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ECA POLICY BRIEF

Building a Sustainable and Inclusive Continental Free Trade Area Nine Priority Recommendations from a Human Rights Perspective

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The purpose of this policy brief is to highlight the importance of human rights in the negotiations, implementation and monitoring phases of the Continental Free Trade Area (CFTA), and provide nine focused policy recommendations for African trade negotiators, officials and ministers on how to achieve a sustainable and inclusive CFTA.

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Background and Context

Negotiations towards the Continental Free Trade Area (CFTA) present a unique opportunity to bring enhanced growth and increased opportunity to millions of African citizens. The jobs and wealth that can be created through greater and easier intra-African trade have the potential to contribute significantly to eliminating poverty, creating jobs and promoting equality.

Whilst economic modelling shows positive long-term and overall effects of increased and liberalized trade in Africa, it also indicates differences in impacts both between and within countries.¹ For the CFTA-led structural transformation of African economies to enable the realization of human rights and the attainment of the development objectives set out in the African Union's Agenda 2063 and the global Agenda 2030 (Sustainable Development Goals), the potential adverse effects, particularly on vulnerable

groups within the continent must be taken into account. It must do so in the way it is negotiated, designed, implemented, monitored, as well as through flanking measures instituted within and alongside the CFTA. To this end, the Economic Commission for Africa (ECA), together with the Office of the High Commissioner for Human Rights (OHCHR) and the Friedrich-Ebert-Stiftung (FES) Geneva Office, commissioned an ex-ante human rights impact assessment (HRIA) of the proposed CFTA.

This brief presents recommendations emerging from the impact assessment, the results of which were published in July 2017. It is being made available to African trade negotiators, officials and ministers with the aim of ensuring that the gains from the CFTA positively contribute to addressing human rights concerns on the continent. The timing of the brief is important, because it comes at the same time as rising scepticism towards regional integration and trade agreements, as witnessed by the Brexit

vote in the UK and rising populist anti-trade attitudes elsewhere 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 scrutinize the details of trade agreements to ensure fairness and equity. In this context, it is critical that Africa takes efforts to guarantee an inclusive CFTA.

The human rights framework offers important tools for focusing attention on possible impacts of economic policies on vulnerable groups. As the World Bank has noted, putting human rights at the centre of economic decisions adds quality to economic growth.² Human rights focus immediate attention on distributional issues and help to identify flanking measures in times of economic adjustment. In addition to the procedural tools that it offers, the human rights framework provides legal reference points for assessing impacts of proposed new economic policies and measures.

The overlaying of human rights on economic welfare analysis can provide a more relevant framework within which options can be tested and distributional consequences understood.

Source: The World Bank, *Human Rights and Economics* (2012).

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.

African States are parties to a wide range of human rights treaties, including the African Charter on Human and Peoples' Rights (ACHPR)³, 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).⁴

This brief sets out nine of the recommendations that emerged most saliently from the HRIA. These recommendations can positively influence the remainder of the CFTA negotiations, as well as the CFTA implementation and monitoring processes.

The RECs extended their mandate to human rights due to the realisation that economic integration can succeed better in stable and conflict-free political environments.⁵

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 emphasizes 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 pro-actively 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 marginalized groups and enhance information dissemination on the CFTA, including via local radio or social media.

It should be noted in this context the Decision of the African Union July 2017 Summit that binds all member states to carry out national consultations.

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

SDG Goal 16, Target 7

2. Collect data

Ensuring that new trade and investment policies 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.

The essential first step towards promoting the realization of economic, social and cultural rights is diagnosis and knowledge of the existing situation.

Source: CESSCR (1989).⁶

Countries have not always, in the past, formulated trade policy as a response to a deep understanding of the national context, although doing so can yield

more responsive and robust policies. For instance, research for this HRIA found that some key actors such as women or informal cross-border traders, are often insufficiently acknowledged in available data. Better data collection can help maximize economic benefits drawing on the potential of these under-recognized groups. Moreover, 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.

Informal cross-border trade contributes nearly 40 percent of total intra-regional trade in the Southern African Development Community (SADC) and Common Market for Eastern and Southern Africa (COMESA) regions. Such trade is source of income for approximately 43 per cent of Africa's population. The actual impact of informal cross-border trade on the economy is difficult to measure because of its invisibility in official statistics.

Source: Report on the Continental Free Trade Area (CFTA) in Africa: A Human Rights Perspective, UNECA, 2017

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.

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.

SDG 17, Data, monitoring and accountability, target number 18

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

Non-discrimination is a key tenet of human rights. Human rights permit – and sometimes require – governments to treat disadvantaged groups more favourably with a view to achieving equality.

The impacts of trade and investment liberalization 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.

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 et al. 2016.

The CFTA process provides African countries with an opportunity to integrate potential disaggregated effects of trade liberalization. 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 liberalization. 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 benefits 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.

Promote and enforce non-discriminatory laws and policies for sustainable development.

SDG 16, target 12

4. Explicitly recognize women

Human rights requires governments to take steps to ensure that women's rights are respected by law and 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. The macroeconomic consequences of higher levels of gender equality are clear: it can lead to faster economic growth, lower rates of poverty, increased female labour force participation, and better health outcomes for women and children.⁷

Yet most governments – in rich and poor countries alike – treat economic policies as “gender-neutral” when in fact they are “gender-ignorant”.⁸ 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.

When Uganda first looked at its budget through a gender lens, it discovered that little of the spending on agriculture was going to support women farmers, though they did most of the work.

Source: The Economist, February 2017.

Research for this impact assessment draws attention to the fact that women's high participation in the agriculture sector and in the informal economy, as well as their unpaid labour is insufficiently recognized. Equal-opportunity laws are often insufficient to cut inequality. African governments should look beyond the laws and analyse the differential impact of policies and provisions on women and on men, and design flanking measures to ensure that de facto discrimination against women is not reinforced. Women-friendly arrangements at border crossings through the CFTA would also help to curb the ill-treatment that female informal cross border traders often face.

Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.

SDG 5, target 5

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 percent 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.

If the net impact of adopting freer trade policies decreases total tax revenue, then governments may be forced to lower public investment in crucial areas such as infrastructure, education and health.

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

Given that governments have obligations to mobilise resources for human rights purposes – such as education and social protection – the full breadth of the implications of tariff reductions must be considered with utmost care. This is particularly so since studies in Africa and elsewhere suggest that

developing countries have generally found it difficult to replace tariffs with revenue from domestic sources.

A human rights lens can help policymakers decide in favour of the most sustainable, inclusive option when faced with policy choices. Consider the following trade-offs:

How should a government allocate its educational budget? Should more be spent on building primary schools in rural areas or on training bank auditors and accountants? Should the government maintain price controls on food crops, even if such controls distort resource allocation in the economy?

See Dani Rodrik, The Global Governance of Trade as if Development Really Mattered, 2001.

6. Engage in paced, layered, targeted liberalization

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

Exclusion list provisions would allow governments to select a specified number of tariff lines to be temporarily excluded from tariff liberalisation. This will enable them to protect vulnerable groups such as women, food insecure populations, indigenous groups or cross-border traders. Exclusion lists also provide valuable tools for reducing the negative impact of tariff liberalisation on tariff revenues.

One reference for establishing an exclusion list 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, 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.⁹

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 can be used by least developed countries (LDCs).

7. Maintain policy space

Economic development is a dynamic process. Governments have to be very cautious not to limit their “policy space” for the future. In other words, they should resist provisions in trade agreements that could undermine the ability for the government to implement future measures to ensure human rights are protected, respected and fulfilled. Indeed, human rights law requires governments to take appropriate legislative, administrative, budgetary, judicial and other measures in favour of human rights. What is appropriate may vary with changing circumstances over time.

In the agriculture sector for instance, governments would do well to maintain policy space to enable them to take new measures relating to trade and investment if necessary, for instance to promote agricultural development in favour of small-scale agricultural production and for domestic food production capacity. This is also linked to governments’ human rights obligation to regulate private actors.

8. Ensure adjustment mechanisms

As economies and societies change, people have to adjust. Even the most inclusive and beneficial changes may 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. This means that likely impacts must be monitored and discrimination must 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 provisions on labour issues that makes reference not only to binding ILO instruments but also to non-binding instruments. These include in particular Recommendations 202 and 204, which recognize that social protection is an important tool to promote equal opportunity and gender and racial equality, as well as support transition from informal to formal employment. These recommendations are particularly relevant to informal cross-border traders.

The right to work includes the obligations of the State to adopt and implement a national employment strategy and plan of action based on and addressing the concerns of all workers (in both the formal and informal sectors) and the unemployed.

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

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 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.

Human rights and obligations demand accountability. This implies that decision makers ought to be transparent about their actions and justify their choices and that redress mechanisms should be established.

Pacific Trade and Human Rights, 2014.

Achieving the CFTA's objectives will require the removal of a long list of non-tariff barriers (NTBs) that pose 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.

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