Towards achieving sustainable economic development through the African Continental Free Trade Area: a legal analysis

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Abstract

The African continent holds tremendous potential for prosperity, due in part to vast reserves of diverse natural resources and a population of over 1.3 billion people. The economic potential of the continent has the capacity to fulfil the socio-economic rights of all African citizens. However, even though the African people should benefit from the extensive economic potential across the continent, the socio-economic state of Africa is extremely poor. Thus, the problem analysed in this study concerns the urgent need to improve the dire socio-economic state prevalent on the African continent, specifically though regional economic integration.

Regional economic integration is a recognised and effective means of achieving sustainable economic development, which in turn leads to the promotion and protection of socio-economic rights. In essence, African states require the achievement of true sustainable economic development in order to promote socio-economic rights and the recent formation of the African Continental Free Trade Area is a potential means of fulfilling this urgent need. However, regional economic integration capable of promoting socio-economic rights requires a well-developed legal framework with a clear focus on the achievement of sustainable economic development. Therefore, this study provides a critical examination of the legal framework upon which the African Continental Free Trade Area is built. Although the legal instruments themselves cannot ensure the achievement of sustainable economic development, it can provide a framework in terms of which sustainable economic development, and the resultant fulfilment of socio-economic rights, can be achieved. In this manner the regulatory framework of the African Continental Free Trade Area will play an important role in facilitating the fulfilment of African people's socio-economic rights.

The research methodology used in this dissertation is a literature study of primary and secondary sources in the international and regional sphere, specifically in relation the United Nations and the African Union. Apart from analysing relevant sources, this study also considers the potential adaptability of the free trade area to overcome challenges, such as the COVID-19 pandemic, as well as various conditions

for success which can be met to facilitate its socio-economic goals. The successful implementation of the African Continental Free Trade Area in the wake of the devastation caused by the COVID-19 pandemic is of even more importance as it will not only provide African economies with the means to rapidly recover, but will dramatically transform the socio-economic state of the continent and significantly change the standing of Africa in the global economy post COVID-19.

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List of Abbreviations

AEC	African Economic Community
AfCFTA	African Continental Free Trade Area
AfDB	African Development Bank
AU	African Union
AUC	African Union Commission
AUDA	African Union Development Agency
AVDP	African Virtual Trade-Diplomacy Platform
AVRIVA	African Virtual Resilient-Integration for a Vibrant Africa
CFI	Corporate Finance Institute
DSM	Dispute Settlement Mechanism
ECOSOC	United Nations Economic and Social Council
ECOSOCC	African Union Economic, Social and Cultural Council
FAO	Food and Agriculture Organisation of the United Nations
FTYIP	First Ten Year Implementation Plan
GDP	Gross Domestic Product
HLPF	High-Level Political Forum on Sustainable Development
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communication Technology
IDEA	International Institute for Democracy and Electoral Assistance

IEDC	International Economic Development Council
JSDLP	Journal of Sustainable Development Law and Policy
NEPAD	New Partnership for Africa's Development
OAU	Organisation of African Unity
PAP	Pan-African Parliament
PwC	PricewaterhouseCoopers
REC	Regional Economic Community
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
TRALAC	Trade Law Centre
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNECA	United Nations Economic Commission for Africa
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
VAT	Value-Added Tax
WBG	World Bank Group
WTO	World Trade Organisation

1 Introduction

The African continent is home to more than 1.3 billion people and an abundance of diverse natural resources.[1] Africa holds a vast proportion of global natural resources, including 30% of the world's mineral reserves, 12% of the oil reserves, 40% of the gold reserves, the largest reserves of uranium, cobalt, diamonds and platinum, as well as 65% of the world's arable land.[2] This abundance and diversity has the economic potential to fulfil the socio-economic rights of all African citizens. [3] Socio-economic rights are those rights which give people access to the basic needs to lead a dignified life. It refers to second generation rights, such as the right to food, education and decent living conditions. In order to promote second-generation rights, governments are required to take positive and deliberate action. The fulfilment of socio-economic rights forms the founding principles and objectives of various international and regional legal instruments and frameworks, such as Agenda 2030[4] adopted by the United Nations (UN) and Agenda 2063[5] adopted by the African Union (AU). These instruments envision a prosperous future where the socio-economic rights of all people are guaranteed.

Although the African continent holds tremendous potential for prosperity, there is widespread poverty, unemployment and food insecurity. Extreme poverty, namely people living on less than US$1.90 per day, is becoming an increasingly African phenomenon.[6] Roughly 36% of the population in Sub-Saharan Africa, approximately 490 million people, are living in extreme poverty.[7] These figures clearly demonstrate that Africa is not reaching its potential, specifically with regard to the fulfilment of socio-economic rights. There are numerous factors which result in the failure by

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1 Anon 2021 https://www.statista.com/statistics/1224205/forecast-of-the-total-population-of-africa/.
2 UNEP 2021 https://www.unep.org/regions/africa/our-work-africa.
3 WBG 2020 https://www.worldbank.org/en/region/afr/overview.
4 *Transforming our world: the 2030 Agenda for Sustainable Development* GA Res 70/1 (2015).
5 AUC *Agenda 2063: The Africa We Want- Popular Version*.
6 WBG *Accelerating Poverty Reduction in Africa: Overview* 1.
7 Human 2021 https://www.developmentaid.org/#!/news-stream/post/84943/highest-poverty-rates-in-africa.

African governments to effectively promote socio-economic rights, including conflict, political instability, lack of infrastructure and extensive corruption.[8] A further factor which hampers economic growth is rooted in the economic system of exploitation derived from Africa's colonial past. African infrastructure is directed at the export of Africa's raw natural resources to foreign nations, resulting in a costly drain of African resources for the enrichment of foreign states.[9] Although there are numerous factors which give rise to the poor socio-economic states on the continent, effective measures to fulfil such rights must be undertaken.

The importance of socio-economic rights is reiterated in legal instruments adopted in the international and regional sphere. Certain principles set out in the Universal Declaration of Human Rights (UDHR),[10] such as the right to human dignity, have gained the status of customary international law. This sets a binding socio-economic standard since the right to human dignity can only be afforded protection through the effective enforcement of socio-economic rights.[11] International treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) goes further to explicitly require member states to ensure all people have adequate food, clothing, housing and a decent standard of living.[12] Likewise, regional instruments such as the African Charter on Human and People's Rights provide that all people are entitled to their socio-economic development.[13]

Thus, all African state have a legal obligation in terms of international and regional human rights law to fulfil the socio-economic rights of their citizens, yet the current state of affairs clearly illustrates the failure by African governments to effectively comply with such obligations. In order to promote socio-economic rights, African states should undertake effective measures to achieve economic growth and development in a sustainable fashion. This refers to the achievement of sustainable

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8 AU, AfDB and UNECA *Africa Regional Integration Index: Report 2019* xiii.
9 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 14.
10 *Universal Declaration of Human Rights* (1948).
11 A 22 of the *Universal Declaration of Human Rights* (1948).
12 A 11(1) of the *International Covenant on Economic, Social and Cultural Rights* (1966).
13 A 22(1) of the *African Charter on Human and Peoples' Rights* (1986).

economic development, which in turn will lead the fulfilment of socio-economic rights. One highly effective vehicle for the achievement of sustainable economic development is regional economic integration. The sub regional integration of the African continent has made progress through the formation of eight Regional Economic Communities (RECs). Some RECs, such as the Southern African Development Community (SADC), have already achieved important objectives, including the promotion of intra-Africa trade and the improvement of the socio-economic wellbeing of people in the sub region.[14] However, the RECs are at differing stages of economic development and significant integrative challenges remain. This includes challenges derived from overlapping memberships between the various RECs which hamper the coordination of policies and programmes and leads to intricate administrative procedures.[15]

True socio-economic transformation lies in complete African unity. The complete economic integration of the African continent forms the basis of the Pan African vision of continental prosperity and the imperative need for integration is continuously reiterated in numerous regional legal instruments. Therefore, the AU and member states have adopted the long-awaited and highly anticipated decision to establish the African Continental Free Trade Area (AfCFTA). The AfCFTA entered its operational phase on the 1st of January 2021. Its successful implementation has the potential to transform the socio-economic state of the African continent in an unprecedented and extraordinary manner. Once fully operational, it will connect 1.3 billion people across 55 countries in an economic area with a combined GDP of US$3.4 trillion.[16] By 2035, it has the potential to increase African real income gains by US$450 billion, as well as lift 30 million people from extreme poverty and an additional 68 million from moderate poverty.[17] However, to realise the full extent of potential benefits, African leaders must ensure the AfCFTA is successfully and effectively implemented.

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14 AU, AfDB and UNECA *Africa Regional Integration Index: Report 2019* xiii.
15 AU, AfDB and UNECA *Africa Regional Integration Index: Report 2019* xiii.
16 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 1.
17 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* IX.

The problem analysed in this study concerns the issues outlined above, namely the urgent need to improve the dire socio-economic state prevalent on the African continent in order to comply with international and regional human rights law. Solving this issue can be facilitated through effectively implemented regional economic integration which in turn will lead to the achievement of sustainable economic development and the eventual fulfilment of socio-economic rights. In essence, African states require the achievement of true sustainable economic development and the recent formation of the AfCFTA is a potential means of fulfilling this urgent need. However, the successful implementation of the AfCFTA requires a well-developed legal framework with a clear focus on the achievement of sustainable economic development. Therefore, the research question this study will answer is: Does the legal framework of the African Continental Free Trade Area sufficiently provide for the achievement of sustainable economic development? Although the legal instruments themselves cannot ensure the achievement of sustainable economic development, it can provide a framework in terms of which sustainable economic development, and the resultant fulfilment of socio-economic rights, can be achieved. In this manner the legal instruments of the AfCFTA will play an important role in facilitating the fulfilment of African people's socio-economic rights.

Consequently, the aim of this study is to answer the research question and in so doing, various objectives must be achieved. The first is of a theoretical nature, namely determining whether sustainable economic development results in the fulfilment of socio-economic rights. Similarly, it should be determined whether economic integration effectively leads to the achievement of sustainable economic development. This will illustrate the relationship between economic integration and the promotion of socio-economic rights. The second objective is to examine whether the legal framework of the AU recognises this inherent relationship and provides effective measures to achieve sustainable economic development through economic integration. The final objective is to determine whether the regulatory framework of the AfCFTA caters for the achievement of sustainable economic development through, amongst others, setting clear and comprehensive socio-economic objectives, establishing effective legal mechanisms and providing a measure of adaptability to overcome potential challenges.

The structure of this dissertation follows a systemic approach to achieve said objectives and effectively answer the research question. Thus, it is critically important to lay a solid theoretical foundation through analysis of key concepts, namely sustainable economic development and economic integration. These concepts are dealt with in chapter two and three respectively. The conceptual analysis on sustainable economic development found in chapter two will portray its relation to the fulfilment of socio-economic rights, specifically with regard to legal obligations in terms of international and regional human rights law. Chapter three will provide insight into the manner in which economic integration leads to the achievement of sustainable economic development, with specific regard to the formation of a free trade area. The theoretical foundation will be followed by a brief overview on the AU and its regional integrative and socio-economic objectives in chapter four. The AU plays a central role in the socio-economic development and economic integration of the African continent, and its regional legislative framework should recognise the importance of sustainable economic development and the critical need for economic integration.

This will be followed by a critical examination of the main focus of this dissertation, namely the legal framework of the AfCFTA. Two interrelated aspects of the regulatory framework will be analysed in order to determine whether it sufficiently provides for the achievement of sustainable economic development. Chapter five consider the first aspect to determine whether the founding legal framework of the AfCFTA is sufficiently focussed on providing for regional integration with the clear intention and capacity to achieve sustainable economic development. In other words, to determine whether the regulatory framework adequately guides the free trade area to clear socio-economic objectives. The second aspect is analysed in chapter six and examines the sustainability of the legal framework with regard to its capacity to continuously develop and overcome challenges, such as the COVID-19 pandemic, on the road to achieving sustainable economic development. This aspect is crucial to the long-term socio-economic success of the AfCFTA as it can only be sustainable if the free trade area can adapt to the changing circumstances of the modern world. This two-pronged approach to analyse the regulatory framework of the AfCFTA will effectively determine whether it sufficiently provides for the achievement of sustainable economic development, and in so doing ensure the promotion of fundamental human rights.

The research methodology used in this dissertation is a literature study of primary and secondary sources. The primary sources include the legal instruments adopted in the international and regional sphere, namely through the UN and the AU. The legal instruments in the international sphere include well known international instruments such as the UDHR and the ICESCR, as well as lesser known, yet crucially important instruments, such as Agenda 2030. The regional legal instruments include the founding documents of the AU and AfCFTA, such as the Constitutive Act of the African Union[18] and the Agreement Establishing the African Continental Free Trade Area,[19] as well as the framework provided in terms of Agenda 2063. The secondary sources include expert online publications by, amongst others, the African Union Commission (AUC), the African Development Bank (AfDB), the United Nations Economic Commission for Africa (UNECA) and the World Bank Group (WBG). Reference is also made to online publications and commentary by the Trade Law Centre (TRALAC), a non-profit organisation consisting of expert trade lawyers and economists, which provide invaluable insight and perspective on current socio-economic developments specific to the AfCFTA. The secondary source publications are authored and compiled by established experts in the field of trade law and economics, and are among the most authoritative sources on the topic. Since the AfCFTA is a novel undertaking, the source material in legal journals in relation to the specific focus of this dissertation is limited. However, the source material used is truly authoritative and consolidates the legal and economic aspects of the free trade area with great success.

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18 *Constitutive Act of the African Union* (2000).
19 *Agreement Establishing the African Continental Free Trade Area* (2018).

The relevance of this study is illustrated though its novelty, in that the AfCFTA is a current and new undertaking in terms of which legal research is continuously developing. Apart from relevance, the importance of the study is emphasised by the dire need for African states to comply with international and regional legal obligations with regard to the promotion and protection of socio-economic rights. Therefore, analysing whether the regulatory framework sufficiently caters for the achievement of sustainable economic development will provide insight into the manner in which African states can potentially meet their global legal obligations.

The successful implementation of the AfCFTA can be a catalyst for the complete socio-economic transformation of the African continent. However, a regional project as ambitious as the formation of the AfCFTA is dependent upon coordinated and bold action by African leaders at the national, regional and international level. Even though the effective implementation of the free trade area, and its continued success post-implementation, ultimately depend upon the strong political will and action by relevant stakeholders, a sound regulatory framework which adequately provides for the achievement of sustainable economic development will play a vital role in ensuring its long-term socio-economic success.

2 Sustainable economic development

2.1 Introduction

The objective of this chapter is to determine the extent to which sustainable economic development can lead to the fulfilment of socio-economic rights. Before examining this relationship, a thorough theoretical understanding of sustainable economic development is required. The concept can best be understood through analysis of its different components, namely sustainable development, economic growth and economic development. These interrelated components each play a key role in the achievement of sustainable economic development as a whole. This will be followed by an examination of the manner in which sustainable economic development leads to the promotion of socio-economic rights. The overview on socio-economic rights in relation to sustainable economic development takes place in the international sphere as the international legal framework developed by the UN is the source of the governing principles. However, since this dissertation primarily concerns the African context, it is appropriate to include an overview on such human rights in terms of the regional legal framework developed by the AU.

2.2 Components of sustainable economic development

The UN's Bruntdland Report[20] provides the most widely used and accepted definition of sustainable development:

> ... [d]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs.[21]

The UN Economic and Social Council (ECOSOC), which plays a central role in the UN's work on the three pillars of sustainable development,[22] described sustainable development as the "international community's most urgent priority".[23] The three

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[20] *United Nations Report of the World Commission on Environment and Development: Our Common Future* GA Res 42/427 (1987).

[21] *United Nations Report of the World Commission on Environment and Development: Our Common Future* GA Res 42/427 (1987) 37.

[22] ECOSOC 2020 https://www.un.org/ecosoc/en/sustainable-development.

[23] ECOSOC 2020 https://www.un.org/ecosoc/en/sustainable-development.

core pillars of sustainable development are economic growth, social inclusion and environmental protection.[24] These pillars are interrelated and interdependent and the achievement of sustainable development is dependent upon finding a balance between the three core pillars. This balance entails economic growth with due consideration and protection of the environment, while simultaneously ensuring the advancement and protection of socio-economic rights and social inclusion for all.

In 2015, all the member states of the UN adopted the 2030 Agenda for Sustainable Development,[25] one of the most comprehensive legal instruments to provide a framework for the achievement of sustainable development. It is a "blueprint for peace and prosperity for people and the planet"[26] encompassing all three core pillars of sustainable development. The 2030 Agenda is not binding international law; it is merely a framework setting out the Sustainable Development Goals (SDGs) all nations must strive to achieve. However, even though the provisions of the 2030 Agenda itself cannot be enforced, the socio-economic outcome of the SDGs directly achieve and enforce binding international, regional and domestic legal principles. The 2030 Agenda sets out 17 SDGs which are:

> ... [a] universal call to action to end poverty, protect the planet and improve the lives and prospects of everyone, everywhere.[27]

Each SDG is intended to achieve an aspect of one of the core pillars of sustainable development, and is set out in the 2030 Agenda as follows:

1. End poverty in all its forms everywhere
2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture
3. Ensure healthy lives and promote well-being for all at all ages.
4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
5. Achieve gender equality and empower all women and girls
6. Ensure availability and sustainable management of water and sanitation for all
7. Ensure access to affordable, reliable, sustainable and modern energy for all

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24 UN 2019 https://www.un.org/sustainabledevelopment/development-agenda/.
25 *Transforming our world: the 2030 Agenda for Sustainable Development* GA Res 70/1 (2015).
26 UN 2020 https://sdgs.un.org/goals.
27 UN 2019 https://www.un.org/sustainabledevelopment/development-agenda/.

8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
9. Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation
10. Reduce inequality within and among countries
11. Make cities and human settlements inclusive, safe, resilient and sustainable
12. Ensure sustainable consumption and production patterns.
13. Take urgent action to combat climate change and its impacts
14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development
15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
17. Strengthen the means of implementation and revitalise the Global Partnership for Sustainable Development.[28]

Although each SDG requires independent focus and effort to be achieved, sustainable development as a whole can only be attained if all the SDGs are achieved together. Article 13 of the 2030 Agenda recognises this interrelated and interdependent nature in that:

> The challenges and commitments... are interrelated and call for integrated solutions... Sustainable development recognises that eradicating poverty in all its forms and dimensions, combating inequality within and among countries, preserving the planet, creating sustained, inclusive and sustainable economic growth and fostering social inclusion are linked to each other and are interdependent.

This interdependence is clearly demonstrated in the relation between conservation and economic growth, for example, economic growth may provide the funds necessary for the creation of parks and reserves. Furthermore, in countries with a high standard of living, people generally attach greater value to environmental amenities.[29] Thus, through sustainable development the "actions in one area can reinforce the goals of another."[30] Even though the SDGs are interdependent, finding a balance between the achievement of each SDG and the three fundamental pillars is

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28 *Transforming our world: the 2030 Agenda for Sustainable Development* GA Res 70/1 (2015) 16.
29 Bascom 2016 https://sustainabilityx.co/economic-growth-to-sustainable-development-5d441e9a595e.
30 Bascom 2016 https://sustainabilityx.co/economic-growth-to-sustainable-development-5d441e9a595e.

often complex as progress in one may negate progress in the other. For example, economic growth may cause environmental degradation and exhaustion through excessive consumption of natural resources and waste production.[31] Although finding a balance between the fundamental pillars and correlating SDGs can be complex, sustainable development can only be achieved when this balance is effectively established. Thus, the three core pillars are clearly interrelated and interdependent, but the fundamental importance of the pillar of economic growth in the achievement of sustainable development cannot be overemphasised. Therefore, the research conducted in this dissertation will focus on economic growth, specifically the concept of sustainable economic development.

In order to understand sustainable economic development, it must be distinguished from and understood in relation to economic growth and economic development. Economic growth refers to an increase in the overall production of an economy. This entails an increase in real Gross Domestic Product (GDP) caused by greater productivity and higher incomes for individuals and businesses. Economic development incorporates the concept of economic growth, but has a wider meaning to include the:

> ...advancement of economic wealth of a country, aimed at the overall welfare of the citizens.[32]

This overall welfare entails the attainment and protection of socio-economic rights through providing individuals with a higher standard of living, employment opportunities and increased income.[33] Economic development is achieved through:

> ...improving the quality of life, measured by life expectancy, literacy, gross domestic product (GDP) and so forth.

[31] Bascom 2016 https://sustainabilityx.co/economic-growth-to-sustainable-development-5d441e9a595e.

[32] Bascom 2016 https://sustainabilityx.co/economic-growth-to-sustainable-development-5d441e9a595e.

[33] Bascom 2016 https://sustainabilityx.co/economic-growth-to-sustainable-development-5d441e9a595e.

Therefore, economic growth is a driving force behind economic development, and when balanced with the other fundamental pillars of sustainable development, sustainable economic development will be achieved. The International Economic Development Council (IEDC) defined sustainable economic development as:

> The investment in business, social, built, and natural environments that creates increasing prosperity for all, now and into the future.[34]

In other words, sustainable economic development refers to increased economic growth and the advancement of economic development in line with the fundamental pillars of sustainability. The critical importance of sustainable economic development should be understood with regard to its role in the promotion and protection of fundamental human rights. In essence, the higher standard of living achieved through sustainable economic development ensures the fulfilment of socio-economic rights.

2.3 Socio-economic rights

An in-depth discussion on socio-economic rights is outside the framework of this dissertation, but it is necessary to understand the basic relationship between the achievement of sustainable economic development and the promotion of socio-economic rights. Socio-economic rights are second generation rights which "provide protection for dignity, freedom and well-being of individuals".[35] It refers to the basic rights necessary to lead a dignified life. The enforcement of socio-economic rights, such as the right to food, education, housing and decent living conditions,[36] can be achieved through sustainable economic development. This relationship can best be understood with regard to the effects of sustainable economic development, such as an increase in standard of living. Sustainable economic development increases the standard of living through protecting the "most fundamental interests of individuals in having resources"[37] necessary for their wellbeing by providing increased GDP,

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34 IEDC *Green Metrics: Common Measures of Sustainable Economic Development* 2.
35 International IDEA *Social and Economic Rights* 3.
36 International IDEA *Social and Economic Rights* 9.
37 International IDEA *Social and Economic Rights* 3.

more employment opportunities, higher wages and a general increase in the wealth and welfare of a nation. This directly leads to the promotion of second-generation rights.

Apart from increasing the wages and standard of living of individuals, sustainable economic development will also finance the state, enabling governments to provide basic services and so protect the socio-economic rights of its citizens. The Secretary General of the UN, António Guterres, portrayed the relationship between socio-economic rights and sustainable development in one simple statement:

> Access to basic services is not only a fundamental human right, but also a stepping stone to sustainable development.[38]

The socio-economic effects of sustainable economic development are further demonstrated through its achievement of numerous SDGs. The SDG most directly achieved through sustainable economic development is Goal 8: to promote sustained, inclusive and sustainable economic growth, employment and decent work for all. However, numerous other SDGs are also dependent upon the achievement of Goal 8 and the resultant sustained, inclusive and sustainable economic growth. Goal 1, to end poverty in all its forms everywhere, will be achieved as increased employment opportunities and higher incomes will gradually eradicate poverty. This will lead to the achievement of Goal 2, to end hunger and increase food security; and Goal 3, to ensure healthy lives and the promotion of well-being for all. Access to basic services will also be increased as people will have the finances to afford services such as quality education, and so achieve Goal 4. This illustrates the importance of sustainable economic development as an underlying factor of sustainable development as a whole.

The role sustainable economic development and the resultant socio-economic rights play in the protection of human dignity is critically important. Human dignity is the most basic and fundamental human right. All people have inherent dignity and it is

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[38] Guterres *The Sustainable Development Goals Report 2018* 14.

the underlying value of all human rights.[39] In societies where socio-economic rights are not guaranteed, human dignity is not guaranteed. Persons living in extreme poverty without access to food, water, housing and basic services cannot live a life of dignity. The dependency of dignity on the enforcement of socio-economic rights is reiterated in Article 14 of the 2030 Agenda, which states that "billions of our citizens continue to live in poverty and are denied a life of dignity."[40] The UDHR specifically recognises that "economic, social and cultural rights (are) indispensable for his dignity".[41] The UN clearly recognises the fundamental importance and underlying need of socio-economic rights in the protection of human dignity.

It is abundantly clear that sustainable economic development leads to socio-economic development as a whole, which includes the fulfilment of socio-economic rights. The enforcement of these rights is crucial to the achievement of the 17 SDGs and the protection of human dignity. The importance of sustainable economic development is demonstrated through its reiteration in the founding values of international and regional regulatory instruments. These legal instruments also require the enforcement of socio-economic rights which is afforded protection through the achievement of sustainable economic development.

2.4 International human rights law

There are numerous international legal instruments which provide for the achievement of sustainable economic development. Some instruments directly require sustainable economic development, such as the ICESCR, or indirectly promote sustainable economic development in order to realise its values and goals, such as the UDHR. This concept should be understood with due regard to the inherent relationship between socio-economic rights and human dignity.

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39 Preamble of the *Universal Declaration of Human Rights* (1948).
40 *Transforming our world: the 2030 Agenda for Sustainable Development* (2015) GA Res 70/1 para 14.
41 A 22 of the *Universal Declaration of Human Rights* (1948).

The principles contained in the UDHR serve as a framework and foundation for human rights law. Various provisions of the UDHR, such as the protection of human dignity, have gained the status of customary international law binding on all states. In the Preamble of the UDHR it is stated that the dignity and worth of the human person is protected through promoting:

> ...social progress and better standards of life in larger freedom.[42]

Apart from binding customary international, the Charter of the UN is binding on member states as it is a treaty between the UN and all 193 member states. The Charter "reaffirm(s) faith in fundamental human rights, in the dignity and worth of the human person"[43] and places an obligation on member states to solve international economic problems.[44] To ensure the fulfilment of the rights envisioned in the UDHR and the Charter, specifically the socio-economic rights, the UN adopted the ICESCR.

The ICESCR is only binding on states party to the treaty, however, its values and goals directly achieve and enforce socio-economic rights necessary for the protection of human dignity. These rights include an adequate standard of living and "adequate food, clothing and housing".[45] The Preamble of the ICESCR goes further to state that:

> The ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.[46]

This reinforces the innate relationship between sustainable economic development and the protection of fundamental human rights. These principles are clearly and repeatedly stated in international legal instruments, but are also included in the regional legal framework developed by the AU.

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42 Preamble of the *Universal Declaration of Human Rights* (1948).
43 Preamble of the *Charter of the United Nations* (1945).
44 A 1(3) of the *Charter of the United Nations* (1945).
45 A 11(1) of the *International Covenant on Economic, Social and Cultural Rights* (1966).
46 Preamble of the *International Covenant on Economic, Social and Cultural Rights* (1966).

2.5 Regional human rights law

The AU is an intergovernmental organisation with a duty and obligation to comply with principles of international law. The AU is dedicated to the realisation of the Pan African vision of:

> An integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena.[47]

This vision is the foundation of the AU and is the ideal towards which all its initiatives and projects strive. Through these initiatives, the AU intends to achieve sustainable economic development, with due regard to its inherent and crucial role in the protection of fundamental human rights.

The founding document of the AU is the Constitutive Act of the African Union. Its objectives include the promotion and protection of human rights in accordance with international and regional human rights law, including the provisions on socio-economic development. It specifically binds all member states to the provisions of the UDHR and the Charter of the United Nations,[48] as well as regional human rights law in terms of the African Charter on Human and People's Rights.[49] The importance of socio-economic rights is reiterated in the founding objectives by placing an obligation on the AU to raise the standard of living of the African people.[50]

Article 22(1) of the African Charter on Human and People's Rights specifically protects the right of all people to "their economic, social and cultural development". The Preamble of the Charter recognises the need for sustainable economic development in order to ensure the protection of human rights:

> … [i]t is essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights… and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

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47 AU 2020 https://au.int/en/about/vision.

48 A 3(e) of the *Constitutive Act of the African Union* (2000).

49 A 3(h) of the *Constitutive Act of the African Union* (2000).

50 A 3(k) of the *Constitutive Act of the African Union* (2000).

The Charter enforces the right to "the respect of dignity inherent in a human being",[51] and as stated above, human dignity cannot be guaranteed without the effective enforcement of socio-economic rights. This demonstrates the recognition by the AU, in a similar manner to that by the UN, of the interrelated nature between the achievement of sustainable economic development and the protection of fundamental human rights.

Apart from directly promoting the achievement of sustainable economic development[52] and the protection of fundamental human rights, the founding objectives of the Constitutive Act specifically include the critical necessity of regional economic integration. The Constitute Act explicitly makes the AU responsible for the acceleration of the socio-economic integration of the African continent.[53] The inclusion of economic integration in the founding objectives demonstrates the AU's recognition of its crucial and effective role in the achievement of sustainable economic development and resultant promotion of international and regional human rights law. In order to provide a framework for the achievement of the Pan African vision, as well as sustainable economic development, the AU adopted Agenda 2063. This Agenda serves as the strategic framework to form "the basis for Africa's long term socio-economic and integrative transformation."[54] Included in Agenda 2063 is the objective to form the AfCFTA. An in-depth analysis on these regional integrative aspects will be provided below.[55]

2.6 Conclusion

Throughout this dissertation, reference to sustainable economic development should be understood to incorporate all the components discussed in this chapter. The key takeaway being that the achievement of sustainable economic development leads to the socio-economic development as a whole and promotes international and regional

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51 A 5 of the *African Charter on Human and Peoples' Rights* (1986).
52 A 3(j) of the *Constitutive Act of the African Union* (2000).
53 A 3(c) and (j) of the *Constitutive Act of the African Union* (2000).
54 AUC *An Overview of Agenda 2063: The Africa We Want- First Ten Year Implementation Plan* 2.
55 See paras 3-6 below.

human rights law. Thus, sustainable economic development refers to increased economic growth and the advancement of economic development in line with the fundamental pillars of sustainability, as well as the resultant enforcement of socio-economic rights inherent in the protection of human dignity.

This chapter clearly portrays the critical importance of sustainable economic development. Therefore, all states must undertake measures to effectively achieve such development. One such measure is regional economic integration, which has repeatedly proven to be a highly effective means of achieving sustainable economic development.

3 Economic integration

3.1 Introduction

The objective of this chapter is to determine whether regional economic integration is an effective means of achieving sustainable economic development. This requires an understanding of the process of regional integration through various stages and resultant effects. Therefore, the basic principles underlying economic integration, as well as the socio-economic benefits it could entail for member states, will be examined. This will be followed by an analysis of the seven stages of integration to provide insight into the process of regional integration. Specific regard should be given to the second stage, namely the formation of a free trade area, to better understand the formation and development of the AfCFTA.

The formation of the AfCFTA is a significant step in the economic integration of the African continent and its effective implementation is central to ensuring compliance and realisation of the SDGs and Agenda 2030.[56] As eloquently stated in the Africa Regional Integration Index, which was compiled by the AU in collaboration with the AfDB and the UNECA:

> If prosperity, social cohesion, and human development are the destination, then regional integration is the path.[57]

This principle highlights the basic foundation of this study and is analysed in greater detail below. The essence being the manner in which regional economic integration leads to the achievement of sustainable economic development and the realisation of resultant socio-economic benefits.

3.2 What is economic integration

Economic integration, also known as regional integration, refers to a legally binding agreement between states in a particular geographical area in which members agree

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56 Albert *The African Continental Free Trade Agreement: Opportunities and Challenges* 24.
57 AU, AfDB and UNECA *Africa Regional Integration Index: Report 2019* 1.

to "reduce or eliminate trade barriers and agree on fiscal policies."[58] It entails an area in which the political cooperation between participating countries increases to promote trade within the region and provide for economic growth and development. There are various stages of economic integration, with each successive stage furthering the goal to achieve complete economic harmonisation. For any form of regional integration, the critical importance of a "well-articulated legal foundation... cannot be over-emphasised."[59] Although many of the issues which may arise are policy-related, specifically with regard to economics, the success of "economic integration is predicated first on a proper legal foundation and structure."[60] Therefore, the legal framework in terms of which regional integration takes place, including the framework upon which the AfCFTA is founded, plays an important role in its eventual success.

The WBG, a global institution working with the UN to end extreme poverty and promote shared prosperity by 2030,[61] recognise that economic integration and the resultant free trade is a driving force behind economic growth[62] and "central to ending global poverty."[63] The WBG states that:

> Countries that are open to international trade tend to grow faster, innovate, improve productivity and provide higher income and more opportunities to their people.[64]

The aim of economic integration is to "reduce costs for both consumers and producers and to increase trade"[65] between member countries. Economic integration holds various advantages for member countries; this includes trade benefits which can:

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58 Kenton 2020 https://www.investopedia.com/terms/e/economic-integration.asp.
59 Okafor 2013 JSDLP 109.
60 Okafor 2013 JSDLP 109.
61 WBG 2020 https://www.worldbank.org/en/about/what-we-do.
62 WBG 2018 https://www.worldbank.org/en/results/2018/04/03/stronger-open-trade-policies-enables-economic-growth-for-all.
63 WBG 2018 https://www.worldbank.org/en/results/2018/04/03/stronger-open-trade-policies-enables-economic-growth-for-all.
64 WBG 2018 https://www.worldbank.org/en/results/2018/04/03/stronger-open-trade-policies-enables-economic-growth-for-all.
65 Kenton 2020 https://www.investopedia.com/terms/e/economic-integration.asp.

> ... [r]educe the costs of trade, improve the availability of goods and services, and increase consumer purchasing power in member nations.[66]

The WBG specifically recognises that this reduction in costs can alleviate poverty as "more affordable goods and services"[67] will be available to lower income households. Economic integration also provides an increase in employment opportunities and higher wages as trade liberalisation leads to increased production, "market expansion, technology sharing and cross-border investment."[68] The strong economic ties between member countries strengthen political cooperation which "provide an incentive to resolve conflicts peacefully and lead to greater stability."[69]

However, despite the extensive and widespread benefits regional integration hold for member states, economic integration may potentially hold disadvantages. The WBG recognise that even though:

> ... [e]conomies gain enormously from increasing trade, as competition increases and many good jobs are created in export sectors—the wages of workers in import-competing industries may suffer or some workers may lose their jobs.

Further disadvantages may include diversion of trade from non-members to members, "even if it is economically detrimental for the member state".[70] The erosion of national sovereignty may possibly occur as members will have to comply with "rules on trade, monetary policy and fiscal policies"[71] which are determined and established by an unelected external policymaking body. Economic integration may also initially decrease tax revenue for certain members, through loss of import tax, and may cause some producers to suffer economic hardship in the highly competitive market. These disadvantages lead to many African nations being hesitant to fully commit to regional integration. This hesitance is also evident from the differing stages of integration in the eight RECs in Africa as the different economic

66 Kenton 2020 https://www.investopedia.com/terms/e/economic-integration.asp.
67 WBG 2018 https://www.worldbank.org/en/results/2018/04/03/stronger-open-trade-policies-enables-economic-growth-for-all.
68 Kenton 2020 https://www.investopedia.com/terms/e/economic-integration.asp.
69 Kenton 2020 https://www.investopedia.com/terms/e/economic-integration.asp.
70 Kenton 2020 https://www.investopedia.com/terms/e/economic-integration.asp.
71 Kenton 2020 https://www.investopedia.com/terms/e/economic-integration.asp.

circumstances and capabilities of each state and region determines its capacity and commitment towards regional integration.

However, the potential disadvantages are far outweighed by the advantages regional integration may hold for member states as it is a recognised and effective means of achieving economic growth and development. When economic integration is balanced with the SDGs and achieved in terms of the fundamental pillars of sustainability, it will lead to the achievement of sustainable economic development and the socio-economic benefits derived from it.

This widespread socio-economic effects of regional integration are recognised in legal instrument promulgated by international and regional institutions. In 2015 the UN adopted the Addis Ababa Action Agenda,[72] which has the objective of strengthening the framework to finance sustainable development for the successful implementation of the 2030 Agenda. One of the action areas identified in the Action Agenda is "International trade as an engine for development".[73] International trade is recognised as an:

> ... [e]ngine for inclusive economic growth and poverty reduction, and contributes to the promotion of sustainable development.[74]

This affirms the crucial role international trade plays in the achievement of socio-economic development.[75] International trade, and the socio-economic benefits derived from it, are enhanced through the process of economic integration. These benefits include the accelerated achievement of sustainable economic development. This principle is affirmed by the UN in article 87 of the Action Agenda, which commits to strengthening regional trade agreements and recognises the:

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72 *Addis Ababa Action Agenda of the Third International Conference on Financing for Development* GA Res 69/313 (2015).

73 *Addis Ababa Action Agenda of the Third International Conference on Financing for Development* GA Res 69/313 (2015) paras 79-92.

74 *Addis Ababa Action Agenda of the Third International Conference on Financing for Development* GA Res 69/313 (2015) para 79.

75 Abrokwaa 2020 https://www.acintad.org/the-significance-of-african-continental-free-trade-area-afcfta-in-the-attainment-of-sdgs/.

> ... [s]ignificant potential of regional economic integration and interconnectivity to promote inclusive growth and sustainable development...

Therefore, the World Trade Organisation (WTO) has implemented various measures for the rapid liberalisation of trade, such as a call for regional integration, with the specific aim of positioning the sector as a key contributor to sustainable development.[76]

The benefits associated with economic integration are especially relevant to the African continent. Apart from current developments concerning the AfCFTA, African nations are developing states in which poverty is rampant, infrastructure is underdeveloped and socio-economic rights are not guaranteed to all people. There is an urgent need for sustainable economic development which can be achieved through effective economic integration.

3.3 Stages of economic integration

An overview of the stages of economic integration is required to understand the gradual development of regional integration in Africa. There are "seven stages in the process of economic integration",[77] with the final goal of achieving complete economic harmonisation. The first stage is the formation of a preferential trade area in which member countries:

> ... [a]gree to reduce or eliminate tariff barriers on selected goods imported from other members of the area.[78]

This is usually the first step towards the creation of a trading bloc. The second stage is the formation of a free trade area in which member countries "agree to reduce or eliminate barriers to trade on all goods coming from other members."[79] A detailed

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76 Abrokwaa 2020 https://www.acintad.org/the-significance-of-african-continental-free-trade-area-afcfta-in-the-attainment-of-sdgs/.

77 Kenton 2020 https://www.investopedia.com/terms/e/economic-integration.asp.

78 Economics Online date unknown https://www.economicsonline.co.uk/Global_economics/Economic_integration.html.

79 Economics Online date unknown https://www.economicsonline.co.uk/Global_economics/Economic_integration.html.

discussion on free trade areas and its effects is provided below.[80] The region may further integrate into a customs union in which member countries form part of the same customs territory, this entails that no tariff is levied on goods traded amongst members and a common external tariff is accepted against non-members.[81] The use of a common external tariff, namely levying the same tariff on goods from outside the customs union, allows goods to move freely within the customs union which:

> ... [e]ffectively removes the possibility of arbitrage... is one of the fundamental building blocks of economic integration.[82]

A customs union is defined in the General Agreement on Tariffs and Trade[83] as:

> (a) ... [t]he substitution of a single customs territory for two or more customs territories, so that
> (i) duties and other restrictive regulations of commerce... are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,
> (ii) ... [s]ubstantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union.[84]

Further economic integration leads to a common market which "promotes frictionless trading"[85] and is "the most significant step towards full economic integration."[86] All economic resources can be freely traded in a common market as "all barriers are eliminated to allow the free movement of goods, services, capital and labour." This entails that all goods from any member country is suitable for sale, distribution and consumption,[87] and all persons from any member country can work freely throughout the region. The next stage is the formation of an economic union when the trading bloc has:

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80 See para 3.4 below.
81 Economics Online date unknown https://www.economicsonline.co.uk/Global_economics/Economic_integration.html.
82 Economics Online date unknown https://www.economicsonline.co.uk/Global_economics/Economic_integration.html.
83 *General Agreement on Tariffs and Trade* (1986).
84 Article XXIV (8)(a) of the *General Agreement on Tariffs and Trade* (1986).
85 CFI 2020 https://corporatefinanceinstitute.com/resources/knowledge/economics/free-trade-area/.
86 Economics Online date unknown https://www.economicsonline.co.uk/Global_economics/Economic_integration.html.
87 CFI 2020 https://corporatefinanceinstitute.com/resources/knowledge/economics/free-trade-area/.

> ... [b]oth a common market between members, and a common trade policy towards non-members...[88]

This may further integrate into a monetary union through adopting a single, shared currency. This is a "major step towards macro-economic integration"[89] enabling economies to converge even more closely. The next stage is the formation of an economic and monetary union in which the region will have a:

> ... [s]ingle economic market, a common trade policy, a single currency and a common monetary policy.[90]

The final stage is complete economic integration which is the "complete harmonisation of all policies, rates, and economic trade rules."[91] This refers to an economic and monetary union "together with a single fiscal policy"[92] setting out common tax and benefit rates.

Each successive stage of economic integration further simplifies and strengthens cross-border trade, movement, labour and relations between member countries. However, it also becomes increasingly complex to develop and regulate rules and procedures acceptable and beneficial to all members. Nonetheless, since economic integration effectively achieves economic growth and development, the successive stages should be undertaken to achieve sustainable economic development and promote fundamental human rights.

3.4 Free trade area

A free trade area, the second stage of regional integration, refers to a "region in which a group of countries has signed a free trade agreement"[93] which "seal(s) the

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88 Economics Online date unknown https://www.economicsonline.co.uk/Global_economics/Economic_integration.html.
89 Economics Online date unknown https://www.economicsonline.co.uk/Global_economics/Economic_integration.html.
90 Economics Online date unknown https://www.economicsonline.co.uk/Global_economics/Economic_integration.html.
91 Economics Online date unknown https://www.economicsonline.co.uk/Global_economics/Economic_integration.html.
92 Economics Online date unknown https://www.economicsonline.co.uk/Global_economics/Economic_integration.html.
93 Anon 2019 https://www.investopedia.com/terms/f/free_trade_area.asp.

economic cooperation"[94] between the different countries, especially neighbouring countries or those within the same geographical region. The main aim of free trade areas is to:

> ... [b]ring down barriers in trading, specifically tariffs and import quotas, and encourage the free trade of goods and services among its member countries.[95]

The General Agreement on Tariffs and Trade defines a free trade area as:

> ... [a] group of two or more customs territories in which the duties and other restrictive regulations of commerce… are eliminated on substantially all the trade between the constituent territories in products originating in such territories.[96]

In order to establish a free trade area, the participating countries will have to determine the rules applicable to trade within the region. These rules vary from regulating tariffs to determining customs procedures and resolving trade disputes.[97] A free trade area is mainly concerned with eliminating tariffs and non-tariff barriers on goods traded among member countries. The members "grant each other exclusive tariff preferences"[98] which require rules of origin to identify goods entitled to such preferential treatment. The free trade agreement must:

> ... [s]pecifically identify the duties and tariffs that are to be imposed on member countries when it comes to imports and exports...[99]

A free trade area holds numerous advantages for member countries. One of the most fundamental effects of free trade is increased competition as "domestic firms will face more competition from abroad."[100] The highly competitive market will lead to increased efficiency as products and services will increase in quality without being too expensive in order to be on par with competitors. The competitive market will also lead countries to specialise in the production of certain goods as such products

94 CFI 2020 https://corporatefinanceinstitute.com/resources/knowledge/economics/free-trade-area/.
95 CFI 2020 https://corporatefinanceinstitute.com/resources/knowledge/economics/free-trade-area/.
96 A XXIV (8)(b) of the *General Agreement on Tariffs and Trade* (1986).
97 Anon 2019 https://www.investopedia.com/terms/f/free_trade_area.asp.
98 TRALAC Erasmus *Ratification of the AfCFTA Agreement: What happens next?* 13.
99 CFI 2020 https://corporatefinanceinstitute.com/resources/knowledge/economics/free-trade-area/.
100 Pettinger 2019 https://www.economicshelp.org/trade2/benefits_free_trade/.

"take less time to complete and their output is higher."[101] Through such specialisation, countries will "benefit from economies of scale and lower average costs".[102] A highly competitive market, especially on a global scale, will lower prices and ensure consumers enjoy a higher purchasing power. Since the market spans over the entire free trade area, producers will have access to a greatly expanded market of potential consumers or suppliers.[103] The expanded market will also result increased employment opportunities. Furthermore, monopolies are often eliminated in free trade areas, especially when there are no tariffs and quotas, as "more players can come in and join the market."[104] Due to the low cost and ease of imports and exports, a wider variety of products will become available.[105] In essence, free trade areas can encourage economic development as whole, which will see increased living standards and the eventual promotion of socio-economic rights.

However, as any form of regional integration, the formation of a free trade area may potentially disadvantage member states in its initial stages. The highly competitive market can cause domestic producers to suffer. The threat to intellectual property is increased as domestic producers can easily access, copy and sell someone else's ideas as their own.[106] Yet this can be solved through effective protection of intellectual property rights. Workers may also "be forced to work in unhealthy and substandard work environments",[107] especially in developing countries where outsourcing jobs are common. This issue can be solved through effective and well-developed labour laws. The greatest disadvantage concerns the loss of import tax and member countries will have to find other means to make up the lost tax revenue.[108] However, this initial loss of tax revenue is trivial compared to the long-term economic gains achieved through the formation of free trade areas.

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101 CFI 2020 https://corporatefinanceinstitute.com/resources/knowledge/economics/free-trade-area/.
102 Pettinger 2019 https://www.economicshelp.org/trade2/benefits_free_trade/.
103 Anon 2019 https://www.investopedia.com/terms/f/free_trade_area.asp.
104 CFI 2020 https://corporatefinanceinstitute.com/resources/knowledge/economics/free-trade-area/.
105 CFI 2020 https://corporatefinanceinstitute.com/resources/knowledge/economics/free-trade-area/.
106 CFI 2020 https://corporatefinanceinstitute.com/resources/knowledge/economics/free-trade-area/.
107 CFI 2020 https://corporatefinanceinstitute.com/resources/knowledge/economics/free-trade-area/.
108 CFI 2020 https://corporatefinanceinstitute.com/resources/knowledge/economics/free-trade-area/.

3.5 Conclusion

This chapter clearly demonstrates that economic integration, including the formation of a free trade area, is a recognised and effective means of achieving economic growth and development. When implemented with due regard to the fundamental pillars of sustainability, sustainable economic development will be achieved. The various stages of integration successively achieve greater socio-economic benefits for member states. These extensive benefits, especially in the long term, should provide the incentive for states to fully commit and accelerate the process of regional integration.

In recognition of the fundamental role regional integration can play in socio-economic development, the economic integration of the African continent is a key and integral objective of the AU and its member states. However, the success of any form of regional integration is dependent upon a well-developed legal foundation. Therefore, the AU and regional legal instruments promoting economic integration should be analysed to better comprehend the legal foundation of regional integration on the African continent.

4 African Union

4.1 Introduction

The objective of this chapter is to determine whether the regulatory framework of the AU recognises the relationship between economic integration and the promotion of socio-economic rights. In recognition of this inherent relationship, the AU should undertake effective measures towards the regional integration of the African continent. Thus, regional legal instruments and institutions of the AU, as well as initiatives and projects derived from such instruments and institutions, should facilitate the achievement of sustainable economic development through the process of regional economic integration. An overview of the AU institutions and regional legal framework will provide a regional perspective on the manner in which African states are legally obligated to achieve sustainable economic development through regional economic integration. This is demonstrated through the provisions of regional legislative instruments and the portfolios of various regional institutions established by the AU.

4.2 Institutions of the African Union

The AU is a continental body made up of 55 African member states which was officially launched in 2002, replacing its predecessor, the Organisation of African Unity (OAU). Where the OAU was focussed on liberation movements, the AU is an organisation "spearheading Africa's development and integration."[109] The AU was established with a specific view of "accelerating the process of integration in the continent",[110] in order to play its rightful role in the global economy. This shift in focus towards integrative objectives demonstrates the recognition by heads of African states and the Government of the OAU that regional integration is a necessary and critical feature of the socio-economic transformation needed on the

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109 AU 2020 https://au.int/en/about/vision.
110 AU 2020 https://au.int/en/au-nutshell.

African continent. This principle is the foundation of the Pan African vision which strives to achieve

> An integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena.[111]

The key takeaway being that the Pan African vision, which forms the basis of the idealistic future envisioned for the African continent, includes the regional integration of its member states.

There are numerous organs of the AU, each uniquely responsible for realising an aspect of the Pan African vision and promoting principles found in the regional legislative framework. A brief overview will be provided on those institutions with the primary responsibility to oversee the economic integration and resultant achievement of sustainable economic development on the African continent.

The AUC was established in terms of Article 20 of the Constitutive Act. It is the AU's secretariat which undertakes the day-to-day activities of the Union.[112] The mission of the AUC is to become:

> An efficient and value-adding institution driving the African integration and development process in close collaboration with African Union Member States, the Regional Economic Communities and African citizens.[113]

The AUC is composed of a Chairperson, Deputy Chairperson and eight Commissioners. The eight Commissioners are in charge of specific portfolios. The most relevant portfolio is the Departments of Economic Affairs, which plays an integral role in the promotion of African regional integration.[114] The AUC is founded upon the principle of driving regional integration, depicting the recognised and paramount need of economic integration as a primary mission of the AU secretariat.

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111 AU 2020 https://au.int/en/about/vision.
112 AU 2020 https://au.int/en/commission.
113 AU 2020 https://au.int/en/about/vision.
114 AU 2020 https://au.int/en/ea.

The New Partnership for Africa's Development (NEPAD) is the "implementing arm of the AU's Agenda 2063 development strategy."[115] This institution has the primary objective of transforming Africa through focussing on, amongst others, high-impact projects that can:

> ... [t]ranslate the AU's continental strategic development frameworks into national development priorities... regional integration... implementation of the First Ten Year Implementation Plan of Agenda 2063.[116]

NEPAD is an institution directly responsible for putting the AU's plans into action, including plans on regional integration which are recognised as high-impact projects which play a central role in realising the Agenda 2063 development strategy.

The Pan-African Parliament (PAP) was established in terms of Article 17 of the Constitutive Act in order to facilitate and ensure the full participation of African states and its people in the "development and economic integration of the African continent".[117] It serves as platform for all African states to be involved in discussions and decision making on challenges facing the African continent, specifically those related to the integration and economic development of the continent.[118] Currently the PAP only has consultative, advisory and budgetary oversight powers within the AU, but the ultimate aim is for the PAP to be an "institution with full legislative powers, whose members are elected by universal suffrage."[119] The PAP has the potential to serve as one of the most effective bodies in consolidating and realising economic integrative ideals. The platform provided by the PAP can effectively ensure that all member states are involved in decision making, while legislatively enhancing and enforcing all decisions made. However, to truly be effective, the PAP should be provided with full legislative powers as intended.

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115 AU 2020 https://au.int/en/nepad.
116 AU 2020 https://au.int/en/nepad.
117 A 17(1) of the *Constitutive Act of the African Union* (2000).
118 AU 2020 https://au.int/en/pap.
119 AU 2020 https://au.int/en/pap.

The Economic, Social and Cultural Council (ECOSOCC) is an "advisory organ composed of different social and professional groups of AU member states."[120] Its functions include advising and contributing to the institutions of the AU on the promotion and realisation of the AU's vision and objectives, translating the objectives and policies into concrete programmes. The ECOSOCC can effectively provide the necessary expertise to the AU and all relevant institutions during the implementation of regional economic integration. Considering the fundamental importance of the integrative ideals, the expertise provided by the ECOSOCC can serve to provide invaluable insight and guidance on all issues which integration may face.

The above institutions, amongst others, are responsible for realising the Pan African vision and implementing the reforms required to achieve sustainable economic development, specifically through regional integration, and comply with the principles of international and regional legal instruments. Those highlighted above merely demonstrate the various regional institutions established with a direct purpose of implementing and overseeing economic integrative ideals in order to achieve sustainable economic development.

4.3 Regional legal framework

Numerous regional legislative instruments have been adopted by the AU in an attempt to achieve the Pan African vision. Although the regional instruments which promote socio-economic rights discussed above are also applicable,[121] the following discussion is focussed on the provisions of regional instruments directed at the achievement of regional economic integration and the resultant sustainable economic development.

The main objectives of the AU are set out in the Constitutive Act, which include to:

> (a) achieve greater unity and solidarity between the African countries and the peoples of Africa;
> (b) ...

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[120] AU 2020 https://au.int/en/about/ecosocc.
[121] See para 2.5 above.

(c) accelerate the political and socio-economic integration of the continent;
(d) ...
(e) ...
(f) ...
(g) ...
(h) ...
(i) establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;
(j) promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;
(k) ...
(l) coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;[122]

In order to promote the achievement of sustainable economic development and protect fundamental human rights, the founding objectives of the Constitutive Act includes the necessity of regional economic integration.[123] The inclusion of economic integration in the founding objectives again demonstrate its inherent role in the achievement of the Pan African vision and objectives of the AU. Thus, the Preamble of the Constitutive Act recognises the need to:

> ... [a]ccelerate the process of implementing the Treaty establishing the African Economic Community in order to promote the socio-economic development of Africa and to face more effectively the challenges posed by globalization;

The establishment of the African Economic Community (AEC) is a vision derived from the OAU. It is to be established in terms of the Abuja Treaty of 1991,[124] which "implemented a progressive approach to regional integration in Africa."[125] The Abuja Treaty set out an ambitious six stage roadmap to achieve full economic integration,[126] including the establishment of RECs and successive regional integration within and between the RECs, "towards the creation of the African Unity."[127] Article 4(1) of the Abuja Treaty sets out the objectives of the AEC, which includes:

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122 A 3 of the *Constitutive Act of the African Union* (2000).
123 A 3(c) of the *Constitutive Act of the African Union* (2000).
124 *Treaty Establishing the African Economic Community* (1991).
125 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 4.
126 A 6 of the *Treaty Establishing the African Economic Community* (1991).
127 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 4.

(a) To promote economic, social and cultural development and the integration of African economies in order to increase economic self-reliance and promote and endogenous and self-sustained development;
(b) ...
(c) To promote cooperation in all fields of human endeavour in order to raise the standard of living of African peoples, and maintain and enhance economic stability… contribute to the progress, development and the economic integration of the Continent;

Article 4(2) provides that these objectives are to be achieved through regional economic integration. This illustrates that the founding economic integrative objectives recognise its effective role in the achievement of sustainable economic development and the promotion of socio-economic rights. Article 5 requires all member states to take the necessary measures, legislative and otherwise, for the development of the AEC and the achievement of its objectives.

However, implementation and realisation of the objectives set out in these regional legislative instruments have not been achieved to the extent and in the time frame envisioned. Therefore, in an effort to realign and recommit member states to the Pan African vision, the African Heads of State and Governments signed the 50th Anniversary Solemn Declaration[128] in 2013 to reaffirm their:

> ... [c]ommitment to support Africa's new path for attaining inclusive and sustainable economic growth and development...[129]

The re-dedication to the Pan African vision specifically includes a commitment to Africa's economic integration and the agenda for social and economic development.[130] Various means are employed by the AU in an effort to achieve this vision. One of the most relevant and influential measures undertaken through this Solemn Declaration is the adoption of Agenda 2063,[131] which is a "concrete manifestation"[132] of the vision of the AU which is to be achieved within a 50-year period from 2013 to 2063.

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128 *50th Anniversary Solemn Declaration* (2013).
129 AU 2020 https://au.int/agenda2063/overview.
130 *50th Anniversary Solemn Declaration* (2013) 3.
131 *Agenda 2063: The Africa We Want* (2015).
132 AU 2020 https://au.int/agenda2063/overview.

4.4 Agenda 2063

Agenda 2063 provides a detailed and concrete framework for the realisation of the Pan African vision. In order to achieve an integrated and prosperous Africa, Agenda 2063 was developed as the strategic framework to form "the basis for Africa's long term socio-economic and integrative transformation."[133] The AU described the Agenda as a "blueprint and master plan for transforming Africa into the global powerhouse of the future."[134] The Agenda sets out seven Aspirations which are to be achieved by 2063. The Aspirations are interdependent and all seven must be achieved to realise the ideals of the Agenda. The Aspirations correspond with the 17 SDGs in the international sphere, but are specifically catered to meet the needs of the African people. By realising the ideals of the Agenda, "member states will *ipso facto* be meeting Global obligations under the SDGs".[135]

The first two Aspirations, which are most relevant to the attainment of sustainable economic development through economic integration, are the achievement of:

1. A prosperous Africa based on inclusive growth and sustainable development
2. An integrated continent, politically united and based on the ideals of Pan-Africanism and the vision of the African Renaissance[136]

Aspiration 1 refers to the achievement of sustainable economic development and the resultant eradication of poverty[137] and increased standard of living.[138] Aspiration 2 specifically refers to economic integration, demonstrating its critical role in achievement of the Pan African vision, and that the:

> ... [f]ree movement of people, capital, goods and services will result in significant increases in trade and investments amongst African countries rising to unprecedented levels, and in the strengthening of Africa's place in global trade.[139]

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133 AUC *An Overview of Agenda 2063: The Africa We Want- First Ten Year Implementation Plan* 2.
134 AU 2020 https://au.int/agenda2063/overview.
135 AU 2020 https://au.int/en/ea/statistics/a2063sdgs.
136 AUC *Agenda 2063: The Africa We Want- Popular Version* 2.
137 AUC *Agenda 2063: The Africa We Want- Popular Version* para 9.
138 AUC *Agenda 2063: The Africa We Want- Popular Version* para 10.
139 AUC *Agenda 2063: The Africa We Want- Popular Version* para 24.

This further illustrates the AU and its member states' commitment towards attaining continental unity and recognition that the "regional integration process is a critical success factor for shared prosperity and peace."[140] The compilers of the Africa Regional Integration Index:

> ... [r]eiterate that regional integration is crucial for sustainable and inclusive development. If we remain fragmented and weighed down by trade barriers, we create obstacles that only impoverish our people and penalise Africa in a competitive global market.[141]

Apart from encapsulating the seven Aspirations, the Agenda also identifies key Flagship Programmes which are intended to "boost Africa's economic growth and development" [142] to rapidly transform the socio-economic state of the continent. One such Flagship Programme is to accelerate the regional economic integration of the African continent through fast-tracking the implementation of the Continental Free Trade Area.[143]

In order to rationalise 50-year plan and facilitate the achievement of the Flagship Programmes, a series of five ten-year plans were developed as medium-term strategies. The first of these is the First Ten Year Implementation Plan[144] (FTYIP). The Flagship Programmes of the Agenda are incorporated and put into action as Flagship Projects in terms of the FTYIP. [145] The Flagship Projects identify programmes and initiatives which will be "key to accelerating Africa's growth and development".[146] These Projects intend to realise the vision of the AU through specific and concentrated effort on highly effective initiatives. One of these Projects is the establishment of the AfCFTA. In the FTYIP it is stated that the AfCFTA is envisioned to:

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140 AUC *Agenda 2063: The Africa We Want- Popular Version* para 73.
141 AU, AfDB and UNECA *Africa Regional Integration Index: Report 2019* 6.
142 AU 2020 https://au.int/agenda2063/overview.
143 AUC *Agenda 2063: The Africa We Want- Popular Version* para 72(h).
144 *Agenda 2063: First Ten Year Implementation Plan 2014-2023* (2015).
145 AUC *An Overview of Agenda 2063: The Africa We Want- First Ten Year Implementation Plan* 4.
146 AU 2020 https://au.int/en/agenda2063/flagship-projects.

> ... [s]ignificantly accelerate growth of Intra-Africa trade and use trade more effectively as an engine of growth and sustainable development...[147]

The FTYIP further provides that the AfCFTA is expected to double intra-Africa trade within the first 5 years and significantly strengthen Africa's "policy space in global trade negotiations".[148] Agenda 2063 also envisions implementation of further stages of economic integration, such as the establishment of a Continental Customs Union; however, this can only be achieved after successful implementation of the AfCFTA.[149]

4.5 Conclusion

The AU is a highly important body in the socio-economic development of the African continent. There are numerous regional institutions and legal instruments which intend to facilitate the achievement of sustainable economic development, specifically through economic integration. The regulatory framework clearly recognises that the regional integration of the African continent is directly linked to the realisation of continental prosperity. The legal instruments of the AU continuously reiterate the critical necessity and importance of economic integrative initiatives for the achievement of sustainable economic development. Apart from the founding documents, Agenda 2063 sets out a roadmap with specific Programmes to assist the AU and member states in realising its ideals. One such Programme carries the primary responsibility for regional integration, namely the formation of the AfCFTA. Therefore, the AU is taking bold action to accelerate the AfCFTA's implementation in order to achieve wide ranging and fundamental regional objectives.

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147 AUC *An Overview of Agenda 2063: The Africa We Want- First Ten Year Implementation Plan* 4.
148 AUC *An Overview of Agenda 2063: The Africa We Want- First Ten Year Implementation Plan* 4.
149 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 5.

5 The African Continental Free Trade Area

5.1 Introduction

In January 2012, at the 18th Ordinary Session of the Assembly of Heads of State and Government of the AU, the decision to establish a Continental Free Trade Area was officially adopted. The aim was to:

> ...[c]reate a single continental market for goods and services, with free movement of business, persons and investments, and thus pave the way for accelerating the establishment of the Customs Union...[150]

In 2018 the founding document of the AfCFTA, namely the Agreement Establishing the African Continental Free Trade Area,[151] was formally adopted. The AfCFTA will be more than a standard free trade area as it will:

> ...[c]over trade in goods, trade in services, dispute settlement, competition, investment and intellectual property rights.[152]

In terms of number of participating countries, the formation of AfCFTA will create the largest free trade area in the world since the formation of the WTO. The Agreement will connect 1.3 billion people across 55 countries in an economic area with a combined GDP of US$3.4 trillion.[153] The AfCFTA provides a unique opportunity for African states to effectively integrate into the global economy and so reduce poverty and promote social inclusion. Successful implementation of the AfCFTA:

> ... [c]ould help deliver equitable human development, strengthen regional integration, and further the development agendas of African institutions including Agenda 2063. [154]

The effective undertaking of this momentous endeavour will play an important role in the achievement of unprecedented sustainable economic development on the African continent and the fulfilment of socio-economic rights of African citizens.

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150 TRALAC Erasmus *Ratification of the AfCFTA Agreement: What happens next?* 1.
151 *Agreement Establishing the African Continental Free Trade Area* (2018).
152 TRALAC Erasmus *Ratification of the AfCFTA Agreement: What happens next?* 2.
153 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 1.
154 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 5.

Thus, the objective of this chapter is to analyse the legal framework of the AfCFTA to determine the extent to which it caters for the formation of a free trade area with the clear intention and capacity to achieve sustainable economic development. An examination of the objectives set out in the founding instruments can assist in determining whether the AfCFTA's formation is adequately focussed on achieving sustainable economic development and promoting socio-economic rights. This analysis will be followed by a brief overview of the AfCFTA institutions established in terms of the founding legal framework, specifically those which carry the primary responsibility of ensuring the effective implementation of the Agreement and realisation of its ideals. This will provide insight into the AfCFTA's initial capacity to achieve said objectives. However, before these aspects are examined, the unique legal process of the formation of the AfCFTA, in relation to its founding instruments, will be analysed as this process plays an important an interesting role in its success. An effective process of ratification which ensures the equal distribution of benefits is critical to successful regional integration capable of achieving sustainable economic development.

5.2 Formation of the African Continental Free Trade Area

One of the most important legal documents in the formation of the AfCFTA is the founding document, namely the Agreement Establishing the African Continental Free Trade Area. The founding document itself must be distinguished from the AfCFTA Agreement as a whole, which has a wider meaning. Although interlinked and interdependent, the distinction between the founding document and the AfCFTA Agreement as a whole is important to this discussion. The AfCFTA 'Agreement' is defined in Article 1 of the founding document as referring to the Agreement Establishing the African Continental Free Trade Area as well as its "Protocols, Annexes and Appendices which shall form an integral part thereof". A fully functioning AfCFTA, in the manner envisioned, will only become effective once the entire 'Agreement' is implemented. In essence, the AfCFTA Agreement is comprised of three layers. The first layer is the founding document itself which is a framework setting out the Agreement's "purposes and intentions… and provides primary definitions and outlines."[155] The second layer consists of the Phase I and II Protocols which "constitute the main substantive and operative components of the agreement".[156] The third layer is comprised of the "annexes, guidelines, and step-by-step instructions of the protocols."[157]

Before analysing the specific legal developments on implementation of the AfCFTA, the unique process of ratification and coming into force of the Agreement should be considered. Ratification refers to an international act whereby a sovereign state "consent(s) to be bound by an international agreement"[158] on the international plane. The ratifying state accepts to be bound by the agreement and will implement the obligations agreed upon. A state may also accede to an existing agreement after its conclusion and so be bound by its provisions. There are two phases in which ratification and negotiations of the AfCFTA Agreement takes place. Phase I concerns the coming into force of the founding document, as well as negotiations on the Protocol on Trade in Goods, the Protocol on Trade in Services and the Protocol on Rules and Procedures on the Settlement of Disputes. Phase 2 concerns negotiations on the Protocol on Competition Policy, the Protocol on Intellectual Property Rights and the Protocol on Investment.

In the normal course of international agreements, states must complete all negotiations before ratification. However, the AfCFTA follows a different approach since African states can ratify the founding document, namely the Agreement Establishing the African Continental Free Trade Area, which will be the first to enter into force, whereas the Phase I and II negotiations will take place afterwards.[159] Therefore, the "AfCFTA will not enter into force as one complete package of legal instruments."[160] Although not stated specifically:

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155 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 8.
156 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 8.
157 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 8.
158 TRALAC Erasmus 2019 https://www.tralac.org/blog/article/14052-the-afcfta-what-enters-into-force-now-and-what-does-it-mean.html.
159 TRALAC Erasmus *Ratification of the AfCFTA Agreement: What happens next? 16.*
160 TRALAC Erasmus *Ratification of the AfCFTA Agreement: What happens next? 16.*

> ...[t]he notion of *early harvest* seems to have been accepted as part of the AfCFTA negotiating process. [161]

This means that aspects of the agreement on which consensus are reached at an early stage may be "implemented on a provisional or definitive basis".[162] Through concluding ratification and negotiations in different phases, the Agreement ensures the attainment of benefits derived from aspects on which consensus can be reached, while simultaneously ensuring complicated issues which may affect states differently are implemented only after thorough negotiations are concluded. This protects vulnerable states and guarantees the benefits of the Agreement are distributed equally, while simultaneously accelerating the Agreement's eventual implementation.

Article 23(1) of the Agreement Establishing the African Continental Free Trade Area states that the operational phase of the AfCFTA will be launched 30 days after the 22nd instrument of ratification is deposited with the Chairperson of the AUC. Sierra Leone and the Saharawi Republic deposited their instruments of ratification on the 29th of April 2019, bringing the total number of ratifications to 22, and the operational phase of AfCFTA was launched on the 30th of May 2019.[163] However, the full operational phase was not truly launched since it was only the founding document which entered into force on the 30th of May 2019 and preferential trade under AfCFTA will only be possible once the outstanding Phase I issues, namely negotiations concerning the Protocol on Trade in Goods and the Protocol on Trade in Services, are finalised and come into force.[164] Once fully negotiated, the Phase I Protocols must be formally adopted by the AU Assembly.[165] The aim was for these

161 TRALAC Erasmus 2020 https://www.tralac.org/blog/article/14463-how-will-phase-ii-of-the-afcfta-be-negotiated-ratified-and-implemented.html.

162 TRALAC Erasmus 2020 https://www.tralac.org/blog/article/14463-how-will-phase-ii-of-the-afcfta-be-negotiated-ratified-and-implemented.html.

163 TRALAC Erasmus 2019 https://www.tralac.org/blog/article/14052-the-afcfta-what-enters-into-force-now-and-what-does-it-mean.html.

164 TRALAC Erasmus 2019 https://www.tralac.org/blog/article/14052-the-afcfta-what-enters-into-force-now-and-what-does-it-mean.html.

165 TRALAC Erasmus *Ratification of the AfCFTA Agreement: What happens next?* 3.

negotiations, as well as preparatory implementation at a national level, to be completed in order for trade under AfCFTA to commence on the 1st of July 2020.[166]

However, this deadline was not met due to the significant impact of the COVID-19 pandemic, as well as the failure to finalise and agree on certain essential aspects concerning the Phase I negotiations. With regard to Trade in Goods, negotiations on preferential tariff concessions and the finalisation on rules of origin were continuously postponed.[167] Consensus on these aspects are critical requirements of a free trade area, but it may take a considerable period of time for all member states, each at differing levels of economic development, to agree on such matters. This issue is evident when considering the negative impact caused by an initial loss in tariff, as this form of revenue is an important source of income for many member states which can be used to "protect domestic industry from import competition."[168] In the wake of the COVID-19 pandemic, a further loss of income in the initial stages of the AfCFTA may be devastating to struggling economies. With regard to Trade in Services, there are still various service sector commitments which are to be negotiated.[169] This includes the development of regulatory frameworks in service sectors, carrying out of regulatory assessments and the development of guidelines for negotiating schedules of specific commitments and the development of these schedules themselves.[170]

The Phase II negotiations are still underway and are expected to be completed at the end of 2021. These Protocols will only come into force 30 days after their 22nd instrument of ratification is deposited.[171] Due to the ongoing negotiations and difficulties in finding suitable solutions, as well as the severe impact of the COVID-19

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166 TRALAC https://www.tralac.org/documents/resources/faqs/3079-african-continental-free-trade-area-faqs-december-2019-update/file.html 2.

167 TRALAC Erasmus *Ratification of the AfCFTA Agreement: What happens next?* 16.

168 TRALAC Erasmus *Ratification of the AfCFTA Agreement: What happens next?* 16.

169 TRALAC Erasmus 2019 https://www.tralac.org/blog/article/14052-the-afcfta-what-enters-into-force-now-and-what-does-it-mean.html

170 Chinyamakobvu 2020 https://www.ippc.int/static/media/files/publication/en/2020/09/Update_on_the_African_Continental_Free_Trade_Area_-_Oswald.pdf

171 A 23(1) of the *Agreement Establishing the African Continental Free Trade Area* (2018).

pandemic on African economies, the implementation of the Agreement was postponed and it only entered its operational phase on the 1st of January 2021. Nevertheless, the remarkable pace at which African states ratified the founding document is "unprecedented in the AU history."[172] To date, the Agreement Establishing the African Continental Free Trade Area has been signed by 54 African states while 38 states have deposited their instruments of ratification.[173]

The unique process of ratification of the Agreement demonstrates the manner and willingness of regional institutions to provide for regional integration which caters for the specific needs, including the socio-economic needs, of African states. From the initial stages of ratification, the formation of the AfCFTA clearly intends to find a unique way forward in terms of which all African states can benefit while simultaneously ensuring effective steps are continuously taken towards full implementation.

5.3 Objectives of the African Continental Free Trade Area

The Agreement Establishing the African Continental Free Trade Area sets out general and specific objectives to ensure its progressive implementation focused on Pan African ideals. Both sets of objectives are included in full to illustrate the scale of the endeavour and its potential effects. The general objectives are set out in Article 3 of the Agreement:

(a) create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of "An integrated, prosperous and peaceful Africa" enshrined in Agenda 2063;
(b) create a liberalised market for goods and services through successive rounds of negotiations;
(c) contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs;
(d) lay the foundation for the establishment of a Continental Customs Union at a later stage

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172 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 6.
173 TRALAC 2020 https://www.tralac.org/resources/infographic/13795-status-of-afcfta-ratification.html.

(e) promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties;
(f) enhance the competitiveness of the economies of State Parties within the continent and the global market;
(g) promote industrial development through diversification and regional value chain development, agricultural development and food security;
(h) resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

The general objectives are clearly directed at the achievement of sustainable economic development and the promotion of socio-economic rights. Article 3(a) specifically refers to the Pan African vision and its socio-economic principles as the first and foremost objective of the formation of the AfCFTA. Article 3(e) goes even further to recognise the AfCFTA's role in the promotion and attainment of sustainable socio-economic development. The general objectives are clearly and concisely directed at the achievement of sustainable economic development.

In terms of Article 4, the Agreement provides specific objectives to be undertaken by member states to facilitate the realisation of the general objectives:

(a) progressively eliminate tariffs and non-tariff barriers to trade in goods;
(b) progressively liberalise trade in services;
(c) cooperate on investment, intellectual property rights and competition policy;
(d) cooperate on all trade-related areas;
(e) cooperate on customs matters and the implementation of trade facilitation measures;
(f) establish a mechanism for the settlement of disputes concerning their rights and obligations; and
(g) establish and maintain an institutional framework for the implementation and administration of the AfCFTA.

With regard to the elimination of tariffs, the Agreement compels member states to eliminate tariffs on 90% of goods. Tariff reductions for the remaining 10%, classified as sensitive goods, can be undertaken over a longer period of time.[174] The elimination of tariff and non-tariff barriers facilitates intra-Africa trade and:

[174] Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 12.

> ... [p]romote regional value chains to foster the integration of the African continent into the global economy; boost industrialization, competitiveness and innovation, ultimately contributing to Africa's economic development and social progress.[175]

The specific objectives provide further guidelines to member states in the achievement of the founding general objectives, which are directed at the eventual achievement of sustainable economic development. The objectives of the Agreement sufficiently recognise the manner in which regional economic integration results in the achievement of sustainable economic development and the eventual fulfilment of socio-economic rights.

It is clear that implementation of the AfCFTA is a massive leap towards the regional integration of the African continent and provides a platform for the successive stages of integration. The creation of the AfCFTA regional market:

> ... [i]s a major opportunity to help African countries diversify their exports, accelerate growth, and attract foreign direct investment.[176]

However, mere reiteration of idealistic objectives alone will not lead to the achievement of sustainable economic development and realisation of the Pan African vision. The objectives should be realised by effective and accountable regional institutions established in terms of the AfCFTA Agreement. Furthermore, determined and coordinated action by the AU and all member states will be required to ensure the effective implementation of the AfCFTA and the full realisation of its objectives. Only then will the AfCFTA being a highly effective vehicle for the achievement of sustainable economic development.

5.4 Institutions of the African Continental Free Trade Area

The institutions of the AfCFTA are essential to "oversee, promote and monitor the implementation of obligations by the State Parties."[177] The AfCFTA establishes four key institutions as well as various technical bodies in terms of the Protocols. These

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175 Cofelice *The Federalist Debate* 32.
176 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 1.
177 TRALAC 2019 https://www.tralac.org/blog/article/14238-the-institutions-of-the-african-continental-free-trade-area.html.

institutions provide political oversight, policy direction, and technical guidance and assistance.[178]

In terms of Article 10(1) of the Agreement, the Assembly of the AU is the highest decision-making body of the AfCFTA and provides oversight and strategic guidance. The Assembly has the exclusive authority to adopt interpretations of the Agreement on recommendations by the Council of Ministers, which must be done by consensus.[179] The Assembly is directly responsible for implementing the AfCFTA and furthering Pan African ideals. The oversight functions of the Assembly are crucial to ensure effective steps are continuously taken by all member states.

The Council of Ministers is established in terms of Article 11 of the Agreement and consists of the Ministers responsible for trade in member states. These Ministers must ensure the effective implementation and enforcement of the Agreement to realise its objectives.[180] This Council constituted by the Ministers of Trade is expected to provide the necessary expertise and insight, in consideration of their national responsibility to trade and their individual portfolios which generally relate to the socio-economic development of their respective states.

The Committee of Senior Trade Officials is established in terms of Article 12 of the Agreement and shall consist of Permanent or Principal Secretaries designated by each member state. This Committee is responsible for implementing decisions of the Council of Ministers and overseeing the implementation of the Agreement.[181] The Committee will play an important and central role in ensuring the AfCFTA meets the socio-economic objectives stipulated during implementation, as well as ensuring the necessary steps are taken towards effective implementation.

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178 TRALAC 2019 https://www.tralac.org/blog/article/14238-the-institutions-of-the-african-continental-free-trade-area.html.

179 A 10(2) of the *Agreement Establishing the African Continental Free Trade Area* (2018).

180 A 11(3)(b) and (c) of the *Agreement Establishing the African Continental Free Trade Area* (2018).

181 A 12(2)(a) and (b) of the *Agreement Establishing the African Continental Free Trade Area* (2018).

The Secretariat, which is established in terms of Article 13 of the Agreement, will be the "only bespoke AfCFTA institution".[182] It shall be a functionally autonomous institutional body within the AU system with an independent legal personality.[183] The Assembly of Heads of State and Government of the AU selected Ghana as the host country for the Secretariat of the AfCFTA.[184] The role and responsibilities of the Secretariat are to be determined by the Council of Ministers,[185] and has the potential to become:

> .. [a]n active continental agent and facilitator of the governance improvements required to make the AfCFTA a game changer.[186]

The Secretariat has the potential to be a highly effective agent in implementing the AfCFTA Agreement in line with its socio-economic objectives. The independent nature of the institution will ensure its ability to effectively and responsibly oversee the manner in which the Agreement is implemented, as well as hold members and institutions accountable for their failures and shortcomings.

One of the main objectives of the AfCFTA is to "establish a mechanism for the settlement of disputes".[187] Article 20 goes further to provide that the mechanism shall be administered in terms of the Protocol on Rules and Procedures on the Settlement of Disputes.[188] The institutional arrangement of the Dispute Settlement Mechanism (DSM) is modelled on the WTO and consists of Panels, a Dispute Settlement Body and an Appellate Body.[189] This DSM is exclusively intergovernmental as it only applies to disputes between State Parties. Article 3(1) of the Protocol provides that:

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182 TRALAC 2019 https://www.tralac.org/blog/article/14238-the-institutions-of-the-african-continental-free-trade-area.html.

183 A 13(3) of the *Agreement Establishing the African Continental Free Trade Area* (2018).

184 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 6.

185 A 13(6) of the *Agreement Establishing the African Continental Free Trade Area* (2018).

186 TRALAC Erasmus 2020 https://www.tralac.org/blog/article/14805-the-afcfta-s-institutions-are-vital-for-effective-implementation.html.

187 A 4 of the *Agreement Establishing the African Continental Free Trade Area* (2018).

188 *Protocol on Rules and Procedures on the Settlement of Disputes* (2018).

189 TRALAC Erasmus 2019 https://www.tralac.org/blog/article/14150-dispute-settlement-in-the-african-continental-free-trade-area.html.

> This Protocol shall apply to disputes arising between State Parties concerning their rights and obligations under the provisions of the Agreement.

This entails that only disputes on the "interpretation and/or application of the Agreement in relation to their rights and obligations"[190] can be resolved in terms of this DSM. An effective DSM is a critical requirement in an undertaking as ambitious as the AfCFTA. Although well-developed and modelled on the WTO, further guidance and possible development of the DSM is discussed below.[191]

The institutions briefly outlined above will each play a central role in monitoring and effectively implementing the AfCFTA Agreement as a whole. The legal framework sufficiently caters for the establishment of such institutions and directly sets out their roles and duties. Although further detailed responsibilities and duties of each institution will go a long way in providing clarity on its ability to effectively ensure implementation in line with socio-economic objectives, the founding legal framework sufficiently caters for the establishment of these institutions. A sound legal foundation is laid for the formation of a free trade area with the necessary institutional mechanisms to achieve sustainable economic development.

5.5 Towards achieving sustainable economic development

The AfCFTA will contribute to the achievement of sustainable economic development through several of its long-term benefits, including, but not limited to, increased employment opportunities, higher wages, better quality and variety of products and services and a general increase in standards of living of the African people. The relationship between the AfCFTA and sustainable economic development is demonstrated through its objectives, which clearly attempt to realise the Pan African vision and promote socio-economic rights in terms of international and regional human rights law. The benefits derived from the AfCFTA will serve "as a vehicle to support the achievement of the SDGs."[192] An overview of the sheer scale of benefits

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190 A 1 of the *Protocol on Rules and Procedures on the Settlement of Disputes* (2018).
191 See para 6.3.1 below.
192 Abrokwaa 2020 https://www.acintad.org/the-significance-of-african-continental-free-trade-area-afcfta-in-the-attainment-of-sdgs/.

the AfCFTA potentially hold demonstrates its effective role in the achievement of sustainable economic development.

The WBG published a highly detailed report on the economic and distributional effects of the AfCFTA.[193] The report is authored by the lead economist in the Trade and Regional Integration Unit of the WBG. The analysis quantifies the short- and long-term economic and distributional implications of AfCFTA, including the "implications for economic growth, international trade, poverty and employment."[194] Where previous studies on African economic integration have mainly focussed on tariff and non-tariff barriers in goods, this analysis extends those studies to include non-tariff barriers in services and trade facilitation measures, in line with ongoing AfCFTA negotiations. The WBG Report estimates that by 2035, implementation of the Agreement could contribute to lifting 30 million people from extreme poverty and an additional 68 million from moderate poverty[195] and:

> Real income gains from full implementation of the agreement could increase by 7 percent, or nearly US$450 billion. As African economies struggle to manage the consequences of COVID-19, AfCFTA can provide an anchor for long-term reform and integration.[196]

Decreased tariffs and trade facilitation measures implemented by AfCFTA is expected to cause intra-Africa trade to increase by 81% while international exports could rise by 19% by 2035.[197] It will also provide increased decent employment opportunities and an "almost 10 percent increase in wages, with larger gains for unskilled workers and women."[198] The shift to a more industrial economy fuelled by inter-regional trade provided by the AfCFTA will hold considerable benefits for the increasing youthful population of Africa, "notably in terms of job creation and improved socio-economic conditions." [199] The WBG Report estimates that by 2035, total production on the

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193 WBG *The African Continental Free Trade Area: Economic and Distributional Effects.*
194 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 1.
195 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* IX.
196 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* IX.
197 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* IX.
198 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* IX.
199 Abrokwaa 2020 https://www.acintad.org/the-significance-of-african-continental-free-trade-area-afcfta-in-the-attainment-of-sdgs/.

African continent could be almost US$212 billion higher than the current production value.[200]

The AfCFTA will also have a tremendous global impact and "generate socio-economic benefits for the entire world."[201] According to the AfDB, the AfCFTA will create 7.5 million jobs in the G20 economies[202] and:

> ... [b]oost aggregate demand, create employment in poor and rich countries alike, and move the world toward peace and prosperity.[203]

Although the reforms envisioned by the AfCFTA will be difficult to implement, "the rewards will be substantial."[204] Lowering tariffs is only the first step in realising these ideals, but to achieve its full potential, significant policy reforms and trade facilitation measures should be put in place.[205] The facilitation of intra-Africa trade in goods, if implemented effectively by making cross-border trade easier and less costly, will have numerous knock-on effects which:

> ... [c]an be linked with the targets for the SDGs, including poverty alleviation, food security and addressing inequality through industrial development and the flow of benefits to small-scale producers and informal cross-border traders due to improved access to inputs, infrastructure, information and markets. [206]

The scope of the AfCFTA is extremely wide, apart from policy reforms and reducing tariffs among member countries, it will also cover regulatory measures such as "sanitary standards and technical barriers to trade."[207] It will offer a continent-wide regulatory framework to complement existing RECs and trade agreements within Africa. The AfCFTA is clearly more than a standard free trade area as it not merely focussed on liberalisation of trade in goods, but also:

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200 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 5.
201 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 22.
202 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 22.
203 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 22.
204 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* IX.
205 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 1.
206 TRALAC Viljoen 2018 https://www.tralac.org/blog/article/12762-the-african-continental-free-trade-area-afcfta-and-the-sustainable-development-goals-sdgs.html.
207 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 1.

> ... [s]ervices liberalisation, trade facilitation, addressing non-tariff barriers to improve access to markets, competition policy, intellectual property rights and possibly e-commerce. If these objectives can be achieved the AfCFTA can make a valuable contribution to African countries' progress on the SDGs.[208]

The liberalisation of trade in services will also have an immense impact since African economies often lack professional and specialised services such as Information and Communication Technology (ICT), financial, education and health services. The facilitated movement of business persons will ensure the transfer of knowledge throughout the region, which is "vital for sustainable economic growth".[209] Furthermore, the liberalisation of trade in services will have an immense impact on the achievement of the majority of the SDG's.[210]

The benefits derived from effective implementation of the AfCFTA clearly further the achievement of the Pan African vision and sustainable economic development. These wide-ranging benefits fully encapsulate the idealistic vision of a future Africa, a continent filled with hope and prosperity.

5.6 Conclusion

Consequently, the first part of the research question is answered in the affirmative. The legal framework of the AfCFTA effectively caters for regional integration with the intention and capacity to achieve sustainable economic development. The objectives clearly recognise the importance of sustainable economic development and the institutions established to govern the AfCFTA has the potential to effectively implement the Agreement and achieve regional socio-economic objectives. Apart from objectives and institutions specifically directed at providing for the formation of a free trade area with the capacity to achieve sustainable economic development, the unique process of ratification further caters for the different socio-economic needs and capacities of African states. The unique process of ratification ensures the

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208 TRALAC Viljoen 2018 https://www.tralac.org/blog/article/12762-the-african-continental-free-trade-area-afcfta-and-the-sustainable-development-goals-sdgs.html.

209 TRALAC Viljoen 2018 https://www.tralac.org/blog/article/12762-the-african-continental-free-trade-area-afcfta-and-the-sustainable-development-goals-sdgs.html.

210 TRALAC Viljoen 2018 https://www.tralac.org/blog/article/12762-the-african-continental-free-trade-area-afcfta-and-the-sustainable-development-goals-sdgs.html.

implementation of the AfCFTA with regard to aspects on with consensus can be reached, and the gradual attainment of resultant socio-economic benefits, while allowing more complex issues to undergo further negotiations to effectively meet the differing economic needs of African states. Furthermore, the magnitude of potential benefits derived from successful implementation clearly demonstrates the manner in which the AfCFTA could transform the socio-economic state of the continent. These benefits will play a vital role in the realisation of the Pan African vision and achieving continental prosperity.

Thus, implementation of the AfCFTA in terms of its legal framework has the potential to turn Africa into a global economic powerhouse of the future. However, the full operationalisation of the Agreement should not be further delayed and all challenges facing implementation should be overcome as swift action is required to lift Africa from socio-economic decline. This is especially relevant in light of the economic devastation caused by the COVID-19 pandemic.

6 Overcoming challenges

6.1 Introduction

The legal framework of the AfCFTA provides a clear foundation in terms of which sustainable economic development can be achieved. However, member states "will face many challenges to fully implement and optimise this Agreement."[211] Apart from the difficulties and trade-offs economic integration hold in general, the implementation of the AfCFTA face numerous challenges which are specific to the African continent, including a lack of infrastructure, poor finance and political uncertainty.[212] The realisation of the benefits envisioned by the AfCFTA is dependent on overcoming "political, legal, economic and functional challenges."[213] Ambitious projects, such as the formation of the AfCFTA, are not new to African states. Historically one of the main obstacles to African regional integration is not the lack of ambitious policies, but of their actual implementation.[214] The turmoil in the wake of the COVID-19 pandemic places further strain on the AfCFTA's effective implementation. Apart from the significant socio-economic impact, the border lockdowns and stringent limitations on trade have had an immense effect on its implementation, especially since the AfCFTA's fundamental objective is to ensure the free movement of people, goods and services within the African continent. However, the AfCFTA also provides a unique opportunity to overcome the devastating effects of the pandemic.

Thus, the objective of this chapter is to determine whether the founding legal framework has the capacity to continuously develop and adapt in order to achieve fundamental objectives despite obstacles which implementation may face. This will illustrate the sustainability of the AfCFTA since the capacity to continuously achieve fundamental socio-economic objectives will ensure its long-term success. This

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211 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 22.
212 Onwuka and Udegbunam 2019 https://www.accord.org.za/conflict-trends/the-african-continental-free-trade-area/.
213 Cofelice *The Federalist Debate* 33.
214 Cofelice *The Federalist Debate* 33.

development and adaptability should be understood in relation to the regulatory framework itself, which in its current form should provide room for adaptability. However, even though the legal framework should lay the foundation for such development, actual adaptation will ultimately depend upon coordinated action by African leaders in the regional and national sphere. Therefore, in answering the second aspect of the research question, the analysis below considers two parts of adaptability and development.

The first identifies key areas in which the legal framework currently caters for the adaptability of the AfCFTA to overcome challenges. The current COVID-19 pandemic, and the unique challenges derived from it, provide insight into potential developments. The second aspect considers various conditions for success and provides guidance on further development of the regulatory framework. These conditions for success include the identification of priority areas which African policy makers can consider to ensure the implementation of the AfCFTA in terms of its socio-economic objectives. The consideration of both aspects on development and adaptability will highlight the manner in which the regulatory framework has the continuous capability to achieve sustainable economic development.

6.2 Adaptability of the regulatory framework

The manner in which the current legal framework has adapted and developed to overcome challenges derived from the COVID-19 pandemic, as well as those unique to the African continent, will portray the capability of the AfCFTA to achieve socio-economic objectives in the long term. However, before analysing the specific manners in which the legal framework caters for possible adaptability, a brief overview of the effects of the pandemic on the AfCFTA's implementation and socio-economic objectives is necessary. These effects will highlight the unique challenges posed by the pandemic, as well as the manner in which the regulatory framework of the AfCFTA has developed to overcome said challenges. Further manners which highlight the legal framework's adaptability include the differential treatment of member states and the harmonisation of existing trade arrangements.

6.2.1 The impact of the COVID-19 pandemic

The COVID-19 pandemic has had a significant impact on the socio-economic state of African nations. Many African states took stringent measures to limit the movement of people and contain the spread of the virus, including the enforcement of varying levels of lockdown and border closures, a ban on public gatherings, closure of public and educational institutions, and suspension of air travel. These measures, although necessary to slow the spread of the virus and help save lives, have had an immense impact on the economic activity and socio-economic development of the African continent, as it "directly hinder activities necessary for economic growth and development."[215]

Economic activity in Africa contracted by -3.3% in 2020, and by the end of 2021 the regions GDP per capita "will likely regress to its level in 2008."[216] This could potentially push 40 million people into extreme poverty.[217] Analysis of the full extent of the socio-economic crisis caused by the pandemic is outside the framework of this dissertation, but these figures portray its significant adverse effects. Furthermore, the pandemic has had a significant impact on the timely and successful implementation of the AfCFTA. The measures undertaken by African states to prevent the spread of the virus impedes the fundamental objectives of the AfCFTA, namely the free movement of people, goods and services. The disruptions caused in the wake of the pandemic did not merely prevent the conclusion of negotiations on implementation, but it also discouraged some already hesitant African nations from facing the initial disadvantages economic integration may hold.

The negotiations on the outstanding Phase I and II issues were halted due to the pandemic as focus shifted to national measures on containing the virus, saving lives and preserving livelihoods. Apart from the shift in focus by African leaders, the containment measures directly prevented physical gatherings and conventions

215 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 1.
216 WBG *Africa's Pulse- Charting the Road to Recovery* 1.
217 WBG *Africa's Pulse- Charting the Road to Recovery* 1.

necessary to complete such negotiations. This resulted in further delays to conclude negotiations on, amongst others, acceptable tariff concessions which:

> ... [c]reates uncertainties for low developing economies (LDCs) as tariffs form a huge percentage of their revenue.[218]

Apart from tariff concessions, the containment measures "paused all forms of contact and collaborations in negotiating key aspects"[219] of the AfCFTA. The rapid completion of these negotiations is crucial for successful implementation of the AfCFTA and the commencement of preferential trade.

One of the objectives of the AfCFTA is the promotion of industrial development through diversification and regional value chain development, agricultural development and food security.[220] This requires African states to increase their industrial and manufacturing sectors which will increase GDP through the processing of raw materials into finished or semi-finished goods for export, either within the AfCFTA or beyond.[221] However, the pandemic and resultant containment measures have "disrupted the regional value chain"[222] and the focus on industrial development "seems to be a secondary alternative for most low-income African economies".[223] The containment measures have also severely impacted trade within the continent. Although the demand for "essential commodities such as pharmaceutical and agricultural products"[224] has increased during the pandemic, the measures implemented by governments to contain the virus have limited its export. This has resulted in scarcity of essential commodities, which ultimately leads to a "hike in prices and unhealthy competition amongst producers and exporters."[225] This undermines the regional integrative objectives of the AfCFTA.

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218 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 3.
219 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 3.
220 A 3(g) of the *Agreement Establishing the African Continental Free Trade Area* (2018).
221 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 4.
222 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 4.
223 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 4.
224 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 3.
225 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 3.

The pandemic has also increased the risk of food insecurity and caused many African nations to rely heavily on foreign aid.[226] Thus, many African states which are highly dependent on the revenue generated by the export of agricultural products, as well as those which are heavily reliant on the import of food products, are especially "vulnerable to disruptions in international logistics and distribution".[227] Furthermore, the agricultural sector in most African states is highly labour intensive and the:

> ... [s]hortages of workers due to the lockdowns may compromise farming activities, as well as downstream trading and transportation activities.[228]

This further disruption in the regional value chain impedes the AfCFTA's objective to ensure food security, and thus impedes industrial development. This impediment to the industrialisation objectives of the AfCFTA directly leads to a decline in socio-economic development as a whole, especially within poorer regions where there is a lack of an effective manufacturing and agricultural sector to improve self-sustenance.[229]

The disruptions caused to global supply chains and international logistics have also had a significant impact on the AfCFTA. The demand for African commodities and raw materials in neighbouring continents have significantly reduced,[230] whereas the importing capacity of much needed industrial components and manufactured goods have been limited.[231] The economic uncertainty caused by these disruptions could widen the gap between the most and least competitive and developed economies within Africa.

The socio-economic challenges generated by the pandemic come at a critical stage of the AfCFTA's implementation. However, even though the pandemic poses a risk to the implementation of the AfCFTA and realisation of its objectives:

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226 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 4.
227 FAO *Intra-African trade, the African Continental Free Trade Area (AfCFTA) and the COVID-19 pandemic* 1.
228 FAO *Intra-African trade, the African Continental Free Trade Area (AfCFTA) and the COVID-19 pandemic* 1.
229 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 4.
230 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 4.
231 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 4.

.. [a]ll analyses and studies confirm that the AfCFTA represents Africa's best insurance policy and strategy to recover from the Covid-19 pandemic.[232]

Effective implementation of the AfCFTA, as well as determined and coordinated action by African leaders, will certainly "benefit the fight against the pandemic and its economic consequences for Africa".[233] African leaders could turn the pandemic into "an opportunity for stronger collaboration, if certain policies are pursued quickly."[234]

The pandemic has clearly demonstrated the need for African states to increase cooperation. Integration in terms of the AfCFTA will not only increase cooperation and trade reform, but the resultant removal of non-tariff barriers and trade facilitation measures will "help countries increase their resiliency in the face of future economic shocks."[235] The AfCFTA Secretary-General reaffirmed that although the pandemic had significant adverse effects on African economies:

... [a]n opportunity exists to establish robust supply and value chains for Africa as well as diversify the continent's productive capacity, particularly from the overreliance on the export of primary commodities.[236]

This was reaffirmed by the Chairperson of the AUC, who stated that the pandemic "magnified the urgent need for speed to accelerate economic integration"[237] of the African continent.

Challenges posed by the COVID-19 pandemic must be overcome to ensure the effective implementation of the AfCFTA. A successfully implemented AfCFTA will play a major role in Africa's short- and long-term recovery. In the short term, the AfCFTA will:

... [h]elp cushion the negative effects of COVID-19 on economic growth by supporting regional trade and value chains through the reduction of trade costs.[238]

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232 AU *In Wake of COVID-19, African Union to Keep AfCFTA on Track with Digital Technology* 1.

233 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 6.

234 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 4.

235 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 8.

236 Ighobor 2020 https://www.un.org/africarenewal/magazine/august-2020/arz/afcfta-secretariat-commissioned-accra-free-trade-set-begin-january-2021.

237 Ighobor 2020 https://www.un.org/africarenewal/magazine/august-2020/arz/afcfta-secretariat-commissioned-accra-free-trade-set-begin-january-2021.

In the long term the AfCFTA will provide a "path for integration and growth-enhancing reforms."[239] The far-reaching benefits derived from the AfCFTA are too important to be delayed any further and African leaders must take swift and coordinated action to overcome all challenges and accelerate the AfCFTA's implementation.

Thus, although the COVID-19 pandemic poses new challenges to the AfCFTA, it also provides an opportunity for states to accelerate implementation and for Africa to re-establish itself on the global stage. The considerations below demonstrate the prospect of adaptability of the AfCFTA, and the willingness of African states to adapt to changing circumstances, to ensure the successful implementation of the AfCFTA in a manner that can achieve sustainable economic development.

6.2.2 Overcoming challenges derived from the COVID-19 pandemic

There are various measures in terms of which the regulatory framework caters for possible development. One of the most effective means is through the unique process of ratification of the Agreement. In recognition of the growing importance and benefits of digitisation and a digital economy, the AU took the decision to conduct Phase III negotiations focussed on developing the AfCFTA Protocol on E-Commerce.[240] This clearly demonstrates the manner in which the AfCFTA can continuously develop, through allowing further phases of negotiation which cater for potential developments in an ever-changing modern world. The regulatory framework specifically caters for this development through the unique process of ratification, which ensures further negotiations to deal with new issues can take place. The benefits derived from previous negotiations upon which agreement has been reached reached remain in force, while the framework remains adaptable to conclude further negotiations on aspects such as digitisation.

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238 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 8.
239 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 8.
240 TRALAC Ogo 2020 https://www.tralac.org/news/article/14692.

The move towards digitisation has facilitated the conclusion outstanding negotiations on implementation of the AfCFTA. Since the containment measures prevented in person negotiations from taking place, the negotiations were moved online. To keep the AfCFTA on track using technology, the AUC has received support from the African Virtual Trade-Diplomacy Platform (AVDP), which is part of the broader African Virtual Resilient-Integration for a Vibrant Africa (AVRIVA).[241] The purpose of these platforms is to enable member states to "effectively and securely"[242] participate in outstanding AfCFTA negotiations. The AUC is hopeful that digital technologies can drive positive cooperation in the integration process.[243] Further potential digital solutions include the:

> ... [d]igitisation of the biosurveillance and bioscreening protocols of the Africa Centres for Disease Control & Prevention...[244]

There is also potential to design and deploy a technological framework for aligning e-commerce and e-trading platforms"[245] as well as the enhancement of "cybersecurity in multilateral affairs".[246] The pandemic has portrayed the importance and potential opportunities African economies can gain from a digital economy.[247] A digital economy refers to:

> ... [t]he conduct of business using technology and the internet... the digitisation of traditionally analogue processes, such as paperless trading and smart contracts... the use of technology to perform tasks historically performed by humans... the new kinds of economic value generated by digital or intangible exchange such as from data, digital services, intellectual property and design. The digital economy is increasingly *the* economy.[248]

The development of a digital economic strategy can "sustain economy interactions and development in the face of a pandemic."[249] However, many African states do not have well-developed or affordable ICT and widespread internet connectivity to fully

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241 AU *In Wake of COVID-19, African Union to Keep AfCFTA on Track with Digital Technology* 1.
242 AU *In Wake of COVID-19, African Union to Keep AfCFTA on Track with Digital Technology* 1.
243 AU *In Wake of COVID-19, African Union to Keep AfCFTA on Track with Digital Technology* 2.
244 AU *In Wake of COVID-19, African Union to Keep AfCFTA on Track with Digital Technology* 2.
245 AU *In Wake of COVID-19, African Union to Keep AfCFTA on Track with Digital Technology* 2.
246 AU *In Wake of COVID-19, African Union to Keep AfCFTA on Track with Digital Technology* 2.
247 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 5.
248 TRALAC Hope *Trading in the digital economy* 1.
249 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 4.

benefit from a digital economy. There are various digital infrastructural challenges which must be overcome as the "legal framework and conducive environment for digital activities and trade"[250] are not yet readily available all over Africa. Apart from developing the required legal framework and technological infrastructure, it is necessary to promote:

> ... [d]igital trust and competition policies in the digital sector, data privacy, protection and cyber security"[251]

African states which can effectively develop its technological infrastructure and integrate into the digital economy will benefit to a greater extent from the AfCFTA now that "globalisation has gone online."[252] Apart from building up the infrastructure, skills and services necessary to maintain a digital economy, states will need to develop an effective digital legal framework, such as cyber security and data protection laws, to "mitigate the growing risks of the digital era".[253]

The regulatory framework of the AfCFTA clearly provides room for adaptability in the face of the pandemic. Although the legal framework lays the foundation for development, actual adaptation will take place through the use of effective measures and policies by African states to overcome potential challenges. Through coordinated action and the development of proper strategies, African policy makers can promote the socio-economic reform of the African continent. Well-developed policies, as well as effective implementation of said policies by the responsible institutions, will "chart the course of recovery and improve countries' resilience to shocks."[254] Together with the development of effective policies, institutional reforms which ensure:

> ... [a]ccountable and efficient governments, better service delivery, more civil society engagement, and less corruption will be key.[255]

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[250] Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 23.
[251] Albert *The African Continental Free Trade Agreement- Opportunities and Challenges* 23.
[252] PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 5.
[253] WBG 2020 https://www.worldbank.org/en/programs/all-africa-digital-transformation/ambition.
[254] WBG *Africa's Pulse- Charting the Road to Recovery* 2.
[255] WBG *Africa's Pulse- Charting the Road to Recovery* 2.

Apart from adaptability in terms of the legal framework, the effects of the AfCFTA itself also provides a means of overcoming challenges posed by the pandemic. A significant benefit of the AfCFTA is the increase in intra-Africa trade through promotion and development of the regional value chain. This will mitigate some of the adverse effects of the pandemic through limiting African states' dependence on extra-regional trading partners, especially with regard to food and pharmaceuticals.[256] The disruption of global supply chains and international logistics caused by the pandemic demonstrates the urgent need for implementation of the AfCFTA, as it can be an important "mechanism for building resilience and managing long-term volatility."[257] The increased intra-Africa trade in terms of the AfCFTA provides an opportunity for Africa to establish regional value chains and reduce the dependence on extra-regional trading partners.[258]

Furthermore, the pandemic has evidently demonstrated the need for self-sustainability, specifically with regard to sectors such as "food security, education, healthcare and logistical services."[259] One of the aims of regional integration is to make the African continent more self-reliant,[260] this is especially true for these sectors. Members of the AfCFTA should:

> ... [d]evelop a framework and set realistic implementation plans to improve these key sectors irrespective of regional integration.[261]

The border closures and restrictions on trade have "laid bare the deficiencies in trade facilitation and border management procedures",[262] and many African states have struggled to maintain imports of essential commodities. The pandemic and resultant export restrictions have "the potential to create a severe food security crisis in Africa."[263] Instead of a complete closure of borders which impede implementation of

256 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 5.
257 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 5.
258 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 5.
259 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 4.
260 A 4(1)(a) of the *Treaty Establishing the African Economic Community* (1991).
261 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 4.
262 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 8.
263 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 43.

the AfCFTA, governments should keep borders open to essential commodities and services "required for national development and economic sustainability."[264] To effectively achieve this, governments must rapidly develop policies which set business and economic criteria for movement across borders. Apart from ensuring the movement of essential goods and services, it will also assist in implementation of the AfCFTA.

Policy responses should be avoided that could potentially undermine the AfCFTA. This includes avoiding blanket import and export-restricting measures, especially with regard to essential commodities such as food. The avoidance of blanket import restrictions entail that African states must:

> ... [e]stablish safe trade and travel corridors according to WHO guidelines, to minimize the impacts of COVID-related disruptions and keep food supply chains alive.[265]

Apart from overcoming current challenges specific to the COVID-19 pandemic, the regulatory framework shows clear signs of adaptability in manners unique to Africa. This is highlighted in the differential treatment of member states, as well as the harmonisation of existing trade arrangements.

6.2.3 Differential treatment

Differential treatment of African states is required since the AfCFTA "will have a differential impact from member state to member state."[266] One of the main issues behind the reluctance of some states to ratify the Agreement relate to the differential impact caused by the Agreement's objective to eliminate 90% of tariffs on intra-Africa trade. The willingness of African states to implement the Agreement differs depending on the extent to which the state is dependent on intra-Africa trade tariffs for revenue generation. Therefore, compensation should be provided for states that

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264 PwC *COVID-19 and the African Continental Free Trade Area Agreement- Key Considerations* 4.

265 FAO *Intra-African trade, the African Continental Free Trade Area (AfCFTA) and the COVID-19 pandemic* 2.

266 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 19.

"rely on customs duties to consolidate their (fragile) national budgets."[267] Liberalisation of trade under the AfCFTA, and the resultant loss of trade tariff revenue, will "significantly reduce government revenue and thereby capacity to provide services",[268] especially for states which are heavily dependent on such tariffs. However, even though the states which are heavily dependent on tariff revenue will suffer the most in the short-term, these are the states who will "benefit the most by reducing their intra-African trade tariffs,"[269] as the extensive socio-economic benefits accrue over the long-term.

However, the initial loss of revenue, even in the short-term, may be devastating to the more fragile African economies. Therefore, policies must be adopted to cater for the specific needs of states to make the AfCFTA agreement inclusive and mutually beneficial to all. This will require careful identification of states and regions:

> … [w]here economic integration will cause pain and remedying the cost of transformation rapidly.[270]

In recognition of the differential impact of the AfCFTA, and to minimise the influence of larger economies on smaller ones, the AfCFTA negotiating forum agreed upon a "differential schedule of liberalisation... to protect more fragile economies."[271] This portrays the intended adaptability of the regulatory framework, depicting the manner in which the Agreement facilitates implementation by taking the individual circumstances and capabilities of each state into consideration. This progressive liberalisation will ensure the achievement of a "win-win situation where every African country will benefit from economic growth."[272]

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267 Cofelice *The Federalist Debate* 33.
268 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 13.
269 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 12.
270 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 12.
271 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 19.
272 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 20.

Furthermore, more diversified economies will benefit to a greater extent than less diversified economies.[273] The Agreement's effect on Africa's two largest economies, Nigeria and South Africa, will differ substantially. Nigeria's well-developed, but undiversified economy will benefit to a lesser extent than South Africa's diversified and efficient manufacturing sector, which could:

> ... [s]ignificantly benefit from the Agreement by expanding their exports throughout the African continent and giving them an advantage over manufacturers from other countries.[274]

Therefore, countries should accelerate the diversification of their economies, but this is no easy task and depends on a variety of factors, including the availability of finances, resources and skilled labour. Thus, the progressive liberalisation provided by the AfCFTA negotiating forum will provide:

> ... [l]east developed countries the necessary time to build productive capacity and diversity from trade in commodities to ensure long-term sustainable economic growth, employment creation and poverty alleviation.[275]

To further counteract the differential impact of the Agreement, policies could be developed to create an adjustment and compensation fund for states negatively affected by the Agreement, especially in the initial stages, and the promotion of capacity building programmes which ensures all stakeholders are fully aware of the rules and mechanisms to effectively exploit the Agreement's benefits and opportunities.[276]

6.2.4 Harmonisation of existing trade arrangements

A further manner in which the legal framework portrays its adaptability is the harmonisation between existing trade arrangements and trade under the AfCFTA. Implementation of the "AfCFTA will impact pre-existing multilateral free trade

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273 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 20.
274 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 20.
275 TRALAC Viljoen 2018 https://www.tralac.org/blog/article/12762-the-african-continental-free-trade-area-afcfta-and-the-sustainable-development-goals-sdgs.html.
276 Cofelice *The Federalist Debate* 33.

areas"[277] within RECs and the WTO. African states are bound by trade arrangements in terms of their respective RECs and some have entered into additional regional trade arrangements, moreover, they are bound by WTO commitments and unilateral and multilateral trade agreements with external regions or countries. These various trade agreements should not impede implementation of the AfCFTA, but should act as building blocks for regional integration.[278]

There are eight RECs in Africa, each at differing levels of economic integration and development. The RECs "facilitate regional economic integration between members of the individual regions",[279] and act as building blocks for the AEC. African states are bound by their REC commitments. However, most states are members of more than one REC and such overlapping membership is a complicating factor as "different rules of origin, tariffs, standards, (and) dispute settlement procedures"[280] apply to the same goods.

Article 19 of the Agreement Establishing the African Continental Free Trade Area deals with potential conflicts and inconsistencies with RECs. With regard to conflict between the Agreement and the RECs, the "Agreement shall prevail to the extent of the specific inconsistency,"[281] however, this will not apply to trade arrangements of RECs which have:

> … [a]ttained among themselves higher levels of regional integration than under this Agreement, (they) shall maintain such higher levels among themselves.[282]

The idea is to build on the progress made by RECs in regional economic integration. This principle is reiterated in Article 8 of the AfCFTA Protocol on Trade in Goods:

> State Parties that are members of other RECs, which have attained among themselves higher levels of elimination of customs duties and trade barriers than

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277 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 14.
278 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 22
279 AU 2020 https://au.int/en/organs/recs.
280 TRALAC Erasmus *How will the AfCFTA and other African Trade Arrangements co-exist* 1.
281 A 19(1) of the *Agreement Establishing the African Continental Free Trade Area* (2018).
282 A 19(2) of the *Agreement Establishing the African Continental Free Trade Area* (2018).

> those provided for in this Protocol, shall maintain, and where possible improve upon, those higher levels of trade liberalisation among themselves.

The leeway provided for existing trade arrangements to continue existing further portrays the adaptability of the AfCFTA, specifically to provide the maximum and most effective means of socio-economic development at all times. This will also ensure states party to trade arrangements with a lower level of economic integration can immediately benefit from the higher level of integrative ideals in terms of the AfCFTA. The AfCFTA Agreement is clearly intended to be malleable to fit the needs of the differing economic circumstances across the continent.

Article 19 will also apply to regional agreements such as customs unions, including the Southern Africa Customs Unions and the Tripartite Free Trade Area. However, the exact effect of the AfCFTA on such trade arrangements which are already on a further stage of economic integration require further development and:

> Additional work is required to understand the interlinkages between AfCFTA and these regional agreements.[283]

It is crucial that the AU and AfCFTA institutions provide clarity and certainty on the manner in which overlapping memberships will be dealt with, as well as make provision for institutional linkages between the AfCFTA and RECs.[284]

Since these regional agreements mainly relate to trade in goods, a more immediate benefit of the AfCFTA can be to "unlock continent-wide trade in services liberalisation."[285] The liberalisation of trade in services under the AfCFTA can effectively and directly increase industrial and infrastructure development through the transfer of knowledge and specialised skills and so "complement the modest results of the RECs in trade in services".[286] This will make a significant and direct contribution to African integration and sustainable economic development.

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283 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 14.
284 TRALAC Erasmus *How will the AfCFTA and other African Trade Arrangements co-exist* 2.
285 TRALAC Erasmus *How will the AfCFTA and other African Trade Arrangements co-exist* 2.
286 TRALAC Erasmus *How will the AfCFTA and other African Trade Arrangements co-exist* 2.

6.2.5 Concluding remarks

The discussion above highlights manners in which the current regulatory framework of the AfCFTA provides for its adaptability to overcome potential challenges, such as those caused by the COVID-19 pandemic. The unique process of ratification clearly provides a measure of adaptability. This is demonstrated through the adoption of Phase III negotiations on E-commerce and the conclusion of further negotiations directing a move towards digitisation. This move towards digitisation also facilitated the conclusion of crucial negotiations which ensured the timely implementation of the Agreement. Furthermore, the manner in which the legal framework provides for differential treatment of member states and the harmonisation of existing trade arrangements further portrays its intended capability to be adaptable and overcome challenges unique to the African continent. The adaptability of the AfCFTA Agreement clearly guides the free trade area to the long-term achievement of sustainable economic development.

6.3 Conditions for success

There are various measures which can be implemented by African states and institutions of the AfCFTA to overcome challenges which hinder effective implementation. The analysis below identifies key areas which policy makers can take into consideration to ensure the successful implementation of the AfCFTA in line with its socio-economic objectives. These conditions for success should be met to realise the full extent of potential benefits. Overcoming challenges which may arise as a result of trade liberalisation may be difficult, but the benefits derived from the Agreement should provide the incentive for policy makers to:

> ...[o]vercome these challenges and implement the substantive reforms that are needed to make Africa as competitive as any other region in the world.[287]

While certain measures require direct adaptation and development of the regional legal framework, others require substantial policy reforms in the national sphere.

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[287] WBG *The African Continental Free Trade Area: Economic and Distributional Effects X.*

The conditions for success must be met over two dimensions, namely implementation and post-implementation.[288] The implementation stage refers to the "ability, capacity, and political will of African leaders to implement the AfCFTA."[289] Even though the Agreement Establishing the African Continental Free Trade Area has passed the minimum threshold of ratifying states to reach its implementation stage, actual implementation is dependent upon the strong political will and actions of member states. In order for the initial implementation of the AfCFTA to be successful, individual African states and their political leaders must fully commit to taking effective implementing action, with due regard to their:

> ... [c]apacity and ability to coordinate and harmonize trade policies at the national, regional, continental and global levels.[290]

Effective implementation at this stage requires, amongst others, the elimination of all tariff and non-tariff barriers to trade, ensuring good governance, and infrastructure and ICT development.[291]

The success of the dimension on post-implementation is dependent upon "maintaining the agreement and realising its potential benefits."[292] To maintain long-term support for the Agreement, African states and AU institutions must overcome challenges and mitigate risks that arise as a result of economic integration in order to achieve the benefits envisioned. Overcoming post-implementation challenges sustains the Agreement as the:

> ... [s]uccess of AfCFTA in contributing to shared continental prosperity will ultimately be weighed against the hardships faced along its implementation.[293]

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288 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 6.

289 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 6.

290 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 5.

291 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 5.

292 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 6.

293 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 16.

Therefore, effective policies should be established to mitigate risks and compensate states, firms and individuals that are disadvantaged during implementation of the Agreement.

The various conditions for success discussed below incorporate aspects of both implementation and post-implementation as the measures are often interrelated and require ongoing commitment through both dimensions. The interdependency of the conditions must be taken into account as realising the full potential of the AfCFTA "depends on agreeing to ambitious liberalisation and implementing it in full."[294] Partial and one-dimensional implementation will have a reduced effect.

6.3.1 Development of the Dispute Settlement Mechanism

In terms of the AfCFTA's DSM, no AfCFTA institution or private party will have standing to bring an application for the resolution of disputes or the enforcement of AfCFTA rules. This right is exclusively limited to State Parties.[295] This means that private parties will:

> .. [o]nly be protected if a State Party, able to show that its rights have been violated, would bring a claim.[296]

However, African states tend not to litigate against each other over trade related matters and are "unlikely to do so in the case of the AfCFTA."[297] One of the main impediments preventing African states from instituting litigation on trade disputes is a lack of technical expertise.[298] To overcome this, the AfCFTA Secretariat could provide impartial legal advice and assistance as well as organise special training

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294 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 9.

295 TRALAC Erasmus 2020 https://www.tralac.org/blog/article/14802-what-disputes-could-be-heard-by-the-afcfta-dispute-settlement-mechanism.html.

296 TRALAC Erasmus 2019 https://www.tralac.org/blog/article/14150-dispute-settlement-in-the-african-continental-free-trade-area.html.

297 TRALAC Erasmus 2019 https://www.tralac.org/blog/article/14150-dispute-settlement-in-the-african-continental-free-trade-area.html.

298 TRALAC Erasmus 2019 https://www.tralac.org/blog/article/14150-dispute-settlement-in-the-african-continental-free-trade-area.html.

courses.[299] However, this concern needs to be more fully addressed and "academic and professional training will be necessary."[300] Only if the AfCFTA succeeds in changing African governments' attitude and willingness towards trade dispute litigation, as well as the development of technical expertise, will it "make a very real contribution to better trade governance in Africa."[301]

Apart from increasing the ability and willingness of State Parties to litigate, private parties should also be able to assert their own rights, especially since the AfCFTA DSM "will not entertain and decide disputes about human rights violations".[302] This entails that:

> ... [i]t would be appropriate to explicitly recognize the possibility for individuals to assert their rights under the AfCFTA.[303]

Since most trade transactions involve private parties whose "rights need to be protected to ensure certainty and predictability", the inclusion of private parties in the DSM will ensure that individuals can effectively and judicially protect their rights and interest in the context of regional trade. In order to achieve this, a subsidiary juridical framework could be developed providing for "a system of complaints and appeals"[304] adjudicated upon by national courts, sub-regional courts and possibly the African Court on Human and Peoples' Rights:

> ... [w]hich should be equipped with an ad hoc "trade chamber", also with a view to creating positive synergies between trade law and human rights law.[305]

Apart from resolving disputes between private parties, such a development can also ensure the continued success of the AfCFTA in achieving sustainable economic

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299 TRALAC Erasmus 2019 https://www.tralac.org/blog/article/14150-dispute-settlement-in-the-african-continental-free-trade-area.html.

300 TRALAC Erasmus 2019 https://www.tralac.org/blog/article/14150-dispute-settlement-in-the-african-continental-free-trade-area.html.

301 TRALAC Erasmus 2019 https://www.tralac.org/blog/article/14150-dispute-settlement-in-the-african-continental-free-trade-area.html.

302 TRALAC Erasmus 2020 https://www.tralac.org/blog/article/14802-what-disputes-could-be-heard-by-the-afcfta-dispute-settlement-mechanism.html.

303 Cofelice *The Federalist Debate* 34.

304 Cofelice *The Federalist Debate* 34.

305 Cofelice *The Federalist Debate* 34.

development with due regard to its role in the fulfilment of fundamental human rights.

6.3.2 Effective governance

To ensure the successful implementation of the AfCFTA, an appropriate governance system "based on the rule of law and on a solid institutional architecture,"[306] must be established. The institutions of the AfCFTA discussed above[307] will be primarily responsible for effective implementation of the Agreement and its continued success post-implementation. Apart from the evident need for transparent and accountable AfCFTA institutions, increased efficiency is dependent upon ensuring effective governance.

The first issue on governance relate to the decision-making mechanism. Since the AfCFTA falls under the institutional umbrella of the AU, it will follow a similar decision-making mechanism. Article 14 of the Agreement establishing the African Continental Free Trade Area sets out its decision-making mechanism and provides that decisions by the AfCFTA institutions on substantive issues shall be taken by consensus,[308] namely that negotiations must result in an agreement acceptable to all parties. When no consensus can be reached, the Committee on Senior Trade Officials shall refer the matter to the Council of Ministers, if consensus can still not be found, the matter shall be referred to the Assembly where a decision can be made by a two thirds majority.[309] Although this may have the fairest result, it will hinder the effectiveness of the deliberative processes and lead to "political stagnation by causing very long negotiation rounds."[310] Therefore, the decision making mechanism could be adapted to be more effective, such as foregoing consensus in favour of two thirds majority in the initial negotiation stages. This will require careful and

306 Cofelice *The Federalist Debate* 33.
307 See para 5.4 above.
308 A 14(1) of the *Agreement Establishing the African Continental Free Trade Area* (2018).
309 A 14(2) of the *Agreement Establishing the African Continental Free Trade Area* (2018).
310 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 9.

responsible governance, as well as measures to assist states who may be negatively affected by decisions.

The second governance issue relate to the PAP, which has no institutional role in the AfCFTA. Even though the PAP currently has no legislative powers, it could play an important advisory and monitory function through:

> ... [a]cting as a permanent forum for dialogue and confrontation between institutional, economic and civil society actors...[311]

Through having an institutional role in the AfCFTA, the PAP can provide assistance in ensuring the effective implementation of the AfCFTA and realisation of the full extent of the benefits envisioned.

Furthermore, the AfCFTA's "institutional architecture should adopt a “multi-level” character".[312] Apart from the institutional architecture in the regional sphere, support and governance by national and sub-regional institutions will be critical to its continued success. National institutions, namely the governments of African states and Departments responsible for economic development and trade integration, will play a key role in ensuring domestic harmonisation and rationalisation of AfCFTA policies and requirements. Therefore, "[N]ational integration agendas must cover services as well as goods."[313] With regard to the sub-regional institutions, RECs can:

> ... [p]rovide the framework for reform by bringing together regulators to define harmonized standards or agree on mutual recognition of the qualifications of professionals.[314]

This will require harmonisation of policies found in the different RECs as well as those of regional trade arrangements.

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311 Cofelice *The Federalist Debate* 34.
312 Cofelice *The Federalist Debate* 34.
313 WBG *Africa's Pulse- Charting the Road to Recovery* 87.
314 WBG *Africa's Pulse- Charting the Road to Recovery* 87.

6.3.3 Elimination of non-tariff barriers to trade

The elimination of non-tariff barriers to trade "outweigh the benefits of removing traditional tariff barriers."[315] The lowering and removal of tariffs will be relatively easy, although new challenges may arise for states highly dependent on tariff revenue, but the more difficult aspect will be enacting non-tariff and trade facilitation measures which is expected to achieve the largest economic gains.[316] Therefore, the removal and elimination of non-tariff barriers "is a vital condition for the success of the AfCFTA."[317] Non-tariff barriers to trade include:

> ... [l]egal barriers, technical barriers, structural barriers, infrastructural barriers (such as lack of communication infrastructures) or cultural barriers (language for instance).[318]

To remove such barriers and effectively improve intra-Africa trade and communication, African states will be required to "foster mutual trust and cooperation to implement policies".[319] This requires trade facilitation measures in terms of which:

> ... [g]overnments seek to establish a transparent and predictable environment for cross-border trade transactions based on simple, standardized Customs procedures and practices, documentation requirements, cargo and transit operations, and trade and transport arrangements.[320]

These trade facilitation measures intend to simplify and speed up the process of cross-border trade. The elimination of "excessive border bureaucracy"[321] and the harmonisation of certification should be a priority as the large number of differing standards throughout the continent slows down the cross-border trading process.[322]

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315 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 19.
316 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 9.
317 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 19.
318 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 11.
319 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 11.
320 UN Conference on Trade and Development *Technical Notes on Trade Facilitation Measures* 1.
321 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 22.
322 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 22.

Furthermore, African infrastructure should be enhanced to increase the flow of goods across the border, this includes the development of new border crossings as well as:

> ... [i]mproved road and rail border crossings and improved transportation infrastructures within countries.[323]

Apart from such trade facilitation measures and policies, the elimination of non-tariff barriers will also require effective governance, reduced corruption, as well as improved monitoring and processing of cross-border trade.[324]

6.3.4 Well-developed rules of origin

Negotiations on the finalisation of rules of origin are still underway. Only when these negotiations are finalised and published will there be certainty on the manner in which it is to be implemented as well as provide clarity on the percentage of value-added tax (VAT). Rules of origin refer to criteria whereby customs "determine the nationality of a product or a producer."[325] It is especially important in economically integrated regions where:

> ... [p]referential agreements allow for the discrimination of goods depending on sources of supply."[326]

Well-developed rules of origin ensure that goods from non-member countries are prevented from entering the region through a low-tariff member and being shipped duty-free to other members in the region. In essence, rules of origin:

> ... [d]escribe the transformation a product must undergo in the region—such as the share of value added—to enjoy preferential market access.[327]

Well-developed rules of origin "can be a game changer if they are simple, transparent and predictable."[328] Rules of origin which are too restrictive and complex

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323 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 19.
324 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 19.
325 UN Conference on Trade and Development *Technical Notes on Trade Facilitation Measures* 32.
326 UN Conference on Trade and Development *Technical Notes on Trade Facilitation Measures* 32.
327 WBG *The African Continental Free Trade Area Economic and Distributional Effects* 15.
328 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 22.

will be a barrier to trade as it will hinder preferential market access through difficulty in interpretation, unpredictability and impeding the effective functioning of global supply chains.[329] However, rules of origin which are too lenient or mismanaged "will provoke a flood of extra regional products with low levels of value added."[330]

Preferential trade under the AfCFTA is dependent on well-developed rules of origin as it will increase intra-Africa trade and member states will "source more intermediate and final goods among themselves rather than import them."[331] Costly and complex rules of origin may cause African states and companies to import products from foreign states and decrease the economic gains and development intended by the AfCFTA. Therefore, a balance must be found to develop effective rules of origin. The final outcome of the rules will "be central to successful and fruitful implementation of the ACFTA."[332] Apart from ensuring simplicity and predictability, the rules of origin must take due account of the "inequalities and asymmetries among African countries,"[333] as well as ensuring accessibility through the establishment of platforms serving as a repository for rules of origin in multiple local languages.[334]

Further developments concern the monitoring of VAT as most "African countries lack the capacity and ability to effectively monitor VAT."[335] Therefore, African states should:

> ... [e]mbark on rigorous training of customs union officials and to build capacity in each member state to effectively implement VAT monitoring systems...[336]

Apart from training sessions, the success of VAT monitoring can be ensured through economic aid and guided institutional development, as well as reducing the levels of corruption associated with revenue taxes amongst government officials.[337]

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329 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 15.
330 WBG *The African Continental Free Trade Area: Economic and Distributional Effects* 15.
331 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 22.
332 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 23.
333 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 23.
334 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 23.
335 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 14.
336 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 14.

6.3.5 Inclusive integration

Although the AfCFTA presents an opportunity for companies to access new markets and increase production and profits, the cost of cross-border trade remains high. Therefore, public authorities will have to provide:

> ... [t]echnical and financial support for smaller companies in order to allow them to penetrate the cross-border continental market.[338]

This will ensure that it is not only large companies which benefit from the AfCFTA. To ensure such inclusive integration, African governments will have to implement national infrastructural, financial and technical plans to "widen the range of companies that can benefit from this agreement."[339]

The AfCFTA tariff eliminations "are likely to lead to readjustment of sectors and economies."[340] These readjustments, and the resultant reallocation of industry and investment, will lead to economic hardships for the industries and individuals from which the shift occurred. To assist those negatively affected and maintain continued support for the AfCFTA, public authorities should invest in policies:

> ... [a]imed at ameliorating the impact of these adjustments or compensating those that might be negatively affected...[341]

A further important effect of the AfCFTA is that it will "enhance the integration of women and youth within the trade system."[342] The youth will directly benefit through increased job opportunities whereas an indirect effect of the AfCFTA, as stated by the Executive Secretary of UNECA, "will be that women will become a lot more economically empowered".[343] However, numerous non-tariff barriers limit this

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337 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 14.
338 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 23.
339 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 23.
340 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 18.
341 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 18.
342 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 23.
343 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 23.

potential for inclusive growth by negatively effecting the participation of women in trade. Up to 70% of informal cross-border traders in Africa are women,[344] yet these women:

> ... [s]till suffer from invisibility, stigmatization, violence, harassment, poor working conditions and lack of recognition of their economic contribution.[345]

By taking deliberate actions to design and implement "gender-sensitive policies and target complementary measures",[346] African states can ensure that the significant role women play as catalysts for trade and economic development is recognised and protected. A clear legal framework should be developed to improve entrepreneurship among women and youths. This could be done through:

> ... [n]ational initiatives such as a gender-sensitive education, women-training programmes, financial support for women entrepreneurship and the implementation of tax reduction for women-owned companies.[347]

Considering that women make up a large part of the workforce, especially in cross-border trade, such policies will foster economic growth and development, as well as decrease unemployment and poverty rates.[348]

6.3.6 Diversifying financial sources

The success of the AfCFTA is dependent upon strategic investments and funding. African economies are "characterised by a tremendous lack of infrastructure"[349] in various domains, including:

> ... [c]ross-border railways, air routes, water routes, roads... power/energy supply... digital infrastructure… Moreover, most African countries are still missing strategic facilities (trade harbours, financial hubs, special economic zones, etc…).[350]

According to the AfDB, African economies require US$170 billion in infrastructure investments per year to unleash African economic potential.[351] Therefore, African

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344 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 24.
345 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 24.
346 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 24.
347 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 24.
348 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 14.
349 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 16.
350 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 16.

states will have to adopt "supportive complementary policies designed to support structural transformations."[352] The AfCFTA Agreement provides for policies which can address infrastructure development to facilitate trade and economic growth on the continent.[353] Consequently, provision is made for investment strategies, which can support "national investment plans in order to channel financial flows",[354] as well as:

> Investment promotion agencies, partnering to facilitate investment... trade facilitation measures... and trade-related infrastructure measures...[355]

The AfDB could also support states, especially those which initially suffer due to trade liberalisation, "by investing in human capital, infrastructure, and improved governance."[356] Attracting foreign investment will have a significant impact on Africa's infrastructure development as:

> New capital enhances an upward productivity cycle that stimulates the entire economy. An inflow of foreign capital can also stimulate banking systems, leading to more investment and consumer lending.[357]

The ease and cost-effective trade under the AfCFTA will attract foreign investment for national and regional infrastructure projects, which "stimulates market demand for African products which are more easily accessible."[358] The elimination of non-tariff barriers and trade facilitation measures may also increase investment appeal to foreign investors.

Investments are crucial to improve African infrastructure and achieve the intended socio-economic benefits of the AfCFTA. The Protocol on Investment, once ratified and adopted, will provide certainty regarding the AfCFTA's position on investments. There are certain measures which should be included in the Protocol to ensure its

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351 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 16.
352 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 27.
353 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 16.
354 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 18.
355 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 16.
356 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 8.
357 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 18.
358 TRALAC Viljoen 2018 https://www.tralac.org/blog/article/12762-the-african-continental-free-trade-area-afcfta-and-the-sustainable-development-goals-sdgs.html.

success, this includes; provisions on binding commitments and a dispute settlement mechanism in a similar manner to that of the SADC Protocol on Finance and Investment,[359] establishment of an investment governance framework that would facilitate investments and "promote sustainable socio-economic and industrial development"[360] and the inclusion of legal obligations which require responsible business conduct and the promotion of sustainable development from investors.[361] The inclusion of such provisions will play an important role in guiding the implementation of the AfCFTA towards it's socio-economic objectives.

6.3.7 Strengthening the link to sustainable development and human rights

The global consequences of climate change are having a significant impact on the African continent. The rise in temperatures and subsequent increase in the frequency and length of droughts threaten water resources, which heavily affect the agriculture and health sectors of African economies.[362] Therefore, it is critically necessary for African states to implement "sustainable mechanisms to deeply transform agriculture and methods of production."[363] Such transformation entails a decrease of carbon emissions and use of pesticides, developing eco-friendly agriculture, alternative and renewable ways of production, a more efficient and ecological means of waste disposal and significantly raising awareness among the African people about the consequences of climate change.[364] Effective transformation will require governments to:

> ... [i]mplement measures that encourage industrial producers, farmers and civil society to change their ways of doing business and trade in a more sustainable manner.[365]

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359 TRALAC Chidede 2019 https://www.tralac.org/blog/article/14065-how-can-the-afcfta-investment-protocol-advance-the-realisation-of-the-afcfta-objectives.html.
360 TRALAC Chidede 2019 https://www.tralac.org/blog/article/14065-how-can-the-afcfta-investment-protocol-advance-the-realisation-of-the-afcfta-objectives.html.
361 TRALAC Chidede 2019 https://www.tralac.org/blog/article/14065-how-can-the-afcfta-investment-protocol-advance-the-realisation-of-the-afcfta-objectives.html.
362 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 24, 25.
363 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 24.
364 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 25.
365 Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 25.

Various measures can be implemented, ranging from financial incentives such as tax reductions for eco-friendly farmers, to providing technical support such as environmentally friendly tools and fertilisers.[366] The transfer of knowledge and technologies in a regionally integrated Africa will also assist in ensuring sustainable development, as well as the protection of African biodiversity through the creation of protected parks and green cities.

Apart from environmental sustainability, the linkage between economic integration and the resultant protection of human rights must also be strengthened. This relationship can be established through careful analysis of the distributional impacts of the AfCFTA. There is growing scepticism towards the regional integration process:

> ... [f]uelled to a large extent by a widespread perception that the benefits of trade and globalisation have not been equally distributed.[367]

Although the AfCFTA will not impact all people and regions in the same manner, there is a variety of measures, including those discussed in this chapter, which can be undertaken to ensure the success of the AfCFTA and the fulfilment of socio-economic rights of African citizens. It is necessary to adopt policies which ensure the benefits derived from the AfCFTA, including the achievement of sustainable economic development, are equally distributed. To ensure the benefits are equally distributed and the human rights of all African people are promoted and protected, the Agreement should be socially sustainable and inclusive. Apart from the measures discussed above, it would also be appropriate to "adopt a gradual and targeted approach"[368] to integration in order to protect the most vulnerable, conduct systematic human rights assessments to "monitor the impact of the agreement on the economic and social rights"[369] of affected people, as well as maintaining political control over implementation of subsidiary agreements which could:

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[366] Albert *The African Continental Free Trade Agreement Opportunities and Challenges* 25.
[367] Cofelice *The Federalist Debate* 24.
[368] Cofelice *The Federalist Debate* 34.
[369] Cofelice *The Federalist Debate* 34.

> ... [u]ndermine the institutional capacity to ensure that human rights are effectively protected and respected."[370]

Measures such as these will ensure that the implementation of the AfCFTA promote socio-economic rights in terms of international and regional human rights law.

6.3.8 Concluding remarks

The above conditions for success can be useful considerations in developing the regulatory framework of the AfCFTA during the process of negotiating and implementing the free trade area. This will assist in maintaining support for the Agreement post-implementation. Successful implementation of the Agreement, and overcoming challenges impeding its effective implementation, will require determined and ambitious effort from political leaders and "careful coordination between actors at all levels."[371] To maintain support post-implementation, challenges which arise as a result of regional integration should be effectively dealt with. The success of this ambitious endeavour can be facilitated through implementing the above conditions for success. The resultant successful implementation of the AfCFTA will accelerate the realisation of Agenda 2063 and propel Africa's socio-economic development into the 21st century.

6.4 Conclusion

The implementation of the AfCFTA seems to signal the long-awaited socio-economic transformation of the African continent. A project as ambitious as the formation of AfCFTA will understandably face numerous and seemingly overwhelming challenges. Apart from difficulties associated with economic integration in general, the African continent faces unique challenges due to its poor socio-economic state, especially in the wake of the turmoil caused by the COVID-19 pandemic. These challenges are not without solutions and the discussion above identifies manners in which the current regulatory framework of the AfCFTA caters for adaptability to overcome potential

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370 Cofelice *The Federalist Debate* 34.
371 AUDA-NEPAD *Conditions for Success in the Implementation of the African Continental Free Trade Agreement* 23.

challenges, as well as identifying key priority areas which African policy makers can consider to ensure the timely, effective and successful implementation of the AfCFTA. Consequently, the second aspect of the research question can be answered in the affirmative. The regulatory framework of the AfCFTA adequately caters for its development and adaptability to ensure its sustainability and long-term success in achieving sustainable economic development.

This capability relates to the current legal framework itself, which has the capacity to develop and overcome challenges unique to the African continent. This is illustrated by the harmonisation of existing trade arrangements, as well as the adaptability to overcome challenges derived from the COVID-19 pandemic through the unique process of ratification of the Agreement. Furthermore, various conditions for success were identified which can facilitate implementation in a manner that guarantees the achievement of sustainable economic development. These solutions include careful and effective development of the AfCFTA legal framework to ensure the achievement of its fundamental objectives, as well as substantial policy reforms and economic measures to mitigate adverse effects and overcome potential obstacles. The legal foundation of the AfCFTA Agreement effectively provides for the possibility of adaptation to ensure the successful implementation of the AfCFTA and the achievement of unprecedented sustainable economic development on the African continent. However, the capacity of the legal framework to adapt and overcome obstacles will not ensure the achievement of sustainable economic development by itself. Although the framework clearly provides potential for adaptation in order to ensure the realisation of socio-economic objectives, actual adaptation and implementation is ultimately dependent upon the strong political will and coordinated actions of African leaders, which often require substantial policy reforms in the national sphere.

7 Conclusion

The African continent holds tremendous potential for prosperity, due in part to vast reserves of diverse natural resources and a population of over 1.3 billion people. The economic potential of the continent has the capacity to fulfil the socio-economic rights of all African citizens. However, even though the African people should benefit from the extensive economic potential across the continent, the socio-economic state of Africa is extremely poor. Poverty is rampant and governments continuously fail to promote second generation rights. This results in a widespread failure to fulfil the socio-economic rights of African citizens. Although each African state bears a legal obligation, in terms of international and regional human rights law, to fulfil the socio-economic rights of their people, the current state of affairs clearly illustrate that this legal obligation is not being met.

In order to improve the socio-economic state of the continent, effective measures to achieve sustainable economic development must be undertaken. One such highly effective measure is regional economic integration. Therefore, the implementation of the AfCFTA has the potential to transform the socio-economic state of the African continent in an extraordinary manner. However, in order to achieve the full extent of potential benefits, the AfCFTA should be founded upon a sound regulatory framework with the capacity to achieve sustainable economic development. Consequently, the research question answered in this study was to determine whether the legal framework of the AfCFTA sufficiently provides for the achievement of sustainable economic development.

To effectively answer the research question, various objectives needed to be achieved. The first objective was of a theoretical nature regarding sustainable economic development and economic integration, specifically in relation to the fulfilment of fundamental human rights. A critical analysis was required to comprehend the manner in which economic integration leads to the achievement of sustainable economic development and the promotion of socio-economic rights. The second objective concerned the AU and determined the extent to which regional legal instruments provide measures for the achievement of sustainable economic development, specifically through economic integration. The final objective was to critically analyse the extent to which the legal framework of AfCFTA provide for the achievement of sustainable economic development with regard to numerous factors, including its legislative capacity, objectives and ability to adapt and overcome challenges.

Chapter one and two provided a critical theoretical analysis of key terminology. A conceptual foundation was laid to demonstrate the critical importance and interrelated nature between sustainable economic development and economic integration. The theoretical analysis in chapter one illustrated that the achievement of sustainable economic development directly leads to the fulfilment of socio-economic rights enforced by international and regional human rights law. The analysis clearly portrayed the manner in which binding international and regional human rights law places a legal obligation on African states to achieve sustainable economic development in order to promote fundamental human rights. The legal instruments discussed repeatedly recognise that the fulfilment of socio-economic rights is dependent upon the achievement of sustainable economic development. Therefore, various legal instruments adopted in the international and regional sphere directly require states to undertake effective measures to achieve sustainable economic development. The theoretical analysis on economic integration in chapter two provided insight into the manner in which regional integration, including the formation of a free trade area, provide extensive socio-economic benefits. The economic effects derived from regional integration has continuously proven to be an effective vehicle for the achievement of sustainable economic development and the resultant promotion of socio-economic rights. The extensive potential benefits economic integration holds for member states, including the accelerated achievement of sustainable economic development, should provide the incentive for all states to pursue regional integration initiatives.

Chapter three provided an overview of the AU in order to illustrate the manner in which the regional intergovernmental organisation attempts to achieve sustainable economic development though economic integration. In all its endeavours, the AU strives toward the realisation of the Pan African vision of continental prosperity, which is founded upon the principle of regional integration. Likewise, the legal instruments adopted by the AU explicitly recognise the need for regional integration in order to achieve sustainable economic development, as well as recognising the inherent relationship between sustainable economic development and the fulfilment of fundamental human rights. Various institutions and legal mechanisms are established by the AU with the primary purpose of achieving economic integration and the resultant sustainable economic development. One of the most important Projects of the AU in realising the Pan African vision is set forth in the framework provided in terms of Agenda 2063, namely the accelerated implementation of the AfCFTA. Thus, the regulatory framework of AU extensively provides numerous measures for the achievement of regional integration and sustainable economic development on the continent.

The analysis found in chapter one to three mainly laid a theoretical foundation to adequately comprehend the manner in which economic integration leads to the achievement of sustainable economic development and the eventual fulfilment of socio-economic rights in compliance with international and regional human rights law. The principles and relation between the concepts, as well as the role of the AU, are crucial to fully understand the process of regional integration in Africa. This was followed by a critical analysis to effectively answer the research question, which had to be determined in two crucial and interdependent dimensions. The first aspect concerned the AfCFTA's legislative formation, specifically whether the founding legal framework sufficiently provides for regional integration which the clear intention and capacity to achieve sustainable economic development. The second aspect concerned the extent to which this framework caters for the adaptability and continuous development of the free trade area in order to effectively achieve sustainable economic development in the face of an ever-changing world.

Chapter 5 focussed on the first aspect of the research question, namely determining whether the founding legal framework sufficiently provides for regional integration which the intention and capacity to achieve sustainable economic development. The objectives of the AfCFTA Agreement are clearly intended to establish a free trade area that not only achieves sustainable economic development, but wholly transforms the socio-economic state of the entire continent. The effectiveness of the regulatory framework in providing for a free trade area with the capacity to achieve sustainable economic development is demonstrated through the sheer extent of potential socio-economic benefits it entails for member states. There are also numerous potentially effective institutions of the AfCFTA that are directly responsible for ensuring its effective implementation and resultant achievement of sustainable economic development. Furthermore, the unique process of ratification can be a highly effective mechanism to implement certain aspects of the AfCFTA Agreement, and gain resultant benefits, while ensuring outstanding negotiations result in decisions which protect the interests of all states. Thus, the AfCFTA Agreement effectively provides a basis for its successful formation in a manner that is not only intended to achieve sustainable economic development, but also creates effective legal mechanisms to ensure it has the capacity to realise such socio-economic ideals.

However, the formation of the AfCFTA, even with the intention and potential capacity to achieve sustainable economic development, will not achieve the full extent of the socio-economic benefits envisioned. The legal framework should continuously develop and be adaptable to ensure this capacity is transformed into long-term capability. Therefore, the critical analysis in Chapter 6 determined the extent to which the regulatory framework is adaptable to overcome potential challenges in order to achieve sustainable economic development in the long-term. The AfCFTA Agreement is potentially adaptable in numerous manners. Some aspects relate to the adaptability of the legal framework itself, while others relate to economic measures and require substantial policy reforms in the national and regional sphere.

Aspects regarding the adaptability of the legal framework often relate to the unique process of ratification which ensures individual aspects of the AfCFTA Agreement can be effectively negotiated, and possibly adapted, to protect the interests of all member states. This capability was clearly illustrated through the increased use of digital technologies to complete negotiations during the COVID-19 pandemic, as well as providing a means to conduct Phase III negotiations on the Protocol on E-Commerce in recognition of the increased importance of a digital economy, especially in light of the devastating socio-economic impact of the pandemic. Further measures which directly relate to the adaptability of the regulatory framework include the harmonisation of existing trade arrangements. The legal framework specifically caters for the continued functioning of pre-existing trade arrangements which have achieved higher levels of economic integration, ensuring the maximum socio-economic benefits are achieved by all member states. The AfCFTA legal framework clearly recognises the need for adaptability to overcome potential challenges and adapt with changing times to realise the full extent of potential benefits in the modern global economy.

Certain aspects of adaptability require substantial policy reforms in the national and regional sphere. Thus, the success of the AfCFTA is dependent on meeting various conditions for success which can be taken into consideration by African policy makers during implementation. This often relate to the Protocols, such as the development of the Dispute Settlement Mechanism to recognise the rights of private parties or diversifying financial resources through development of the Protocol on Investments. Further measures include the elimination of non-tariff barriers to trade and assisting states and communities negatively affected by trade liberalisation. The success of these measures requires coordinated and bold action by African leaders and AfCFTA institutions. The regulatory framework also provides for the formation of AfCFTA institutions responsible for overseeing the successful implementation and realisation of its objectives. These institutions, as well as governments of African states, will be responsible for the development of policies and economic measures required to overcome challenges in a manner that caters for the achievement of sustainable economic development and realisation of the AfCFTA's objectives. Although the legal framework lays a sound foundation, actual adaptation and development will ultimately depend upon the willingness and ability of these institutions and African leaders to take the necessary action.

In conclusion, the research question can be answered in the affirmative. The legal framework of the AfCFTA sufficiently provides for the achievement of sustainable economic development. The founding documents clearly recognise the urgent need for sustainable economic development and guides the free trade area to clear socio-economic objectives. The institutions and mechanisms established in terms of the framework provide further evidence of the manner in which the AfCFTA has the capacity and intention to achieve sustainable economic development and facilitate African states' compliance with legal obligations. Moreover, the adaptability of the legal framework to overcome potential challenges is effectively catered for. It is evident that the regulatory framework has the capacity to continuously develop in order to achieve sustainable economic development in the long-term. Through answering the research question in the affirmative, it is clear that African states recognise the need to comply with legal obligations in terms of international and regional human rights law. The current socio-economic state prevalent on the African continent requires drastic change and the formation of the AfCFTA, with sufficient focus on providing for the achievement of sustainable economic development, is a potential catalyst for the necessary socio-economic transformation of Africa.

However, the decisions on implementation will be made by AfCFTA institutions and African governments. Consequently, competent decisions free of corruption will ultimately determine the extent of the AfCFTA's effectiveness and eventual success. The legal framework lays the foundation for unprecedented socio-economic development, but actual implementation and overcoming of challenges are dependent upon coordinated and effective action from all responsible stakeholders. The successful implementation of the AfCFTA in the wake of the devastation caused by the COVID-19 pandemic is of even more importance as it will not only provide African economies with the means to rapidly recover, but will dramatically transform the socio-economic state of the continent and significantly change the standing of Africa in the global economy post COVID-19.

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