



DIGITAL TRADE IN AFRICA

Implications for Inclusion and Human Rights

Executive summary and policy recommendations

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Background

In July 2017, the African Trade Policy Centre of the United Nations Economic Commission for Africa (ECA), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Friedrich-Ebert-Stiftung Geneva Office launched a joint report entitled *The Continental Free Trade Area in Africa: A Human Rights Perspective*. The publication contained a critical assessment of the human rights dimensions of what is to be the biggest trade agreement in terms of the number of participating countries since the establishment of the World Trade Organization.

Since that date, significant headway has been made towards establishing the African Continental Free Trade Area. The landmark agreement establishing the African Continental Free Trade Area, covering trade in goods and services, was signed in Kigali on 21 March 2018 by representatives of 44 Governments. As of 8 May 2019, an additional eight Member States had signed the agreement, and the 22 ratifications required for the agreement to enter into force had been received.

The Agreement includes a built-in agenda for a second phase of negotiations on competition policy, intellectual property rights and investment. However, if the African Continental Free Trade Area is to fulfil its potential in transforming African economies, it must also include a clear digital strategy. This has led to discussions on whether e-commerce should be included in the second phase of negotiations. At the same time, although the digital economy and the dynamism generated by digital trade solutions create significant opportunities, they also present challenges that will need to be addressed in a way that is inclusive, transparent and consistent with people-centred governance and the attainment of human rights.

It is against this background that ECA, OHCHR and the Friedrich-Ebert-Stiftung agreed to collaborate on assessing the inclusion and human rights implications of digital trade in the context of trade policy in Africa, which is underpinned by the African

Continental Free Trade Area. The present publication is a result of that collaboration.

A conference on the theme “Digital trade in Africa: implications for inclusion and human rights” was organized by ECA, OHCHR and the Friedrich-Ebert-Stiftung in Addis Ababa from 31 May to 1 June 2018. To build upon the success of the conference, the three organizations agreed to prepare a joint publication on the main issues raised during the various sessions, and presenters were invited to contribute “think pieces” to the publication. In October 2018, an authors’ workshop was organized to review the early drafts of those think pieces. The contribution by Omobola Johnson was produced on the basis of her 2019 Adebayo Adedeji lecture at the ECA Conference of Finance and Economy Ministers that was held in Marrakech, Morocco, from 20 to 26 March 2019.

The present publication is timely. In February 2019, the African Union Commission, ECA and other stakeholders were mandated to prepare a digital transformation strategy for the continent, to include effective means of securing a digital identity for all Africans. That initiative is complemented by the Digital Trade and Digital Economy Strategy that is being prepared by the Department of Trade and Industry of the African Union Commission. The recommendations on the strategies are to be submitted in early 2020. It is hoped that insights from the various contributions to this publication will help to shape the ongoing discussions on those recommendations.

Applying a human rights lens

Digital trade offers an innovative tool for industrial leapfrogging and income convergence, and human rights can provide firm ground for consistent and principled action. Finding the right balance between innovation and regulation is key in the area of technology, specifically with regard to digital trade. A human rights lens can assist in identifying those stakeholders whose inclusion and participation is vital in order to harness the full benefits of digital trade. In addition, a human rights approach is crucial

to assessing broader issues of connectivity across the continent, access to and use of technology platforms, tools and services, privacy and data protection and the impact of digital trade on the realization of a range of human rights.

- a) The right to equality and non-discrimination: this includes barriers and offline discrimination as well as discrimination in relation to participation in the digital space. Real-life barriers include poverty, lack of economic access and state failures in the protection of rights, in particular women's rights.
- b) Privacy and access to information: this also links to violence and other security risks, which are often used as pretexts for surveillance and restricting access. Legal protection is also often lacking.
- c) Freedom of speech and expression, assembly and association: this includes the creation, expansion or updating of governance to ensure the use of and access to necessary means of communication.
- d) The right to work, adequate standard of living and other labour rights: there is a lack of equality of opportunity in digital trade, and discrimination exists in terms of the right to work and access to skills, credit and finance. Digitalization can also heighten precarious working conditions, with insecure wages, more casual or freelance work and unstable contracts.
- e) The right to education: digital technologies can enhance the right to education, but women and girls are underrepresented among digital technology users, thereby furthering an already marked gender divide in Africa. Harnessing technologies is key to ensuring that violence and inequalities are not aggravated; digital education and literacy are needed to create an equal society.
- f) The right to development: this is at the core of African human rights instruments (for example, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa) and requires connectivity, access to technology and knowhow to harness the benefits of digital development.

Human rights exist regardless of offline or online status. The human rights discourse is disruptive in that it challenges the unjust power dynamics pervasive in the realms of business, trade and development. Moving into the digital trade space offers human

rights practitioners a new platform for applying past successes and innovating future safeguards. In addition, the emergence of new technology systems, platforms and ideas creates an opportunity for human rights to be a guiding framework for the development of digital technology in Africa. There is a need for an active and participatory debate on controls, limits and creating coherence between different regulatory regimes.

In carving out the relationship between human rights and digital trade in Africa, it is important to recognize that African States are party to a wide range of human rights treaties, including the African Charter on Human and Peoples' Rights. Agenda 2063: The Africa We Want of the African Union also provides a legal basis for considering human rights in the digital economy agenda of Africa – it contains the aspiration of an Africa of good governance, human rights, justice and the rule of law.

Updating the policymaker's toolkit in the digital era

The digital economy can lower barriers to entry to and help connect micro-, small and medium-sized enterprises with global markets and value chains through providing the services necessary to facilitate their exports. Communication networks and e-commerce platforms are facilitating new opportunities for businesses and workers in developing countries. Professional service platforms, for instance, connect professionals in developing countries to freelance opportunities around the world. Digital applications are already being leveraged to promote innovation and entrepreneurship, including the empowerment of women as traders, and mobile and digital solutions are contributing to filling credit gaps. The digital economy also offers new possibilities for productive job creation for young people, who are typically quicker at adapting to new technologies and developing new digital solutions than those who have been in the workforce longer.

These gains are, however, not automatic, and the digital economy also presents immense challenges for the continent in the context of the digital divide. Owing to the concentration of digital technologies in developed countries and the skills-biased nature of digitalization, the main beneficiaries of the digital economy are currently the most developed countries and a few countries in Asia.

This risks reducing the ability for Africa to resolve its unemployment problem and take the traditional route to industrialization. In addition, inequalities in access to technology within countries are typically rooted in structural and historical discrimination, so groups that are already left behind, in terms of their access to education, food, energy, water, sanitation or decent jobs, or in terms of their literacy levels and skills, stay behind. There are also concerns that digital trade embodies network effects that can lead to market concentration and anti-competition issues, and that it may facilitate the distortion by international companies of their taxable income through transfer pricing.

As argued in the article below entitled “Updating the policymaker’s toolkit: a new ‘digital’ trade and development landscape”, the response must be an updating of policymakers’ toolkits to face the new opportunities and challenges of digital trade and ensure inclusive outcomes that uphold human rights. It is crucial that African countries do not take a passive approach to digitalization but that they take an active, decisive and principled approach to closing the digital divide, which exists in terms of both access to and use of technologies.

Structure of the publication

The present publication contains four special commentaries, followed by two articles that provide contextual background and a series of innovative and forward-looking contributions (think pieces) from a range of academics, practitioners and researchers with expertise in the trade and investment landscape in Africa.

In the first background article, entitled “Updating the policymaker’s toolkit: a new ‘digital’ trade and development landscape”, the linkages between digital trade and development are described, an update on Africa and the e-commerce agenda of the World Trade Organization is provided and how the African Continental Free Trade Area could foster a continental approach towards the digital economy is considered. In the second background article, entitled “Human rights, connectivity and digital trade in Africa”, the reasons behind exploring human rights in the context of digital trade and approaches to applying human rights to digital trade are tackled. Emphasis is placed on the issue of connectivity, a precondition for any discussion on

digitalization, which affects a number of economic and social rights.

The nine think pieces offer unique perspectives on digital trade in Africa and its implications for human rights. The topics of the pieces differ widely and cover transfer of technology, the digital divide, work and skills, entrepreneurship, youth, gender, manufacturing, data governance and personal data protection.

Policy recommendations

The policy recommendations contained in the present publication point to what needs to be done in order to fulfil Governments’ commitments to human rights, while at the same time developing national, regional and continental approaches and frameworks to support digital trade in Africa. For practical purposes, the recommendations have been structured into five thematic categories: regulation and governance, digital infrastructure, social and personal security, education and skills, and trade and development cooperation.

Given that the aim of the present publication is to explore the issues, and not to cover them comprehensively, ECA, OHCHR and the Friedrich-Ebert-Stiftung hope that this publication will encourage other stakeholders to undertake further human rights analysis of digital trade in Africa and in other regions.

Regulation and governance

- Efforts must be made to preserve space within domestic policy for evolving data governance frameworks for the digital economy, for the regulation of digital transnational corporations and emerging e-commerce marketplaces, and for digital industry protection measures which are still in their infancy.
- Regulatory or other intrusions into the right to privacy of individuals must be limited and justifiable in terms of African-driven human rights standards.
- Operational licences should only be issued to those platforms that respect regulatory frameworks.
- To ensure convergence, an African regional framework should be developed to regulate more efficient technology giants. The African

Continental Free Trade Area offers a platform for establishing a digital single market, akin to the European Union, which could incorporate a continental regulatory framework with equal standards for all platforms, regardless of their size.

- All member countries of the African Union must take stock of their specific geo-economic advantages and disadvantages in order to determine their national digital and data strategies.
- Multi-stakeholder engagement should be central to attempts to create a regulatory environment that respects human rights and supports digital trade. Existing relevant multi-stakeholder forums should be leveraged as part of that engagement.
- Governments need to support the building of local capabilities to design and invent home-grown additive technologies, drawing on locally sourced materials. Efforts should be made across the board to satisfy a range of industrial and consumer needs at highly customized levels.
- The effects of e-commerce on domestic resource mobilization in Africa need to be taken into account and an international governance framework should be put in place to facilitate the taxation of international e-commerce transactions in Africa.
- There is a need for mandatory language for technology transfer-related provisions under a global digital trade regime. The requirement to transfer technology should also apply to foreign companies when they access the lucrative African market. The requirement to disclose and facilitate transfer of and access to non-personal data, source code and algorithms could also become a market access condition to the African Continental Free Trade Area market.
- Governments should prioritize the collection of qualitative and quantitative gender-disaggregated data on women's participation in the digital economy to inform meaningful dialogue and policymaking.
- The African development discourse should more effectively explore how digitalization can be used to raise agricultural production and productivity in Africa.

Digital infrastructure

- A two-pronged approach to digitalization is needed in Africa, namely: (a) investing in digitalization; and (b) building up local industrial capabilities.
- Financing to improve access to digital technologies and digital infrastructure should be given greater attention than has been the case so far.
- In relation to the digital divide, data costs must facilitate broad access to, and use of, digital technologies and digital infrastructure to encourage economic activity. Competition in infrastructure is a necessary step for fair pricing.
- A broad appreciation of the digital divide should also ensure that policy interventions consider all sociopolitical and economic aspects that may impede access to digital technologies, digital infrastructure and digital literacy.
- Efforts are needed to develop comprehensive and targeted science and technology innovation policies to ensure that African countries enhance their capacity not only to assess and absorb imported digital technologies, but also to produce the technologies needed to address their unique developmental challenges and to export to other regions of the world.
- Research on digital technology and its applications should be supported in African countries and could involve the establishment of regional and national digital research and learning centres.
- The establishment of digital entrepreneurial ecosystems, underpinned by national innovation systems that support the integration of digital technologies into enterprises, should be key elements of the digital entrepreneurship strategies of African countries. Forums on digital-based entrepreneurship could be set up in which public-private dialogue and collaboration, in addition to e-business networks and support groups, are fostered.
- Employment gains from the productivity effects of digital technologies should be maximized through the reinvestment of cost savings from productivity gains into new job creating activities, building the absorptive capacity of the workforce and promoting better domestic linkages between firms and sectors.

- There is need to foster an environment for online payment solutions and create opportunities for women to learn how best to leverage their use of the Internet and mobile phones to access e-finance and other information and communications technology-enabled financial services.
- Efforts should be made to introduce special measures that respond to the specific challenges faced by women traders in the informal sector, particularly in terms of participating in new trade opportunities and developing microenterprises into more productive enterprises.
- The implementation of any biometric system must be subject to monitoring by independent data-protection authorities or other competent bodies comprising experts on privacy and human rights.
- Effective remedies that afford redress to victims of violations of the right to privacy resulting from the unlawful processing of biometric data must be adopted.
- The rights of data subjects – the right to information about the data held and the right to access that information, object to its processing and have incorrect personal data updated or amended – must be respected.
- Effective security measures to prevent violations of the right to privacy through means such as encryption and anonymization must be adopted.

Social and personal security

- Workers will need to be protected against job polarization, increasing competition and pressure on wages, and the rising precariousness of online work.
- All African countries must pay attention to how digital and data innovation opportunities can be leveraged for equitable value distribution in the economy. Policy and legal frameworks established on a foundation of rights are vital in this regard so that road maps to build future economies are well grounded in normative principles.
- Human rights provide both a normative and a constructive framework for incorporating policy concerns into economic policies relevant to the African Continental Free Trade Area as a necessary step towards implementing the Sustainable Development Goals.
- The United Nations Guiding Principles on Business and Human Rights should be incorporated into and expanded upon by African Union mechanisms in order to impose reasonable obligations on those private actors that are central to facilitating or inhibiting digital trade.
- The use of biometric data for any identification and verification process should be on the basis of an objective appraisal of the necessity of such use, taking into account human rights considerations.
- Interference with privacy through the sharing of individuals' biometric data between States or third parties must comply with the human rights requirements of legality, legitimacy, necessity and proportionality.

Education and skills

- Instead of focusing only on skills, attention should be given to lifelong education, learning and civic skills.
- Non-routine cognitive tasks in the digital economy will require job-specific digital skills (for example, computer programming) and job-neutral digital skills (for example, data analysis), as well as "soft skills" such as managerial, collaboration, communication and analytical skills. Formal education and national skill development and training strategies should reflect that.
- Business and entrepreneurial skills, including financial planning, marketing, strategic planning and website design skills, must complement opportunities for digital skills development.
- Targeted skill-development programmes should have the goal of increasing the ability of the workforce in African countries to acquire, utilize and implement new digital technologies.
- Governments must forge collaborative partnerships with a broad range of stakeholders, including the private sector, to ensure the longevity of e-commerce skill-development initiatives.
- It will be important to define the digital skills and digital entrepreneurial skills and competencies that meet the needs of African women entrepreneurs and support their equal participation in e-commerce.

- Efforts are needed to actively engage in and ensure meaningful dialogue on the design of a gender-responsive digital skills and digital entrepreneurship strategy.

Trade and development cooperation

- Cooperation and development assistance arrangements between Africa and its development partners should integrate capacity-building assistance into the areas of digital technology, digital manufacturing and science, technology, engineering and mathematics.
- There is a need for a collaborative and consensus-based approach at the multilateral level to arrive at improved technology transfer-related provisions that cater for the unique situation of the least technologically advanced countries, which are latecomers to the use of digital technology.
- The least technologically advanced countries should be granted, under a global digital trade regime, the flexibilities and exemptions necessary to enable them to realize their right

to development and achieve the Sustainable Development Goals.

- There is a need for a comprehensive aid-for-digital-technology programme to facilitate digital technology transfer and enhance the absorptive and adaptation capacities of the least technologically advanced countries.
- There is a need for positions on digital trade to evolve to enable African countries to make the most of the opportunities for industrial leapfrogging.
- Before signing any trade agreement, it is imperative to undertake a systematic audit of all its provisions (including those pertaining to digital trade policy) and their implications for human rights and development.
- Open access to government data should be encouraged and facilitated as a necessary component for a sound trade environment.
- As an active step towards combating online discrimination that could negatively impact the trade environment, transparency must be encouraged in policy – including at the level of algorithms.

