

**THE IMPACT OF THE AFRICAN CONTINENTAL FREE TRADE AREA
ON REALIZATION OF SOCIO-ECONOMIC AND CIVIL RIGHTS IN
AFRICA**

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Brief bio of Prof. Eusebio Wanyama

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Previously served as the state Attorney for the Republic of Kenya state Law Office for Ten years.

Prof is a distinguished international jurist with expertise in public interest litigation constitutional interpretation drafting investigation prosecution defense technical writing dispute resolution mechanisms legal policy research and analysis advanced research methods in law teaching and training methodologies in higher education , human rights based approaches.

He has researched, written and published on issues of constitutional making and transformations in Africa commonly violated rights in Africa ethnicity and conflict in Africa entrenching the rule of law in Sub Saharan Africa among other many topics.

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Abstract

Africa has ushered in a new dawn for trade, growth and prosperity with the African continental Free trade which is set to be the worlds, largest free trade area connecting over a billion people across 54 countries. This is a long overdue action plan for Africa born from a dream of a united and economically sound Africa that could see not only a common market but an economic and monetary union much like the European Union by the year 2030.

The AFCFTA aims to make Africa a power house through trade within the continent and with other third parties. This will eliminate tariffs for intra Africa trade, increase exports, create jobs, improve wages. Promote free movement of people, goods, services, labour, reduce poverty levels and intellectual property protection. However, amidst all the excitement and potential of the FTA, what will this mean for human rights and trade within the continent ? does the agreement adequately provide for human rights protection and promotion?

The objective of this paper is to examine some of these questions and dilemmas. Analyses the agreement and sees where it lacks in human rights protection. Also considers what steps and lessons the AFCFTA can learn towards the goals of agenda 2030, 2063 and possible recommendations to enhance enforcement

Key Words/ operational Definitional Terms

The following terms used in this paper have the meanings;

“Dispute Resolution” means the process that two or more parties undergo to resolve any disagreements between them

“First second and Third Generation Rights”, means the classification of human rights into three distinct groups but none being more important than the others

“Free Trade Area Agreement” means a trade blocks whose member countries have signed a trade agreement. Such agreements entail collaboration between at least two countries in order to lower trade obstacles, import quotas and tariffs as well as boost cross border trade of goods and services

“Human Rights”, means rights and freedoms that are entitled to each and every one person from birth by virtue of being human.

“Regional Integration”, means the process by which two or more states in a geographical region agree to cooperate and work closely together in order to promote peace, stability, wealth and which is usually governed by a written agreement outlining areas of collaboration

“Trade” means the economic activity of purchasing, selling, exchanging products or services between people, businesses or countries.

1.0 Introduction

What is a Free Trade Area? Refer to agreements between two or more countries relating the facilitation of trade as well as elimination of barriers to trade. Agreements establishing FTAs set out obligations that member states will be bound by, such as obligations affecting trade of goods, services and intellectual property rights of member states as well as investor protection. Other benefits of free trade areas include improved standards of goods and fair treatment between state parties.

FTAs may eliminate these tariffs over an agreed period of time and help to foster the creation of open markets and competitive market places by allowing states to invest across borders.

1.2 Types of regional agreements

Trade agreements are region specific. Conditions of FTAs are dependent on regions or the countries in any or from a particular region. These agreements are in the form of treaties between the member states to encourage free movement of people, goods and services across borders.

States agree on rules that they will stand by as part of the agreement and these rules also specify the relationship with other countries outside of the trade area. For example Africa has several regional agreements such as SADC, EAC, and ECOWAS. There are several types of regional agreements. Other than the aforementioned and defined free trade area these are; common markets, preferential trade area, economic union, customs union.

1.3 The African Continental Free Trade Area Agreement (AFCFTA) and Nexus of Human Rights

The agreement establishing the FTA recognizes the importance of human rights in the development international trade and economic cooperation. It also affirms the rights of states to regulate their territories and the flexibility to achieve legitimate policy objectives in the areas

including public health, safety, environment, publicmorals, promotion and protection of cultural diversity.

Article 3(c) (e) (g) further supports this commitment but the agreement itself remains vague on how to achieve and protect these fundamental rights. The agreement is lacking in harmonization of all generations of human rights as they may pertain to FTAs.

Frurthermore, the agreement does not explicitly outline the duties expected of state parties in neither the preamble nor the articles mentioned herein

It is a well-known fact that majority of African states have set limits through domestic legislation on the justiciability of second generation rights. Simply put no one can take the state to court for its failure to effectively provide an environment where its citizens can fully enjoy the realization of these rights. Unlike states like South Africa, most states need to get over this hurdle first prior to battling with the implementation of the new regional instrument on trade

Opening up borders for trade provides numerous opportunities but challenges need not to be underestimated

The agreement while mentioning the importance of human rights and their protection does not provide for its dispute board to hear disputes that may arise out of human rights violations within the context of FTA. Agreement does away with these kinds of disputes and remains silent on what recourse may be taken for trade related human rights abuses and violations.

In its current form, the agreement has weak protection of human rights and even weaker monitoring system which may prove hard to implement for example, a sanction article is missing in the document. This creates a problem where the agreement may not satisfactorily protect the rights of the African community.

Gap between human rights protection in the agreement is therefore evident.

1.4 Human Rights and International Trade

For many people human rights are seen mainly as a social issue that is why the divide between human rights and trade is wide.However there is an interrelation between trade and human rights. Peterman one of the most prominent advocates for linkage between trade and human rights writes that; human rights and liberal trade rules including WTO rules are based on the same values; individual freedom and responsibility; nondiscrimination; rule of law; access to

courts and adjudication of disputes; promotion of social welfare through peaceful cooperation among free citizens; parliamentary approval of national and international rules.

1.5 Lessons from European Union

Human rights and trade in EU policy

EU is known as an ardent supporter and promoter of human rights. Human rights concerns underpin every internal and external EU policy, including external assistance, development cooperation and trade. Special attention is paid to the rights of women, children and the protection of human rights defenders.

The treaty of European Union is explicit in its human rights provisions where the AFCFTA fails. It has accompanying protocols and charters, member states and their citizens are guaranteed legally human rights protection even as they trade with each other and within EU.

AFCFTA has same aspirations as EU which is to promote intra trade in Africa, boost international trade with third parties, eliminate tariffs and barriers to trade, promote and respect the rule of law, humanrights, gender equality and solidarity for the people of Africa, free movement of people ,goods and services.

EU has almost achieved all of these but it has been a long journey that can be traced to 71 years from 1950 to get to this current stage. Single market itself has been in existence for 30 years

Therefore it is important that key players in AFCFTA functionality understand that it will take Africa some time to reach the preferred level of integration but not to stray from this path

1.6 Recommendations

1 Amendment

The AFCFTA is work in progress, amendments are big part of agreements, treaties, and statutes should provide for human rights provisions and dispute resolution

2 Harmonization of Laws

It would be pertinent for countries that are party to the AFCFTA to harmonize laws. Harmonization of laws usage of something similar to the EU Charter of Fundamental

Rights could help solve this problem for a number of states and help further in dispute resolution of human rights violations in implementation processes both at national and continental level.

3 Human Rights Protection

Best way human rights can be protected under AFCFTA will be through harmonization as highlighted above. Human rights are at the core of all human activity and it is a source of worry that the FT in Africa seems nonchalant about human rights especially on the continent rife with human rights violations. If the end game is to have a single market, a lot needs to be done in regards to having human rights at the fore front of all trade activity

Much like the EU started with a trade agreement between German and France later came to win a Nobel Peace Prize for upholding and protection of human rights within EU single market and worldwide.

This can only be possible where African member states undergoing this integration accept the importance of human rights standards in the protection of their own people and all the people of Africa.

When this is done, even enforcement of human rights becomes easy, where human rights thrive economies also thrive and so does the well-being and dignity of the people.

1.7 Conclusion

The Purpose of this paper was to determine efficacy of the AFCFTA regarding human rights protection promotion and realization where this was examined the question was then if human rights could be realized and play a critical part to benefit people on the continent.

Negotiations for the agreement could have been a good place for member states key stake holders and experts to draw up an agreement that was all encompassing but it lacks in standard human rights provisions save for some vague provisions

Agreement is the first step in Africa to achieving regional integration a kin to EU single market as was seen in the 2034 vision to have a united common African market.

On paper the agreement presents a ground breaking opportunity for Africa which has the potential to have far reaching positive consequences as far as economic prosperity and better standard of living for the people.

The agreement will do well to adopt an additional protocol dealing with human rights within the FTA much like EU has done.

References

Agreement establishing the African Continental Free Trade Area Art 3(c) Art 5 (1)

Oasis D. Akinkugbe, what the African Continental Free Trade Agreement Protocol on Dispute Settlement says about the Culture of African States to dispute Resolution (2019)

In Anton Bose and Joseph Disco (eds), Human Rights in Africa; Legal perspectives on their protection and promotion (Macmillan Education Namibia (2009)

Consolidated Version of the Treaty on Functioning of the European Union (2012) C 326 Art .3

Consolidated Version of the Treaty on European Union (2016) OJ c 202/1 Art 6 c 19

Abdulrahman and Abraham. M. Peter, Comparative Analysis of African Union (AU) and European Union (EU); Challenges and Prospects (VOL.3 No.1 June 2016)

John C. Mubangizi , The Constitutional Protection of Socio-Economic Rights in selected African Countries; A Comparative Evaluation (2006) African Journal of Legal Studies

The Constitution of the Republic of South Africa, No108 of 1996, Chapter 2 s 23 s24 s25