

International Economic Law in an Era of Multiple Crises: Opportunities and Challenges for Africa in the wake of AfCFTA

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ABSTRACT

Free trade agreements have been known to have numerous benefits, especially from an economic point of view. However, it has been argued that for them to be deemed successful, they ought to address challenges within the socioeconomic and by extension political environment, among others. The Africa Continental Free Trade Area (AfCFTA) was launched in 2018 and ratified in 2019. Regrettably, the AfCFTA arrived at a time when Africa was economically and politically unstable amid covid-19 prevalence; with conflict and economic insecurity have exacerbated the lack of development in the continent. The challenges for growth and opportunities on the continent come in many forms; but for the limitations of this paper on covid-19 and child's rights as among the crisis facing AfCFTA within international economic law perspectives viz-a-viz the objectives of the AfCFTA to its future perspectives to respond to these different challenges. AfCFTA will create a single market for goods, services and movement of persons within the continent. The AfCFTA Agreement adds to the adoption in 2016 of a Pan-African Investment Code (PAIC) – the first continent-wide model investment agreement whose objective is to foster coherence and consistency regarding the rules and principles that govern investment protection, promotion and facilitation in Africa. This cross-border trade will grow as the continent reaps the benefits of closer regional cooperation. These increased cross-border trades could exacerbate ongoing challenges like child marriage, commercial sexual exploitation of children (CSEC), and child trafficking. Also, increased trade and the associated expansion of economic opportunities could push children out of school and into further engagement in child labour within an environment of poorly enforced child labour laws. The descriptive and analytical frameworks adopted for this paper consider pathways through which the AfCFTA had faced its challenges and opportunities abound. The descriptive approach was adopted in the covid-19 effects on AfCFTA while the analytical approach reviews the enforcement of domestic policies as well as international standards in determining the protection of girls, young women and children in AfCFTA trade activities participation. The findings observed that due to limited child-care opportunities, some young women have to go to work with their children who are in turn (especially young girls) exposed to exploitation and sexual overtones. There is no uniform or strict enforcement of legislations regarding travelling with children across borders, and this can increase the threat of child trafficking as it is not easy to establish the parents of the child due to the absence of easily verifiable official documentation, except for Rwanda with strictly enforced legislations regarding travelling with children across the border. Despite these issues, the paper concludes that AfCFTA remains a significant and enhanced frameworks for deepening intra-African trade relations and maintaining political stabilities within the continent. It does show how African states navigated the covid-19 crisis and the opportunities of addressing child's rights in the hope of contributing to the success of the AfCFTA. Finally, the paper asserts that Africa is ready for a free trade agreement by employing a qualitative research approach and reviewing current literature.

Keywords: AfCFTA Agreement; Africa Continental Free Trade Area; Africa Continental Free Trade Agreement; AfCFTA Challenges; AfCFTA Opportunities

INTRODUCTION

International economic law is an increasingly seminal field of international law that involves the regulation and conduct of states, international organizations, and private firms operating in the international economic arena. It is a field of international law that encompasses the conduct of sovereign states and international organizations in international economic relations and the conduct of private parties involved in cross-border economic and business transactions[3]. It is an interdisciplinary field encompassing both public and private international law encompassing the fields of international trade law, international financial law, traditional private international law fields, regional economic, international development law, international commercial arbitration, international intellectual property law, and international business regulation.

The 18th Ordinary Session of the Assembly of Heads of State and Government of the African Union, held in Addis Ababa, Ethiopia in January 2012, adopted a decision to establish a Continental Free Trade Area by an indicative date of 2017. This deadline was, however, not met. The Summit also endorsed the Action Plan on Boosting Intra-Africa Trade (BIAT) which identifies seven priority action clusters: trade policy, trade facilitation, productive capacity, trade related infrastructure, trade finance, trade information, and factor market integration.[4] African leaders held an Extraordinary Summit on the African Continental Free Trade Area (AfCFTA) from 17-21 March 2018 in Kigali, Rwanda, during which the Agreement establishing the AfCFTA was presented for signature, along with the Kigali Declaration and the Protocol to the Treaty Establishing the African Economic Community relating to the Free Movement of Persons, Right to Residence and Right to Establishment. On that occasion, 44 out of the 55 AU member states signed the consolidated text of the AfCFTA Agreement, 47 signed the Kigali Declaration, and 30 signed the Protocol on Free Movement. To date, only Eritrea has yet to sign the consolidated text of the AfCFTA Agreement.[5]

The evolution of AfCFTA can be traced to the creation of the Organisation of African Unity (OAU) on May 25, 1963, in Addis Ababa, Ethiopia, to fight against excessive Balkanization of the continent. This was followed by the creation of the East African Community by Kenya, Uganda and Tanzania in 1967. These initial steps were followed by the creation of more regional organisations from 1970 onwards, such as the Permanent Inter-State Committee for Drought Control in the Sahel (CILSS), the Mano River Union (MRU), the Customs Union of Central African States (UDAC), and the African and Malagasy Union (AMU), all in 1973. From 1975, a number of other regional bodies saw the light of day, such as ECOWAS, SADC, COMESA aimed at creating larger, more viable economies and markets.[6]

The third step involved the transformation of the Organisation for African Unity (OAU) into the African Union (AU), in 2000, at Durban, South Africa. This evolution, although considered utopian in certain international circles, became necessary as the OAU had become increasingly redundant given its principal goal had been the decolonization of the Continent, which was achieved with the independence of Namibia in 1990, the end of apartheid in South Africa in 1991, and the pathway to autonomy for South Sudan in 2011. The fourth initiative was the creation of the New Partnership for Africa's Development (NEPAD) in July 2001 in Lusaka, Zambia. In spite of a tentative start, this project – a fusion of the Millennium Partnership for African Recovery (MAP) and Project Omega – benefitted from the special interest shown by many big powers, being given a platform in Canada in June 2002 and becoming the subject of many global publications. However, despite the enthusiasm, NEPAD has been unable to achieve its objectives, thanks to the financial crisis of 2008-2009 which brought down banks around the world and made it very hard to mobilise the money needed to get NEPAD's activities underway. NEPAD[7] is now the African Union's Development Agency (AUDA), its creation having been approved in July 2018 at the AU summit in Nouakchott, Mauritania. This decision was adopted at the January 2019 Summit in Addis Ababa, Ethiopia, with a new set of objectives which centered on:

1. Human capital development (skills, youth, employment and empowerment of women)
2. Industrialisation, Science, Technology & Innovation
3. Regional Integration

4. Trade and infrastructure (energy, water, ICT, and transport)
5. Governance of natural resources
6. Food security

The creation of the African Continental Free Trade Area (AfCFTA), which was finalised in Kigali, Rwanda, on March 21, 2019, by African Heads of State is part of the several initiatives noted above. The contribution made by this paper will take into account among others, those challenges and opportunities amid multiple risks involving AfCFTA and integration and free trade, as they represent the drivers and challenges of Africa today. Among these drivers, include increasing digitalisation of societies and economies; the link between global warming and a set of new risks (emerging diseases, such as Covid-19); emerging tensions between USA and China as a new element in global structures; the unclear role of new and emerging powers in global governance, stability, and conditions for global peace; and the structural challenges facing Africa in affirming its place in global geopolitics, in the light of current narratives referring to it as the ‘new frontier’, a peripheral player, and its dependence on others.

The 2019[8] report states that the level of integration even at the heart of the Regional Economic Blocks (RECs) as with the rest of the continent remains weak compared to the 2016 results with an average score of 0.327 out of 1. This weak result is further impacted by the Coronavirus, in spite of the creation of the African Continental Free Trade Area (AfCFTA). As such, the AfCFTA Agreement builds on a long-standing tradition among African States ‘of using regional integration as a norm of solidarity and as a defensive response to Africa’s marginalisation in the global trading system.’[9] The AfCFTA Agreement and its dispute settlement mechanism are expected to usher in new institutional mechanisms for intra-African relations premised on a rules-based regime.[10] Notwithstanding the fact that African States have little to no record of using the World Trade Organization’s (WTO) dispute settlement regime due to their preference for an informal dispute settlement mechanism,[11] it is interesting to see that the Member States of the AfCFTA remain committed to a formalised regime. While the AfCFTA Agreement was concluded amidst resounding optimism among the majority of African States,[12] a bouquet of developments in the international arena provides an additional impetus and underscores the significance of the AfCFTA. These developments include but are not limited to challenges in the multilateral trading system epitomised by the WTO appellate body’s crisis and the fracture in the European Union’s (EU) in the form of Brexit; the African Union (AU) adoption of a common position for negotiations of a new cooperation agreement with the EU post-2020; and the United States’ consideration to mature its trade relations with Africa upon the expiration of the African Growth and Opportunity Act (AGOA) waiver in 2025,[13] and China’s new cooperation strategy with Africa through free trade agreements like the one concluded with Mauritius in October 2019 and of course the Covid-19 pandemic.

Taking into account these drivers, our focus will be structured along the following areas:

1. Examining AfCFTA and its future in addressing Africa and African crisis;
2. An assessment of how Covid-19 is affecting integration efforts, especially for AfCFTA; and
3. Evaluation of AfCFTA activities along possible crisis with existing child’s right laws; among others

These three issues are important to examine given the world’s poor image of Africa. The global view of Africa is troubled, catastrophic even (protracted conflicts, endemic diseases, weak economic performance, and a consequent state of extreme poverty). This lacklustre situation is further threatened by Africa’s borders being in flux, among nation-states which are a product of colonisation, exemplified by Ethiopia, Somalia, and Democratic Republic of Congo (DRC). These countries offer us a preview of the risks for other African countries if no action is taken to address socio-political crises, contain the spread of endemic diseases, and halt the development of mafia networks around mining, child’s labour and the arms trade. The broad objective of the study is to build evidence to inform advocacy for actions by African countries on the AfCFTA successes or otherwise with covid-19 and its potential implications for the protection of child’s

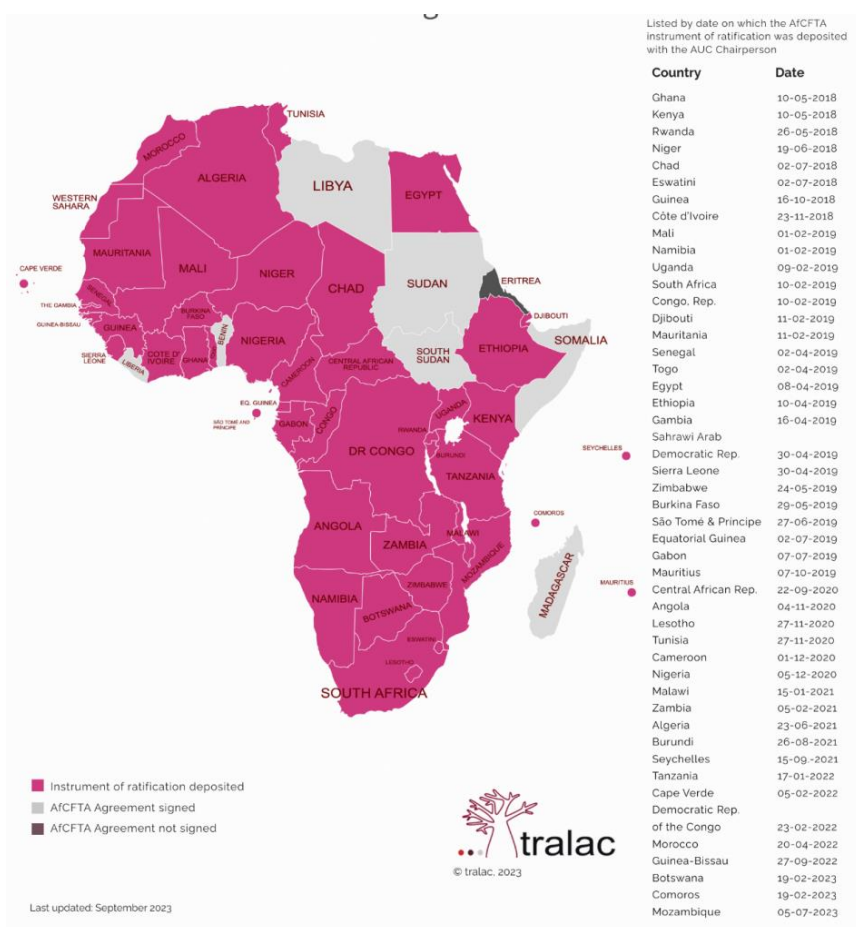
rights on the continent.

LITERATURE REVIEW

• AfCFTA in Review

The AfCFTA[14] was agreed in March 2019 in Kigali, Rwanda and brings together 55 African states, of which 36 have already ratified the treaty for its creation. The AfCFTA was expected to start work in July 2020. However, due to Coronavirus, it did not begin operations until the start of 2021. Its Secretariat is based in Accra, Ghana. The AfCFTA is the world's largest free trade area[15], having a market reach of 1.4 billion consumers, making it the world's largest free trade area[16].

Figure 1: The African Continental Free Trade Area (AfCFTA)



Source: Tralac (2023)

The main objective of the AfCFTA[17] is to create a single market for goods and services, facilitated by movement of persons, in order to deepen the economic integration of the African continent. More specifically, the State Parties shall progressively eliminate tariffs and non-tariff barriers, progressively liberalise trade in services, cooperate on investment, intellectual property rights and competition policy, cooperate on all trade-related areas, cooperate on customs matters and the implementation of trade facilitation measures, establish a mechanism for the settlement of disputes concerning their rights and obligations, and establish and maintain an institutional framework for the implementation and administration of the AfCFTA.

Most of the literature on AfCFTA, particularly from the World Bank, the African Development Bank, the Economic Commission for Africa, and the African Union[18] congratulate the setting up of the initiative

and have positive opinions about its future. All the institutions affirm that AfCFTA will have many positive impacts on the Continent's development, of which the following are key priorities:

1. increased economic growth;
2. increase in general income and a reduction in poverty;
3. a boom in African trade;
4. growth in productive sectors and manufacturing;
5. more effective functioning of the RECs due to better harmonisation of their activities.

The improvement in growth, according to the World Bank[19], will be based on the increase in incomes and salaries and a reduction in poverty induced by the impacts of such a zone on production and trade. Regarding the revenues, the Bank estimates that AfCFTA could increase regional income by 7% or USD 450 million per year from now until 2035. This increase will be mainly due to the lifting of non-tariff barriers such as quotas, rules of origin, and also the measures on facilitation of trade, such as reduction of administrative formalities or the simplification of customs processes. For countries and sectors, the gains in revenues are likely to vary. Ivory Coast leads with an expected gain of 13%, followed by Zimbabwe (12%), Kenya, Namibia, DRC, and Tanzania, with gains of more than 10%. The revenue gains would benefit almost all African countries. For example, Burkina-Faso will gain around 7.5%, Ghana 5.7%, and Nigeria 4.2%. However, there are certain countries where the predicted gains will not be more than 2%, such as in the case of Madagascar, Malawi, and Mozambique. While increasing revenues, AfCFTA will also lift an expected 67.9 million out of poverty with at least USD 5.5 as income per day thanks to an improvement in the performance of the productive sector which would positively impact household incomes. Extreme poverty is predicted to fall by 12.2 million persons in West Africa, 9.1 million persons in Central Africa, 4.8 million persons in East Africa, and 3.9 persons in Southern Africa. The countries which are expected to be the biggest beneficiaries of a reduction in poverty would be in West Africa: Guinea-Bissau (12.2%), Togo (7.2%), Mali (7.6%), Sierra Leone (7.2%), Liberia (5.7%), and Nigeria (5.4%).

In terms of the number of people expected to benefit from this reduction in poverty, Ethiopia leads with 8.2 million inhabitants, followed by Nigeria with 7 million inhabitants, Tanzania with 6.3 million inhabitants, Democratic Republic of Congo with 4.8 million inhabitants, Kenya with 4.4 million inhabitants, and Niger with 4.2 million inhabitants.

AfCFTA's third impact will be on African trade which would be considerably stimulated, particularly the manufacturing sector. Between setting up in 2021 and 2035, intra-African trade is expected to rise from 16% to 21%. Export volumes will increase by nearly 29%, with intra-continental exports climbing to a whopping 81% even though exports to non-African countries will not increase more than 19%. Cameroon, Egypt, Ghana, Morocco, and Tunisia are expected to profit from the big increase in intraregional exports due to the dynamic nature of their SME sectors. AfCFTA is expected to impact the production sector, especially manufacturing activities, with a 62% rise in exports anticipated, of which 110% would be within the continent and only 46% with the rest of the world.[20] These trends are related to the reallocation of resources between different sectors. From now until 2035, the continent's total production will surpass USD 212 billion. The processing sector is expected to see more than 2% annual growth even if this increase will not be more than 0.50% in agricultural production. From now until 2035, agricultural production exports such as cocoa, cotton, tea, coffee, banana, etc, will fall by up to USD 8 billion per year.

However, it is on the functioning of the Regional Economic Blocks (RECs) that AfCFTA is expected to have most impact[21]. It would bring about better organisation and a recentring of their objectives.

Overcoming similarities, common characteristics, including membership overlaps, RECs will be required to cooperate together and harmonise their programmes. Regarding this, COMESA, EAC and SADC have already been asked to form a tripartite framework for cooperation which ensure their policies and programme activities are brought together. Over time, this cooperation is expected to result in a fusion

between the different bodies, with the goal of accelerating the realisation of a single African economic community.

The creation of a unified market in Africa presents enormous challenges, not only because of the scale of the Continent, but also due to the prevalent context there: heterogeneity of RECs, strong balkanisation, the shifting global dynamics with new threats (terrorism and insecurity, new pandemics, climate risks, etc.) and new opportunities (the rise of the digital economy has led to the emergence of new actors with influence far beyond their own countries).

While speaking about AfCFTA's advantages, one cannot ignore the persistent structural developmental challenges of African countries such as balkanisation. Africa, as a continent, has the highest number of countries (55 in total), the populations and budgets of half these countries do not match even certain administrative regions of the OECD, leaving much room for improvement. At the same time, the lifting of tariff and non-tariff barriers, harmonisation of customs policies, and the removal of entry visa requirements to facilitate movement of persons and goods represent enormous potential advantages. These measures aim to change borders from being obstacles to facilitators of growth, with the people who are currently cut off by these border restrictions expected to be the first such beneficiaries. AfCFTA's creation is a major step towards achieving the AU's programme of promoting 'border countries', which are expected to become major pathways to continental integration. This move also confers a cultural role upon AfCFTA – a dimension without which trade cannot prosper. Indeed, consumer choices are driven by cultures and ways of life, from clothes to food to activities. The 'border countries', thus, will help bring together the people of a divided Africa, bruised by harsh border restrictions and colonisation. Another advantage that AfCFTA offers is that of the opportunity to create a unique market around the enormous potential of natural resources as common assets for the Continent. This requires rational use of the resources, and refusal to give in to the exploitation currently practised by certain foreign countries in Africa. Therefore, it appears quite urgent for Africa to formulate a rational, responsible and sustainable plan for use of these resources in order to move away from current practices which mirror colonial exploitation, which, in turn, raise the question of a growth model formulated for and by Africa itself and which steps away from imitating growth models from the West. However, it should be noted that, there cannot be a single market if the different actors can not communicate with each other, leading to the role of AfCFTA in promoting the major African languages. Swahili, for instance, was born from trade relations between East Africa, the Great Lakes region, the Sultanate of Oman and the Indian Ocean between the 17th and the 19th centuries. AfCFTA could also turn out to be an asset in managing the migration flows from Africa to the global North, which has become a serious issue of brain drain and loss of life in the Mediterranean Sea in the recent years. If AfCFTA were to favour free movement of persons across the Continent, this could support establishment of development hubs in pilot countries such as Nigeria, South Africa, Kenya and the Democratic Republic of Congo which would, in turn, serve as hubs for human resources from all over the Continent [22]. However, AfCFTA risks being another positive but disrupted initiative, historically brought down by the different problems in the Continent.

Since the fall of Pharaoh's Egypt, Africa's destiny has never been in its control, even during the building of great empires such as Ghana, Mali, Songhai in West Africa, Kanem Bornu in Lake Chad, Monopatain East Africa or the Zulu Empire in Southern Africa. All these empires were plundered for their resources by foreign powers. This was followed by long periods of slavery across the Atlantic Ocean, Indian Ocean, by colonisation, and then neo-colonialism by multinationals with their subtle games. These together have increased in security through religious antagonisms (jihadism) and weakened democratic systems by mafia networks which have created predatory systems across the Continent today. In the face of such a tragic history, is it right to rejoice in AfCFTA at this stage, which even now is already threatened by the pandemic – a new source of insecurity for peace and development? Can this pandemic have even more devastating consequences than Malaria and AIDS? Current developments echo the adverse impact that the global

financial crises in 2008-2009 had on NEPAD's launch.

Apart from the pandemic, there are also questions around the extreme dependence of certain African economies on customs revenues and the true political will of the leaders towards creating a unified market in the absence of leadership across the Continent. A unified market also requires massive investments, as hoped from NEPAD, to provide basic infrastructure on the Continent. Without connectivity and associated equipment, transport corridors, rail, roads, electricity, and air freight, is it possible to believe in the mirage of a unified African market?

While riding on the optimism shown by everyone about this initiative, it is easy to forget that this could easily become another instrument which renders the continent more fragile, through the subtle games played by foreign multinationals. In this regard, Jacques Berthelot^[23] considers AfCFTA to be suicidal madness, says,

“Far from favouring regional integration in the Continent, this cannot but disintegrate the Continent further by opening the doors wider for multinational firms who are already widely present in the majority of the countries and who will concentrate their efforts in the most competitive countries and export to ward so their countries. We can already underline the near geopolitical impossibility of establishing common rules across this massive Continent which had 1.2 billion inhabitants in 2016 and is expected to have 2.5 billion in 2050, with differing political regimes, very weak transport infrastructure, with GDP percapita in 2015 ranging from USD 276 in Burundi to USD 15476 in Seychelles, USD 911 in Senegal, USD 1377 in Kenya, USD 1381 in Ghana, USD 1399 in Ivory Coast, USD 2460 in Nigeria, USD 3615 in Egypt, USD 3783 in Tunisia, and USD 5691 in South Africa. Instead of taking a leap forward based on unregulated free trade, reason demands we begin by reinforcing each REC for at least 20 years before expanding free trade to more RECs and then across the Continent. As Sheikh Tidiane Dieye, ENDACACID Director remarks, “frequently it’s the countries themselves which refuse to apply the decisions which they have freely signed-up to.”

• COVID-19 effects on AfCFTA

While the coronavirus pandemic continues to ravage the world, Africa appears to be less affected. Nevertheless, they have been preparing for the worst with the second wave and the emergence of new strains of virus in South Africa. Apart from South Africa and Nigeria, lock downs have not been used elsewhere as the main solution, with a focus on other measures such as restricting both short and long-distance movement, prohibition of large religious gatherings, making it a norm to wear masks, etc. Nevertheless, the scale of impact which this disease is having is felt most of all by the main economic activities such as trade, basic production systems, and the growing scarcity of investment, of all sorts, due to short-term uncertainties. The pandemic's impact has hit regional integration and AfCFTA too, due to the lock downs and movement restrictions. New waves of the pandemic will further worsen these strictions on movement of persons and goods. Indeed, without the free movement of persons and goods, regional integration will not work well and AfCFTA's beginnings are at risk of being compromised. Originally planned for July 2020, AfCFTA's activities finally kicked off on January 1st 2021, and many uncertainties remain on the horizon. For further analysis of the consequences of the coronavirus on continental concerns, we focus here on:

1. the effects of Covid-19 in Africa;
2. its impact on society and economy;
3. lock downs as an obstacle to integration objectives and AfCFTA;
4. and finally, the paradigm shift that the pandemic has brought for Africa, not just with respect to integration but also regarding its global positioning.

Africa is the continent least affected by the pandemic. As of June 12, 2020, Africa had recorded only

155,800 cases and 3,700 deaths across 52 countries. By the end of November 2021, the number of cases had increased greatly to 8,832,000 with around 224,000 deaths among this number. While each death is a tragedy, compared with other parts of the world, given the Continent's population of 1,380,000,000 inhabitants (16.7% of the global total), this tally is very low, coming in at only 3.3% of global cases, and 4.2% of global deaths. The more valuable statistic of deaths per million of the population stand at 162, in comparison with a global tally of 668. The number of COVID-19 cases worldwide is now around 266,775,000 and total deaths stand at 5,279,000.[\[24\]](#)

There exist institutions published reports on the socio-economic impact of covid-19[\[25\]](#): These reports show that Covid-19 has had an enormous impact on the functioning of these structures, and their capacity to promote further regional and continental integration. Such impacts are the consequence of measures taken to limit the spread of the disease; whether through lock downs, travel restrictions, or closure of hospitality and other venues, these have all led to serious costs for society, governance and the economy.

The lock down measures, restrictions on movement of persons between urban and rural areas, and prohibition of travel, despite limiting the spread of the virus, have ruptured relationships between town and countryside, within families, and in terms of visits to places of worship. Prohibition of travel weighs heavily on the circulation of goods, trading systems and cultural activity. The lock down measures have had a particularly harsh impact on the subsistence of informal sector workers and traders, especially in urban areas. In these crowded zones, people are not able to follow the recommended hygiene practices to prevent transmission. In addition to the social consequences, there are also those on education, health, social insecurity and the rupture of social and familial links. Schools, colleges, and universities were closed because of lock downs. Distance education, which was recommended and put into practice in certain countries, often did not work well in rural areas due to lack of electricity, poor telephone and internet systems, and lack of qualified teachers able to work in this way. In the health sector, the emergence of Covid-19 revealed the limitations of the health infrastructure and poor training of health workers to address this emergency. Covid-19 provoked social insecurity in many forms, particularly food insecurity and the rupture of social and family links. Food insecurity is a result of the low agricultural productivity, the closure of markets, increasing prices for staple foods while household incomes have fallen. At the same time, many street-food outlets and snack-sellers had to shut. The damage to social and familial links has mainly been due to the breakdown in patterns of dependence and exchange between neighbours for food and household services, such as the support daughters giving to ageing parents.

Coronavirus has wreaked the most havoc on Africa's economy, with falling growth, rising inflation, decrease in household incomes, growing budget deficits, a fall in internal and external trade, declining migrant revenues, a collapse in foreign investment, etc.. All countries hit by the pandemic saw a fall in their economic growth, Inflation increased due both to the uncertainty in supply, and by some traders who increased prices in order to capture a bigger margin. In some regions, inflation is quite serious, such as in ECOWAS where it has risen from 9.9% to 12%, with some countries experiencing really high rates, such as Liberia with 20.5%, Nigeria 13.5%, the Gambia, Ghana, and Guinea where inflation went up from 6.5% in 2019 to more than 10% in 2020. By contrast, countries in the WAEMU zone have seen much lower levels of inflation at an average of 3%.

The decrease in incomes is mainly due to the lock down measures which had a devastating impact on the subsistence earnings of workers, especially those in the informal sector who make up 60% of employment in most African countries. Traders and shopkeepers, particularly in urban zones, also had significant falls in revenues due to the low savings and lack of social security nets for their customers. This fall in incomes has been particularly marked in informal settlements. The reduction in investments is a consequence of the slowdown in economic activity around the world. In spite of the debt moratorium for poor countries, especially in Africa, the latter have suffered cruelly from the slowdown in investment, given their increased

financial needs due to the pandemic, particularly the need to relaunch economic activity, and fund new equipment needs in the health sector, including vaccines.

These difficulties in governance create a lack of coherence and efficiency in dealing with crises, such as Covid-19, which has revealed the weaknesses of African institutions. The lack of leadership in the face of the pandemic in certain countries resulted in a delayed and poses big questions about the future. Overall, the different impacts from the pandemic on multiple socio-economic dimensions raise questions about the functions and effectiveness of regional institutions and the goal of continental integration, above all as AfCFTA starts to get underway. The decline in socio-economic conditions has pushed national governments and regional institutions to pursue a range of strategies in response to COVID-19[26], amongst which the most common are:

1. establishing emergency funds for the health sector;
2. creating centres for intensive care;
3. disinfection of markets, shops, and public spaces;
4. ensuring people adhere to social distancing measures;
5. budget revisions due to falling tax receipts such as VAT;
6. support measures for different sectors and businesses, especially those which have suffered most, by setting up special funds using state budgets and aid money;
7. price support measures;
8. food distribution to the poorest and most vulnerable households;
9. financial measures to provide rapid support to SMEs;
10. financial support for informal sector workers, among others

All the strategies put in place by the continent to gain access to vaccines remain hesitant and uncertain, provoking the WHO to raise the alarm about the highly unequal access and use of vaccines as a means to deal with the pandemic. Aside from the urgent need to gain access to Covid-19 vaccines, African countries continue to face difficulties keeping their head above water after many years of limited social and economic development. The road ahead remains long and strewn with many pitfalls.

• The AfCFTA Agreement and Child Rights

Protection of child rights and welfare is enshrined in several global and regional conventions.[27] For example, Article 15 of the ACRWC calls for protection of children from all economic exploitation. On the other hand, Article 13 section (g)[28] calls for the introduction of “minimum age for work and prohibits the employment of children below that age, and prohibits, combats, and punishes all forms of exploitation of children, especially the girl child”. Nonetheless, despite the various child protection provisions in the above treaties, a large proportion of African children are actively involved in child labour.

Girls are generally less likely to engage in child labour; however, child labour rates by gender vary considerably across countries and age groups. Overall, high rates of female child labour may reflect the higher burden of household work among girls in this age group. On the other hand, for children 12-14 and 15-17 years, boys consistently have higher child labour participation rates. However, in two West African countries—namely Sierra Leone and Togo, girls always have higher rates of child labour than boys regardless of age category[29].

Furthermore, the 2019 African Report on the Girls and the Law shows that 23 per cent of all girls in Africa (more than 80 million in total) are out of school while the continent has the highest teenage pregnancy rate in the world.[30] One of the reasons why girls are out of school is their engagement in trade activities, especially when supporting family enterprises. The same report notes that the available child protection national laws in many African countries are gender blind, i.e. fail to consider the unique vulnerabilities

faced by girls. Children actively participate in informal cross border trade. Children are lured by different factors to join cross border trade— these range from the influence of their parents to early exposure to “easy money”. For family businesses, children may be required to run the family enterprise as the parents ferry goods across the border. Child participation in running the family enterprises may expose the child to money, even when unpaid. Beyond the family business, border crossings are characterized by beehive-style activities, including money changers who may display a considerable amount of cash to vulnerable children. Exposure to the border community can serve as a pull factor for children out of school and into trading activities. Once exposed to cross border trade, children are more likely than not to drop out of school. Children exposed to both “easy money” and various routes for conducting cross-border business are unlikely to value the importance of continuing school. Children living in border communities like Jendema in Sierra Leone at the border with Liberia don’t attend school on Fridays because they have to attend the periodic market (Luma), that bring together business people from different West African countries.[\[31\]](#)

Finally, cross-border traders overtime can acquire substantial wealth, including property and cars, despite minimal education. Quick and easy wealth accumulation without skills can serve as a disincentive for children to continue with education. The demand for cheap labour could rise with the implementation of the AfCFTA. Increased trade activities and the inherent profit motive of business could drive the increased recruitment of underage children and in turn increase child labour in many African countries characterised by weak enforcement of child protection laws.

- **Child Marriage:**

There is a high prevalence of child marriages in Africa: Globally, child marriage rates are highest in sub-Saharan Africa, where four in 10 young women are married before the age of 18. This amounts to a staggering 40 per cent of girls marrying before age 18. According to the African Union’s campaign to end child marriage in Africa, 15 out of the 20 countries with the highest rates of child marriages globally are Africa.[\[32\]](#) Adolescent and teenage girls are often forced into marriage arrangements by their parents and families. While some African countries have been able to make significant progress in reducing child marriage, progress on the entire continent has been slow[\[33\]](#).

Child marriages are associated with girl’s school dropout and the low education attainment of women. Apart from violating a girl’s rights, child marriages are also associated with numerous health challenges. Child marriages are associated with 52.4 per cent of girls having children before the age of 18; and children born by young mothers are more likely to die during infancy[\[34\]](#). Furthermore, adolescent mothers suffer poor health outcomes due to the increased risk of intimate partner violence.[\[35\]](#) Another significant impact of child marriage is single motherhood, and this is a regular occurrence in areas near border posts. Increased cross border activities because of the AfCFTA could entice young girls into early sexual relationships with traders and transporters. Early sexual debut often leads to unwanted pregnancies.

A substantial proportion of young girls are getting pregnant prior to attaining the minimum age of marriage and many suffer human rights abuse such as dropping out of school and being exposed to domestic violence. Continental institutions have also addressed child marriages. For example, the African Union launched a Campaign to End Child Marriage in Africa.[\[36\]](#) This campaign works at encouraging all member states to develop strategies to raise awareness of and address the harmful impact of child marriages. The African Region has ratified instruments which view child marriage as a violation against girls’ human rights: Several African human rights instruments condemn child marriage and establish 18 years as the minimum age of marriage[\[37\]](#). Furthermore, reduction of child marriages were also entrenched in the tenets of the Africa Agenda 2063. There are some note worthy practices at the country level. For example, countries like Botswana, Egypt and Gambia have legislation that specifies the minimum age of marriage as 18 years with no exemptions. Furthermore, in 2014, the government of Egypt developed a national strategy to prevent child marriage and promote young people’s sexual and reproductive health and rights. Similarly, the

government of Ethiopia developed a National Strategy on Elimination of Harmful Traditional Practices. In 2019, the federal government came up with a nationally costed roadmap to end child marriage and female genital mutilation (FGM) during 2020–2024. Earlier, in 2013, the government of Zambia launched a three-year national campaign to end child marriage. Zambia has also adopted constitutional prohibitions against marriages for girls under 18. 19 Zimbabwe and Tanzania are also a good example where courts have ruled against unions for children under 18 years of age. These national and regional efforts will pave way for a more child rights friendly AfCFTA upon its full implementation.

- **Likely Impact of the AfCFTA on Child Marriages in the African Region:**

Opening up of trade in the region might lead to a situation where adolescent girls start migrating in search of educational and livelihood opportunities in other countries. According to UNICEF[38], one out of every four migrants from Africa is a child. Child marriages linked to migration necessitate complex relationships among authorities in the countries involved. If receiving countries have signed international commitments to uphold children's and women's rights, then they will be obliged to monitor and enforce appropriate legislation to protect these children within their borders, regardless of their place of origin.

Globally and at the Africa continental level, there is a rich and protective policy framework for the protection of children from sexual abuse and exploitation.[39] Despite the availability of these legislative protections, girls in Africa are in a very precarious environment. Illegal activities performed as part of the cross-border trade, including smuggling, are likely to expose girls and young women to sexual abuse and other forms of abuse. Nonetheless, girls and young women more likely to be exposed to sexual abuse by smugglers. As such, the expansion of trade activities across borders as part of implementing the AfCFTA has the potential to escalate the level of abuse faced by girls and young women through smuggling. Globally children make up over a quarter of detected trafficking victims in the world, However, at least 64 per cent of these children are from SSA[40].

- **The Potential Impacts of AfCFTA on Child Trafficking in Africa:**

The above analysis has demonstrated that trade routes and road transporters within and across State parties are the primary vehicles for child traffickers. Of note is the weak border control systems and the monitoring of road transports—which can potentially fuel child trafficking. Children are trafficked often by people known to their parents and relatives. Increased trade and movement of people as the borders are opened further for business, is likely also to increase child trafficking. To this end, as the countries develop their national strategies for operational isation of the AfCFTA, it is vital that the drivers of child trafficking and the knowledge gained on the key players, are used to put in place measures that can contribute to the reductions in child trafficking. Child trafficking cases are difficult to trace because minors are not responsible for their actions, and there is a thin line between smuggling and trafficking. Trafficking is not always clear as many trafficked people may be recorded as migrants in the country of destination. Opening up of borders may lead to an increase in commercial sexual exploitation of adolescents particularly girls and an increase in child marriages as young girls will be forced to migrate in search of greener pastures in other countries such as South Africa, Angola, Nigeria etc.

METHODOLOGY AND LIMITATIONS

Although, the study was carried out from Lagos, Nigeria; it relied on comprehensive literature review and secondary data analysis relying on both descriptive and analytical research designs. A desk review focusing on available literature on covid-19 and cross-border trade and its effects on children as it relates to AfCFTA was conducted. In particular, we examined how the AfCFTA especially relating to how the negotiations that led to the agreement took into account the relativeness of AfCFTA and local laws of member States among others.[41] The desk review was complemented by secondary data analysis as it relates to the subject matter.

The source of data used in the analysis duly referenced

This study is limited in several respects. From the various crisis faced, facing or likely to be faced by the full implementation of AfCFTA, the paper interests are in covid-19 and child's rights. Furthermore, the study is limited by a shortage of evidence and literature that examines the AfCFTA in respect to the areas of interests since it came into force only in 2019 and its actual implementation in 2021. Nevertheless, the contextual, quantitative, and qualitative information gathered in this study adds to the evidence base on the likely challenges and opportunities abound on the AfCFTA agreement.

CONCLUSION & RECOMMENDATIONS

Until now, attention paid to regional and continental issues has come principally from African leaders themselves, rather than being a concern of the grassroots. Even though civil society organisations have been playing an increasingly important role in how these institutions function, they are usually considered as the "trade union" by the Heads of State, which aim to protect a range of private interests. Due to this, the general African public lacks confidence and trust in these different regional and continental groupings, and most of them are not well-known to the general public.

It appears therefore quite urgent for AfCFTA to change its vision in a radical way to be accepted by all actors of African society. Otherwise, it risks becoming yet another initiative, set up by African nations, without learning any of the lessons from previous experience. A further observation from this study notes the lack of significant continental leadership. This absence of charismatic leaders is in marked contrast to previous leaders. Without informed, charismatic leaders, the AfCFTA will lack the vision and authority to ensure its respect by African and the international community.

There is also the need to review the fundamentals of the African economy, which is currently far too centered on rentier activities, such as mining (South Africa, DRC, Angola, Nigeria, Botswana, etc.), agro-exports (Ivory Coast, Ghana, Kenya, etc.), and services (Rwanda, Morocco, Mauritius). The manufacturing sector, for which AfCFTA is well-positioned, has yet to be built, and it will not happen by magic. To bring this about needs massive investment, new infrastructure, and a change of mindset within Africa's private sector actors, who often turn to immediate income-generating sectors such as banking, insurance, telecommunications, and trade, rather than make the longer-term investments needed to construct an industrial base.

For AfCFTA to compete favourably among the league of regional and continental trade bodies, it is important to note the role of training hubs in the build-up of regional processes. Whether one consider the EU, ASEAN or NAFTA, their foundations have been built on the solid pillars of pilot countries which made significant sacrifices to establish strong regional institutions. Germany's role in EU is well known. ASEAN could never have been the dynamic unified market today without China or Japan. The US played a similar role in NAFTA. In Africa, the free trade zone risks becoming a playground for foreign multinationals if big economies such as Nigeria, South Africa, Egypt, Morocco and Kenya are unable to reinforce the single market with their impressive production capacities. The manufacturing capacities of these countries could really boost the unified market. This will lead to a stronger continental trade body ready to meet future disruptions like the covid-19 or other future continental disruption.

The report card from UNECA, the World Bank and the AfDB [\[42\]](#) clearly highlights the countries capable of carrying AfCFTA to success. South Africa tops this list as the most regionally integrated country with its score of 0.625. South Africa is also the best performer in terms of infrastructure and production, and among the top 4 in trade integration. However, the lack of free movement of persons and its periodic bouts of xenophobia are in direct contrast with the principles of regional integration which are founded on acceptance and tolerance of others. This xenophobia is also a paradox given the very wide support received

by the ANC from across the Continent in its fight against apartheid. Nigeria occupies the second position on this list as an important contributor to the Continent's overall GDP, and its good score in production integration (0.525) despite weak scores in regional integration (0.292). However, with Nigeria recently out of recession, due in part to the continued disruptions caused by the Boko Haram rebels and the Delta populations, the impacts of Covid-19 and consequent closure of its land borders; the country is expected to play its roles in AfCFTA, considering its large, diversified economy. Kenya takes the third position on this list as the second-most integrated country (0.444). Kenya has displayed remarkable results in integration across production, infrastructure, and free movement of persons, and can bring all these advantages into play so it takes on a pivotal role in the single market. Morocco (0.430) and Mauritius (0.424) which take first and second positions in macro-economic integration, and have considerable regional infrastructure, follow Kenya on the list of countries that can help the single market be a success. Morocco already leads the Continent in the banking sector and has geopolitical ambitions in Sub-Saharan Africa which it considers its strategic priority (the Mediterranean region and EU follow); Mauritius also has a considerable financial market and has positioned itself as the Indian Ocean's financial hub. Egypt, as an important part of COMESA, Rwanda, thanks to its performance in free movement of persons, and Ivory Coast with strong growth in West African production, are other important countries for the success of the unified market. These 8 countries should be the pillars on which AfCFTA can build its success and are considered to be the major winners from this initiative due to their potential roles as hubs.

Alongside accelerating efforts to start the operation of the AfCFTA agreement and negotiate future protocols, there is the need for AU State Parties – supported by the AfCFTA Secretariat, Regional Economic Commissions, development partners and civil society – to take the following actions as it relates to the maintenance of a function child's rights system for the continent:

1. Establish an AfCFTA sub-committee on human rights
2. Recognise sexual harassment as a nontariff barrier.
3. Ensure that labour standards are part of future protocols of AfCFTA.
4. Collect gender-dis aggregated data on informal cross border trade
5. Develop an AfCFTA gender policy
6. Develop minimum standards for One Stop Border Posts (OSBPs)
7. Harmonise existing trade agreements with the AfCFTA
8. Harmonise and popularise cross-border trade charters and codes of conducts; and
9. Implement the simplified trade regime

The following are further recommended for promotion and action by AfCFTA and its developmental partners:

1. Fund nationwide birth registration to address child trafficking
2. Ensure a gender balance for border personnel.
3. Establish a system of reporting on the implementation of the trade agreement.
4. Development partners should finance the development e-based platform for monitoring the AfCFTA
5. CSOs should monitor and address child trafficking at border crossings.
6. Girls should use established companies when seeking external employment opportunities.
7. Young women and girls should be encouraged to report incidents of child trafficking and Commercial Sexual Exploitation of Children (CSEC).

AfCFTA appears to be a last chance initiative for Africa, following in the wake of NEPAD. In spite of the high expectations, care must be taken that its ambitions and plans for a single market are not disrupted due to the negative consequences of the coronavirus pandemic, management of labour laws including child's rights; and the incoherence of African leaders as regards their commitments to regional integration. Addressing the multi-facet challenges and exploring the opportunities abound within AfCFTA is sacrosanct,

else, AfCFTA risks becoming yet another instrument which threatens peace and development, such as tensions between the elites, the ruling classes and African people on the one hand, and the resource grabbing by foreign powers for continued exploitation of the Continent, on the other

Finally, whatever form development takes as a result of AfCFTA, it should seek to avoid the accumulation of capital and profits through multinational companies. It should aim for a more equitable form of development which generates returns for everyone, and leaning towards the large number of small and medium enterprises which currently mobilise much of Africa's private sector. This would showcase, globally, how Africa's socio-economic development experience can be founded on the principles of equity and solidarity.

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FOOTNOTE

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- [37] These include (i) The African Charter on the Rights and Welfare of the Child (article 21); (ii) The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Article 6); (iii) The African Youth Charter (Article 8); (iv) Nigeria Child Rights Act (2004); and (iv) The SADC Protocol on Gender and Development (Article 8).

- [38] UNICEF (2016) Uprooted: The growing crisis for refugee and migrant children https://www.unicef.org/publications/files/Uprooted_growing_crisis_for_refugee_and_migrant_children.pdf (accessed 19 October 2023). According to a recent analysis of migration in the horn of Africa, it is postulated that teenage girls' experiences of poverty, exploitation, and violence shape their decisions to migrate despite the risks they may face doing it; see UNICEF Office of Research – Innocenti (2019). "No Mother Wants Her Child to Migrate". Vulnerability of children on the move in the Horn of Africa. <https://www.unicef-irc.org/publications/pdf/Child-Migration-Horn-of-Africa-part-1.pdf> (accessed 19 October 2023)
- [39] Articles 33, 34, 35, 36 of the Convention on the Rights of the Child (CRC) provide for the protection of children from sexual abuse and exploitation. Specifically, Article 16 (1) of ACRWC provides for the protection of children from abuse, maltreatment, including sexual abuse. Furthermore, Article 27 requires states to protect children from all forms of sexual exploitation and sexual abuse. On the other hand, Article 13 (e) of the 2003 Maputo Protocol underscore the need to support women working in informal activities. See African Union (2003) Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
- [40] according to 2017 UNICEF Report (cited in O Bello et al., 2020)
- [41] The documents reviewed include: Agreement and the annexes establishing The Continental Free Trade Area—A Human Rights Perspective by UNECA; Aid for Trade and the empowerment of women and young people by UNECA and WTO; Labour market effects of AfCFTA by GIZ, and Sexual Exploitation of Children in Africa: A Silent Emergency by Africa Child Policy Forum and Oak Foundation; AfCFTA Agreement
- [42] UNECA as cited in Professor John IGUE (2020), Regional and Continental Integration in Africa in the Covid-19 Era: New Drivers and Perspectives. Institute of New Economic Thinking. African Paper Series 2. Available online <https://www.ineteconomics.org/uploads/papers/BP-John-Igue-INET-final.pdf> (accessed 19th October 2023)