



Joint Press Release

NANHRI-NHRC-Gambia-African Commission 5th NHRIs Forum on African Continental Free Trade Area Agreement

October 19-20, 2022

Banjul, The Gambia

Members of the press welcome to the 5th National Human Rights Institutions' Forum organised by the [Network of African National Human Rights Institutions](#) (NANHRI), the National Human Rights Commission of the Gambia (NHRC), the African Commission on Human and Peoples' Rights (ACHPR), the Office of the High Commissioner for Human Rights (OHCHR) and other partners.

We have organised this event on the margins of the 73rd Ordinary Session of the African Commission on Human and Peoples' Rights under the theme:

“Trade and human rights in the African Continental Free Trade Area (AfCFTA) Agreement: inclusive implementation of the AfCFTA with participation of vulnerable populations.”

We host the 5th NHRIs Forum against a backdrop of adoption of the AfCFTA by 54 out of 55 Member States of the African Union and 43 ratifications so far.

While adoption and ratification of the AfCFTA is a positive progress towards achieving an integrated market on the continent for over 1.3 billion people, we are gravely concerned that national negotiations and implementation plans have continued to exclude key human rights actors. This exclusion was also noted during negotiations at the continental level.

Businesses have been some of the greatest violators of human rights today. These important negotiations cannot and must not happen without reference to human rights. And a discussion on human rights cannot happen in the absence of NHRIs.

Indeed, our report, the *Baseline Assessment and Stakeholder Mapping of National Human Rights Institutions' and Other Actors' Involvement in African Continental Free Trade Area (AfCFTA) Processes* established that **no NHRI** was involved in the negotiations towards

the AfCFTA. With the ratification by 43 States, only **one NHRI** has participated in the implementation. Similarly, a limited number of civil society organisations have made contributions to the AfCFTA processes so far.

The study involved 37 representatives of National human rights, institutions, civil society organisations, private sector and government agencies. Highest participation of over 85 percent was reported by government agencies.

Such exclusion puts human right promotion and protection at risk in the transactions under this trade pact.

While it is a State obligation to promote and protect human rights, tenets of good governance call for complementarity between and among State and non-State stakeholders. Conversely, NHRIs are the principal human rights agencies established and mandated to support the State in delivering on its human rights mandate of preservation of human rights.

*Failure to accommodate diversity from interested parties not only violates the human rights principle of non-discrimination, but also raises suspicion of government and enterprises' intention to work in isolation under limited **or no accountability**.*

If untamed, continued exclusion of other key actors will breed, propagate and perpetuate impunity and make it hard to mainstream human rights into the AfCFTA. This is against the **integration spirit** of this flagship project of the African Union Agenda 2063- a development blueprint that is bedrocked on human rights in its **Seven Aspirations**.

We may have missed the AfCFTA negotiations bus, but we have an opportunity to catch-up and infuse the human rights agenda into it.

It is even worrying that the trade pact identifies the Assembly of the AU Member States, the Council Ministers, the Committee of Senior Trade Officials and the Secretariat as the key **monitoring and oversight bodies**.

These bodies cannot be the negotiators, implementers and oversight to themselves. That is how NHRIs, CSOs and other non-State actors come in.

Accelerated ratification of AfCFTA has triggered negotiations of inter-State, multi-State and subregional initiatives as African Union Members seek to anchor business and investments on this pact. The first transaction under AfCFTA took place in January 2021.

This is happening while the African Union Draft Policy Framework on Business and Human Rights has been pending for over five years awaiting adoption. Similarly, only two countries- Kenya and Uganda- have held national consultations with stakeholders, developed and published National Action Plans (NAPs) for implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs). A few countries, including Liberia, Ghana and Senegal are developing their NAPs with regard to the UNGPs, but more than 85 per cent of others are lagging behind. The UNGPs provide a

three-pillar approach to addressing business and human rights violations through remedy, respect and protection.

In addition, AfCFTA can only be successful if there is seamless movement of people, goods and services. However, free movement of people across the continent remains on paper where legal frameworks have been put in place. The current regimes of national protectionist policies will substantively and negatively impede trade under this pact.

We can only trade in an integrated Africa where every country is home for everyone. We can not trade with each other when our laws consider us foreigners to one another.

While the African Charter on Human and People's Rights and other national and international instruments can be applied, there is no specific continental binding instrument to secure human rights under the framework of AfCFTA.

For these reasons, there is a risk of **leaving behind** women, youths, people living with disabilities, migrant workers, small holder farmers and small and medium enterprises and other vulnerable groups.

It is on this basis that WE, the Network of African National Human Rights Institutions and our partners call on:

1. NHRIs in collaboration with other public and private actors to conduct national impact assessment for evidence-based protection strategies and the value of mainstreaming human rights into implementation of AfCFTA;
2. States to open up negotiations to multi-stakeholders for diversity of input for enhanced protection;
3. States to establish national mechanisms in form of special committees incorporating diverse interested parties, led by NHRIs and CSOs to monitor and report on implementation of the AfCFTA;
4. States to deliberately mainstream human rights into the implementation of AfCFTA through express clauses in the inter-State negotiations;
5. African Union Member States and their agencies to accelerate conclusion and adoption of the AU Policy Framework on Business and Human Rights. This will provide a binding legal basis requiring business entities to guarantee enjoyment of human rights in all aspects of their work;
6. States to work with National Human Rights Institutions in developing national action plans (NAP) for the implementation of the UNGPs on Business and Human Rights. The States must also set aside funds for implementation of these NAPs for protection, remedy and respect of business and human rights.
7. NHRIs to work with other actors in reviewing protocol and other policies impeding free movement of people and goods and services, and make recommendations for realignment.

It is worth noting that out of the AfCFTA baseline, NANHRI has developed Guidelines on mainstreaming human rights into the AfCFTA process- including inter-State negotiations and implementation.

In conclusion, we also let you know that the NHRIs Forum will develop and adopt a joint resolution on the thematic area, which will be shared with the African Commission on Human and Peoples' Rights during the 73rd Ordinary Session for consideration.

Thank you for attending this briefing and we welcome questions.

Dr Elasto Hilarious Mugwadi, NANHRI Chairperson.

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