exacerbate poverty.

As alluded to in the previous chapter, agricultural liberalisation in the SADC and SACU regions, to date, has not been clearly beneficial to rural development or rural employment. Even South Africa's trade liberalisation has not demonstrated positive gains for agricultural livelihoods. Employment in South Africa's agricultural sector fell by 50 per cent between 1968 and 2003.¹⁶ Where new jobs were created, they have tended to be seasonal, related to harvests in orchards and vineyards. Generally, liberalisation has not served to reduce poverty and generate employment in rural South Africa.¹⁷

Increase in adverse working conditions

As the agro-manufacturing sector has become an increasingly important employer, there is also concern that it is exposing less empowered workers to exploitation and unhealthy, unsafe and inferior working conditions. Women are often more vulnerable to this given their lower level of education and poorer access to information and technology.

*Decent work for all cannot be achieved unless greater emphasis is placed on rural economies, where the lack of decent work opportunities is pervasive and persistent.*¹⁸

There are concerns that by increasing off-farm work, the CFTA could result, as explained above, in unsafe working conditions, inadequate remuneration, as well as unequal treatment for work performed by women in the agro-manufacturing sector. The right to work and to an adequate standard of living, could, unless mitigating policies were adopted to enable farmers to enjoy decent jobs, be adversely affected. The ILO has drafted policy guidelines for the promotion of sustainable rural livelihoods targeting the agro-food sectors. These emphasise the importance of collective bargaining and freedom of association as "essential for ensuring that rural workers' voices are heard in economic and social development."¹⁹

Some have expressed concerns that through CFTA provisions (particularly on investment), worker rights in the agro-manufacturing sector could be diminished. Negotiators should be attentive to avoid reducing the scope of employment regulation in a way that would make it easier for employers to hire and fire workers or otherwise infringe workers' rights. Adopting as a policy or as a rule flexible job markets under the CFTA would be in violation of workers' rights.

Competition pressures can undermine small-scale agro manufacturing, jobs and wages

Tariffs and non-tariff barriers can be critical to the agro-manufacturing sector. Several African governments use them as policy measures to keep the sector competitive. Moreover, as noted above, if the design and implementation of the CFTA expose small-scale African agro-manufacturing to sudden competitive pressures they may put them out of business with consequent job losses, contrary to human rights. And even where jobs are maintained, real agricultural wages may decline in some countries because of the rise in imports over exports.

The extent to which CFTA's draft provisions balance the interests of bigger versus small-scale agro-manufacturing firms, and the measures taken to ensure African agro-manufacturers are able to take advantage of the CFTA, through appropriate rules of origin for example, is not known. Careful consideration of who will benefit is important, from an economic and social perspective as well as from a human rights perspective.

This requires more than balancing the interests of smaller versus those of bigger firms. As many agro-manufacturers operate in the informal sector, their needs and potential economic contribution could easily be overlooked. Africa is home to many small-scale agricultural producers who could provide the inputs for agro-manufacturing if they have the necessary resources and are adequately connected with value chains, but are often insufficiently considered by policy-makers. A major challenge in the raw and processed milk sector, for instance, is that large quantities of milk produced by small-scale farmers are marketed through informal channels that do not have access to sterilisation, cooling and packaging.²⁰ Building strong linkages between large commercial agro-manufacturing firms and smaller players will be important, both for sharing of knowledge and technologies, but also to ensure access to markets.

These factors highlight the need for complementary interventions to boost capacities and overcome constraints to participate in agro-manufacturing. Safeguards, exclusions and phased liberalisation would also help to protect small-scale agro-manufacturers from a significant hit from the CFTA, and enable them to build competitiveness over time.

The CFTA could favour the emergence of larger African players who are able to tap into the economies of scale the new agreement will provide. Larger, more established firms would be expected to be better connected to export markets and networks, be more aware of the contents of the CFTA, and have more capacity to be able to implement and benefit from the

agreement, for instance through the use of trade remedies and competition policy provisions and the ability to comply with standards requirements.

From a human rights perspective, this raises the concern that funds invested in developing agro-manufacturing and facilitating trade could benefit primarily those who are already better-off, thus diverting resources from being spent on measures to develop opportunities for those who are the most vulnerable, particularly women and the youth. Indeed, the AU's policy for agricultural transformation sets out a central role for private sector firms.²¹ There are also concerns that regional liberalisation could open up African food markets for deeper penetration by global firms, through trade or investment.

Exacerbate inequality and discrimination

Smaller operators, particularly household level agro-manufacturers or those operating in the informal sector, may find it difficult to make use of new, trade-related mechanisms. For instance, while SPS standards are necessary to ensure food safety, the costs of complying with technical or sanitary standards will weigh heavier on the budgets of small agro-manufacturers than on those of larger and more established entities. Safeguards in trade agreements and the public expenditure that accompanies them often favour larger, more established firms due to their better ability to access these. In the context of the CFTA, governments should avoid favouring public expenditures that largely benefit those who are better-resourced over more economically and socially vulnerable actors. It may be that the investment is worthwhile, but this decision must be grounded in real data and analysis of the needs of the most vulnerable and communicated in a transparent way in order to be consistent with human rights standards.

Opportunities of the CFTA

Economies of scale and value chains

The CFTA will create a single African market of over a billion people and with a GDP of over US\$ 3 trillion.

The larger market promises to enable significant economies of scale and to attract investments to the continent's agro-manufacturing sector. It also promises to boost incentives to source inputs and intermediates from within the continent. These economies of scale can support the expansion of agro-manufacturing and enhance the competitiveness and productivity of African goods and services. This can benefit small-scale agricultural producers due to

the CFTA opening up markets where none previously existed, or through being able to sell to African agro-businesses.

In addition, it is expected to contribute to the development of regional value chains (RVCs), which hold considerable potential given the expected growth in regional population and urban middle class, and better position the continent to integrate into global value chains (GVCs).

Whether it is African or global firms who occupy the economic space the CFTA creates, the linkages mentioned earlier between African producers and manufacturers, including small-scale ones, will be essential.

More fluid trade: reducing food prices for consumers and raising income for producers

The reduced non-tariff barriers along with the trade facilitation measures likely to be included in the CFTA will accelerate the process through which items cross borders, contributing to lowering food prices. These price decreases can benefit both consumers and producers: lower prices improve accessibility for consumers, while producers' revenues increase because their products are priced more competitively on markets. Such trade-related efficiencies can help to incentivise investment in agriculture, improving the overall ability of agro-manufacturers to compete on more open markets, and thus to create African jobs.

Complementary measures: enhancing African productive capacity

African leaders have recognised that trade reforms should be complemented with measures like the development of infrastructure, such as transport links; productive capacity, such as a skilled workforce; and trade finance. Indeed, trade liberalisation on its own will not lead to structural transformation of African economies. Complementary measures will be necessary to meet AU goals of inclusive development through improved intra-regional trade. The BIAT Action Plan addresses this need,²² and rural infrastructure and trade-related capacities for market access are primary pillars of the CAADP²³ as well as PIDA.²⁴

Designed correctly, such measures can help support domestic production and African processing capacity and agrarian transformation, develop manufacturing and agro-processing, and help move away from the continued reliance on exports of raw materials.²⁵ Without such mitigating efforts, the right to work and to an adequate standard of living for small-scale producers, farmers and traders could be adversely affected, in particular through less opportunities for employment, lower or inadequate earnings and little or no social protection.

Complementary measures should address the specific situation and needs of women. Agricultural extension services in Africa tend to be skewed in favour of men, neglecting the productive capacity and the vulnerabilities of the high proportion of women active in the sector.²⁶ The transformation of agriculture in parts of Africa has introduced changes that benefit women. Opportunities have opened for them to move to more productive work through the expansion of national and international demand for specialised foods. Women are moving to agro-packing and processing jobs, and joining integrated value chains to supply fresh produce and livestock, the production of which frequently aligned with their traditional agricultural work.

Access to information and business networks is critical for business success. Yet many women entrepreneurs and producers lack access to crucial information about trade and export requirements and opportunities. In addition, men typically dominate business networks and organizations, such as chambers of commerce and unions. Women are also typically under-represented in government institutions established to support exporters.²⁷

There is cautious optimism that public private partnerships can, under certain circumstances, become effective development platforms.²⁸ The Tanga Dairy Platform, in the North-eastern Region of the United Republic of Tanzania is an example of an initiative that has had government support among a broad cross-section of the dairy industry, and that could be replicated.. The African Development Bank's Feed Africa: Strategy for Agricultural Transformation in Africa, 2016-2025 similarly aims to link production and markets for agricultural goods while strengthening processing capacity.²⁹

Supporting rural employment

Strategies that promote agri-business, including small-scale and household-level enterprises in rural areas, can create jobs, as well as promote social equity and inclusion. Women and youth may benefit in particular – the youth population in Africa is most vulnerable to the decreasing number of formal employment opportunities. Indeed, the dynamic modernisation of the agro-manufacturing over the last twenty years has made it an increasingly important source of household income in rural areas.³⁰

With respect to CFTA negotiations, the duty to respect the right to work means negotiators should ensure that the commitments made do not destroy opportunities for individuals to earn their living. The obligation to fulfil the right to work means that CFTA commitments ought to at minimum not jeopardise gainful employment and, at best, increase the number of individuals who have the opportunity to earn their living through decent gainful employment.

E Recommendations

These recommendations seek to highlight some of the points that CFTA negotiators must consider in order to maintain and enhance the dynamism of African agro-manufacturing.

Engage in paced, layered, targeted liberalisation

The CFTA ought to be structured to allow paced, layered and targeted liberalisation. This would give AU Member States the policy flexibility to gradually reduce tariffs, while investing in relevant sectors to make sure they can effectively adjust to the growing competition. In addition, this would allow governments to put in place trade remedy regimes that would safeguard against unfair trade practices that could injure and or threaten domestic agro-industries.

Consideration of each tariff line for possible impacts of reducing that tariff on vulnerable groups or selected industrial sectors would be part of this paced, layered and targeted liberalisation. The CFTA will include lists of products that can be excluded from liberalisation. These exclusion lists could be used strategically with the development of the agro-manufacturing sector.³¹ As mentioned in Chapter VI, States could also turn to specialised agencies for assistance as to how best to define exclusion lists or to negotiate individual tariff lines to favour small-scale agro-manufacturing.³²

The CFTA is expected to include protections for infant industries. Negotiators could ensure that the definition of infant industries and duration of their protection for the purposes of exclusion from liberalisation obligations respond to the needs of small-scale producers and the informal agro-manufacturing industry. It could, for instance, specify that the employment of vulnerable rural groups is of national strategic importance.

Establish complementary measures

The removal of barriers to trade should be complemented with agricultural development measures. Improved transport, telecommunication networks and capacity building will be necessary, often requiring fine-grained interventions at local levels. Capacity building could,

inter alia, improve small-scale producers' access to trade finance and skills that would enable them to build and enhance their productive capacity and to process, package, brand and market their products. Such measures must pay particular attention to women's role in agriculture and agro-manufacturing and respond to their needs in order to end discrimination and fully harness women's potential for contributing to the economy.³³

Many complementary measures are already anticipated in the Action Plan for Boosting Intra-Africa Trade (BIAT), the Programme for Infrastructural Development in Africa (PIDA) and the Comprehensive African Agricultural Development Programme (CAADP). These should be explicitly referred to in the CFTA. Indeed, African policy-makers should give the attention to agriculture that the continent has lacked in recent years, encouraging significant investments in agriculture and agro-manufacturing to fuel decent work, the right to food and inclusive growth. Correctly designed, these complementary reforms would have a positive human rights impact, in that they could significantly contribute to improving the employment-generating potential of the agro-manufacturing sector and thus the livelihoods of small-scale food producers.

Create inclusive value chains

Improving connectivity of value chains is another measure that will be needed if trade in food and agricultural crops is envisaged. This will both provide benefits for producers engaging in production for African value chains and opportunities to shift away from a reliance on global value chains, thus helping to embolden African value-added and agro-processing sectors. Small-scale producer collaboration with the private sector to support aggregation and distribution of their produce is likely to benefit small-scale producers who might otherwise be excluded in a private-sector led development, particularly in the fruits and vegetables (horticultural) sector.³⁴

Support connectivity of small-scale producers with agro-manufacturing

African Union Member States in the CFTA must prioritise how they can foster and expand backward and forward linkages between agriculture and agro-industry. For small-scale farmers to benefit from new sub-regional or regional markets created by the CFTA for agro-manufactured products, flanking measures need to be implemented. These should include government support for infrastructure such as storage, refrigeration and cooling facilities, extension services, credit, capital and access to technology. This will be crucial, as these elements can enable small-scale farmers to effectively participate in the local agro-manufacturing sector and thus perhaps even in the export market. In addition, governments could usefully encourage large-scale and commercial farms to subcontract small-scale producers to supply them

at market prices. This would enable them to overcome the substantial barriers they face in entering the sub-regional and regional markets created by the CFTA.

Governments must support producer marketing organizations for small-scale farmers to enable them to remain in or re-enter value chains, from agricultural input production and distribution, farm production, raw products assembly, processing and marketing.³⁵ Governments should also seek donor support to supplement their efforts to help small-scale farmers to adapt to the post-CFTA market through enhanced technical, managerial and financial skills and meet industry standards. This can be achieved through initiatives such as the Global Partnership for Agriculture and Food Security (GAFSP).³⁶ Strengthening farmer cooperatives and organizations will also be useful, particularly in productivity enhancing and processing methods as well as in their marketing capacity to enable them to enter into distribution channels.

Avoid favouring large enterprises to the detriment of small-scale firms

The promotion of agri-business must be designed so that the increasing influence of consolidation of the agribusiness industry at the global level is not elevated by the CFTA to impede the emergence of small-scale firms. It is important to remove discriminatory barriers that, for example, favour big business and disfavour small-scale farmers, such as high costs of registering a business which have lower adverse impacts on larger firms and which also affect the likelihood of accessing capital. Governments could also consider flanking measures to liberalisation that will support small-scale agro-manufacturers in competition with large-scale commercial firms, particularly global firms that tend to capture large market shares through branding and enforcing consistent standards and quality.³⁷

A mitigation strategy to address the growing concentration of global agri-business in African Union Member States could be to impose local content and staffing requirements that discourage international firms from employing non-African citizens. Immigration laws that give priority to employment of African workers could also be strengthened – this would help to ensure job creation for Africans and allow African firms to benefit from finance and synergies with global players.³⁸ Stemming the dominance of global agri-business firms reinforces the case for removing barriers to intra-African investment – especially since only a low proportion of African countries' investment crosses borders within Africa.³⁹ This highlights the importance for CFTA negotiators to ensure supportive investment rules and a strong competition policy in Phase 2 of the CFTA negotiations.

Protect the right to work and rights at work

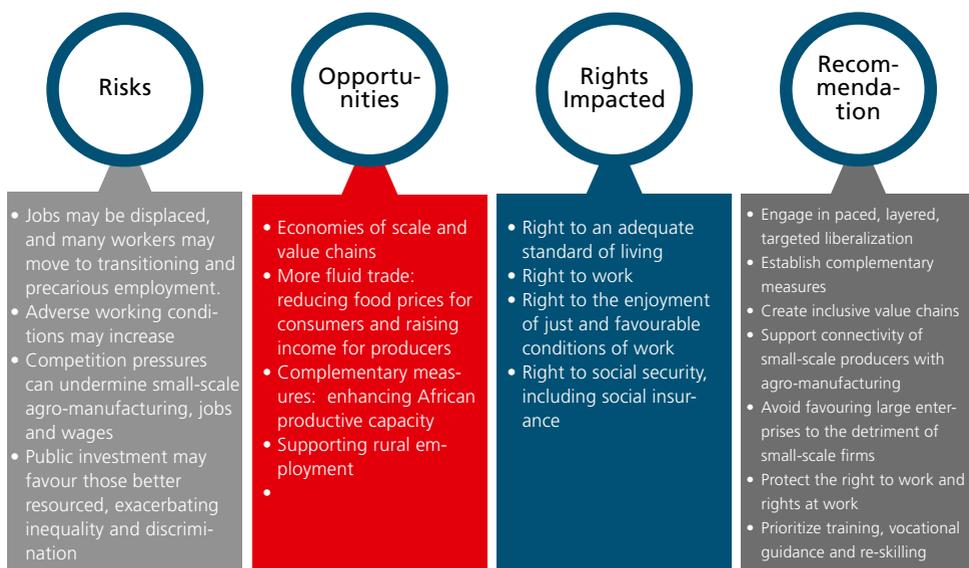
CFTA negotiators should ensure that new trade rules do not reduce the scope of employment regulation, and that they promote the right to work and rights at work.

Prioritise training, vocational guidance and reskilling

For those whose work prospects are likely to be adversely affected by trade liberalisation, States are, by virtue of their human rights commitments, under an obligation to provide education, training and vocational guidance to enable them either to develop the skills necessary to adapt to new agro-manufacturing trade opportunities, or the skills needed to secure alternative employment. Indeed, training to facilitate the reallocation of labour will be essential for the CFTA to successfully increase trade in a way that is economically and socially beneficial to member countries.⁴⁰

Reskilling programmes should be specifically targeted at helping vulnerable rural people find employment, or enhancing their abilities to compete in agro-manufacturing. Priority should be given to youth entering the labour market and to women. Skills development in rural areas should be coordinated with the priorities set for rural development and should be linked to policies aimed at diversifying agricultural production or markets, and expanding services or manufacturing in rural areas.⁴¹ Training and skill development is also an important way to encourage and spur innovation.

Figure 11: CFTA and the right to work in the agro-manufacturing sector



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- ³⁵ Governments must invest in rural infrastructure including roads, water and electricity in addition to investing in improving agricultural productivity.

³⁶ Auer, Claus. 2010. Global Partnership for Agriculture and Food Security: Actors, Missions and Achievements, 2, in: Rural 21 5/2010. www.rural21.com/fileadmin/_migrated/content_uploads/Auer_GPAFS_long_01.pdf (accessed 30 March 2017).

³⁷ UNECA. 2015. Economic Report on Africa 2015. <http://www.uneca.org/publications/economic-report-africa-2015> (accessed 30 March 2017).

³⁸ Limiting acquisition of African firms may by foreign firms would be another option particularly for countries like South Africa that have viable competition regimes and where this would be inconsistent with the growing support for competition law and policy across the continent.

³⁹ Karingi, Stephen et. al. 2016. Towards a Transformative African Integration Process: Beyond the Conventional Approaches. AERC Working Paper presented at the Research Symposium.

⁴⁰ Mevel, Simon & Karingi, Stephen. 2013. Towards a Continental Free Trade Area in Africa – A CGE Modelling (...) on Agriculture; in: Cheong, D. et al. 2013. Shared Harvests: Agriculture, Trade and Employment. International Labour Office and United Nations Conference on Trade and Development, 287.

⁴¹ ILO. 2016. Draft Policy Guidelines for the Promotion of Sustainable Rural Livelihoods Targeting the Agro-Food Sectors. Report for Discussion at the Meeting of Experts to Adopt Policy Guidelines for the Promotion of Sustainable Rural Livelihoods Targeting the Agro-Food Sectors, 13, para. 21. www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_512911.pdf (accessed 26 March 2017).

Chapter VIII

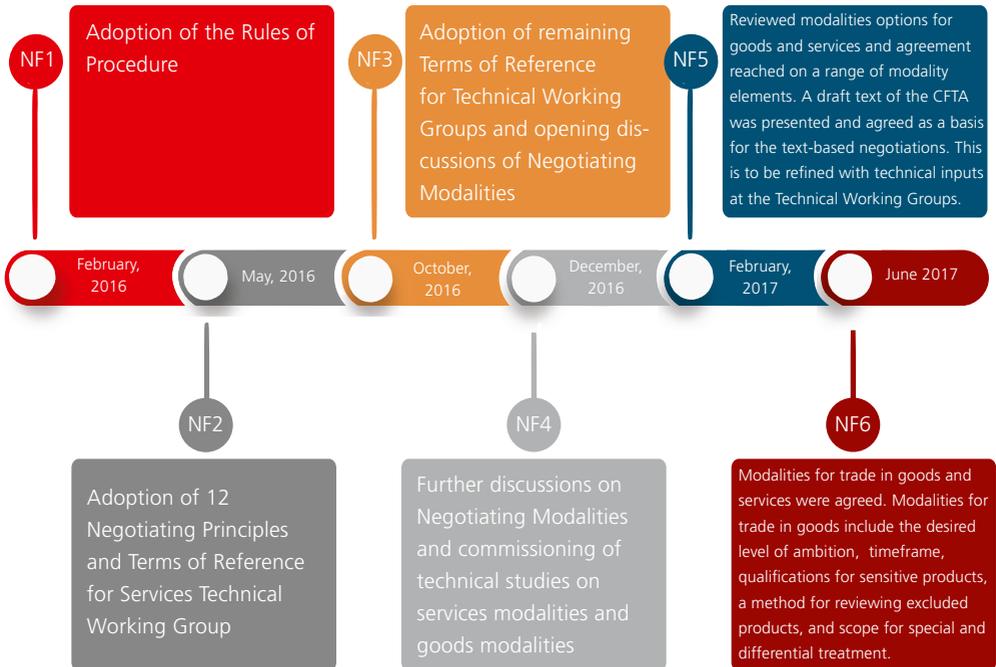
Ensuring a human rights-consistent negotiating process

A General principles

The primary purpose of a human rights impact assessment of a trade and investment agreement is to ensure that the agreement's provisions support human rights. HRIAs must also assess whether the process of negotiation was participatory, inclusive and transparent, and whether it was conducted with appropriate parliamentary oversight.¹ As noted earlier, human rights require compliance with procedural obligations of participation and transparency.

These obligations are set out in the African Charter and other African human rights instruments² as well as in international human rights treaties which the overwhelming majority of African States have ratified. They have since been reaffirmed in Africa's Agenda 2063 as well as the Global Agenda 2030. These principles point to the fact that human rights require attention to both the process and the outcome of policy-making.

Figure 12: Update on Negotiations Progress



The process itself of negotiating and concluding a trade or investment agreement should be assessed as regards its compliance with the guiding principles of participation, transparency, and accountability on human rights impact assessments of trade and investment agreements, para. 5.3.

Some of the major issues that guaranteeing a right to participation can address include project sustainability, mitigating public opposition, preventing marginalisation and efficiency. Beyond being good practice, the concept of participation is firmly rooted in international law.³

B Why encourage participation

Broad participation in trade policy-making tends to result in policies that are more transparent, better informed and more responsive.⁴ Given that all human rights are interdependent and interrelated, these participation-related rights can reinforce other human rights; notably they can empower poor people to fight poverty.⁵ Putting the most marginalised groups at the centre of economic decisions contributes to reaching agreements which uphold human rights for all. This can ensure that an inclusive and balanced economy is fostered through the trading process.⁶

In addition, inclusiveness is important from a political perspective: if individuals and communities feel disenfranchised it can spark social tensions, political instability or even conflict, as demonstrated by the UN Report on the World Social Situation 2013⁷ and other studies. In addition to shining a light on the most vulnerable and likely to be marginalised, effective public participation will also give the CFTA broad social legitimacy that would otherwise not be possible if it is negotiated in secret, outside of public view and participation. Participation permits buy-in to the results of the agreement, and minimises potential resistance by specific sectors, or by parliaments, at the conclusion of negotiations – all elements important for a successful CFTA.

From an economic perspective, even if the economic models' assumptions and predictions are relatively accurate (which is not always the case), it is impossible to foresee with certainty how new policies will play out – political factors abroad can affect world prices, or weather can affect agriculture production and prices. For this reason, ensuring that a wide range of views and impacts are taken into account prior to the conclusion of new trade and investment provisions can significantly contribute to robust, inclusive and sustainable policies.

Economic policy-making behind closed doors violates the right to political participation – and is susceptible to the corrupting influences of political power and big money.⁸

A human rights-based approach, like poverty reduction approaches, can help inform and strengthen trade policy by bringing more areas of expertise, and thus more breadth of experience, to the shaping of trade policy. While trade effects are typically analysed through economic models using macroeconomic data, poverty analysis and human rights rely increasingly on a combination of quantitative and qualitative measures carried out at community or household levels. Relaying the experience from those levels to trade negotiators, in language they can take on board, can ensure the resulting policy responds to the country's needs,⁹ and particularly the needs of the most vulnerable.

It has long been demonstrated – through formal economic modelling, empirical work, and policy analysis – that trade policies do not necessarily have the same impact on men and women and that gender relations and differences themselves can influence trade policy outcomes.¹⁰

In Africa, specialised networks, NGOs and think tanks have developed functional relations around topical issues such as peace and security, gender, climate change and governance.¹¹ In trade also, civil society organizations (CSOs) can bring expertise and knowledge to the table, thus strengthening governments' capacities to put forward useful and human rights consistent negotiating options. Countries with a vocal civil society and active trade associations tend to obtain better results from trade negotiations – such inclusive processes help countries set their individual trade policy as a response to a deep understanding of their national context. There tends to be inadequate political participation of women and a lack of transparency in decision-making processes, some of which continue to be driven by patriarchal considerations which shut out women. Policy approaches that are informed by a women's rights perspective are critical to achieving inclusive and sustainable development which leads to progressive outcomes.¹²

C Levels of participation and related principles

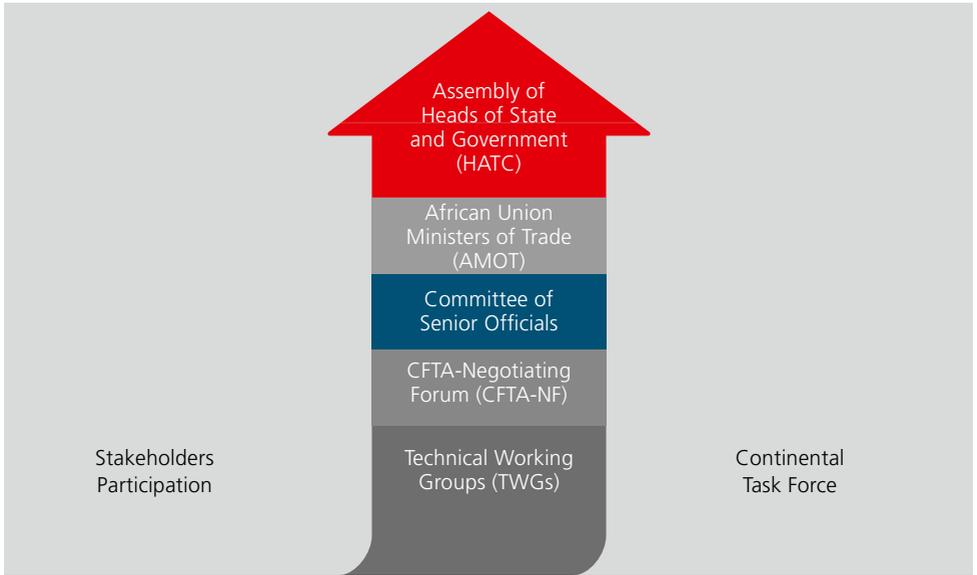
Participation in trade negotiations should be envisaged at different levels: national, regional and international. All the relevant actors – national governments, regional economic communities and those hosting international negotiating fora – should take steps to ensure effective and meaningful participation.

First, the process of setting negotiating priorities at national levels must involve participation of all stakeholders, including the poorest and most vulnerable segments of the population, and women. States should therefore make provision for institutional mechanisms at the national level through which to consult stakeholders and ensure their views are fully considered.

Governments should ensure that those consulted include at least the following: agricultural producer and farming associations (including small-scale and landless farmers), consumer bodies, chambers of commerce and industry, specific-industry associations, professional associations, standard-setting bodies, parliaments and parliamentarians, the media, women's groups, national human rights institutions, academia and NGOs, particularly NGOs working in the field of environment, labour rights, gender or youth-related issues. The range of groups approached in this way will obviously depend on the countries concerned and the type of agreement envisaged. If, for example, the aim is an agreement limited to goods, the range of services providers that need to be consulted is narrower than would be the case in an agreement covering goods and services. But in the case of a genuinely comprehensive agreement, as is the case with the CFTA, the range of possibly interested organisations and individuals will be large, and will require an important effort to manage.

Workers in the informal economy, women or people in rural areas who depend on agriculture for their livelihoods, are often overlooked in trade policy-making. Perhaps decision-makers do not view these groups as actors in international trade or investment. However, as the preceding chapters have shown, some of these people are active traders and could contribute even more to economic integration and growth with a supportive framework in place. Moreover, many will be affected, for better or for worse, by new trade and investment rules. Therefore, ensuring that their human rights and their needs are taken into account, and making efforts to include them in consultative processes around new trade and investment policy, is crucial. It is necessary to bear in mind that some of these stakeholders – such as actors in the informal sector or women farmers – may not be familiar with governmental consultative processes. As a result, special efforts will have to be made to reach out to these groups, such as working through community-level workers or traditional leaders and bearing in mind the need to use languages other than English or French and perhaps to ensure transmission of information orally rather than in writing.

Figure 13: Institutional framework for the CFTA negotiations



Transparency is an underlying human rights principle. Access to information is inherent to transparency and is closely linked with public participation. A participatory process can be meaningful and effective only when the participating stakeholders are well aware of all information essential for them to make informed decisions. During the negotiations information about possible content of the agreement should be made available, and draft texts made public as work progresses. During negotiations, draft texts change. New provisions included in the agreement, or deletion of previously included wording should be conveyed to stakeholders, both by the inter-governmental body hosting the negotiations and by national governments. Again, this contributes to building public trust and support of the process. It can also ensure broad consideration of possible impacts of including – or not – specific provisions.

Agenda 2063 – The Africa We Want

ASPIRATION 6: An Africa whose development is people-driven: All the citizens of Africa will be actively involved in decision-making in all aspects of development, including social, economic, political and environmental.

Source: <http://www.un.org/en/africa/osaal/pdf/iau/agenda2063.pdf> (accessed 5 April 2017)

The effective inclusion of groups affected by a free trade agreement presupposes that they possess both the necessary information to judge the agreement in question and the

capacity to participate in a negotiation process. These are not automatically given but must be ensured in the process of preparing, negotiating and implementing trade and investment agreements. Sharing information, engaging in consultations and working in partnership can be new and unfamiliar for State and non-state actors alike.¹³ The challenges of organising and implementing truly consultative mechanisms should not be underestimated. Yet as previous sections have shown, the benefits are manifold; it is thus worthwhile to invest the time and resources to develop these capacities and bring new voices to the table.

The State should ensure, through political and financial support, the greater effective participation of the population in all phases of policy and programme design, implementation, monitoring and review¹⁴.

D Participating in CFTA negotiations

The Draft Strategic Framework of the CFTA emphasises the importance of ensuring that the process is all-inclusive, participatory and consultative with all stakeholders, particularly civil society groups at the national, sub-regional and continental levels. The Strategic Framework requires that AU Member States should engage in information exchange and sharing, and that journalists and academics should be involved in the establishment process to engage in capacity building and to communicate the agenda of the CFTA to the public.¹⁵ Similarly, the BIAT underlines “Enhancement of the role of the organised private sector, informal private sector and women in trade policy formulation” in the priority programme cluster on trade policy.¹⁶

This builds on the recognition that “average Africans need to be involved in the integration process more. This requires more information on how it works, which will also help to offer greater transparency of the process and secure greater buy-in from the populace.”¹⁷ This is all the more so given that Africa’s regional integration approach transcends narrow economic considerations and lends itself naturally to an open, inclusive process for a continental agreement such as the CFTA.¹⁸

Parties solemnly affirm and declare their adherence to the following principles: accountability, economic justice and popular participation in development.

Abuja Treaty, Article 3.

In a public statement, H.E. Mrs. Fatima Haram Acyl, AU Commissioner for Trade and Industry, recalled that the African Union Commission had developed a preliminary draft of a CFTA Model Text on both trade in goods and trade in services by early 2017. The draft was sent to Member States and RECs for national and regional consultations. “For the CFTA to be successful, it is very important to recall that ownership is very critical. We are trying our best to engage stakeholders in this process including the private sector and other non-state actors where possible. However, we always encourage and urge Member States and Regional Economic Communities to undertake regional and national consultations of those stakeholders as regularly as possible,” she underscored.¹⁹

Many critical voices however are being raised. “The processes involved in the design and negotiations of the CFTA are so far opaque and exclusive. The structures created for the CFTA have little or no space for the involvement of civil society, the private sector, and the different social groups and economic constituencies whose interests are implicated. In addition, information related to the CFTA process, including even the timings of the meetings of the CFTA structures and their agenda, tend to be treated as confidential and are not readily available. Thus, the perspectives and concerns of workers, farmers, traders, domestic producers, women’s groups who have borne the brunt of trade policies of the past risk being marginalised in the CFTA process,”²⁰ civil society groups have complained.

There have been several consultative events with civil society during the CFTA negotiations, enabling some civil society views to be reflected and engaging African policy-makers in calls for an inclusive CFTA. However, these have tended to gather CSOs already active at the national level, and have not enabled ongoing participation as the CFTA text and options have evolved.

The AU Commission has encouraged national governments to release the draft texts of the agreement for consultation but it is not clear whether this has resulted in wide release of the draft texts. Negotiations are held between Member States only. ECA and UNCTAD are admitted as observers who can provide inputs of a technical nature when requested by Member States. There is scope for more women negotiators to be involved in the negotiations as part of governmental delegations. There are no official mechanisms for civil society participation in the CFTA negotiating fora; rather, individual “representatives of civil society can lobby their governments to be part of the delegations to the negotiations.”²¹ The AU Secretariat has been urging States to include key stakeholders in their delegation to the CFTA negotiations.

Given the narrow scope for non-state actors to intervene at AU level and the lack of transparency of the negotiations, the national consultative process takes on even more importance.²² Yet it appears that at the national level – with a few exceptions – discussions have so far been limited, either starting late or only including already well-connected private sector actors.

Discussions even with internationally-connected Africans in business reveal that a large share of stakeholders likely to be impacted by new continental trade arrangements are unaware of the CFTA process' existence, let alone of national consultations. This further highlights the need to reach out to marginalised groups and enhance information dissemination on the CFTA, including via local radio or social media.

The citizenry, the main 'beneficiaries' of the CFTA, have so far not played any meaningful role in the processes

African Agenda23

E Recommendations

Member States and the AUC should ensure that the CFTA framework include inclusive consultative processes, with pro-active measures in place to share information about the progress of negotiations, including draft texts of the CFTA agreement.

National consultations are particularly important in gathering the views and interests of non-state actors such as the private sector, civil society and academia and workers. National ministries in most cases have well-established channels of communication with the private sector which can be used to support the efficient conduct of the negotiations.²⁴ The need for consultation and coordination between national ministries should also be placed high on national agendas. As with many trade processes, the CFTA negotiations have tended to be led by the trade and industry ministries. Yet others – including finance, agriculture, labour or education – are important players and could provide valuable input.

Member States must also go beyond these channels and actively reach out to a range of stakeholders, including groups such as informal traders, rural food producers and women who are often not consulted in trade and investment policy. States should invest sufficient time and resources to build awareness and disseminate information about the CFTA process and proposed content. This should include carefully choosing the format and language of the information provided so as to reach as wide an audience as possible, paying particular atten-

tion to the oft-forgotten grassroots levels. Channels that could be used include agricultural extension workers, traditional leaders, local hearings, or traditional and social media.

Gender analysis and consultation with women's groups must be central to determining national priorities for trade negotiations and formulating substantive advocacy positions of governments and NGOs. This should involve significant participation of national and regional gender machineries in the decision-making process of the CFTA negotiation framework.²⁵ Workshops such as that organised in Kampala in 2016 by Third World Network Africa, SEATI-NI and others, which brought together feminist and youth organizations, activists, academics, and progressive policy-makers to build knowledge and solidarity around the proposed CFTA are welcome.²⁶ Similar initiatives should also be put forward by governmental and intergovernmental agencies.

Member States must take steps to ensure participation of women on national trade and investment negotiating delegations.

At the level of the CFTA Negotiating Forum and technical working groups, the processes and structure of CFTA negotiations must create entry points and mechanisms for ensuring transparency, consultation and participation. At the very least, negotiations among Member States could involve occasions or platforms where non-state actors are informed of progress made and given an opportunity to provide suggestions on the draft agreement.²⁷ Civil society representatives should be able to have direct access to the negotiating forum without having to go through their national government to be included on a delegation.

The CFTA negotiating forum should also include means for informing and allowing participation of specialised agencies or other relevant organizations. These could include the African Commission on Human and People's Rights, FAO, ILO, UNDP, UNICEF, and others.

It will be necessary to ensure that there is sufficient funding available to enable information-sharing about, and participation in, the negotiations. Funds could be required for domestic and international travel by sometimes quite large teams, for hiring meeting venues and for interpretation and translation.²⁸ Governments may wish to seek support through the Aid for Trade framework or from other international sources to develop consultative and information-sharing processes.

- ¹ De Schutter, Olivier. 2011. UN Human Rights Council – Guiding principles on human rights impact assessments of trade and investment agreements, U.N. Doc. A/HRC/19/59/Add.5, para 3.3.
- ² African States have agreed to these in a number of instruments, such as the African Charter Articles 9, 10, 13 and the 1998 Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights.
- ³ Global Initiative for Economic, Social and Cultural Rights (GI-ESCR). 2014. A GI-ESCR Practitioner’s Guide, 2 globalinitiative-escr.org/wp-content/uploads/2014/05/GI-ESCR-Practitioners-Guide-on-Right-to-Participation.pdf (accessed 25 May 2017).
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- ¹⁰ See for instance Cagatay, Nilufer. 2001. Trade, Gender and Poverty and Beneria, Lourdes et al. 2003. Gender, Development and Globalization: Economics as if All People Mattered.
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- ¹³ Randall, Ian. 2011. Guidelines for Non State Actor participation in CAADP processes, CAADP Working Group on Non State Actor participation, 2.
- ¹⁴ African Commission. 2011. Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, para 29 www.achpr.org/instruments/economic-social-cultural (accessed 29 March 2017).
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- ¹⁶ African Union Commission & ECA. 2012. Boosting Inter-African Trade: Issues Affecting Intra-African Trade, Proposed Action Plan for boosting Inter-African Trade and Framework for the fast tracking of a Continental Free Trade Area, 33.
- ¹⁷ ECA. 2012. Assessing Regional Integration in Africa V: Towards an African Continental Free Trade Area, 23.
- ¹⁸ ECA et al. 2015. Transparency, Consultation and Participation in the Continental Free Trade Area (CFTA) Negotiations in Africa, Recommendations from the Multi-Stakeholder Expert Workshop on a Potential Human Rights Impact Assessment (HRIA) of the CFTA, 4 www.ohchr.org/Documents/Issues/Globalization/RecommendationsTransparency-AndParticipation30April2015.pdf (accessed 25 May 2017).
- ¹⁹ AU. 2017. The African Union Commission hosts the 5th Meeting of the Continental Free Trade Area Negotiating Forum (CFTA-NF), Press Release, 27 February 2017 <https://www.au.int/web/en/pressreleases/20170228/african-union-commission-hosts-5th-meeting-continental-free-trade-area> (accessed 25 May 2017).
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- ²² Tralac. 2016. African Continental Free Trade Area: Policy and negotiation options for trade in goods <https://www.tralac.org/news/article/10980-african-continental-free-trade-area-policy-and-negotiation-options-for-trade-in-goods.html> (accessed 25 May 2017).
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- ²⁴ Tralac. 2016. African Continental Free Trade Area: Policy and negotiation options for trade in goods <https://www.tralac.org/news/article/10980-african-continental-free-trade-area-policy-and-negotiation-options-for-trade-in-goods.html> (accessed 25 May 2017).
- ²⁵ ECA et al. 2015. Transparency, Consultation and Participation in the Continental Free Trade Area (CFTA) Negotiations in Africa, Recommendations from the Multi-Stakeholder Expert Workshop on a Potential Human Rights Impact Assessment (HRIA) of the CFTA, 4 www.ohchr.org/Documents/Issues/Globalization/RecommendationsTransparency-AndParticipation30April2015.pdf (accessed 25 May 2017).
- ²⁶ Dag Hammarskjold Foundation. 2016. Towards an Equitable and Transformative Continental Free Trade Area: A Heterodox and Feminist Approach (East Africa) <http://www.daghammarskjold.se/event/towards-equitable-transformative-continental-free-trade-area-heterodox-feminist-approach-east-africa/> (accessed 25 May 2017).
- ²⁷ Tralac. 2016. African Continental Free Trade Area: Policy and negotiation options for trade in goods <https://www.tralac.org/news/article/10980-african-continental-free-trade-area-policy-and-negotiation-options-for-trade-in-goods.html> (accessed 25 May 2017).
- ²⁸ Tralac. 2016. African Continental Free Trade Area: Policy and negotiation options for trade in goods <https://www.tralac.org/news/article/10980-african-continental-free-trade-area-policy-and-negotiation-options-for-trade-in-goods.html> (accessed 25 May 2017).

Chapter IX

Institutional and Structural Mechanisms

A Introduction

A set of institutions and structures will be designated or created in the CFTA context to facilitate and monitor implementation, resolve conflicts, and encourage stakeholders to implement the agreement. The CFTA Framework Document sets out some of the mechanisms envisaged.¹ The nature and scope of the CFTA institutional framework is however not yet known, either in terms of institutional mechanisms, flanking measures or dispute settlement provisions.

Ongoing mechanisms will be needed to ensure an inclusive, sustainable and human rights consistent CFTA. Its institutions and mechanisms must therefore be designed and operated in such a way that fully captures and supports human rights principles, African Union's Agenda 2063 aspirations and the Sustainable Development Goals. Human rights-consistent design of CFTA's institutional and structural mechanisms will also contribute to accountability of governments and other economic actors under trade and investment agreements.

From this perspective, the present chapter focuses on what some of these mechanisms' mandates should include. There has been much discussion elsewhere regarding the optimum structures, financing and timings for CFTA implementation, monitoring and dispute settlement mechanisms, so this chapter does not delve into questions of which structures should be established, nor how and when they should be instituted.

Develop effective, accountable and transparent institutions at all levels

SDG 16, Target 6

The first part of this chapter considers some of the features that new institutional and structural mechanisms for CFTA implementation should have. In the second part, it identifies some specific mechanisms that would help to achieve a human rights consistent CFTA, some of which have already been discussed in the CFTA process. Monitoring, which should take place within these mechanisms, is discussed in Chapter X.

B General features

A range of bodies have been mentioned for implementing or further developing the CFTA. These include at the continent-wide level a Secretariat, an Oversight Committee and a Committee of Representatives. The CFTA will also require several implementation structures at the national level. It would make sense to also utilise existing REC structures and institutions to support the CFTA regime.²

Whatever the bodies entrusted with roles in CFTA implementation, they should be guided by a number of principles in order to enhance the capacity of the CFTA to deploy human rights- and development-consistent effects as its implementation advances. These principles include establishing dialogue and consultation processes to engage civil society and social movements, ensuring effective coordination mechanisms with other concerned bodies, and being guided by information deriving from new monitoring and data collection effects.

Dialogue and consultation

Ensuring that adequate dialogue and consultation processes are included in any institutional or structural mechanisms entrusted with CFTA implementation is essential. Indeed, as noted in Chapters IV and VIII, human rights require ensuring the rights to information and to participation in decision-making. The dialogue and consultation mechanisms must engage not only the private sector but also civil society, social movements, and all other relevant stakeholders.

Critical factors for success for attaining the vision for 2063 include participation, inclusion and empowerment of citizens

African Union Commission, Agenda 2063: The Critical Factors for Success³

Including provision for these is only a first step to effective public involvement in regional integration; those who craft and operate these mechanisms must pay careful attention to the actual effectiveness of these measures. Civil society participation in Africa is frequently handicapped by lack of capacity and resources.⁴ Some actors may find it hard to participate in inter-governmental mechanisms or trade policy-related structures, assuming they know about them at all. National and international CFTA-related institutions and structures should ensure that the relevant information is provided in a medium that is accessible to African people, taking into account considerations such as local variations in language, literacy levels and cultural background.

Average Africans need to be involved in the integration process more. This requires more information on how it works, which will also help to offer greater transparency of the process and secure greater buy-in from the populace.

Economic Commission for Africa, Assessing Regional Integration in Africa V: Towards an African Continental Free Trade Area, 2012

Officials at national and regional levels must take special steps to reach out to all stakeholders and ensure that the voices of more disadvantaged or marginalised groups are heard. This might involve pro-actively reaching out to social movements or grassroots actors, such as farmers' networks or alliances of informal traders, or through means such as seeking inputs from traditional leaders. It will also require bearing in mind that many of the continent's most vulnerable people are not members of any associations. The need for accurate, disaggregated data about the situations of those sectors of the African population who are the most disenfranchised thus takes on its full importance.

The Committee recommends that the State party establish a statistical data collection system to assess the level of enjoyment of economic, social and cultural rights, in particular, by disadvantaged and marginalised individuals and groups, including persons living in rural areas, internally displaced persons, indigenous peoples and ethnic minorities and persons with disabilities.

Source: Committee on Economic, Social and Cultural Rights, Concluding Observations, Angola, 20165

Data collection and monitoring

Data collection

Data will be essential to ensure that the institutional and structural mechanisms for implementation and oversight of the CFTA respond to the continent's needs in an ongoing way. Any of the mechanisms created in the CFTA context will need to ensure that one of these has a data-collection role, and that the data collected reflects the specific situation of groups vulnerable to discrimination or who tend to be overlooked in policy and in practice, particularly traders in the informal economy and women.

Data disaggregation and collection which allow for comparison of different populations forms part of States' human rights obligations

OHCHR (2016) A HUMAN RIGHTS-BASED APPROACH TO DATA - Leaving No One Behind in the 2030 Development Agenda

It should be noted that the process of collecting data can encourage the involvement of various economic, social and cultural sectors of society in the formulation, implementation and review of policies that may affect them. The benefits of this will be accentuated if efforts are made to empower vulnerable groups in the collection process and use of the resulting data.⁶ Better data collection will contribute to the Abuja Treaty principles of accountability, economic justice and popular participation in development,⁷ as well as the principles of democracy, human rights and the rule of law, which are recognised in the CFTA process. Moreover, it is consistent with general HRIA objectives of contributing to developing the capacities of duty-bearers and rights-holders.

Statistics play a fundamental role in the information system of a democratic society

United Nations Fundamental Principles of Official Statistics (quoted in OHCHR (2016) A HUMAN RIGHTS-BASED APPROACH TO data)

Human rights bodies have acknowledged that gathering data is potentially time-consuming and costly and noted that international assistance and cooperation through human rights channels can be available to this end.⁸ Governments can also seek support to develop adequate data-collection, consultative and monitoring processes through the Aid for Trade framework as part of, or in parallel to the CFTA and BIAT. In this respect, it is worth recalling the recent Memorandum of Understanding between the ILO and ECA, according to which they will work together to assist African States to develop sustainable labour statistics in youth employment, social protection and labour migration in Africa.⁹

Monitoring

From a human rights standpoint, it is to be welcomed that CFTA negotiators are considering including a monitoring and evaluation mechanism in the agreement. Chapter X presents some of the specific elements that should be included in such a mechanism.

Both data collection and monitoring are essential for accountability, which is a key human rights principle. Monitoring ensures transparency about impacts of policy decisions and can help identify what redress measures might be established. Moreover, ongoing monitoring and evaluation is key to ensuring that CFTA policies continue to respond to economic, social and development needs as circumstances change, as well as to adapt when they do not yield the expected impacts. The monitoring and implementation mechanisms should be accessible not only to economic operators and governmental entities but also to other potentially affected parties as noted above.

Coordination

A series of mechanisms are likely to be created by the CFTA, at the AU level as well as national level. In addition to these, existing continent-wide, regional and national mechanisms are likely to be entrusted with a role pursuant to CFTA.

The continental CFTA architecture should be buttressed with national, regional and continental level institutions, based upon those envisaged in the Boosting Intra-African Trade strategic framework.

Source: ARIA VIII, 201710 (quoted in OHCHR, 2016. A human rights based approach to data.)

Some welcome efficiencies are already being envisaged, such as combining the institutional structures required for implementing the BIAT with those envisaged as part of the CFTA. RECs for instance, already have monitoring and evaluation (M&E) units that monitor the implementation of their strategic plans, and ECA is spearheading the development of a continental strategy for the alignment of the M&E structures of the RECs to track progress on the BIAT clusters.

Irrespective of the number of entities involved in implementing the CFTA, solid efforts towards effective coordination of their mandates and activities will be essential for ensuring its full potential is deployed, avoiding undesirable impacts or resolving disputes.

It would be particularly desirable to coordinate with human rights bodies, and especially the African Commission on Human and Peoples Rights. The functions of the African Commission include co-operation with other African and international institutions concerned with the promotion and protection of human and peoples' rights.¹¹

C Specific mechanisms

This section outlines some of the institutional and structural mechanisms that can serve to ensure that the human rights impacts of the CFTA are taken into account in an ongoing way, consistent with the Abuja Treaty, the African Charter on Human and People's Rights and other international human rights treaties. The mechanisms discussed pertain to one or more of the following roles: human rights-consistent CFTA implementation, ongoing CFTA negotiations, design of flanking measures and human rights oriented support in the transition phase, accountability and redress in case of CFTA-related harm.

The Secretariat

The CFTA will most likely have a Secretariat, which will be responsible for a range of issues relating to the CFTA content, including trade in goods, services and investment. It is possible that the African Union Commission will be re-structured and resourced to serve as the CFTA Secretariat. There has been suggestion that trade experts may be seconded from the RECs to the CFTA Secretariat.¹² Tasks which fall to the Secretariat might involve monitoring, evaluating, reporting and following up on the implementation of the CFTA Agreement, either itself or through preparation of reports for Ministers to facilitate their role of CFTA monitoring, evaluation and implementation, or through the establishment of subsidiary bodies such as an Oversight Committee.

Whatever the scope of the Secretariat's mandate and its relationship with other bodies entrusted with further developing and implementing the CFTA, it will be important that its work be guided by human rights principles as discussed in the preceding section. In addition, whatever the Secretariat's mandate, a certain number of functions must be carried out, if not by the Secretariat, then by another of the CFTA-related mechanisms. These functions include taking deliberate steps to ensure that all sectors of Africa's population are considered (through dialogue, consultation, data collection or other means) when overseeing implementation, designing flanking measures and dispute settlement.

Adjustment and Compensatory Arrangements

The CFTA institutional framework should include adjustment and compensatory funds and related arrangements for those who will be adversely affected by the structural and regulatory changes brought about by the CFTA. A development fund to compensate for losses from liberalisation should be instituted under CFTA auspices. The importance of such a fund is underlined by the fact that many CFTA Member States have weak tax administration systems that make them more dependent on trade tariffs. To encourage them to undertake trade reforms like lowering tariffs would therefore require well-functioning compensation funds to reassure them that their lost tariff revenue will be compensated. The fund could be targeted at providing the support needed to make the reforms to implement and benefit from the CFTA agreement, including those contained under the BIAT initiative. This would ensure improvements in competitiveness and reductions in the need for financial assistance over time, helping to avoid an overly expensive and inefficient handout system.

A development or compensation fund could include a mechanism for sharing of gains from liberalisation in a fair and proportionate way to African Union members. Several of the RECs provide for financial compensatory mechanisms of some sort. ECOWAS has a 'Fund for

Cooperation, Compensation and Development of the Community,' which creates a mechanism to compensate an ECOWAS Member State for losses incurred due to ECOWAS liberalisation commitments.¹³ On its part, the South African Customs Union (SACU) provides an agreement for sharing customs revenue, under which the distribution of the development component of the fund is weighted in favour of the less developed Member States.¹⁴ The budgets for these funds came from member contributions or donors. Revenue sharing funds like the one in SACU and ECOWAS have performed better than others because of this. Similarly, it will be important for the CFTA to provide for a well-funded mechanism, with clear eligibility and pay-out criteria.

To the fullest extent possible, solutions should be found under which losses and gains are shared across groups, rather than concentrated on one group. This suggests the need to identify mechanisms, such as mitigating measures or redistributive measures ... ensuring that those benefiting from the agreement will at least in part compensate those who are negatively affected, and that the latter will be protected.

Source: De Schutter, Olivier. 2011. *Guiding principles on (...)*, 13 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf (accessed 5 April 2017)

Funds for facilitating adjustment at the national level will also be necessary. Implementing the CFTA will entail benefits, but also social and private adjustment costs. If adjustment costs are borne disproportionately by certain sub-groups, this would be inconsistent with Africa's human rights obligations. Social sustainability and human rights will be endangered if the costs incurred by especially potentially vulnerable individuals, such as cross-border traders, small-holder farmers, women and youth, are not compensated for adverse effects of CFTA or are not provided with adjustment assistance – such as reskilling programmes – to be able to adapt to new opportunities following from CFTA.

Capacity building

The CFTA must be accompanied by targeted capacity building designed to ensure that all African countries and stakeholders are able to understand the CFTA and are well-placed to take advantage of its opportunities. Capacity building should ensure that all Parties can meet the commitments in the Agreement in a sustainable, human rights-consistent way, and take full advantage of its benefits.

The AUC and its technical partners should provide targeted and customised capacity building that explicitly targets youth, women, informal cross-border traders and rural food producers. At the national level, African governments may also require capacity building to

ensure that they have the ability to assist traders with the CFTA rules of origin and standards and to make use of the trade remedy provisions in the agreement.

The BIAT Action Plan seeks to contribute to more inclusive gains from trade. It makes specific reference, for instance, to the need to support female entrepreneurs and secure their active participation in trade policy development. Also, by bringing down the cost of information and simplifying complex procedures, it can be ensured that those with more limited means to deal with the transaction costs involved can also access the opportunities brought by the CFTA. Combining the institutional structures for implementing BIAT with those envisaged as part of the CFTA will help ensure the BIAT Action Plan is implemented.

As noted in Chapter IV, human rights as well as sound economic policy require investment in training and skills development. High levels of skill and training in a country's workforce is an important way to attract investment, spur innovation, equip people to take advantage of new trading opportunities, and facilitate transition of workers displaced from one sector of the economy to another.¹⁵ Capacity building should be provided for those engaged in sectors where jobs are likely to be lost, to facilitate transition of low-skilled or inappropriately skilled workers to new jobs anticipated under the CFTA. Skills development relevant to the agricultural sector and particularly agro-processing will be needed to enable small-scale agricultural workers to take advantage of the higher value added and commercial agriculture opportunities envisaged under the CFTA. States might consider setting up a fund to facilitate this.

The right to work includes the obligation of the State to ensure that educational systems prepare young people with the skills necessary to obtain initial employment, and take steps to realise the right of everyone to gain their living by work which they freely choose and accept. Such steps include technical and vocational guidance and training programmes.

Source: African Commission. 2010. Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights

Social protection

A range of human rights bodies have noted the need for social protection and insurance systems, for workers in both the formal and informal sector,¹⁶ and the provision of unemployment benefits. Negotiators could for instance consider including a reference to ILO Recommendation 202 in a CFTA article on labour issues. This recognises that social protection is an important tool to promote equal opportunity and gender and racial equality as well as support the transition from informal to formal employment.

The Non-Tariff Barrier Mechanism

As noted in earlier chapters, achieving the CFTA's objectives will require removal of the extremely large number of non-tariff barriers (NTBs) that pose obstacles to intra-African trade. Including a NTB Mechanism in the CFTA offers potential not only for reducing barriers to trade but also for offering individuals a voice and remedy within the CFTA.

Existing REC NTB mechanisms are designed to facilitate the reporting, monitoring and elimination of NTBs. They allow traders to report non-tariff barriers to national officials who are obliged to take action to remove those barriers and to report their removal to officials in their regional economic community. Some NTB mechanisms include on-line or mobile phone text message reporting, facilitating their use by a wide variety of actors – economic operators, cross-border traders, companies, government functionaries, academic researchers and other interested parties.¹⁷

A CFTA NTB mechanism could build on REC's experience with NTBs. East African countries have a significant experience with NTB mechanisms.¹⁸ In EAC member countries, for instance, an administrative mechanism establishes a coordination framework within which national institutions and officials in a variety of government departments responsible for facilitating intra-EAC trade oversee NTB elimination. There is both a public- and private-sector focal point designed to work toward the eradication of NTBs.¹⁹ The NTB mechanism is therefore a multi-stakeholder forum for communication and dialogue to eliminate NTBs. It is a cooperative solution designed to provide a common pool of information and knowledge about NTBs among an otherwise disparate set of national and regional actors.²⁰ Evidence from experience with NTB mechanisms in Africa shows that they can be successful in resulting in the removal of NTBs.²¹

An NTB mechanism under the CFTA could include these elements, but also go further and respond to concerns experienced by vulnerable groups such as cross-border traders. For instance, the CFTA Secretariat (or body entrusted with NTB functions) could reach out to encourage a range of representatives from civil society in the NTB process, being particularly attentive to the need to include women farmers, cross-border traders, or informal sector actors. The CFTA NTB mechanism could also include cooperation with human rights bodies, to monitor border posts and ascertain whether small-scale cross-border traders are subjected to any barriers or requirements to their trade that have not been provided for by law. This would play a valuable awareness-raising role whilst protecting the rights of this significant yet vulnerable group of economic actors. It could also contribute to good governance and the rule of law by reducing opportunities for abuse by customs officials.

Judicial Redress Mechanism

Accountability and access to remedy are fundamental tenets of human rights law. The CFTA will undoubtedly include a dispute-settlement mechanism. This will probably draw on the practice within COMESA and other trade arrangements to prioritise resort to non-litigious dispute settlement mechanisms. Failure of negotiations to resolve a dispute would be followed by mediation, conciliation or other peaceful means of dispute-settlement, before resorting to litigation at a CFTA dispute settlement committee.²²

Promote the rule of law at the national and international levels and ensure equal access to justice for all

SDG 16 Target 3

It is likely that the CFTA dispute-settlement mechanism would provide for appeals to be heard either through a Chamber in the existing African Court of Human and Peoples' Rights or a specialist ad hoc committee.²³ In the long-term, it would be expected that appeals in CFTA dispute would be heard through a Chamber in African Court of Justice and Human and Peoples' Rights. This Court has not yet come into being, but when it does, it will replace the current African Court of Human and Peoples' Rights.

The foregoing framework opens the prospect of positive synergies between human rights and trade law; it would indeed be easier to ensure that members of the CFTA Chamber include eminent jurists with expertise in human rights law if the Chamber is created under the auspices of the African Court of Human and Peoples' Rights.

The CFTA dispute settlement process could further respond to human rights concerns if it grants individuals standing to petition it. Similarly, national courts of CFTA Member States can be used to give individuals the right to enforce compliance of CFTA obligations at the national level. National courts give individuals access to remedies and can be an important avenue for enforcing CFTA rights and obligations.

The impact assessment should lead to the presentation of conclusions and recommendations, on the basis of which the bodies in charge of negotiating and concluding the impact assessment shall be held accountable.

Human Rights Council, 2011,

Source: Guiding principles on human rights impact assessments of trade and investment agreements, para 7.5

- ¹ ECA & AU. 2012. Issues Affecting Intra-African Trade, Proposed Action Plan for Boosting Intra-African Trade and Framework for the Fast Tracking of a Continental Free Trade Area. www.uneca.org/sites/default/files/uploaded-documents/ATPC/issues_affecting_intra-african_trade_proposed_action_plan_for_biat_and_framework_for_the_fast_tracking_en.pdf (accessed 15 May 2017).
- ² ECA, AUC & AfDB. 2017. Assessing Regional Integration in Africa VIII: Bringing the CFTA About. United Nations Publications.
- ³ African Union Commission. 2015. Agenda 2063: Framework Document. The Africa We Want, 100. www.un.org/en/africa/osaa/pdf/au/agenda2063-framework.pdf (accessed 15 May 2017).
- ⁴ African Union Commission. 2015. Agenda 2063: Framework Document. The Africa We Want, 62. www.un.org/en/africa/osaa/pdf/au/agenda2063-framework.pdf (accessed 16 May 2017).
- ⁵ United Nations Economic and Social Council. 2016. Committee on Economic, Social and Cultural Rights: Concluding Observations on the Fourth and Fifth Periodic Report of Angola. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6Q5mlBEDzFEovLcUvYv4K4CjYtFmhtiKDYybtR6DUel4IQ54C5Gx5GhpHH4mm2x-Se1c%2F%2BYuhzy8XaYxsfMZ9Tb0N1SED5czdoKzPN0NP%2FsiHeOPCvAoP6lrUvLk> (accessed 17 May 2017).
- ⁶ OHCHR. 2016. A Human Rights-Based Approach To Data: Leaving No One Behind In The 2030 Development Agenda. <http://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf> <http://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf> (accessed 15 May 2017).
- ⁷ Treaty Establishing the African Economic Community, adopted in Abuja, Nigeria on 3 June 1991, Article 3.
- ⁸ Economic and Social Council. 1989. No. 1 on Reporting by States Parties. Supplement No. 4 (E/1989/22 - E/C.12/1989/5), Annex III.
- ⁹ ILO. 2016. ILO and UNECA Sign a New MOU to Support Labour Statistics in Africa. http://www.ilo.org/addisababa/media-centre/pr/WCMS_450099/lang--en/index.htm (accessed 16 May 2017).
- ¹⁰ ECA, AUC & AfDB. 2017. Assessing Regional Integration in Africa VIII: Bringing the CFTA About. United Nations Publications.
- ¹¹ African Charter of Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3/Rev.5, reprinted in 21 ILM 58 (1981), entered into force 21 Oct. 1986, Article 45. http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf (accessed 15 May 2017). Only South Sudan and Morocco have not signed and ratified the African Charter on Human and Peoples' Rights.
- ¹² ECA, AUC & AfDB. 2017. Assessing Regional Integration in Africa VIII: Bringing the CFTA About. United Nations Publications.
- ¹³ ECOWAS. 2003. Protocol A/P2/1/03 Relating to the Application of Compensation Procedures for Loss of Revenue Incurred by ECOWAS Member States As A Result Of The Trade Liberalisation. http://documentation.ecowas.int/download/en/legal_documents/protocols/Protocol%20Relating%20to%20the%20Application%20of%20Compensation%20Procedures%20for%20Loss%20of%20Revenue%20Incurred%20by%20ECOWAS%20Member%20States%20as%20a%20result%20of%20the%20Trade%20Liberalisation%20Scheme.pdf (accessed 17 May 2017).
- ¹⁴ SACU. 2002. 2002 Southern African Customs Union (SACU) Agreement, Article 34. <http://www.sacu.int/show.php?id=566>. (accessed 14 May 2017). See also Gathii, James T. 2009. African Regional Trade Agreements as Legal Regimes. <http://www.felixpena.com.ar/contenido/negociaciones/anexos/2010-08-james-thuo-gathii.pdf>. (accessed 14 May 2017).
- ¹⁵ ACHPR. 2010. Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights. http://www.achpr.org/files/instruments/economic-social-cultural/achpr_instr_guide_draft_esc_rights_eng.pdf (accessed 17 May 2017).
- ¹⁶ ACHPR. 2010. Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights. http://www.achpr.org/files/instruments/economic-social-cultural/achpr_instr_guide_draft_esc_rights_eng.pdf (accessed 16 May 2017).
- ¹⁷ COMESA Business Council. 2017. COMESA: Non-Tariff Barriers Monitoring Mechanisms. <http://comesabusiness-council.org/Home/CBC/PolicyAdvocacy/TradePolicyResearch/NTBMonitoringMechanisms/> (accessed 16 May 2017).
- ¹⁸ Kimani, Nick. 2013. Overcoming Non-Tariff Barriers to Regional Trade Through Stakeholder Forums: Normative

and Empirical Dimensions, 4, African Economic Conference (Oct. 28–30, 2013). www.afdb.org/en/aec-2013/papers/paper/overcoming-non-tariff-barriers-to-regional-trade-through-stakeholder-forums-normative-and-empirical-dimensions-902/ (accessed 15 May 2017). Kenya, Tanzania, and Uganda established National Committees in 2007 and Burundi and Rwanda in 2008. For a typical meeting where NMCs report to the Regional Forum, see EAC. 2014. Report of the 16th EAC Regional Forum on Non-Tariff Barriers. [www.meac.go.tz/sites/default/files/Documents/NTB percent20REPORT percent20DEC percent202014.pdf](http://www.meac.go.tz/sites/default/files/Documents/NTB%20REPORT%20DEC%202014.pdf) (accessed 15 May 2017).

¹⁹ Kimani, Nick. 2013. Overcoming Non-Tariff Barriers to Regional Trade Through Stakeholder Forums: Normative and Empirical Dimensions, 4, African Economic Conference (Oct. 28–30, 2013), 5.

²⁰ The NTB Mechanism also aims at awareness creation among trade officials at the national level and calls upon EAC member states to allocate resources for eliminating NTBs.

²¹ Omondj, George. 2009. Trade Experts Tackle Non-Tariff Barriers at Nairobi Forum. Business Daily. <http://dev.bdafrica.com/rest-africa/policy-and-politics/financial-services/trade-experts-tackle-non-tariff-barriers-nairobi> (accessed 15 May 2017); Makhubu, Manqoba. 2015. SD to Benefit from COMESA Trade Barriers Resolution. Swaziland Daily Observer.

²² AU. 2012. Boosting Intra-African Trade: Issues Affecting Intra-African Trade. Proposed Action Plan for Boosting Intra-African Trade and Framework for the Fast Tracking of a Continental Free Trade Area, 55. http://www.uneca.org/sites/default/files/uploaded-documents/ATPC/issues_affecting_intra-african_trade_proposed_action_plan_for_biat_and_framework_for_the_fast_tracking_en.pdf (accessed 16 May 2017).

²³ AU. 2012. Boosting Intra-African Trade: Issues Affecting Intra-African Trade. Proposed Action Plan for Boosting Intra-African Trade and Framework for the Fast Tracking of a Continental Free Trade Area, 55, para 41. http://www.uneca.org/sites/default/files/uploaded-documents/ATPC/issues_affecting_intra-african_trade_proposed_action_plan_for_biat_and_framework_for_the_fast_tracking_en.pdf (accessed 16 May 2017).

Chapter X

Monitoring and Evaluation

A Introduction

Most human rights impact assessments (HRIAs) of trade and investment agreements identify what should be monitored in order to evaluate the impacts of the agreement. As noted in Chapter III, not all the impacts of the entry into force of an agreement can be anticipated, and some impact assessments lack the baseline data against which to assess whether the agreement has impacted the human rights of the groups studied. This is all the more true for ex ante assessments like this one.

The monitoring and evaluation recommended in this chapter will have two main objectives. First, it aims to ensure that the CFTA does not impose obligations inconsistent with African States' pre-existing human rights obligations, whether in the remaining negotiations under Phase I and Phase II, or in the national domestication of the CFTA. Second, it aims to measure the extent to which the CFTA meets specific targets under each of the human rights that this HRIA has considered, based on a set of measurable indicators.

Monitoring is designed to give a detailed overview of the existing situation; the principal value of such an overview is to provide the basis for the elaboration of clearly stated and carefully targeted policies.

Source: CESCR (1989) General Comment No. 1: Reporting by States parties

As discussed in Chapter IV, monitoring is a human rights obligation. It is important for accountability and also contributes to transparency about impacts of policy decisions. Monitoring can help identify what adjustment, compensatory or flanking measures might be needed in case of adverse human rights impacts related to the CFTA. The usefulness of monitoring has been reiterated in the SDGs, which call for measurement of development-related matters.

Appropriate follow-up should be given to the conclusions and recommendations adopted at the final stage of the impact assessment, by organising a monitoring and evaluation mechanism assessing the extent to which these conclusions and recommendations were in fact taken into account.

Source: Guiding principles on human rights impact assessments of trade and investment agreements

Monitoring and evaluation of the CFTA's ongoing negotiations and impacts must be consistent with human rights principles. It should, for instance, be accessible not only to economic operators and governmental entities but also to other interested parties, including NGOs and National Human Rights Institutions. Monitoring can be a time-consuming and costly task; governments might wish to seek technical and financial assistance, whether through Aid for Trade or via human rights sources, to help capacity constrained African governments conduct monitoring and evaluation.

In some cases, an approach based on a human rights-based audit can make sense. This might be when the entity carrying out the assessment (or audit) lacks the time or resources for a full-fledged assessment, or has not succeeded in obtaining the data needed, or when establishing a link between the adoption of the CFTA and specific human rights outcomes. Such an audit would focus on examining how policy has been conducted, i.e. whether it has consisted of action reasonably calculated to realise the enjoyment of a particular right. Audits of this type can use both quantitative indicators and a qualitative examination of relevant legislation and policy processes.¹

B Who should monitor and evaluate human rights under the CFTA?

The CFTA will include its own mechanisms for monitoring and evaluating its implementation. Trade agreements are often criticised for failing to provide for systematic review of their impacts on different communities.² The CFTA mechanisms for monitoring compliance with the CFTA Protocol are expected to do so “by reference to the objectives” of the Protocol, and in accordance with the Abuja Treaty. This leaves room to broaden their scope. In other words, the CFTA monitoring and evaluation mechanisms can, within their mandate, consider the extent to which the CFTA affects sustainable and inclusive social and economic transformation of the AU Member States, the promotion and protection of human and peoples’ rights, and accountability, economic justice and participation in development.³ This leaves room for the CFTA monitoring mechanism to consider distributional and human rights impacts of the CFTA.

Another mechanism could also be envisaged, either through an in-depth exercise similar to this HRIA, or within an existing human rights body, to focus on the evolving level of human rights enjoyment in Africa as impacted by the new trade and investment environment.

Existing mechanisms – such as the African Commission, the ICESCR and CEDAW – already offer this possibility. States should be encouraged to incorporate impacts arising from the CFTA in their reports under these and other human rights treaty monitoring mechanisms,

and to encourage shadow reports by non-state actors specifically focussing on issues of concern or groups likely to be most vulnerable to changes generated by the CFTA.

One possibility would be for relevant bodies, such as ILO, OHCHR and the African Commission on Human and Peoples' Rights (African Commission) to work with Member States and NHRIs to ensure that their reports to those bodies include information on the indicators or issues identified in relation to the right to food, work, social security, and women's rights; and the impact of CFTA-related measures on these rights.

C What should be monitored and evaluated?

In order to evaluate whether the CFTA is contributing to the realisation of human rights, and how it can better do so, specific indicators must be defined and monitored over time.

A human rights indicator is specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights.

Source: OHCHR. 2012. Human Rights Indicators – A Guide to Measurement and Implementation, http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf (accessed on 6 May 2017)

Types of indicators

These indicators should include structural, process and outcome indicators.⁴ Some of these will need to be evaluated against clearly-identified baselines. The baseline situations themselves may require a human rights-based response. For instance, if data reveal a prevailing situation where unemployment amongst women is higher than amongst men, that situation should be remedied regardless of the impacts of the CFTA.⁵

Structural indicators reflect the human rights institutional framework such as recognition of human rights in national laws or ratification of international human rights instruments. The information regarding the structural indicators will be readily available from the UN Office of Legal Affairs. Process indicators measure the efforts deployed by States towards the realisation of a particular human right, whereas outcome indicators are more generally at the level of the rights-holders' experience. In other words, human rights monitoring should assess both the steps taken and the results attained.

Some indicators are of a qualitative nature, such as experience or perception surveys of affected populations, for example, and as such, do not require a baseline. In addition to being

of interest in and of themselves, these provide a potential assessment methodology where baselines are absent. Other options, in the absence of baselines, can include comparisons of the same data for similar populations near the border and further from it, or with a national average. Such comparisons may highlight disparities and potential issues that call for attention.

Data analysed during the monitoring and evaluation of national plans should be disaggregated according to relevant criteria including emphasis on vulnerable and disadvantaged groups.⁶

To assess outcomes, i.e. compliance with the obligation of result, indicators will be required on the situation of disadvantaged social groups before and after the trade liberalisation (employment, nutrition, enjoyment of women's rights, etc.). Indicators should include analysis of budget allocation and implementation.⁷ Compliance with human rights obligations would be questionable if a State doesn't carry out an impact assessment, and introduce safeguards or compensatory measures to protect discriminated groups from losses, particularly if the situation of such groups worsens after trade liberalisation.⁸

Where appropriate, the analysis of conduct can be cross-checked with a quantitative and qualitative analysis of pertinent 'results' for some relevant rights. The data on results may reinforce or challenge the conclusions about the conduct of policy. For example, in considering public expenditure, one might examine whether expenditure related to employment-promoting objectives of the CFTA can be considered an 'action reasonably calculated to realise' the right to work in a way that complies with obligations of non-discrimination and equality. If one finds that this expenditure is very unequally distributed between different social groups, this suggests a prime facie indication of discrimination. This can be cross-checked with data on the employment status of these different social groups over a given period of time (which measure some dimension of how far they enjoy particular levels of the right to work).⁹

Budget allocations are the government's way of communicating how it intends to spend available funds and are a demonstration of its priorities, which should include human rights.¹⁰

As the groups identified as potential losers from liberalisation under the CFTA are groups already subject to discrimination and inequality, it will be necessary from a human rights perspective to assess whether the final CFTA agreement protects them (e.g. through including

provisions that allow Member States to temporarily reintroduce import tariffs if livelihoods of discriminated groups are threatened by import surges or subsidised imports that are sold below cost). If such provisions are not contained in the final agreement, to comply with human rights, it will be necessary that the government introduce other measures to compensate vulnerable groups for their loss, such as through capacity building and re-skilling as discussed in Chapter IX.C.

It is beyond the scope of this human rights impact assessment to provide a full range of processes, data sources and indicators against which CFTA implementation can be monitored. The following tables are offered as an indication of just some of the data that could be sought, and the types of questions that should be considered for human rights-based monitoring and evaluation of the CFTA.

General human rights obligations

African States are bound by a number of general human rights obligations, based on the human rights instruments they have ratified. As discussed in Chapter IV.A, these general obligations underlie all human rights, including those that this HRIA focuses on. One is the duty to promote awareness of human rights, as a condition for the enjoyment of the rights to information and to participate in decision-making, as set out in Article 25 of the African Charter. “This article requires the States to take measures which will bring awareness of the provision of the Charter to their people” the African Commission has said.¹¹ See table ____

Table 3: Illustrative indicators and sources of information for assessing compliance with the duty to promote awareness

	What to monitor	Source of information
Baseline	Level of human rights awareness amongst officials responsible for trade policy	Surveys of governmental employees
Structural	Is the obligation reflected in national laws?	Legal sources
	Number of references to States’ human rights obligations, including in relation to economic issues, in media	Surveys of the press, radio programmes and social media
	Number of human rights NGOs working on trade-related issues, and number of groups working on questions covered in this HRIA who are adopting a human rights approach	Governmental information; civil society sources

Process	Proportion of trade officials having received human rights training	Surveys of governmental employees
	Percentage of total government budget allocated to promoting awareness of human rights	Government budget
Outcome	Level of awareness of human rights	Surveys of the population (same as for the baseline above, but at a later date)

Informal cross-border traders

To monitor impacts of the CFTA on informal cross-border traders, it might be useful to select one or two border-crossings or locations in urban areas where surveys and observations of the conditions of work of informal cross-border traders can be carried out. The data generated from these surveys can be crossed with broader, continent-wide information and data both on matters relating to customs and trade procedures, and on human rights-related matters such as gender discrimination, employment or livelihoods.

Together, these three different types of information will be able to give a picture of the conditions of work and livelihoods of cross-border traders at different points in time. It will be important to gather baseline data and then return to the same data sources at regular intervals, say every two years, to build a picture of the evolution of conditions of work of cross-border traders.

It is this picture that will make it possible to determine whether changes brought in by the CFTA have helped, or hindered human rights enjoyment by informal cross-border traders.

Some of the questions relating to customs and trade that could be examined over the given time-period are:

- Have documentation requirements and formalities been reduced for small-scale traders?
- Have levels of fees and charges risen or dropped for importing and exporting?
- Have trade-related regulations and fees become more or less transparent and predictable?
- Has the release and clearance of goods from customs custody been expedited?
- How many customs officials have been charged with corruption-related offences?
- What proportion of allegations against customs officials have been investigated?
- How many one-stop border posts have been instituted
- Have any new “Simplified Trade Regimes (STRs)” been established?

- Has the list of goods covered under a CFTA STR extended beyond the COMESA STR list?

Table 4: Illustrative indicators and sources of information for monitoring the rights of women informal cross-border traders

Monitoring the rights of women informal cross-border traders – some selected elements

	What to monitor	Source of information
Baseline	Proportion of women who report having experienced abuse when engaging in informal cross-border trade in the previous six months	Interviews and observations at selected border-crossings
	Facilities at the border crossing (storage facilities, lodging, water, sanitation)	Interviews and observations at selected border-crossings
	Proportion of people in the informal economy covered by social protection	Government statistics; ILO; academia
	Proportion of women amongst people in the informal economy who are covered by social protection	Government statistics; ILO; academia
Structural	Does the country have any institutions or authorities which have the task of ensuring that equality between men and women is complied with in practice?	Legal sources
	What remedies are available to women who have suffered discrimination?	Legal sources; women's groups; national human rights institution.
	Does the CFTA framework explicitly recognise the needs of those in the informal sector?	CFTA text
	Do the CFTA and related measures facilitate trade for informal cross-border traders?	Customs cooperation measures, trade facilitation measures
	Have gender issues been explicitly reflected in the CFTA?	CFTA text
	Have Member States and RECs adopted gender-mainstreamed protocols, policies and programmes?	National and REC policies and programmes
Did the government conduct impact assessments to determine how ICBTs might be affected by the various options regarding CFTA provisions on customs cooperation or trade facilitation measures before these provisions were finalised in the agreement?	Interviews with governmental officials	

Process	<p>Was there sufficient opportunity for ICBTs to participate in the impact assessment?</p> <p>What proportion of customs officials have been charged with corruption-related offences (in relation to the number of allegations)?</p> <p>Expenditure on trade facilitation measures at borders for formal traders vs expenditure on trade facilitation measures and infrastructure at borders that specifically meets the needs of informal women traders</p> <p>Is training provided to border officials on human rights?</p>	<p>Interviews with ICBTs</p> <p>Customs offices; court information.</p> <p>Government budget, interviews with ICBTs</p> <p>Government budget, interviews with border officials</p>
Outcome *	<p>Number of new facilities for female informal traders at border crossings (sanitation facilities, assistance with customs processing)</p> <p>Proportion of women who report having experienced abuse when engaging in informal cross-border trade in the previous three months</p> <p>Number of people in the informal economy covered by social protection</p> <p>Proportion of women amongst people in the informal economy who are covered by social protection</p>	<p>Interviews and observations at selected border-crossings</p> <p>Interviews and observations at selected border-crossings</p> <p>Government statistics; ILO; academia</p> <p>Government statistics; ILO; academia</p>

* Same data sources as for baseline but repeated at selected intervals: every two years for instance.

Right to food

Monitoring realisation of the right to food requires careful data collection on whether households are meeting their basic food security needs over time. Where food insecurity is present, it will be useful to identify what variables are contributing to such insecurity, and whether the problem lies in the accessibility, availability or adequacy of food. It will also be important to determine that food is being produced sustainably and not in a way that interferes with the enjoyment of other human rights such as health.

Established protocols on monitoring and evaluating the right to food have been developed, by FAO, by the UN Committee on Economic, Social and Cultural Rights, as well as by the African Commission on Human and Peoples' Rights.¹² Much of the data required to monitor the indicators chosen to assess impacts of CFTA-related policies and measures will be available from these sources.

States are asked to provide information on general and specific measures taken to achieve an adequate standard of living and a continuous improvement of living conditions of people. Information on measures concerning the right to adequate food could include:

The principal laws, administrative regulations and collective agreements designed to promote the right of everyone to adequate food;

Measures taken to develop or reform existing agrarian systems, in order to achieve the most efficient development and utilisation of natural resources;

Measures taken to improve methods of production and the quantity and quality of food produced, and to increase the yield per unit of cultivated land¹³

To get a realistic picture of the evolution of enjoyment of the right to food of rural food producers as the CFTA comes into force, it could be useful to focus in on one or two selected communities to observe availability and accessibility of food, as well as living standards of producers. The data generated from these community- and household-level surveys could be crossed with broader, continent-wide information and data both on matters relating to food prices, and on human rights-related matters such as gender discrimination, employment and livelihoods.¹⁴ Similarly as for cross-border traders, it will be important to gather baseline data and then return to the same data sources at fixed intervals, to build a picture of the evolution of the enjoyment of the right to food over time.

Where there is insecurity, it can be worthwhile to investigate whether there is a relationship between food insecurity and new patterns in trade or investment under the CFTA. For example, if availability is limited or reduced because of unstable supplies from exporting countries or because imports have displaced domestic production and thus agricultural livelihoods.

This data could usefully be considered in parallel with analysis of public budgets and expenditures, to determine whether governments are giving due priority to the realisation of the right to food of the most vulnerable groups. If such analysis shows that public expenditure on, say, agricultural extension services for women has dropped, but that agricultural yields or nutrition level indicators have not, this could suggest a failure to comply with the obligations of conduct required by the right to food.

Specific questions that could be looked at in gathering the data referred to above include:

- How are benefits of agricultural development programs distributed (which regions? men? women?)
- How are agricultural development programs implemented?

- Are there mechanisms for holding those responsible for programming accountable to human rights obligations?
- Has women's access to productive resources, including land, credit, water, seeds, and other inputs, as well as markets, evolved over the determined period?¹⁵

Table 5: Illustrative right to food indicators – selected elements

	Indicator	Source of information
Baseline	<p>Proportion of rural women engaged in farm work (whether formal/informal)</p> <p>Percentage of household income spent on food</p> <p>Food consumption levels and nutritional quality (women/men)</p>	National statistics; interviews in selected communities (including at household level)
Structural	<p>International human rights treaties relevant to the right to food that the State has ratified, and measures taken to translate them into national law and policy</p> <p>Time frame and coverage of national policy on food and/or nutrition</p>	Official documents; interviews with national human rights institution staff
Process	<p>Share of public budget spent on agricultural extension services specifically designed to meet women's needs</p> <p>Proportion of people interviewed who report having been consulted at different stages of the CFTA negotiation process (before negotiations, during negotiations, prior to implementation)</p> <p>Cost of measures to implement the CFTA. This may involve allocation of resources and certain regulations that need to be adopted to be CFTA-compliant. To what extent might these financial resources have been spent in ways that promote the rights of rural women involved in food production?</p>	<p>Budget documents; interviews in selected villages; interviews with agricultural extension agents</p> <p>Interviews in selected communities; interviews with government officials from Ministries entrusted with agriculture and with trade policy</p> <p>Monitoring of costs earmarked for CFTA implementation and expenditure specifically on agricultural extension services for women between 2017-2020. Has there been a decline over the three-year triennium?</p>

Outcome	<p>Has communication between areas of production and food-marketing centres improved?</p> <p>Has access to markets become easier or more difficult?</p> <p>Percentage of household income spent on food</p> <p>Food consumption levels and nutritional quality (women/men)</p>	<p>Governmental or private information on the number of transport links; the state of communications networks; interviews within the communities (as above)</p> <p>National statistics; interviews in selected communities (including at household level)</p> <p>National statistics; interviews in selected communities (including at household level)</p>
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The right to work

With respect to the right to work, CFTA Member States should aim for the targets listed below. It will be necessary to know whether, over the period of time determined for the monitoring and evaluation of the impacts of the CFTA, the following have improved in Africa:

- Employment opportunities;
- Adequate earnings and productive work;
- Decent working hours;
- Safe work environment;
- Stability and security of work;
- Equal opportunity and treatment of all in employment;
- Social security.¹⁶

The ILO has developed quite detailed indicators that can be useful for monitoring the enjoyment of the right to work. Relevant data will be found there as well as in human rights sources and national statistical offices. To be able to draw a link between CFTA implementation and the enjoyment of the right to work, it will be useful to cross different data sources, such as indicators relating to the number of people in paid employment (noting differences in men/women ratios) and investment in training, re-skilling and social protection. As well as considering continent-wide or national level statistics, a narrower look at a specific sector within a given country (herb teas in Tanzania, cheese production in Uganda or pineapple juice in Ghana for instance) could yield useful insights as to CFTA-related impacts on the ground over time.

Again, an approach based on an audit of public policies or government expenditures might yield useful pointers as to whether a government is complying with its obligations of

conduct or result. For instance, if over a given period of time, tariff revenues have dropped and the government has not recouped that revenue in an equitable way from other sources, and over the same time period, sufficient social protection measures have not been instituted in the agro-manufacturing sector, or jobs have been lost, this would indicate that a government is not in compliance with its human rights obligations.

The following metrics can be used to help measure whether the CFTA and any ancillary programmes have achieved right to work targets. These could be measured at an early date to help establish a baseline of information, and then again after a given time period (two or three years, for instance):

- The amount of money allocated for stimulating economic development and job creation among small-scale producers, particularly among women and small-scale agro-manufacturers,
- The female share of the jobs created during the defined time-period and whether one gender occupies the casual employment sector more than the other;
- The gender wage gap as well as the female share of employment in senior and middle management in more formal jobs;
- Number of labour inspections in the agro-manufacturing sector;
- Kilometres of new railways constructed or upgraded to facilitate environmentally-consistent intra-African trade;
- The extent to which the CFTA and its ancillary programmes create physical infrastructure such as roads, as well as accessible and affordable energy sources as means of creating a productive landscape so that there are markets available for sale of products and services.

The following elements could be measured within the country/sector identified for study:

- The investments made in supporting food processing and agro-manufacturing, particularly in rural areas, to support existing farmer-producer units or to form new ones (with a possible focus on the one or two sectors/countries as suggested above);
- The number of jobs created or destroyed in small and medium scale agro-manufacturing enterprises.

Table 6: Monitoring the right to work – some selected elements

	What to monitor	Source of information
Baseline	<p>Level of employment and extent of unemployment and underemployment in the country (disaggregated by sex, age and level of education)</p> <p>Employment by major sectors of economic activity, including break-down between the formal and informal sectors</p> <p>Youth not in employment, education or training</p> <p>Working poverty rate</p>	<p>ILO, UNECA</p> <p>ILO, UNECA</p> <p>ILO, UNECA</p> <p>ILO, UNECA</p>
Structural	<p>Existence of national legislation, policies and institutions in relation to the substantive elements of decent work</p> <p>Policies and techniques to achieve steady economic and social development and full productive employment while safeguarding fundamental political and economic freedom of individuals</p> <p>Principal laws, administrative regulations, collective agreements, court decisions and other types of arrangements relating to the social security system, including social insurance schemes.</p>	<p>Governmental documents, ILO</p> <p>Governmental documents, ILO</p>
Process	<p>Proportion of workers who moved from precarious to stable contracts during the determined time period</p> <p>Participation in training and re-skilling programmes by youth and women</p>	<p>Government data, ILO</p> <p>Government data, training institutions, interviews in-country</p>
Outcome*	<p>Level of employment and extent of unemployment and underemployment in the country (disaggregated by sex, age and level of education)</p> <p>Employment by major sectors of economic activity, including break-down between the formal and informal sectors</p> <p>Youth not in employment, education or training</p> <p>Working poverty rate</p>	<p>ILO, UNECA</p> <p>ILO, UNECA</p> <p>ILO, UNECA</p> <p>ILO, UNECA</p>

- ¹ Balakrishnan, Radhika & Elson, Diane. 2008. Auditing Economic Policy in the Light of Obligations on Economic and Social Rights, Essex Human Rights Review Vol. 5 No, 9.
- ² The WTO Trade Policy Review Mechanism (TPRM) for instance, is designed foremost for the purpose of monitoring each country's compliance with WTO obligations.
- ³ See AU. 2015. Agenda 2063 - The Africa We Want (Popular Version) <http://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf> (accessed 1 March 2017) and AU. 1994. Treaty Establishing the African Economic Community (AEC Treaty), Article 3 https://au.int/web/sites/default/files/treaties/7775-file-treaty_establishing_the_african_economic_community.pdf (accessed 29 March 2017).
- ⁴ Walker, Simon. 2009. The Future of Human Rights Impact Assessments of Trade Agreements, 106–107.
- ⁵ Duong, Thuo. 2015. Human Rights Impact Assessment of Trade Agreements - Analysis and Critiques of Methodology, 65.
- ⁶ African Commission. 2011. Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, para 28 www.achpr.org/instruments/economic-social-cultural (accessed 29 March 2017).
- ⁷ African Commission. 2011. Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, para 27 www.achpr.org/instruments/economic-social-cultural (accessed 29 March 2017).
- ⁸ Balakrishnan, Radhika & Elson, Diane. 2008. Auditing Economic Policy in the Light of Obligations on Economic and Social Rights, Essex Human Rights Review Vol. 5 No, 17.
- ⁹ Balakrishnan, Radhika & Elson, Diane. 2008. Auditing Economic Policy in the Light of Obligations on Economic and Social Rights, Essex Human Rights Review Vol. 5 No, 9.
- ¹⁰ FAO. 2014. Advocacy on the right to food based on the analysis of government budgets, Right to Food Handbook 8, 17.
- ¹¹ African Commission. 1989. Guidelines for National Periodic Reports, para 17 http://www.achpr.org/instruments/guidelines_national_periodic_reports (accessed 25 May 2017).
- ¹² African Commission. 1989. Guidelines for National Periodic Reports, paras 31-33 http://www.achpr.org/instruments/guidelines_national_periodic_reports (accessed 25 May 2017).
- ¹³ African Commission. 1989. Guidelines for National Periodic Reports, paras 31-32 http://www.achpr.org/instruments/guidelines_national_periodic_reports (accessed 25 May 2017).
- ¹⁴ This was done to very useful effect by an Ecumenical Advocacy Alliance assessment of the right to food impacts of trade liberalization. Paasch, A. et al. 2007. Trade Policies and Hunger: The impact of trade liberalisation on the Right to Food of rice farming communities in Ghana, 24–25.
- ¹⁵ FAO. 2012. Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security www.fao.org/docrep/016/i2801e/i2801e.pdf (accessed 25 May 2017).
- ¹⁶ These goals are based on the Framework on the Measurement of Decent Work endorsed by the ILO, see ILO. 2013. Decent Work Indicators: Guidelines for Producers and Users of Statistical and Legal Framework Indicators www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_229374.pdf (accessed 25 May 2017).

Chapter XI

Conclusions and Recommendations

A Conclusions

This Human Rights Impact Assessment has provided the opportunity to share different perspectives on economic and trade policy with a view to contributing to a sustainable and inclusive Continental Free Trade Area. The organizations responsible for its undertaking – ECA, FES Geneva Office and OHCHR – with the other participants in the process have brought together expertise and strengths on trade policy, economic modelling, human rights, employment and social protection. This has led to an improved understanding of the constraints and opportunities of different approaches to trade liberalisation and a greater knowledge of what a human rights approach can offer in terms of strengthening processes and outcomes.

The human rights lens has helped focus immediate attention on distributional issues arising from trade liberalisation, and helped identify flanking measures that should apply when economic adjustment is implemented under the CFTA. This is important from a human rights perspective, as well as from an economic perspective. It has been highlighted that inequality can lead to less stable, less efficient economic systems that stifle economic growth whilst limiting the participation of all members of society in the labour market.

Furthermore, approaching trade policy-formulation from a human rights perspective reminds us that countries have not always set forward their individual trade policy as a response to a deep understanding of their national context. A better understanding of the national context and what its strengths and weaknesses are in relation to trade is worthwhile and can help to ensure more responsive and robust policies.

This HRIA has helped focus attention on the need to consider a broader set of factors than those which are normally considered in economic modelling. It has also highlighted that evidence from the African continent should drive the CFTA forward, rather than economic theory.

It also draws attention to the interdependency of different human rights and related policy areas. Agricultural practices, for instance, are closely related to health. The need for a productive agriculture sector will increase as Africa's population grows. Considering that this sector serves as the main life resource for the majority of Africans, it will be essential that increased productivity be achieved in a way that is consistent with the right to food requirement

of sustainability, as well as the right to health. As the UN Special Rapporteur on the right to food has recently pointed out, intensive industrial agriculture is heavily reliant on chemical inputs, despite their harms to workers, consumers and the long-term productive capacity of the soil that is associated with them.¹

Figure 14: Summary of case study recommendations

Informal Cross-Border Traders	Small-scale farmers and the right to food	Right to work in the agro-manufacturing sector
<ul style="list-style-type: none"> • Acknowledge informal cross-border traders, their contributions and their needs • Collect data on informal cross-border trade • Support the employment-creating role of cross-border trade • Ensure adequate social protection • Facilitate the free movement of persons • Develop a continent-wide Simplified Trade Regime • Address non-tariff barriers • Build infrastructure in border areas • promote gender sensitization and women's rights 	<ul style="list-style-type: none"> • Consider the right to food when negotiating tariff lines and exclusion lists • Allow for the adoption of trade remedies and safeguards to protect food security • Allow for the adoption of special measures to maintain and develop domestic production • Maintain policy space of governments • Collect data about the needs of the most vulnerable • Provide capacity building • Carry out participatory and transparent consultations • Address concerns about climate change and environmental degradation 	<ul style="list-style-type: none"> • Engage in paced, layered, targeted liberalization • Establish complementary measures • Create inclusive value chains • Support connectivity of small-scale producers to agro-manufacturing • Avoid favouring large enterprises to the detriment of small-scale firms • Protect the right to work and rights at work prioritise training • Vocational guidance and re-skilling

Time and space have precluded this HRIA from developing these interlinkages in detail. Indeed, this HRIA is not comprehensive. The project has had its share of constraints and challenges in terms of time, human resources, finance and practicalities in conducting the assessment. But overall, the results demonstrate that it is a worthwhile endeavour.

This report is offered as a first step in the process of looking at the human rights considerations of the CFTA. It is hoped that it will lead to further work, both in deepening the analysis of the sectors covered, and in considering analysis in other areas where there will be social, environmental and human rights impacts from the CFTA. It is also hoped that the assessment triggers an earnest dialogue on trade, social and environmental impacts of the CFTA, and mo-

tivates governmental bodies, civil society, parliamentarians, academics and others to engage actively during the remaining negotiation process as well as afterwards.

Chapters V through X of this report each set out recommendations emerging from the analyses presented. This chapter presents a summary of these recommendations. These are arranged in two categories: one presents the recommendations to CFTA negotiators, and the other contains recommendations for measures that can usefully accompany and complement the CFTA in order to facilitate a human rights-consistent outcome.

B Recommendations to CFTA negotiators

1. Ensure broad consultation and participation in the CFTA negotiations and implementation

All the relevant actors – national governments, regional economic communities and those hosting international negotiating fora – should take steps to ensure effective and meaningful participation. The Draft Strategic Framework of the CFTA emphasises the importance of ensuring that the negotiating process is inclusive, participatory and consultative with all stakeholders, particularly civil society groups at the national, sub-regional and continental levels. Ensuring that a wide range of views and impacts are taken into account prior to the conclusion of the agreement will contribute to a robust, inclusive and sustainable CFTA.

Member States should make provision for mechanisms at the national level through which to consult stakeholders and ensure their views are fully taken into account. Those consulted should include agricultural producer and farming associations, consumer bodies, chambers of commerce and industry, specific-industry associations, professional associations, standard-setting bodies, parliaments and parliamentarians, the media, as well as NGOs, particularly those working in the field of environment, labour rights, gender or youth-related issues, and academia. Mechanisms for participation and consultation must acknowledge that some vulnerable and disadvantaged actors – small private sector operators, women or rural populations, for instance – may find it hard to make their voices heard. Measures must thus be taken to proactively reach out to these vulnerable groups.

In addition, a participatory process can be meaningful and effective only when the participating stakeholders are well aware of the essential information needed in order to make informed decisions. This highlights the need to reach out to marginalised groups and enhance information dissemination on the CFTA, including via local radio or social media.

2. Collect data

Ensuring that the institutional and structural mechanisms for implementation and oversight of the CFTA respond to the need of the continent's people will require knowing what the situation of those people is with regard to a range of economic and social indicators. For this, data is essential.

A human rights approach pays attention to the situation of the most vulnerable and disadvantaged. It thus points to the need for collection of data that is disaggregated by sex, age, location, ethnicity, participation in the informal economy, or other relevant factors. Such data is an important resource for governments and an essential basis for the elaboration of clearly stated and carefully targeted policies. As well as informing how the CFTA is designed, data will be essential for defining the types of actions necessary to address any potentially adverse outcomes in the transition towards the CFTA. Research for this HRIA finds that important actors in Africa's economy and economic integration, such as women or informal cross-border traders, are insufficiently acknowledged in available data.

Gathering disaggregated data can be time-consuming and costly. International assistance and cooperation through human rights channels and Aid for Trade (AfT) can help to develop adequate data-collection, consultative and monitoring processes.

3. Integrate and address disaggregated effects of trade and investment measures

The impacts of trade and investment liberalisation are not distributed evenly between or within countries – recent economic modelling of the CFTA confirm this. A human rights approach requires governments to take into account the different needs of different sectors of the population, paying attention to the most disadvantaged and vulnerable amongst these – and offer a conceptual framework and operational tools to help them do so. Data collection, as emphasised above, is key to this.

The CFTA process provides African countries with an opportunity to integrate potential disaggregated effects of trade liberalisation. This will require ensuring that impacts of the proposed trade and investment measures are measured in a disaggregated way, and taking steps to prevent and/or mitigate any likely adverse effects of liberalisation. Flanking measures will need to be designed to help leverage the full scope of possible benefits and support adversely affected groups. A continental simplified trade regime (STR), for example, would allow small informal traders to better take advantage of the CFTA through providing them with elements such as simplified customs documents, a common list of goods that qualify for duty free status, and assistance in completing customs procedures. AfT directed towards trade

facilitation would also help to ensure that vulnerable groups can benefit from the new trading opportunities brought about by the CFTA.

Increased competition is likely to follow from increased trade. This could result in favouring large firms over small firms. Governments should consider complementary measures, within and in parallel to the CFTA, to assist small-scale operators. These could include assistance towards meeting technical requirements that they must fulfil to be able to benefit from increased trade opportunities.

4. Explicitly recognise women

Human rights norms require States to take steps to ensure that women's rights are respected by law, as well as to eliminate discrimination, inequalities, and practices that negatively affect women's rights. All African countries have voluntarily signed up to international legal instruments to this end. Gender equality is shown to lead to faster economic growth, lower rates of poverty, increased female labour force participation, and better health outcomes for women and children. Most governments however – in rich and poor countries alike – treat economic policies as “gender-neutral” even though they tend to be “gender-ignorant.” Economic modelling, empirical work, and policy analysis have shown that trade policies do not necessarily have the same impact on men and women and that gender relations and differences themselves can influence trade policy outcomes.

Research for this impact assessment found that women's high participation in the agriculture sector and in the informal economy, as well as their unpaid labour, is insufficiently recognised. African governments must analyse the possible differential impact of CFTA provisions on women and men, and design flanking measures to ensure that the agreement does not result in an increase in de facto discrimination against women. Accommodating women at border crossings through the CFTA would also help to curb the ill-treatment that female informal cross-border traders face in particular.

5. Fully estimate potential revenue gains and losses

At the aggregate level the CFTA is expected to amount to a relatively small trade shock since intra-African trade accounts for only 13.6 per cent of total African imports and the CFTA is expected to contain exclusion lists and safeguard provisions. That said, continental liberalisation will still contribute to a reduction in tariff revenues, particularly for African countries that are heavily reliant on trade tariffs on intra-African imports as a source of government revenue.

Given that governments have obligations to mobilise resources for human rights purposes – such as education and social protection – the full breadth of implications of tariff reductions must be considered with utmost care. This is particularly relevant, given that studies in Africa and elsewhere suggest that other developing countries have found it difficult to replace tariffs with revenue from domestic sources. In other words, governments must plan to generate revenue from other sources in order to compensate for lost tariff revenue.

If government revenues do decrease, even if only temporarily, attention must be paid to the need to avoid adverse impacts that disproportionately affect the already most-disadvantaged sectors of the population.

Moreover, governments must consider opportunity costs: if resources (time, money, political investment) is expended on sectors considered to be able to derive the most benefit from the CFTA, this will leave less scope for expenditure in other sectors. From a human rights point of view, this is acceptable provided that the choices made are consistent with human rights processes and are designed to improve human rights outcomes over the long-term.

6. Engage in paced, layered, targeted liberalisation

Governments should embark on gradual liberalisation that allows protection especially for vulnerable groups and in key areas such as food security.

Exclusion list provisions would allow Member States to select a specified number of tariff lines to be temporarily excluded from tariff liberalisation, enabling them to protect vulnerable groups such as women, food insecure populations, indigenous groups or cross-border traders. One reference for establishing an exclusion list could be the list of strategic agricultural commodities that African countries were called on to protect at the 2006 Abuja Food Security Summit, which were identified based on their importance to the African Food basket, the relative expenditure of foreign exchange to import them and their untapped production potential on the continent. Exclusion lists also provide valuable tools for reducing the negative impact of tariff liberalisation on tariff revenues.

In addition, negotiators should provide for the use of anti-dumping, countervailing and safeguard measures for taking remedial action against imports which are causing material injury to a domestic industry, particularly in the agricultural sector. The CFTA trade remedy provisions must be designed in a way that ensures they are accessible to least developed countries (LDCs).

7. Maintain policy space

Economic development is a dynamic process. African countries must be cautious not to limit their “policy space” for the future - they should resist CFTA provisions that could undermine the ability for government to implement future measures to ensure that human rights are respected, protected and fulfilled. In the agriculture sector, for instance, governments should maintain policy space to promote agricultural development that meets the needs of small-scale agricultural producers as well as maintaining and strengthening domestic food production capacity.

8. Ensure adjustment mechanisms

Even if the CFTA adopts an inclusive pro-human rights approach, as with any other trade agreements, it is bound to leave some people worse off. Human rights do not preclude change of this nature, but require that this be part of a deliberate strategy towards fulfilment of human rights. Human rights call for likely impacts to be monitored and discrimination to be avoided. To this end, a number of CFTA adjustment mechanisms will need to be established to ensure that vulnerable groups and those adversely affected by the structural and regulatory changes brought about by the CFTA, are able to benefit from the agreement over time. This can include training and re-skilling programmes for workers in vulnerable sectors. It could also include measures to ensure that small-scale rural food producers are connected to urban consumers and that agro-manufacturers are able to source from local small-scale producers wherever possible.

To help compensate those adversely impacted by the CFTA, negotiators should establish a compensatory fund to provide short-term financial support and medium-term re-skilling and training, to support transitions to new activities and sectors of employment. Regional AfT could support the financing of such a fund. CFTA negotiators should also include in the CFTA an article on labour issues that references not only to binding ILO instruments but also to non-binding instruments, in particular Recommendations 202 and 204. These instruments recognise that social protection is an important tool to promote equal opportunity and gender and racial equality, as well as to support the transition from informal to formal employment. These recommendations are particularly relevant to informal cross-border traders

9. Provide for monitoring and evaluation of CFTA impacts

The CFTA will include its own mechanisms for monitoring and evaluating its implementation. This should incorporate the monitoring of the distributional and human rights impacts of the CFTA.

Achieving the CFTA's objectives will require the removal of a long list of non-tariff barriers (NTBs) that create obstacles to intra-African trade. An NTB mechanism should be established within the CFTA to facilitate the reporting, monitoring and elimination of NTBs. Such a mechanism would allow traders to report NTBs to national officials who must take action to remove the barriers and report on their removal.

Another mechanism could also be envisaged, either through an in-depth exercise similar to this HRIA, or within existing human rights bodies, to focus specifically on the evolving level of human rights enjoyment in Africa as impacted by the new trade and investment environment. With this in mind, the Secretariat of the CFTA should pro-actively reach out to human rights bodies, particularly the African Commission on Human and Peoples' Rights, with a view to instituting collaborative mechanisms for human rights-based monitoring of the CFTA. It is worth recalling that the functions of the African Commission include cooperation with other African institutions concerned with the promotion and protection of human and peoples' rights.²

Monitoring can help identify what adjustment, compensatory or flanking measures might be needed in case of adverse human rights impacts related to the CFTA. It is also important for accountability, which is a key human rights principle. Monitoring and evaluation should be accessible not only to economic operators and government entities but also to other interested parties. Monitoring can be a time-consuming and costly task. Governments might wish to seek technical and financial assistance, whether through Aid for Trade or via human rights sources, to build capacity and help conduct monitoring and evaluation. Monitoring and evaluation will also be essential to holding governments accountable to their human rights obligations.

C Recommendations regarding complementary measures

Coordination and Policy coherence

This HRIA has highlighted the need for effective coordination. At the national level, this could mean increasing links between different ministries, to ensure that trade negotiators have the necessary information to make the right decisions for their countries. Ministries responsible for agriculture, for instance, might have valid suggestions as to the content of proposed exclusion lists.

At the continental level, this would include combining the institutional structures required for implementing the Boosting Intra-African Trade (BIAT) Action Plan with those envisaged as

part of the CFTA, to ensure effective implementation and economies of scope. As the BIAT Action Plan is important for ensuring that the benefits of the CFTA are maximised and shared equitably, it is critical that it is implemented alongside the CFTA.

Infrastructure development

Infrastructure development will be essential to improving intra-African trade. This HRIA has noted several areas where better infrastructure is needed: such as storage facilities, lodging, water and sanitation at border areas, investment in post-harvest storage and processing, transport links for getting agricultural products to the market and irrigation to improve harvests.

Many such complementary measures are already anticipated in the BIAT Action Plan, the Programme for Infrastructural Development in Africa (PIDA) and the Comprehensive African Agricultural Development Programme (CAADP). These should be explicitly referred to in the CFTA as well as developed outside the Agreement.

Connectivity and value chains

Improving connectivity of value chains will be needed to enhance the benefits of increased trade to small-scale producers. Small-scale producer collaboration with the private sector to support aggregation and distribution of their produce is likely to work to the benefit of small-scale producers who might otherwise be excluded in agro-manufacturing development. Governments could usefully encourage large-scale and commercial farms to subcontract small-scale producers to supply them at market prices, since this would help small-scale farmers to overcome the substantial barriers they may otherwise face in entering the sub-regional and regional markets created by the CFTA.

African Union Member States should prioritise how they can foster and expand backward and forward linkages between agriculture and agro-manufacturing through means such as providing credit, helping farmers obtain high quality inputs, providing information on technology and facilitating its availability, as well as ensuring contract requirements are observed in the case of contract farming.

Ensure adequate social protection, the right to work and rights at work

The CFTA should include references to the right to protect workers' rights and promote social protection for all. Measures should also be taken in other relevant fora to ensure the protection of these rights.

Facilitate free movement of persons

CFTA negotiators should be mindful of the commitment AU Member States have made in the Abuja Treaty to allow free movement of people within the African Economic Community, undertaking to ensure the gradual removal, among Member States, of obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment. Participants in this HRIA have noted how Rwanda, a country which has facilitated entry for Africans, has succeeded in attracting a lot of talent to the benefit of the economy.

Promote gender sensitisation and women's rights

Whilst CFTA negotiators should ensure the agreements reflects the specific needs of women and differential impacts of trade on women, broader steps will be needed across the continent to improve women's capacity to participate in economic and trade opportunities, and to have their rights protected.

Anticipate responses to climate change and avoid environmental degradation

Given the high level of vulnerability for the African agricultural sector to climate change, the CFTA should include explicit exemption safeguarding climate policies from CFTA trade obligations. The CFTA and complementary measures outside the agreement must take into consideration the environmental and sustainability impact of different policy options with regards to agricultural practices, transport infrastructure investment and other matters

¹ De Schutter, Olivier. 201. UN Human Rights Council - Report of the Special Rapporteur on the Right to Food, U.N. Doc. A/HRC/19/59/Add.5.

² Banjul Charter, Article 45.

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