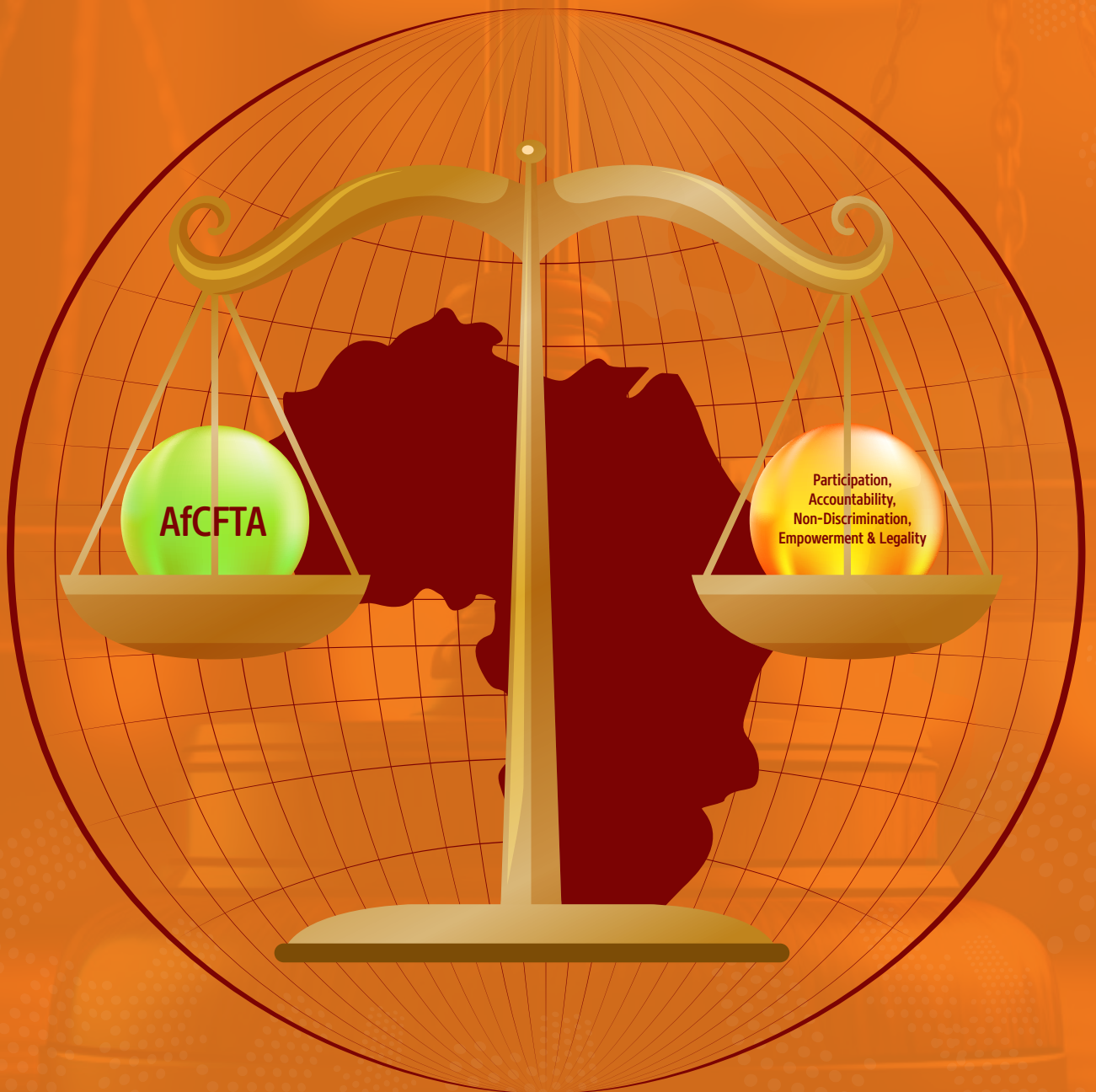




Guidelines on mainstreaming human rights in AfCFTA



Copyright

The content of this publication may be freely used and copied for educational and other non-commercial purposes, provided that any such reproduction is accompanied by an acknowledgement of the Network of African National Human Rights Institutions.

© 2023 Network of African National Human Rights Institutions (NANHRI)

This report is published by:

The Network of African National Human Rights Institutions

3rd Floor, CVS Plaza, Lenana Road

P.O Box 76155-00508

Nairobi – Kenya

Website: www.nanhri.org

Email: info@nanhri.org

Twitter: @NANHRI40

Facebook: Network of African National Human Rights Institutions.

Source of Images used in the report: Creative Commons License



GUIDING FRAMEWORK ON MAINSTREAMING HUMAN RIGHTS IN THE ACFTA PROCESSES

Commissioned by the Secretariat of the Network of African National Human Rights Institutions (NANHRI), with support from the Government of Germany through the GIZ implemented Programme “Strengthening Good Governance and Human Rights in Africa – AGA”.



Table of Contents

ABBREVIATIONS AND ACRONYMS	II
ACKNOWLEDGEMENTS	III
PREFACE.....	VI
1 CONTEXT	1
1) THE DEVELOPMENT OF THIS FRAMEWORK.....	1
2) WHAT IS THE AFCFTA ABOUT?	3
3) WHY SHOULD WE MAINSTREAM HUMAN RIGHTS IN AFCFTA PROCESSES?	3
A. <i>WHAT DOES MAINSTREAMING HUMAN RIGHTS IN AFCFTA MEAN?</i>	<i>4</i>
4) HUMAN RIGHTS OBLIGATIONS OF AU MEMBER STATES	5
5) ROLE OF KEY STAKEHOLDERS	5
6) GUIDELINES FOR MONITORING MAINSTREAMING OF HUMAN RIGHTS IN THE AFCFTA PROCESSES 7	7
A. <i>ENHANCING COMPLIANCE OF BUSINESSES WITH HUMAN RIGHTS STANDARDS.....</i>	<i>7</i>
B. <i>PROMOTING TRANSPARENCY AND ACCOUNTABILITY OF AGREEMENTS.....</i>	<i>8</i>
C. <i>PROMOTING FREE MOVEMENT OF PERSONS</i>	<i>8</i>
D. <i>PROMOTING ENVIRONMENTAL RIGHTS</i>	<i>10</i>
E. <i>PROMOTING LABOUR RIGHTS</i>	<i>10</i>
F. <i>PROMOTING NON-DISCRIMINATION</i>	<i>11</i>
G. <i>PROMOTION AND PROTECTION OF THE RIGHT TO HEALTH</i>	<i>12</i>
H. <i>PROMOTION AND PROTECTION OF THE RIGHT TO EDUCATION</i>	<i>12</i>
I. <i>PROTECTING THE RIGHT TO FOOD.....</i>	<i>13</i>
J. <i>THE REALISATION OF THE RIGHT TO HOUSING AND ADEQUATE STANDARDS OF LIVING.....</i>	<i>14</i>
K. <i>OVERALL RECOMMENDATIONS TO HUMAN RIGHTS GROUPS AND NANHRI</i>	<i>14</i>
7) DATA COLLECTION TOOL.....	15

Abbreviations and Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
AfCFTA	African Continental Free Trade Area
BHRRC	Business and Human Rights Resource Centre
CCJ	Community Court of Justice of the Economic Community of West African States
CEDAW	Convention on Elimination of All Forms of Discrimination against Women
CEN-SAD	Community of Sahel-Saharan States
CRC	UN Covenant on the Rights of the Child
CSO	Civil society organisation
EAC	East African Community
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
FTA	Free trade agreements
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Social, Economic and Cultural Rights
IGAD	Intergovernmental Authority on Development
NANHRI	Network of African National Human Rights Institutions
NGO	Non-governmental organisation
NHRI	National human rights institutions
OHCHR	Office of the High Commissioner for Human Rights
REC	Regional economic communities
PTA	Preferential Trade Area for Eastern and Southern African States
SADC	Southern African Development Community
TOR	Terms of reference
tralac	The Trade Law Centre
AMU	Arab Maghreb Union
UN	United Nations
WTO	World Trade Organisation

Acknowledgements

The Network of African National Human Rights Institutions (NANHRI) acknowledges and thanks the team of experts, led by Mr. Roland Ebole, Mr. Andrew Khakula, and Dr. David Ngira who developed these tools. The experts worked alongside Dr. Brenda Kombo and Dr. Pricilla Marimo who were conducting a cocurrent and related study.

The Network of African National Human Rights Institutions wishes to thank the Government of Germany through the GIZ implemented Programme “Strengthening Good Governance and Human Rights in Africa – AGA” for their collaboration and support in this project, financially and technically.

Guiding Framework on Mainstreaming Human Rights in the AfCFTA Processes

The adoption of the AfCFTA agreement by the 10th Extraordinary Session of the Heads of State Assembly in Kigali Rwanda on 21st March 2018 and subsequently its entry into force on 30th May 2019, marked a significant milestone for the economic integration and development agenda of the African continent. However, as highlighted by the NANHRI “Baseline Assessment and Stakeholder Mapping of National Human Rights Institutions’ and Other Actors’ Involvement in African Continental Free Trade Area (AfCFTA) Processes”, the AfCFTA design process and negotiations have so far paid minimal attention to the human rights implications of the AfCFTA, a dynamic that can be attributed to the isolation between international human rights law and international economic law.

As the premium body for the protection and promotion of human rights in Africa, the African Commission on Human and Peoples’ Rights (African Commission) wishes to reiterate that the parallel dynamic between international human rights law and international economic law does not apply under the African human rights system. This is because Articles 21, 22 and 24 of the African Charter on Human and Peoples Rights specifically recognize the rights of all peoples: to freely dispose of their wealth and natural resources; to economic, social and cultural development; and to a generally satisfactory environment favourable to their development. Articles 21, 22, and 24 are thus anchorage binding human rights provisions that should guide the implementation of the AfCFTA agreement and subsequent frameworks.

Moreover, while the AfCFTA agreement does not include explicit reference to human rights, its preamble alludes to the importance of human rights, thus entrenching a need for a human rights-based approach (HRBA) to its implementation through embedding the principles of participation, legality accountability, empowerment, and non-discrimination. These principles are protected by the African Charter on Human and Peoples Rights and its constituent instruments including the Protocols protecting the rights of women, older persons and persons with disabilities, as well as the African Youth Charter and the African Charter on the Rights and Welfare of the Child.

The African Commission thus welcomes the NANHRI Guiding Framework on Mainstreaming Human Rights in the AfCFTA processes (hereinafter the Guiding Framework) as it will have an impactful role in protecting and promoting the rights of marginalized groups in the implementation of the AfCFTA particularly as they are likely to be disproportionately affected by the adverse effects of trade liberalization. The African Commission commits to working with the NANHRI Secretariat, NHRIs, and other key actors towards the implementation of the Guiding Framework, notably, on following the recommended ten (10) core human rights principles: Enhancing compliance of businesses with human rights standards; Promoting



transparency and accountability of agreements; Promoting free movement of persons; Promoting environmental rights; Promoting labour rights; Promoting non-discrimination; Promoting and protecting the right to health; Promoting and protecting the right to education; Protecting the right to food; and the realization of the right to housing and adequate standards of living.

Accordingly, the African Commission recalls its “Resolution on a Human Rights-Based approach to the Implementation and Monitoring of the African Continental Free Trade Area Agreement - ACHPR/Res.551 (LXXIV) 2023” adopted at its 74th Ordinary Session, in which it urges Member States to “develop and implement as part of the implementation of the AfCFTA, frameworks to protect the rights of individuals and peoples to development, including those of workers, women, indigenous people and minorities, and entailing such component rights as land ownership, intellectual property, biodiversity, traditional knowledge, and cultural expression”. The NANHRI Guiding Framework is timely and a welcome development in this regard as Member States can borrow from its recommendations and work closely with NHRIs to ensure mainstreaming of human rights in development and implementation of national level AfCFTA strategies.

The Africa We Want under Agenda 2063 commitments is an Africa in which vulnerable groups are not left behind. The NANHRI Guiding Framework is the compass we need to steer the continent in the right direction when it comes to mainstreaming human rights in the implementation of the AfCFTA agreement and its subsequent Protocols. The African Commission’s Working Group on Extractive Industries, Environment and Human Rights in Africa will join hands with all key stakeholders to ensure the prioritization of human rights in all aspects relating to the AfCFTA agreement.

Commissioner Hon. Dr Solomon Ayele Dersso,

Chairperson of the Working Group on Extractive Industries, Environment and Human Rights in Africa & Immediate Past Chairperson of the African Commission on Human and Peoples’ Rights

Preface

The coming into force of the African Continental Free Trade Area Agreement (AfCFTA) in 2019 poises Africa to be the largest trading bloc globally in membership.

Upon universal ratification, Africa will also be one market of more than 1.4 billion people trading between and among themselves formally. But beyond the AfCTA framework, there are humans and therefore human rights. Indeed, that is why Agenda 2063 of the African Union- which births the trade agreement- inscribes human rights as core to this economic blueprint.

According to a recent study by the Network of African National Human Rights Institutions (NANHRI), processes leading to the development of this trade pact left out a number of key stakeholders during negotiations phase. However, there are opportunities for the other stakeholders, especially the African National Human Rights Institutions (NHRIs) to contribute to sustainable implementation of the AfCFTA as highlighted by the NANHRI Baseline Survey.

Although the AfCFTA is relatively new, human rights issues in the target sectors may not be. Some possible areas of violations include labour rights, environment, gender and other forms of discrimination, right to health, food, education, movement, lack of transparency, among others. This, therefore, requires that NHRIs push to be part of the process of negotiations and crafting of the various national instruments and implementation of actions related to the AfCFTA. Involvement is not enough in delivering a human rights-centred implementation; the NHRIs must collaborate with other State agencies, private sector, civil society organisations in raising awareness among the public on the impact of the trade pact. Further, there is need to ensure that even after a human rights-based approach to the drafting of the plans, there is continuous monitoring framework for possible violations.

To support this process, NANHRI has developed these guidelines as a framework for the NHRIs and other actors to facilitate mainstreaming of a human rights-based approach to the implementation of AfCFTA.

Effective monitoring requires development of customized tools, petitioning for compliance, with national and international human rights principles, raising awareness internally and externally. It also involves reporting to relevant authorities for accountability, pushing for redress, among others.

While this tool is not a panacea, it provides a basis for the NHRIs and other actors to begin integrating the AfCFTA into their daily work, under the relevant thematic areas like business and human rights.

Gilbert Sebihogo

Executive Director, NANHRI.





Context

The African Continental Free Trade Area (AfCFTA) was established by the African Union (AU) to re-invigorate intra-African trade and promote development. The development of AfCFTA offers an opportunity for African countries to enhance their market competitiveness and benefit from tariff related incentives to spur intra-regional trade. AfCFTA therefore seeks to:

- (1) *Establish a basis for the establishment of a Continental Customs Union*
- (2) *Promote inclusive and sustainable socio-economic development, gender equality and structural transformation of member states*
- (3) *Improve the competitiveness of the economies of State Parties within the continent and globally*
- (4) *Enhance industrial development through product diversification development of agricultural value chain and food security*
- (5) *Enhance African regional integration by aligning conflicting trade regimes emerging out of membership of overlapping regional organizations.*

With a focus on trade, AfCFTA acts as an instrument for potential economic development. However, it also poses a threat to human rights as countries may opt to pursue trade benefits while relegating their human rights obligations to the periphery. It is against this background that these tools have been developed. The objectives of these tools are therefore:

- (1) To provide stakeholders with instruments that can be used to assess the implication of AfCFTA on human rights in the continent
- (2) To provide mechanisms for mainstreaming human rights in AfCFTA processes
- (3) To enable human rights actors to engage with trade under AfCFTA as a way of encouraging governments and businesses to respect human rights.

1) The Development of this framework

The Guidelines have been developed by NANHRI in collaboration with a team of experts. Representatives from NANHRI, African national human rights institutions (NHRIs), government departments responsible for trade in AU Member States and intergovernmental organizations, civil society organisations (CSOs) interchangeably used together in this document with non-governmental organisations (NGOs), trade associations and think tanks were invited to complete surveys, participate in a one to one interviews and focus group discussions that evaluated their capacities, engagement, and knowledge of the AfCFTA processes.

The contributions have been compiled, analysed, and used to develop these Guidelines. The collected data was analysed thematically in line with the broad human rights concerns that relate to trade issues as identified through secondary literature. Follow up interviews were also conducted with stakeholders to understand the unique human rights perspectives of the African NHRIs on AfCFTA. The table below indicates the categories of participants.¹

NHRIs	Government departments responsible for trade in AU Member States and intergovernmental organizations	CSOs including trade associations
15	9	24

The study combined robust desk-based reviews, a comprehensive situational survey and analysis that engaged multi-level policy and governance structures alongside the perspectives of multiple stakeholders identified in consultation with the NANHRI. The comprehensive situational analysis was undertaken to establish the

¹ Data from sources also collected from focus group discussions (FGDs) and one-on-one interviews organised by Consultants: Brenda K. Kombo JD, PhD and Pricilla Marimo, PhD.

interlinkages between human rights, development, and trade and how regional economic communities (RECs) in the region have been implementing trade related policies with regards to human rights. The literature review identified the challenges and opportunities, modalities, and tools for harnessing interlinkages.

Key primary documents that form the legal and policy framework for member states selected from the continent was examined alongside material from sub-regional, regional, and international institutions including but not limited to all the RECs like the Arab Maghreb Union (UMA), Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), Economic Community of Central African States (ECCAS), Southern African Development Community (SADC), Community of Sahel-Saharan States (CEN-SAD) and Intergovernmental Authority on Development (IGAD). Other free trade areas/agreements (FTAs) were also analysed alongside commentary from secondary analysis. This stage of the analysis lay the baseline and conceptual framework as well as the context for the tools.

The survey questions and other tools were designed in consultation with the NANHRI Secretariat for better context on the issues in the terms of reference (TOR), particularly by highlighting the role of human rights actors including NHRIs in the regional and national consultative processes related to the negotiations and implementation of the AfCFTA, including raising key capacity development challenges and opportunities. To be fit for purpose, the survey questions were adapted depending on the interview sources, specific to distinguish respondents, for example, official of a member state, an NHRI staff or a member of the private sector. Such an iterative and adaptive process ensured that relevant information is obtained.

The study indicated that generally, most NHRIs and human rights groups, including CSOs are not well conversant with AfCFTA processes because they were not involved in the negotiations and the drafting of the Agreement. Many respondents could not tell what regional integration or the AfCFTA entails. Many had a general understanding of regional integration but could not delve into detail to demonstrate their understanding of regional integration in the context of the AfCFTA.

National human rights institutions and CSOs also demonstrated limited knowledge about the AfCFTA protocols even though the Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated Annexes and Appendices form an integral part of the Agreement. Awareness as to what entails the Agreement, and the processes thereto can be rated at less than 10%. Because of the foregoing, the capacities of NHRI's and CSOs on the AfCFTA are very limited, therefore, restricting them from leading any meaningful activities aimed at raising awareness on human rights issues around the implementation of AfCFTA processes. There is also very limited knowledge on international trade amongst commissioners and staff of NHRIs. It is on this basis that these guidelines have been formulated.

To monitor the implementation of the principles set forth in Article 5 of AfCFTA, this document offers a framework to support users, in this case, NHRIs and other human rights groups, including CSOs to monitor the mainstreaming of human rights in the AfCFTA processes and negotiations.² The analysis will inform programme and activity design and development of methods of conducting monitoring, documentation, and reporting. Users may be required to refer to a range of information sources. This is in addition to those resources flagged in specific tools focused on promoting a human rights-based approach (HRBA) and inclusive development in the trade arena in Africa.

The Guidelines address norms and building blocks towards the inculcation of human rights in the operationalisation of this continental freetrade agreement. They have been developed based on the experiences of the selected countries that have signed up to the Agreement.

² Continuous monitoring, evaluation, and reporting on AfCFTA policies thereby creating awareness and promoting greater accountability of the various actors, including States. Reference should be made to gender and intersectional issues, including considerations about the youth and other minority populations involvement in the AfCFTA processes.



2) What is the AfCFTA about?

The AfCFTA was established by Article 2 of the Agreement Establishing the AfCFTA (hereinafter referred to as “the Agreement”), which entered into force on 30 May 2019 after receiving approval from 54 out of the 55 AU Member States.³ Trading under the AfCFTA, however, came into force in January 2021, due to delays caused by the Covid-19 pandemic, making Africa the largest global trading bloc since the establishment of the World Trade Organisation (WTO) in 1994.⁴ The AfCFTA was created to strengthen Africa’s economic relationship and build upon Africa’s respective rights and obligations under the Constitutive Act of the AU of 2000, the Abuja Treaty and, where applicable, the Marrakesh Agreement Establishing the [WTO] of 1994.⁵

The establishment of the AfCFTA visualizes implementing the aspirations of Agenda 2063 for a continental market with the free movement of persons, capital, goods, and services, which are crucial for deepening economic integration, and promoting agricultural development, food security, industrialisation, and structural economic transformation. The Agreement covers trade in goods, trade in services, investment, intellectual property rights and competition policy.

3) Why should we mainstream human rights in AfCFTA processes?

Considering the foregoing, the operationalization of AfCFTA requires a functional human rights system. It must be noted that African countries have a poor record in implementation of both regional and international human rights treaties.⁶ This is a challenge that must be surmounted if AfCFTA is to impact the social and economic aspects of the lives of the African people.

To facilitate the integration of human rights into AfCFTA, AU Member States should be encouraged to ratify all pending treaties, develop a culture of respecting human rights institutions, including NHRIs, adhere to international human rights enforcement systems, remove reservations on core components of human rights treaties and promote adherence to human rights both by businesses and individuals. An ex-ante impact assessment on different human rights affected by the AfCFTA should be performed to analyze risks and potential harm to human rights in the implementation process of the AfCFTA. This will provide a platform for persons whose human rights are violated by AfCFTA facilitated trade to seek domestic and regional redress. It will also ensure that AU Member States and businesses implement AfCFTA in a way that upholds human rights.

Robust trade, combined with good governance is a major contributor to inclusive growth and sustainable development, and thus a mechanism of improving the human rights conditions.⁷ As such, all FTAs must contain a commitment to human rights standards, the rule of law and democratic principles. They must also encompass a human rights road-map which explains the consequences of human rights violations. They must equally appreciate the work of CSOs and other human rights actors, including NHRIs on various human rights issues related to trade.

AU Member States’ moral and legal obligations to respect human rights emerge from natural rights and citizenship, constitutional and statutory obligations, and treaty law. Similarly, customary international law obligations emerge out of the fact that the AU Member States are bound by the doctrines and principles emerging from the community of nations. However, treaty obligations, which together with constitutional obligations are the most robust set of obligations.

³ The African Union (AU), The African Continental Free Trade Area, au.int/en/african-continental-free-trade-area

⁴ African business, 2021, Is the African Continental Free Trade Area losing momentum? african.business/2021/12/trade-investment/after-1-year-of-trading-is-afcfta-losing-momentum/#:~:text=The%20AfCFTA%20is%20an%20ambitious%20trade%20pact%20to,order%20to%20deepen%20the%20economic%20integration%20of%20Africa

⁵ Preamble of the Agreement Establishing the African Continental Free Trade Area (AfCFTA), hereinafter referred to as “the Agreement”. Emphasis added.

⁶ Zeleza, Paul, 2007. The struggle for human rights in Africa. *Canadian Journal of African Studies/La Revue canadienne des études africaines*, 41(3), pp.474-506.

⁷ Lim, Hoe., 2001. Trade and Human Rights What’s at Issue? *Journal of World Trade*, 35(2).

Despite the foregoing, NHRIs and CSOs have an opportunity to contribute in the AfCFTA processes, including through negotiating for their significant participation. This may involve day to day advising of States to adhere to democracy, human rights, gender equality and the rule of law, among other good governance principles in pursuance of the objectives under the Agreements. National human rights institutions further have an opportunity through their mandates, roles, and functions⁸ to intervene and advise States for reviews of the Agreement every five years after its entry into force⁹, including to ensure AU Member States incorporate HRBA in recommending amendments, to achieve effectiveness, achieve deeper integration, and adapt to evolving regional and international developments. This review process can be achieved by working with an impartial human rights committee or the AfCFTA Secretariat.

The Guidelines on Mainstreaming Human Rights in the AfCFTA processes and negotiations, therefore, aim to establish a common understanding of human rights treaty obligations emerging out of the FTA and anticipated and unanticipated consequences of its implementation. It further sets out an African region-wide shared Guidelines for Action for a more coordinated and integrated approach to monitoring, documenting, and reporting on human rights in the context of AfCFTA processes. It further offers some possible tools that provide guidance for monitoring and reporting on the processes as it also identifies continental mechanisms that could be supportive in promoting and protecting human rights within the same context.

To ensure that the benefits of AfCFTA, including the human rights benefits reach the grassroot, enhancing the capacity of NHRIs to monitor the implementation of the AfCFTA at domestic and regional levels is as important as the skills necessary for the actualization of AfCFTA and civic education on the AfCFTA.

a. What does mainstreaming human rights in AfCFTA mean?

Mainstreaming human rights denotes the process of infusing human rights standards and principles into the implementation of AfCFTA. These human rights principles and doctrines are anchored in the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Social, Economic and Cultural Rights (ICESCR), Convention on Elimination of All Forms of Discrimination against Women (CEDAW), UN Covenant on the Rights of the Child (CRC), African Charter on Human and Peoples Rights (the African Charter), the Maputo Protocol and the African Charter on the Rights and Welfare of the Child (ACRWC). These overriding human rights principles are; equality and non-discrimination, participation and inclusion, dignity, accountability and rule of law. Adherence to these principles not only improves the quality of human life, but also enhances the legitimacy of a process and institutions.

The above instruments have given rise to certain standards that must be reflected in any human rights responsive process especially in as far as socio-economic rights realization is concerned. Availability, Acceptability, Accessibility and Quality.¹⁰ Compliance with these standards in the implementation of trade regimes under AfCFTA will ensure that the interests and well being of AU citizens are central to the implementation of AfCFTA; that violators are held accountable and that governments respect and promote human rights amongst businesses trading under AfCFTA. These objectives can be measured at the national level by local sectors as well as internationally by NHRIs and non State human rights actors. Continuous human rights assesment can be helpful in identifying intersectional human rights issues and any limitations emerging from the implementation of AfCFTA.

⁸ UN Office of the High Commissioner for Human Rights (OHCHR), Principles relating to the Status of National Institutions (Paris Principles). Adopted by General Assembly resolution 48/134 of 20 December 1993.

⁹ Article 28 of the Agreement provides that, "This Agreement shall be subject to review every five (5) years after its entry into force, by State Parties, to ensure effectiveness, achieve deeper integration, and adapt to evolving regional and international developments."

¹⁰ DIHR. nd. The Availability, Accessibility, Acceptability and Quality (AAAQ) Toolbox accessed from

humanrightseducation.dk/HRBA_Training_Package/HRBA_in_practice/AAAQ%20Toolbox%20concept%20note%20brief.pdf



4) Human rights obligations of AU Member States

AU Member States have an obligation to; respect, promote and protect human rights. This obligation emerges from the international treaties ratified by the States as well as from regional instruments such as the African Charter on Human and Peoples' Rights and its various protocols.¹¹ Such obligations have also been derived from case law from domestic and international courts and domestic legal instruments such as constitutions and statutes.¹² Adhering to human rights when implementing AfCFTA will ensure that the human rights obligations of the AU under AfCFTA do not conflict with their equally important obligations under various sub-regional economic and integration treaties. In this regard, AU Member States and human rights actors are obligated to adhere to human rights principles.

Guarantee protection of health and livelihoods in accordance with the provisions of Articles 12, 16, 17, 22, 23 and 24 of the African Charter. Under this obligation, a State party will be expected to guarantee the right to education, food, health, housing, security (including human security) and clean environment. Businesses trading under AfCFTA will be obligated to refrain from actions that destroy livelihoods and health especially in the extractive sector.

- (1) Promote equality and non-discrimination. Under this pillar, AU Member States will be obligated to ensure that AfCFTA trading practices do not undermine gender equality. Non-discrimination should be reflected in the enhancement of free movement of persons and promotion of access to remedies in cases of violation of this principle. States will need to enforce obligations to women, include preventing businesses operating under AfCFTA from actions that lead to sexual exploitation of women. Trafficking of women and gender based violence.
- (2) Ensure that businesses comply with human rights. This requires the promotion of labour rights and ensuring that businesses trading under AfCFTA adhere to the UN Principles on Businesses and Human Rights. Within ministries responsible for trade, government must integrate human rights monitoring and reporting units. These units will together with other human rights actors to identify instances of human rights violations and enhance detection, prevention and response mechanisms.
- (3) Enhance good governance and accountability. This involves fighting domestic and transnational corruption (including the implementation of the African Convention on Anti-Corruption). Anticorruption institutions and other human rights actors must ensure that businesses trading under AfCFTA do not engage in corruption during licencing, inspections, and compliance monitoring. They must equally avoid bribing state officials for contracts or any form of collusion.

5) Role of key stakeholders

A recent NANHRI "Baseline Study on National Human Rights Institutions Involvement with the Africa Continental Free Trade Agreement" highlighted the need to infuse human rights into AfCFTA processes. A stakeholder mapping from the study indicates that several actors have intersecting obligations with regards to human rights protection in AfCFTA processes. These include government departments responsible for trade in AU Member States, NHRIs, CSOs, domestic courts, African Commission on Human and People's Rights, African Committee of Experts on the Rights and Welfare of the Child, the AfCFTA Secretariat and RECs. The table below outlines the role of key stakeholders on mainstreaming human rights in AfCFTA processes (at continental, sub-regional and national levels).

¹¹ Frederic Megret. 2010. *The Nature of International Human Rights Obligations* in Daniel Moeckli, Sandesh Sivakumaran, Sangeeta Shah, and David Harris (eds), *International Human Rights Law*, (Oxford; Oxford University Press)

¹² Ibid

Stakeholder	Obligation with regards to AfCFTA implementation
Government departments responsible for trade in Member States	Ratification of relevant human rights instruments and protocols Creating awareness on AfCFTA and human rights obligations of businesses under AfCFTA Establishing and monitoring human rights compliance of businesses Enforcement of human rights obligations of businesses as regards AfCFTA Detecting, preventing, and prosecuting corruption cases as relates to businesses operations under AfCFTA
National Human rights institutions	Monitoring compliance with human rights obligations of businesses Creating awareness on AfCFTA and human rights obligations under AfCFTA Coordinating inter-country monitoring and detection of human rights violation Compiling and reporting cases of human rights violations by businesses operating under AfCFTA. Filing public interest cases on human rights violations by businesses operating under AfCFTA Compelling businesses under AfCFTA to redress human rights violations
Non state human rights actors	Providing legal assistance to victims of human rights violations by AfCFTA Filing public interest litigation cases on the violation of human rights obligations of governments and businesses under AfCFTA Identifying and documenting human rights violations by businesses and governments operating under AfCFTA Creating awareness on human rights obligations of businesses Lobbying and advocating for the adoption and implementation of human rights standards and principles in the operationalization and domestication of AfCFTA
Domestic courts	Interpreting human rights obligations of the state's under AfCFTA Enforcing the human rights obligations of businesses Providing timely redress for victims of human rights violations by businesses Resolving disputes between state parties and businesses operating under AfCFTA Development human rights friendly jurisprudence on businesses and trade in the African region
African Commission on Human and Peoples' Rights	Deploy special Rapporteurs to investigate and report on violations of human rights by businesses operating under AfCFTA Receive and investigate complains on violations of Human rights obligations by businesses and governments as regards the implementation of AfCFTA <i>Adjudicating communications (complaints) submitted by Member States, individuals, and NGOs on violations of human rights by businesses and governments operating under AfCFTA</i> Referral of relevant cases of violation of human rights obligation by governments and businesses operating under AfCFTA to the African Court
African Committee of Experts on the Rights and Welfare of the Child	Monitor the implication of businesses on the rights of children and formulate necessary policies and recommendations. Work with AfCFTA Secretariat, ACHPR and governments to identify and redress areas in which AfCFTA processes many undermine children rights. Documents cases of violations of children rights by businesses and propose redress mechanism Continuously issue general comments and reports to state parties on the protection of children rights during implementation of AfCFTA.
AfCFTA Secretariat	Work with AU institutions, non-state actors governments] and regional economic blocs to mainstream and monitor human rights in AfCFTA implementation. Lobby for an additional protocol to the AfCFTA Treaty on business and human rights Establish reporting procedures for human rights violations by businesses trading under AfCFTA
Regional Economic Blocs	Work with AU institutions, AfCFTA Secretariat, non-state actors, governments and regional economic blocs to mainstream and monitor human rights in AfCFTA implementation.



6) Guidelines for monitoring mainstreaming of human rights in the AfCFTA processes

This chapter provides guidance for non-state human rights actors to monitor AU Member State and intergovernmental organisations' actions towards mainstreaming human rights in AfCFTA Processes. The guidance is in the form of recommendations and good practice statements with a HRBA targeted at AU Member State and intergovernmental organisations to facilitate the integration of human rights into AfCFTA.

Structure of the Guidelines

The Guidelines are organised into 10 sections. Each section addresses a human rights area identified from the assessment of the study, as follows:

1. Enhancing compliance of businesses with human rights standards
2. Promoting transparency and accountability of agreements
3. Promoting free movement of persons
4. Promoting environmental rights
5. Promoting labour rights
6. Promoting non-discrimination
7. Promotion and protection of the right to health
8. Promotion and protection of the right to education
9. Protecting the right to food
10. The realisation of the right to housing and adequate standards of living.

a. Enhancing compliance of businesses with human rights standards

i. Recommendations for AU Member States

- (1) Domesticating and implementing the UN principles on Business and human rights through local legislation.
- (2) Conduct regular ex-post impact assessments to determine need for repeal/amendment of domestic laws where applicable, including adoption of administrative measures nationally that are compatible with the implementation of AfCFTA from a HRBA.
- (3) Carry out human rights audits of transnational businesses trading under AfCFTA to determine their compliance with human rights.
- (4) Create platforms through which businesses under the treaty interface with human rights organizations, including periodically organizing human rights training and awareness sessions on relevant human rights issues.
- (5) Establish mechanisms together with business consortiums, federations, or organizations to facilitate human rights dialogue with their membership and to encourage their members to embrace human rights in their trade activities.

ii. Recommendations for the AU

Develop tools and capacity building materials to monitor human rights compliance by businesses, including encouraging States to provide incentives to businesses for HRBA compliance.

- (1) Encourage member states to implement regional and international treaties on human rights
- (2) Work with regional economic blocs to monitor human rights standards
- (3) Build human rights capacities of businesses.

iii. Recommendations for the RECs

- (1) Facilitate the development of dispute resolution system within AfCFTA, including strengthening existing mechanisms to address AfCFTA related disputes
- (2) Develop a regional mechanism of enforcing the human rights obligations of businesses trading under AfCFTA
- (3) Carry out human rights audits of Member States to determine their compliance with obligations to enforce human rights obligations of businesses
- (4) Monitor compliance of businesses with regional human rights obligations

- (5) Convene regional multistakeholder forums to audit human rights compliance of transregional businesses
- (6) Facilitate the development of dispute resolution system within AfCFTA, including strengthening existing mechanisms to address AfCFTA related disputes
- (7) Facilitate the development of dispute resolution system within AfCFTA, including strengthening existing mechanisms to address AfCFTA related disputes
- (8) Facilitate the development of regional mechanisms to resolve AfCFTA related disputes, including strengthening existing mechanisms to resolve AfCFTA related disputes.

iv. Commentary

A human rights-based approach to development, particularly fair distribution of products of development is crucial because of the increasing doubt towards trade and investment liberalisation. This doubt has been driven to a large extent by peoples' concerns that the benefits of trade and globalisation have not been distributed fairly. It will thus be necessary to take active steps to ensure that the gains from productivity and welfare improvements that the AfCFTA can usher in are equitably distributed and the impact felt by the citizens of the different African States.

The HRBA to development revolves around participation and inclusion, equality and non-discrimination and accountability. Implementation of the AfCFTA should comply with HRBA in various areas such as trade of goods and services, investment, and protection of intellectual property. Governments must ensure that they involve their citizens in AfCFTA negotiations and implementation to comply with the requirement for public participation which is a key pillar of HRBA to development.

b. Promoting transparency and accountability of agreements

v. Recommendations for AU Member States

- (1) States must make trade agreements, administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by the Agreement publicly available, through accessible mediums
- (2) States must implement all AfCFTA Agreements and any additions protocols.

vi. Commentary

Article 16 of the Agreement provides that all matters under the Agreement must be made accessible to the public for transparency and accountability.¹³ Transparency refers to the degree to which trade policies and practices, and the process by which they are established, are open and predictable.¹⁴ Most often, trade policies exclude provisions for transparency and accountability which are necessary for facilitating trade consensus, enhancing market access, reducing trade costs, and promoting cooperation in diverse areas including the protection and promotion of human rights.

The AfCFTA enhances supply of reliable and essential macroeconomic information to all stakeholders as well as safeguarding of private and public interest on trade and strengthening the ability to adhere, act and enforce trade policy measures. Transparency and accountability of trade agreements reduces disputes amongst trading partners, promotes growth of trade, and opens avenues to inculcate human rights in trade practices.

c. Promoting free movement of persons

vii. Recommendation for AU Member States

- (1) Implement agreements in relation to the AU Free Movement of Persons Protocol, Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and the AU Free Movement Protocol and apply HRBA to their implementation.
- (2) Promptly issue traders and travellers with any relevant travel papers.

¹³ Article 16 of the Agreement.

¹⁴ WTO, Glossary of terms: An informal press guide to "WTO speak". wto.org/english/thewto_e/minist_e/min96_e/glossary.htm



- (3) Progressively remove visa requirements for traders and persons travelling within the AfCFTA member countries.
- (4) Develop mechanisms and systems to monitor the exploitation of migrant workers and children since opening of borders may have undesirous effects on labour rights and children, including trafficking and child labour.

viii. Recommendations for the AU

- (1) Urge Member States to adopt pieces of legislation and domesticate treaties against human trafficking
- (2) Work with Member States to encourage enforcement of laws against human trafficking
- (3) Advise Member States on immigration and emigration laws, policies, and procedures, including immigration and emigration reforms to prohibit discrimination based on nation of origin, protect the right to a nationality, or address the special protections owed to migrants
- (4) Advise Member States to use AfCFTA to create legal migration opportunities in the services sector to reduce the incentive for irregular migration which is an incubator for human trafficking
- (5) Advocate for the provisions against human trafficking to be included in AfCFTA negotiations and implementation including provision of sanctions against member States that condone the practice
- (6) Promote learning of AU languages across the region.

ix. Recommendations for the RECS

- (1) Advocate for the provisions against human trafficking to be included in AfCFTA negotiations and implementation including provision of sanctions against Member States that condone the practice
- (2) Work with Member States to establish integration programmes for migrant workers from the AU
- (3) Promote friendly integration amongst Member States trading under AfCFTA.

x. Commentary

The AU Free Movement of Persons Protocol, Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment (AU Free Movement Protocol) adopted in 2018 provides labour migration-mobility related provisions and how State parties shall in accordance with the AU Convention on Cross-Border Cooperation coordinate their border management systems to facilitate the safe, orderly, and regular movement of persons.

It is anticipated that with the implementation of the AfCFTA, immigration and emigration protocols will be simplified to attract more revenues. Immigration and emigration will be on the increase as people will engage in cross border investments and employment opportunities. Free movement of services with free movement of people (businesspeople) may also have an impact on immigration laws and national security of Member States.

There is a nexus between trade and migration. The desire for commerce motivates migration and this is often accompanied by trade delegations to the host destination to facilitate business transactions. Immigration and emigration laws acknowledge the phenomenon of foreigners who enter States as traders or investors. If properly implemented, AfCFTA can lead to wage convergence, lessening the incentive to migrate and reducing the scale of human trafficking. In situations where the AfCFTA increases per capita income, it can stimulate migration since a certain level of income is required before people are able to move.

Migration always has a positive effect on trade flows by increasing exports and imports in the receiving country. Besides creating a common market, the free trade provides for movement of labour amongst trading partners and spell out terms regarding the “temporary entry of businesspersons” including terms and conditions for issuance of work.

d. Promoting environmental rights

xi. Recommendation for AU Member States

- (1) Develop environmental cooperation mechanisms including developing and enforcing effective environmental laws. Ecological and social aspects of investment and trade should be integrated in all FTAs
- (2) Domesticating all regional and international environmental treaties
- (3) Ensure that companies and entities do not engage in actions that pollute the environment.

xii. Recommendations for the AU

- (1) Strengthen the capacity of FTA trading partners to protect the environment by promoting sustainable development. For instance, providing incentives for eco-friendly and human rights compliant businesses for instance, tax subsidies, carbon credits, among others
- (2) Monitor and advise Member States to create effective monitoring systems to ensure the extractive industries do not damage the environment and commit human rights violations. Stiff penalties for environmental pollution and human rights violations should also be put in place by governments for deterrence
- (3) Provide mechanism for enforcing administrative and judicial sanctions against companies involved in transboundary environmental pollution
- (4) Urge Member States to develop and/or domesticate local legislation on environmental rights
- (5) Develop standards on acceptance levels of carbon emissions among companies trading under AfCFTA
- (6) Develop and African carbon trading regime for industries.

xiii. Recommendations for the RECs

- (1) Sensitize companies trading under AfCFTA on regional, international, and domestic environmental standards
- (2) Provide mechanism for enforcing administrative and judicial sanctions against companies involved in transboundary environmental pollution
- (3) Develop environmental protection standards for extractive industries trading under AfCFTA.

xiv. Commentary

The implementation of AfCFTA increases foreign direct investment and foreign investment. This may impact environmental protection and natural resources. Some of the human rights concerns arising from implementation of AfCFTA include the impact of floriculture and mining sectors on the right to life and health, noncompliance with minimum labour conditions players in industrial zones, lack of proper waste disposal systems by the extractive industry resulting in environmental pollution, all which affect the enjoyment of rights.

Notably, the extractives industry, which is predominantly owned by foreign private entities, has the potential to perpetuate unfair labour practices, child labour, gender discrimination and other human rights violations in pursuit of profits.

e. Promoting labour rights

xv. Recommendations for AU Member States

- (1) Ratify and implement international and regional labour treaties
- (2) Develop mechanism of redressing cross border labour rights violations
- (3) Develop monitoring mechanisms to labour rights violations including the practice of child labour
- (4) Obligate businesses trading under AfCFTA to sign memorandums on the protection and respect for the rights of workers.



xvi. Recommendations for the AU

- (1) Urge states to harmonize their labour laws
- (2) Urge member states to ratify and implement international regional labour treaties
- (3) Carry out fact finding mission to establish the conditions of migrant workers, especially those working in industries and extractive sectors

xvii. Recommendations for the RECs

- (1) Work with States to develop systems to document and report labour conditions to make it possible to advise governments on how to mitigate human rights abuses while negotiating and implementing AfCFTA
- (2) Develop schemes on minimum wage across regions.

xviii. Commentary

If not managed properly, the implementation of AfCFTA can cause the collapse of entire sectors and subsequent unemployment. Because of the desperation caused by unemployment, labour exploitation can rise through low paying job offers, unfavourable working conditions without job security and an increase in cases of child labour. In some rural parts of member States, children do not have identity documents, making it difficult to ascertain their age when they seek employment. This poses a challenge on protecting children from labour. If the root causes of poverty and marginalization are not addressed by governments, violations of labour rights may persist.

f. Promoting non-discrimination

This can be achieved by:

- (1) NHRIs facilitating processes that support AU Member States to better appreciate the relationship between trade and gender and intersectional prospects to identify and promote the opportunities through which women, the youth, persons with disabilities and other minorities can positively gain from trade at national and regional levels
- (2) NHRIs guiding AU Member States to create monitoring systems to curb discriminatory trade practices in the implementation of AfCFTA so that demographic dividend can be harnessed.

xix. Commentary

Informal cross-border traders are often subjected to discrimination and harassment, contrary to human rights standards. Women are particularly vulnerable. Sexual abuse by border officials is a common violation of their right to security of persons. Implementation of AfCFTA may help the informal traders to officially report incidents of discriminatory treatment, harassment, and their grievances. Several FTA adjustment mechanisms will need to be established to cushion vulnerable groups and those adversely affected by the structural and regulatory changes brought about by the implementation of FTA.

New trends in global trade, especially the rise in services, global value chains and the digital economy are also opening economic opportunities for the usually marginalised groups such as women, youths, persons with disability, and older persons. Women are usually concentrated in low-skilled and low-paying jobs where they have minimal bargaining power. They are also vulnerable to gender-based violence such as workplace sexual harassment and remuneration which is lower than that of men.

The AfCFTA can be beneficial to the youth through employment creation. Similarly, there is a need to promote disability inclusive trade and development through the design and delivery of inclusive economic growth and poverty reduction policies. Intersectionality looks at overlapping contextual and universal characteristics that compound vulnerability and marginalisation and these should be considered when implementing development initiatives including trade opportunities through the FTA.

g. Promotion and protection of the right to health

xx. Recommendations for AU Member States

States should facilitate intra-African manufacture and trade in pharmaceutical products under the auspice of AfCFTA.

Member states should enhance cross border surveillance to ensure that free movement of goods and labour does not result into transmission of diseases.

xxi. Recommendations for the AU

- (1) AU should establish a mutual framework for recognition of inoculation and testing certificates for travellers from member states
- (2) Africa Centres for Disease Control and Prevention (CDC) should Enhance disease surveillance among AU Member States to reduce outbreak and transmission
- (3) Develop common inspection standards to ensure that that the quality of goods and services, manufactured, procured, and accessed under AfCTFA do not undermine the right to health
- (4) Develop protocols on the protection of public health by extractive and manufacturing industries trading under AfCFTA
- (5) Establish an additional protocol to the ACHPR on business and human rights to guide the mainstreaming of human rights in AfCFTA.

xxii. Recommendations for the RECs

- (1) Align their regional trade treaties with AfCFTA especially in the importation, manufacture, and trade in health products under AfCFTA
- (2) Promote regional detection and surveillance on diseases especially among cross border traders
- (3) Promote manufacture, and trade in pharmaceutical products across the regions.

xxiii. Commentary

Free trade agreements have the potential to negatively affect public health due to increased exposure to infectious diseases arising from the rapid cross border transmission of communicable diseases like Covid-19. This can further strain the public health systems of most African countries which are already fragile due to under-funding and under-staffing.

h. Promotion and protection of the right to education

xxiv. Recommendation for AU Member States

- (1) States should develop quality cross-border education at all levels with integrated curricula that meet human, social, economic, and cultural needs of all and for sustainable development
- (2) States should promote cross-border trade in goods and services that facilitate teaching and learning, including school construction materials and human resources, consequently improving the access to quality education
- (3) States should prevent cross border child labour and the employment of adolescents by protecting their academic prospects by law which includes keeping them in schools and making higher education accessible to all.

xxv. Recommendations for the AU

- (1) The AU should work with Member States to provide a framework for recognition of academic qualifications across the region
- (2) The AU should provide technical assistance to weak Member States to improve their production of skilled personnel in science, research, and technology.
- (3) The AU should strengthen the existing intellectual property protection regimes to ensure that weak countries trading under AfCFTA are not exploited.



xxvi. Recommendation for the RECs

- (1) RECs should establish and strengthen regional professional associations to facilitate mutual recognition of professional qualifications.
- (2) Work with Member States to strengthen the quality, availability, accessibility and acceptability of their education standards.

xxvii. Commentary

Even with the promise of free compulsory universal basic education by African governments, access to quality education remains a challenge in Africa. Many children attend school with dilapidated learning facilities, some in tents, or huts. The education sector has a chance to register positive effects with the implementation of trade under the AfCFTA.

The AfCFTA can also negatively affect access to education because of restructuring of the economy. Possible job losses due to a shift in national economies can reduce levels of disposable incomes available to citizens thus affecting their ability to pay school fees. This may lead to delayed enrolments to schools and increased school dropout rates. Enrolment at tertiary institutions which charge higher fees and at times require additional resources for practical learning may also be affected.

i. Protecting the right to food

xxviii. Recommendations for AU Member States

- (1) Strengthen food production and supply across member countries
- (2) Guarantee food supplies across the African region
- (3) Balance trade and production of cash crops against food crops to enhance food security
- (4) Mainstream right to food in their legal frameworks.

xxix. Recommendations for the AU

- (1) Establish intra- African food standards to facilitate intra-regional trade in food
- (2) Establish an authority to coordinate inspection of food products
- (3) Advocate that all negotiations in the AfCFTA processes should have a positive effect on jobs and wealth creation so as to fight poverty, unemployment and food insecurity.

xxx. Recommendations for the RECs

- (1) Establish transregional food inspection units.
- (2) Harmonise food and agricultural policies across the region to enhance quality, affordable, accessible, and acceptable food production standards.
- (3) Work with Member States to discourage trade policies that can alter the demand and supply of factors of agricultural production thus threatening food security.
- (4) Monitor trade policies and advocate against policies that disadvantage certain categories of traders, including individuals whose food security is based on selling or bartering physical assets in exchange for food.

xxxi. Commentary

The implementation of AfCFTA has the potential of improving the right of people to live in dignity, free from hunger, food insecurity and malnutrition by promoting food security in Africa. Some of the anticipated positive outcomes of implementing the Agreement include timely delivery of agricultural inputs into AU Member States, less delays at borders for imported food products, easier movement, and delivery of food products for export within Africa and an increased market for food products.

This will positively impact many African countries that face a double burden of persistent malnutrition and diet related non-communicable diseases because half the population is food insecure. An increased food market will also take care of huge and fast-growing urban populations in Africa.

j. The realisation of the right to housing and adequate standards of living

xxxii. Recommendations for AU Member States

- (1) Protect communities from forced evictions, arbitrary destruction, arbitrary interference and promote the freedom of people to choose where to live, tenant protection, protection from discrimination in the housing sphere and access to basic housing-related services
- (2) Respect the rights of Indigenous peoples to participate and to be consulted to obtain their free, prior, and informed consent regarding decisions that affect their right to housing and land
- (3) Promote better standards of living through increased budgetary allocation to housing and social security schemes. This will guarantee the provision of minimum essential levels of benefits to all individuals to ensure access, among other things, to basic shelter and housing
- (4) Ensure that people's land rights are recognized and protected, including defining a criterion for compensation together with communities including resettlement plans, if there is need for compulsory acquisition of land
- (5) Address environmental concerns to avoid displacement of communities due to environmental factors such as pollution.

xxxiii. Commentary

The human right to an adequate standard of living, which includes the rights to adequate housing is essential for human survival with dignity. Without a right to housing, many other basic human rights will be compromised, including the right to health, family life and privacy, the right to freedom of movement, the right to assembly and association, and the right to development. With the implementation of the AfCFTA, it is anticipated that access to adequate housing will be augmented through affordable and faster cross border trade in construction materials. Liberalization of trade in States is likely to increase foreign investment including real estate development. This investment opportunity will alleviate shortage of and access to adequate housing especially in urban areas.

Despite this positive indication, it is highly doubtful that implementation of AfCFTA will fully address the housing challenges especially in rural Africa. This is because most building materials are sourced locally. In that regard, cross border trade may not have any significant impact on rural housing. Increased movement of people across the continent because of the implementation of the AfCFTA may lead to congestion in urban areas or commercially productive areas due to the high number of people looking for job opportunities. This may result in the development of informal settlements, slums or shanties thus reversing the gains made by the Agreement in improving access to housing.

Free trade and the coming in of diverse foreign investors and corporates can further result in forced evictions of rural communities to pave way for commercial projects especially in the extractives industry. Local authorities can also approve change of use of residential land to commercial land which brings in more revenue, causing shortage of residential land and generally pushing up the prices. For the implementation of AfCFTA to succeed in a HRBA, NHRIs and other human rights groups must ensure that communities enjoy freedom from arbitrary evictions and the right to compensation for developments on land in case of evictions. Additionally, commercial objectives must be balanced against peoples' rights.

k. Overall recommendations to human rights groups and NANHRI

- (1) Advocating for the meaningful involvement of human rights actors at State and regional levels in informing additional instruments, within the scope of the Agreement, and future revisions and amendment processes related to the Agreement
- (2) Creating opportunities for training of commissioners and staff of human rights actors on regional and international trade in general and AfCFTA processes. This will help build internal capacity of African human rights actors staff before they can trickle it down and raise stakeholder and public awareness on the AfCFTA
- (3) Creating opportunities for human rights actors to interact with regional actors and mechanisms with a view to form partnerships on work around understanding and monitoring human rights and trade in the context of AfCFTA



- (4) Supporting national human rights actors to integrate AfCFTA in their work through informing their strategy sessions. This may include proposing considerations for human rights actors to establish relevant positions within their structures to recruit experts on trade policies, and regulations governing transnational business and commercial practices
- (5) Continuing to advocate that – States adequately resource NHRIs, so that they have the funding, staffing, infrastructure, and institutional capacity to perform their functions and discharge their responsibilities with regards to the Agreement
- (6) Publicize information which includes opinions, recommendations, proposals, and reports, as well as any prerogative of the human rights actors in cases where States (governments) have dealt with matters concerning the protection and promotion of human rights in trade practice
- (7) Contribute to the reports which AU Member States are required to submit under their obligations to the Agreement and, where necessary, to express an opinion on trade matters in relation to human rights. Articles 11 and 12 that create mandates of the Council of Ministers and Committee of Senior Trade Officials regarding the implementation of the AfCFTA processes should be utilized to advise AU Member States to incorporate human rights considerations in trade laws, policies, and procedures and in negotiating State-investor contracts.
- (8) Facilitate training of officials in different government offices or departments on HRBA for incorporation in AfCFTA negotiations.
- (9) Support government ministries to ensure periodic monitoring of the operations of businesses conducting trade pursuant to the Agreement. This can also be achieved through compulsory mainstreaming of human rights or adoption of an action plan for business and human rights in terms of the UN Guiding Principles on Business and Human Rights.

7) Data collection tool

To guide human rights actors on how to undertake a human rights audit/assessment to support mainstreaming of human rights in AfCFTA processes within their respective jurisdictions, the country specific tool contained in this section is offered to support users. Human rights actors can collect and disseminate appropriate information to enable the formulation and implementation of human rights-compliant legislative, and administrative provisions and practice. Such data should be disaggregated by age, sex, race and ethnicity, sexual orientation where applicable.

Variable	Illustration and evidence	Compliance/noncompliance with human rights standards and principles
Has the country ratified AfCFTA?		
How is the country mainstreaming human rights in implementing the AfCFTA?		
Equality and non-discrimination.		
Has the country ratified the AU Free Movement Protocol?		

Does the country allow for free movement of labour as a part of AfCFTA compliance?		
Does the country have policy frameworks to protect women, children from sexual exploitation and human trafficking emerging from regional trade?		
Are male and female and foreign traders treated equally?		
Are there mechanisms to support families of immigrants working under AfCFTA integrate into the local communities?		
Is there equal treatment of businesses and goods traded under AfCFTA?		
Ensuring that businesses comply with human rights		
Do businesses comply with the UN Guidelines for business and human rights?		
Has the country developed an operational framework to enforce the rights of citizens against businesses?		
Have businesses trading under AfCFTA been sensitised on their human rights obligations?		
Protection of health and livelihoods?		
Do workers in businesses trading under AfCFTA have a right to quality occupational health services?		
Has the country operationalised tools to prevent businesses from disrupting livelihoods?		



Do the businesses trading under AfCFTA in the extractive sector engage in practices that degrade the environment (including disrupting quality and accessible water sources?)		
Is there a redress mechanism for affected communities and individuals?		
Are there regulatory instruments to protect communities and community resources from exploitation by businesses trading under AfCFTA?		
Enhance good governance and accountability		
Are there structures for reporting corruption institutions that oversee the implementation of AfCFTA?		
Does the country experience civil unrest and has such unrest affected trade under AfCFTA?		
Are the regulatory regimes related to implementation of AfCFTA complied with by the citizens and the state?		







The Network of African National
Human Rights Institutions

3rd Floor, CVS Plaza, Lenana Road
P.O Box 76155-00508
Nairobi – Kenya

www.nanhri.org

info@nanhri.org

Twitter: @nanhri40

FB: Network of African National Human Rights Institutions