

Adjusting and expanding the AfCFTA to support Women

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The decision to adopt a Protocol on Women and the Youth as part of the collection of the African Continental Free Trade Area (AfCFTA) legal instruments is an important development. It also signifies a new dimension in continental trade governance in Africa. However, not all the obstacles faced by African women traders and entrepreneurs can be addressed via the AfCFTA in its original format because it deals primarily with trade in goods in the context of a rules-based Free Trade Area (FTA). Many women traders are engaged in small-scale or informal trade, and for that reason they face many unique problems. It often seems as if their operations are considered to fall outside the recognised system of rules and practices.

The “informal” nature of trade and other economic activities poses unique challenges. Exactly how is “informal” trade to be regulated? Part of the answer lies in accommodating the trade practices of women as legitimate and by providing protection to women traders in the context of what they do as traders. They are not without basic rights because of the nature of their enterprise. An important reason why a Protocol on Women and the Youth is being adopted as part of the AfCFTA is because it has become necessary to recognise the rights and the contribution of women traders. A well-designed regime is required in order to do so. The proposed Simplified Trade Regime (STR), if it includes products traded by women and provides a substantial threshold for trade under this regime, will complement the Protocol on Women and Youth in Trade. The design of the STR can also contribute to addressing challenges, including harassment, that women are subjected to at border posts.

It is often stated that the needs of women must be “mainstreamed” as part of the AfCFTA. What exactly does this mean? Effective “mainstreaming” requires clarity about obligations, entitlements, and predictable procedures. The efforts to accommodate the needs of women must be specific and the ambit of the AfCFTA should be expanded and

adjusted. The same applies to national policies and measures, where implementation will mostly happen. There are no supra-national bodies in the AfCFTA. Specific problem areas, practices and lacunae in development policies and national laws need to be addressed and be tackled via bespoke inter-state and intra-state policies and obligations.

Since the AfCFTA is cast in the format of an FTA for liberalising trade in goods and services¹ the actual implementation and measures regarding the needs of women traders will originate from **national** implementation steps and policies adopted in the State Parties. If the Protocol on Women and Youth contains detailed obligations for the State Parties, specific outcomes and improvements should be expected. This will require follow-up action between and among the State Parties in order to make it easier for women traders to import goods from neighbouring markets and to sell them locally. These actions should address trade facilitation issues, non-tariff barriers (NTBs), technical and safety standards, corruption, and customs administration arrangements in particular.

Trade in services issues should also be targeted. This aspect will presumably come into play in the contexts of specific needs such as access to finance, availability of data and in respect of the needs of women entrepreneurs and professionals. Services sectors such as transport and logistics can be prioritised in order to assist women in their operations. Services are regulatory intensive and the accommodation of women in this context will to a large degree depend on the specific measures adopted and implemented by governments and Regional Economic Communities (RECs).

Women traders face unique obstacles. Lack of knowledge about their rights (under the law of the land and under trade agreements) exacerbates their challenges. In some cases, women are forced to pay bribes or are subjected to harassment by customs and immigration officials. The activities of women traders should be recognised as legitimate and making an important contribution to national economies. They make positive contributions and have specific rights as traders.

There is a long history to reckon with when it comes to the accommodation of women in trade and in commerce generally. Millions of women in Africa are engaged in one form of trade or another, either within their countries or across national borders. Their operations in the informal trade sector, include unorganised small-scale, self-employed individuals or small groups typically being involved in trade for

¹ The 5 priority areas are finances, communication, transport, tourism, and business services.

the purpose of increasing household incomes.² They buy and sell a wide range of goods, from agricultural produce to manufactured goods. Small-scale cross border women trades, across sub-regions make a direct contribution to food security, not only in border communities but sometimes much further afield.

Women also run the majority of agricultural small landholdings. It is generally accepted that women traders' contribution to national economies has become essential in boosting trade in Africa.³ The constraints women face undermine the economic development efforts of many African countries.

The efforts to accommodate the needs of women in an encompassing and systemic manner will, if properly designed, become a dynamic process, and linked to other trade practices and arrangements. The opening up of labour markets to international manufacturing and apparel jobs will follow, as was the case in Lesotho. A 2012 study on Lesotho by the UN Conference on Trade and Development⁴ found that trade liberalisation has expanded trade in that country over several decades, especially in labour-intensive exports such as clothing. It also led to an increase in the number of women employed in the formal sector. This happened to a large extent because Lesotho is a major beneficiary of the Africa Growth and Opportunity Act (AGOA) of 2000, a US law that allows sub-Saharan African exports duty-free and quota free access into the US. Lesotho increased its exports to the US by taking advantage of a clause that permits AGOA-eligible countries to source fabrics from third-party countries such as China. These policies have had a major positive impact on Lesotho's women traders

Further steps and more policy innovation should follow. To improve the position of women, African governments must enact policies that remove existing constraints. The UN Inter-Agency Network on Women and Gender Equality proposes three such policies. First, governments must provide female workers with the necessary skills and access to information. Second, they must pass legislation on labour standards and working conditions to eliminate the exploitation of female workers. And third, they must formulate social and labour policies that support equal household responsibilities. Finally, the study suggests preferential public procurement policies and practices for women.⁵

² <https://www.igi-global.com/dictionary/informal-trading/47220>

³ World Bank, 2013. *Women and Trade in Africa: Realizing the Potential*.

<https://www.worldbank.org/en/news/feature/2013/11/20/boosting-trade-in-africa-why-women-are-the-key>

⁴ UNCTAD, 2012. *Who Is Benefitting from Trade Liberalisation in Lesotho? A Gender Perspective*

<https://unctad.org/webflyer/who-benefiting-trade-liberalization-lesotho-gender-perspective>

⁵ UN Women Africa, 2019. Opportunities for Women Entrepreneurs in the Context of the African Continental Free Trade Area (AfCFTA) <https://africa.unwomen.org/en/digital-library/publications/2019/07/opportunities-for-women-in-the-acfta>

We will know more about the nature of specific AfCFTA related initiatives in this area once the Protocol on Women and the Youth has been adopted and made public. This is expected to happen early in 2023. Once the text of this Protocol is adopted by the African Union (AU) Assembly,⁶ it must be signed, ratified, and must enter into force in terms of the requirements of Article 23 of the AfCFTA Agreement. When this Protocol has formally entered into force the State Parties thereto must implement its provisions.

This Protocol will, in all likelihood, contain provisions on cooperation among the State-Parties in respect of their new undertakings.⁷ This will mean that the monitoring of compliance will be vital. Who will perform this function?

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⁶ As required by Art 22 of the AfCFTA Agreement.

⁷ See Art 4 AfCFTA Agreement.