

INTERNATIONAL ECONOMIC LAW IN AN ERA OF MULTIPLE CRISES: Opportunities and Challenges for Africa

*Keynote Address:
African International Economic Law Network 2023 Conference
Professor Richard Frimpong Oppong**

INTRODUCTION

I am deeply grateful to the organisers of the African International Economic Law Network's 6th Biennial Conference for inviting me to deliver this keynote address. The coming three days promise to be academically stimulating and enriching. From the programme schedule, it is evident that your presentations, questions, and contributions will traverse many diverse fields. At the same time, they demonstrate the interconnectedness of the various sub-fields of international economic law.

In this regard, the leadership of the African International Economic Law Network deserves our praise and commendation for managing this vibrant academic network, as well as for organising this Conference here in Accra. It is refreshing to see the growth and maturity of the organisation from its humble beginnings as the African branch of the Society of International Economic Law. It is also very heartening to see that scholars with an interest in African international economic law have found a natural and befitting home.

For me, personally, reconnecting with mentors, senior colleagues, and scholars from Africa and beyond has been very rewarding. This began on my flight from Amsterdam to Accra when, after many years, I met my brothers Professor Olabisi Akinkugbe and our indefatigable Conference Chairperson, Dr. Regis Simo.

I likewise acknowledge the presence of the doyen of African international economic law, Professor James T. Gathii. His invaluable advice and guidance made my transition from the Canadian to the American legal academy both smooth and less stressful. Thank you, James. I also take this opportunity to acknowledge my senior brothers,

Professors Emmanuel Laryea and Kofi Oteng Kufour. Professor Kufour's pioneering work on the institutional aspects of ECOWAS inspired my research as a doctoral student. Thank you, Prof.

Moreover, Ghana's capital, Accra, is an auspicious place to host this Conference. The Agreement establishing the African Continental Free Trade Area (AfCFTA), as the continent's flagship free trade agreement, entered into force in 2019 after Ghana became the 22nd country to ratify it. Ghana is also the location of the AfCFTA Secretariat. I hope that over the next few days, you will find time to explore this city, with its wide array of interesting sights, foods, and cultures.

Colleagues, delivering an opening keynote address to a distinguished academic audience, such as we have here, is challenging. The expectation is that the speaker will set the right tone for the Conference. This is no mean expectation, given the broad range of topics that will be discussed over the coming three days. However, the beauty of our academic lives is that we enjoy academic freedom – it is the bedrock on which our teaching and research thrive. In Ghana, academic freedom is a fundamental human right enshrined in Article 21(1)(b) of the Constitution. Indeed, I crave your indulgence to invoke the spirit of academic freedom in this address, allowing me to focus mainly, albeit not exclusively, on the AfCFTA.

My address is organised as follows: first, I will discuss two fundamental shifts in the global economy and suggest that notwithstanding these shifts, all is not doom and gloom in Africa. Second, against the background of our enthusiasm over the AfCFTA, I will invite us to use part of our scholarship to question the idealised premise of African integration and to contest the legal principles on which the current international economic order is based. Finally, I will examine a number of specific issues, including public participation, implementation, reforming the trade environment through comprehensive legal reforms, and avoiding the perpetuation of inequalities.

FUNDAMENTAL SHIFTS, BUT NOT ALL DOOM AND GLOOM

The international economy is undergoing fundamental shifts, with countries all over the world facing momentous challenges. The countries of the African continent, including our host Ghana, have not been excluded from this economic morass. Many of you may have read that the IMF approved a US\$3 billion bailout package for Ghana about a month before the start of this Conference, with the IMF noting that:

Large external shocks in recent years have exacerbated Ghana's pre-existing fiscal and debt vulnerabilities, resulting in a loss of international market access, increasingly constrained domestic financing, and reliance on monetary financing of the government. Decreasing international reserves, Cedi depreciation, rising inflation and plummeting domestic investor confidence, eventually triggered an acute crisis.¹

A similar story prevails elsewhere in Africa, where it is reported that currently, just over half of Africa's countries have or are negotiating a programme with the IMF. Most of the active programmes were agreed upon in 2021-22, and the IMF has currently committed approximately US\$16 billion to African countries, with more to come. Egypt, Tunisia, Malawi, and Zambia have all turned to the IMF to shore up their finances.

Of course, the two large external shocks that have unravelled national economies in recent years are the Covid-19 pandemic and the Russia-Ukraine War. The effects of these two seismic events are too well-documented to be rehashed here. That said, they have exposed significant vulnerabilities in Africa, including our dependence on foreign food supplies. Some have also argued for or justified the need to prioritise Africa's regional integration project. Before the Russia-Ukraine War, the average person on the street was unlikely to be aware of the extent of their country's dependence on wheat from Russia and/or Ukraine. For example, it is reported that Benin imported all its wheat from Russia as of March 2022. Moreover, Somalia is fully reliant on wheat imports from Russia and Ukraine, with Ukrainian supplies accounting for nearly 69% of total imports of that commodity.

However, the gloom and doom wrought by these external shocks should not blind us to the remarkable initiatives and opportunities that have arisen in Africa within the same period. Notable among these are the AfCFTA and the Pan-African Payment and Settlement System (PAPSS).

* Professor Richard Frimpong Oppong, FGA, Osgoode Hall Law School, York University, Toronto, Ontario, Canada. Being Keynote Speech delivered on June 21, 2023 at the African international Economic Law Network Biennial Conference, 21-24, June 2023, Accra Ghana. E: roppong@osgoode.yorku.ca

1 IMF, "Trade Integration in Africa: Unleashing the Continent's Potential in a Changing World" (IMF 2023).

As you are aware, trade under AfCFTA rules started in January 2021, with commercially meaningful trade beginning in October 2022, when seven pilot countries—Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, and Tunisia—started trading a set of duty-free goods under the AfCFTA ‘Guided Trade Initiative’. The operationalisation of AfCFTA comes at a time when a changing global environment creates both opportunities and challenges for Africa. It has been suggested that greater trade integration could help the continent take advantage of the opportunities provided by technological change and demographic trends. Trade integration could also enhance Africa’s resilience to climate change and geopolitical fragmentation in trade relations. Meanwhile, the PAPSS is a platform that facilitates instant cross-border payments in local currencies between countries. It is being promoted by the African Export-Import Bank (Afreximbank) to facilitate instant payments between African countries. Historically, the processing of cross-border payments across Africa has involved the use of SWIFT – a global network for processing international payments. However, in addition to transaction charges, SWIFT requires that transactions between two persons in different African countries be processed by conversion to US dollars. The PAPSS addresses this inefficiency by allowing a buyer in one African country to pay in their national currency, while the recipient in another African country can receive the payment automatically in the corresponding local currency.² It is expected to save US\$5 billion yearly in cross-border payment charges and boost intra-African trade. So far, it has been piloted successfully in six countries, namely, Nigeria, the Gambia, Sierra Leone, Liberia, Ghana, and Guinea.

Equally significant is that in February 2023, the AU Assembly of Heads of State and Government adopted three new protocols to the AfCFTA: the protocols on investment, intellectual property rights, and competition policy. While none of these protocols is in force, their adoption represents the extraordinary ambitions of African governments, and that is commendable.

² Isa Alade and others, *Disruptive Innovations or Enhancing Financial Inclusion: What Does Fintech Mean for Africa?* (2022) VANDERBILT JOURNAL OF TRANSNATIONAL LAW VOLUME 53, ISSUE. 4, 673-745

QUESTIONING THE IDEALISED PREMISE OF AFRICAN INTEGRATION IN LEGAL SCHOLARSHIP

Most legal scholarship on the AfCFTA and, more generally, on regional economic integration in Africa, has taken as its unchallenged premise the notion that regional economic integration is essential to Africa's future economic development. In fact, an unarticulated premise for the idealism of regional integration lies at the foundation of most of the legal scholarship on the AfCFTA. It is what one scholar has referred to as "the promise of the AfCFTA".³ African integration and African development are seen as mutually reinforcing. Ajibo's surmise that "most contiguous countries are resorting to economic integration to reduce costs, foster efficiency, diversify consumer preferences, facilitate the expansion of businesses and stimulate industrial competitiveness; Africa cannot be an exception"⁴ reflects this line of thinking.

Whether characterised as flexible legal regimes, supranational regimes, or something in between, the prior question of whether such regimes are essential to the economic growth and development of *each* African country or of Africa as a collective remains free from critical interrogation in the legal scholarship. Another prior question is whether some African countries should be excluded from economic integration initiatives, notwithstanding accommodating principles such as variable geometry, or whether these initiatives should constitute a continental project.

As noted above, the premise that African integration and African development are mutually reinforcing has generally been accepted in the legal scholarship. This has been so despite the failure of most regional economic integration agreements to live up to the lofty economic development ideals enshrined within them, and despite the efforts to embrace all African countries. It is a well-known fact that since the 1960s, several initiatives have been undertaken to enhance intra-African trade. However, substantial tariff and non-tariff barriers remain in place. Africa trades with other regions more than it does with itself. Indeed, a disturbing paradox and enigma of economic integration in Africa, on which much ink has been spent, is that regardless of having the highest concentration of regional economic communities in the world, Africa continues to be the least integrated continent.

3 Olabisi D Akinkugbe, *A Critical Appraisal of the African Continental Free Trade Area Agreement IN KHOLOFELO KÜGLER AND FRANZISKA SUCKER, EDS, INTERNATIONAL ECONOMIC LAW FROM A (SOUTH) AFRICAN PERSPECTIVE* (SOUTH AFRICA: JUTA LAW 2021) 283, at 295.

4 Collins C Ajibo, *African Continental Free Trade Area Agreement: The Euphoria, Pitfalls and Prospects* (2019) JOURNAL OF WORLD TRADE 871, at 894.

The AfCFTA therefore represents a renewed push for regional economic integration in Africa. Professor Akinkugbe notes:

The AfCFTA is the latest layer of agreement in Africa's over half a century experimentation with regional economic cooperation. Historically, the AfCFTA builds on the aspirations of pan-Africanists and their visions for an economically independent Africa.⁵

Conversely, Fredrik Söderbaum has observed that:

One weakness of previous scholarship (especially that rooted in liberal thought) is that too often regions are considered desirable and 'good'. That regionalism can solve a variety of collective action dilemmas is indisputable, but it is equally clear that it may sometimes be exploitative, reinforce asymmetric power relations or lead to a range of detrimental outcomes.⁶

In this light, I argue that the time has come for students and practitioners of African international economic law to vigorously interrogate the idealised premises of regional economic integration in Africa. Should we be more open to accepting that the pan-Africanist vision propelling the AfCFTA is neither settled nor monolithic, and that there are different understandings of this vision, as Professor Rita Abrahamsen⁷ has recently demonstrated? Should we be more open to accepting that our desire to be all-embracing and accommodating of Africa's countries drags the integration project and undermines its integrity?

CONTESTING THE LEGAL PRINCIPLES ON WHICH THE CURRENT INTERNATIONAL ECONOMIC ORDER IS BASED

We should continue to be concerned about the sometimes-Eurocentric bent of our scholarship, including in our critique of and recommendations for economic integration in Africa. We can agree on the virtues of regional integration while simultaneously positing that economic integration is, or should be, tailor-made to suit Africa's specific national and regional realities and contexts. That said, the quest to 'Africanise' regional integration should not be an excuse to condone or rationalise lacklustre performance, inefficient and ineffective institutions, or the non-implementation of regional commitments.

5 Akinkugbe, *supra* note 3.

6 FREDRIK SÖDERBAUM, *RETHINKING REGIONALISM* (PALGRAVE MACMILLAN 2015), at p2.

7 Rita Abrahamsen, *Internationalists, Sovereignists, Nativists: Contending Visions of World Order in Pan-Africanism* (2020) 46 REVIEW OF INTERNATIONAL STUDIES 56.

However, these concerns over the sometimes-Eurocentric bent of our scholarship should not be understood as a critique of comparativism. Indeed, there are many benefits of comparativism, especially if the right comparators are used. In this regard, I call for greater study of other South-South economic integration arrangements, such as the ASEAN FTA, the Caribbean Economic Community, and the lessons that Africa can learn from them.⁸ In addition, we should explore potential linkages between the AfCFTA and other communities in the global South. For example, studies reveal minimal trade between Africa and the Caribbean, despite our shared historical ties. Only 4.4% of the Caribbean's total exports are to Africa. Accordingly, as His Excellency Wamkele Mene, Secretary-General of the AfCFTA Secretariat, recently noted, "the potential for win-win relations between the Caribbean and Africa is tremendous".

Even as the AfCFTA advances the goal of continental free trade to overcome the lingering effects of colonialism and neo-colonialism, we should not forget the continuing need to interrogate and contest the legal principles on which the current international economic order is based. Regrettably, we continue to operate within a set of often inimical rules, designed at a time when most African countries were under colonial domination, although we still expect different results. There is consequently an urgent need to rewrite the rules of the international economic order.

In this regard, it is necessary to re-examine the outsized role of the US dollar in global markets and trade. The decision of delegates from 44 allied countries at the Bretton Woods Conference in 1944 – namely, that the world's currencies would no longer be linked to gold but rather pegged to the US dollar, with President Nixon's subsequent de-linking of the dollar from gold, ushering in the floating exchange rate regimes – continue to haunt many countries and affect their economic fortunes. It means that instead of gold reserves, countries now accumulate reserves that are mostly made up of US dollars, thereby giving the US an outsized influence on foreign economies. How would the economic fortunes of major African gold producers like Ghana, Mali, Burkina Faso, and Sudan have changed if world currencies or the dollar were linked to gold?

8 Clayton Hazvinei Vhumbunu and others, *Consolidating African Regional Integration through the African Continental Free Trade Area: Lessons from the ASEAN Free Trade Area* (2022) 11 JOURNAL OF AFRICAN UNION STUDIES 77.

9 His Excellency Wamkele Mene, *Keynote Address on Occasion of the Caribbean Investment Forum* (2022).

Increasingly, it is reported that central banks are no longer holding the US dollar in their reserves to the extent that they once did. For example, the IMF has reported that 59% of all foreign bank reserves are denominated in US dollars, representing a drop from the high of around 70%. There have even been calls for the dollar to be abandoned.

The PAPSS offers African countries and traders a mechanism to reduce their dependency on the US dollar. In particular, Kenya's President William Ruto recently called on African leaders to take the first steps towards ditching the US dollar as the world's reserve currency by adopting a pan-African payments system to facilitate trade within Africa.¹⁰ Students of African international economic law should pay some attention to these developments and their implications for Africa's future.

THE AfCFTA AND PUBLIC PARTICIPATION

A continuing concern over Africa's economic integration processes, including the AfCFTA, is the lack of public participation and active engagement from civil society groups. Bringing the AfCFTA home to the people should be a principal concern for scholars of African international economic law. Some of our national constitutions are imbued with the values of public participation in decision-making, and a rich jurisprudence on public participation is emerging from countries such as Kenya and South Africa. The same cannot be said for regional integration, and this should not be allowed to be the case for the AfCFTA. Civil society groups may have weak capacity and resources compared to state and formal market actors such as corporations. However, they can significantly shape and influence the path taken by the AfCFTA.

Market and civil society actors can either be powerful facilitators or inhibitors of economic integration. By way of illustration, concerning the AfCFTA, we will all recall how the advocacy of the Manufacturers Association of Nigeria (MAN) delayed Nigeria from ratifying the AfCFTA, even though Nigeria was at the forefront of its negotiations. Equally noteworthy is that several scholars have lamented how Africa's regional economic integration initiatives remain state-centred and state-driven, as opposed to emphasising market mechanisms.

10 <https://northafricapost.com/68180-kenya-calls-on-africa-to-use-papss-to-ditch-us-dollar-in-trade-deals.html>

Söderbaum's call for "theoretically informed and comparative studies about the agency of state, market and civil society actors and how these actors come together to construct and de-construct regions"¹¹ is apposite.

THE CHALLENGE OF IMPLEMENTATION

The perennial issue of implementing the AfCFTA at a domestic level should not be ignored. While 54 countries have ratified the AfCFTA agreement, I am unaware of any country, especially not a dualist common law tradition country, that has given the Agreement (or part thereof) domestic force of law. Vhumbunu and others have captured the significance of this implementation challenge, noting:

For a successful AfCFTA, there may be a need for a paradigm shift from a regional integration culture and political attitudes characterised by ambitious summit pronouncements, declarations and communiqués that are hardly implemented, to a more result-oriented approach that accentuates and underscores the prominence and urgency of policy execution and robust follow-up mechanisms on the implementation of regional commitments by member states. Thus, while political institutions and political pronouncements are indispensable and salient in the regional integration puzzle as vision-setting authorities, these should be complemented by less politicised technical structures, systems and mechanisms that facilitate the translation of broad visions and policy outlines into concrete and practically actionable deliverables to ensure the successful implementation of the AfCFTA agenda.¹²

Thus, the ultimate benefits of the AfCFTA will depend on how its commitments play out in reality. Giving the Agreement domestic force of law is only one of many implementing measures that must be taken. Establishing and resourcing AfCFTA National Implementation Committees, building the capacity of the private sector, and organising this sector, so that it can participate in the implementation processes, are all significant.¹³

¹¹ Fredrik Söderbaum, *Rethinking Regions and Regionalism* (2013) 14 GEORGETOWN JOURNAL OF INTERNATIONAL AFFAIRS 9, at 14.

¹² Vhumbunu et al, *Supra* Note 8, at 88.

¹³ P Sebahizi and others, *From Negotiations to Implementation: Building Effective AfCFTA National Implementation Committees* (ODI POLICY BRIEF, LONDON: ODI 2023).

Furthermore, although the AfCFTA addresses numerous significant trade issues that affect the continent, there are a host of others, often characterised as non-trade issues. These include human rights abuses, violations of labour and environmental rights, bad governance, the absence of the rule of law, and, increasingly, climate change. However, the AfCFTA does not significantly address these issues beyond general provisions on sustainable development. Hence, the extent to which the AfCFTA could or should be used as a launchpad to address these issues or integrate them into its trade regime should form an essential part of our future inquiry.

IMPROVING THE TRADE ENVIRONMENT THROUGH COMPREHENSIVE LEGAL REFORMS

Most of the available studies suggest that the AfCFTA can boost intra-African trade and incomes. However, to ensure that this occurs, a comprehensive and holistic reform agenda is required. This agenda should include the improvement of the trade environment, such as transport and telecommunications infrastructure, access to finance and credit, domestic security, enhanced rule of law, and better governance.

From our perspective, as students and practitioners of international economic law, I think the capacity of the existing legal infrastructure to support intra-African trade merits attention, both in terms of public and private laws. In this regard, one area that demands immediate scrutiny is the regulation of digital trade or online transactions. A recent study identified significant diversity across the legal regimes of African countries, relating to issues such as e-signatures and online consumer protection, cross-border data flows, data localisation and personal data protection, the mandatory disclosure of source code, and intermediary liability.¹⁴

The international harmonisation of private law is an important instrument for improving the trade environment. A strong commercial law infrastructure is likewise necessary for effective intra-African trade. The diversity of national commercial laws is therefore a significant obstacle to cross-border trade. In the words of Asif Efrat:

¹⁴ R Tavengerwei and others, *What to Consider Ahead of the AfCFTA Phase II Negotiations: Focus on Digital Trade Policy Issues in Four Sub-Saharan African Countries* (OXFORD PAPER SERIES, NO 16; OXFORD, UNITED KINGDOM: DIGITAL PATHWAYS 2022).

In a world of national legal systems, where each country has its own corpus of commercial law – most important, its own law of contracts – actors transacting across borders face a significant legal diversity that might hinder trade. Unfamiliar with the foreign legal system, a business faces considerable uncertainty about the consequences of the transaction; this uncertainty, in turn, increases the costs of information finding and negotiations and might result in commercial disputes.¹⁵

The harmonisation of commercial laws simplifies the legal foundation of trade. It allows contracting parties to save resources. It also helps avoid controversy over the choice of law that may be applied to transactions. In short, it is easier to access, understand, and comply with harmonised law. Accordingly, it reduces transaction costs and risk, thereby reinforcing legal certainty.

Nevertheless, despite the notable diversity of laws within Africa, regional integration initiatives have failed to pay systematic attention to significant areas of commercial law that impact cross-border trading. The only exception is the OHADA initiative. Significantly, not one country that adheres to the common law tradition is a member of the OHADA initiative.

The failure to prioritise the harmonisation of commercial law as an important part of the necessary infrastructure for enhancing intra-African trade is equally manifest at the continental level. In 2004, the African Union established the AU Commission on International Law. One of the Commission's objectives is to codify and progressively develop international law in Africa. However, there is no similar AU commission on private law. The AfCFTA fares no better. Unlike African regional economic integration treaties, the Agreement has no provision for the harmonisation of commercial laws.

How do we explain this failure to prioritise the harmonisation of commercial law in efforts to enhance intra-African trade? I offer the following reasons:

- First, trade agreements promise a reduction in tariff and non-tariff barriers to trade. Hence, they have an immediate effect on prices. However, the impact of legal harmonisation on the price of goods and services is not immediate, especially for consumers.

¹⁵ Asif Efrat, *Promoting Trade Through Private Law: Explaining International Legal Harmonization* (2016) 11 REVIEW OF INTERNATIONAL ORGANIZATIONS 311, at 312.

- Second, trade agreements do not have an immediate or widespread impact on legal practice and adjudication. However, the harmonisation of commercial laws entails the displacement of existing domestic laws. Accordingly, it demands significant new learning for both lawyers and judges. In professions that are known to be impervious to change, such a prospect is hardly attractive.
- Third, firms and traders may have no incentive to push for the harmonisation of laws. This is because they can use the contractual device of a choice of law clause to choose a national law that will suit their needs, including foreign laws. Indeed, it is well-known that some traders choose English law as the governing law of their contracts, even though they are trading in Africa!
- Finally, as with many other significant issues that affect Africa, we appear to have 'farmed out' the task of addressing the harmonisation of laws to institutions outside the continent. These include the United Nations Commission on International Trade Law (UNCITRAL) and the Hague Conference on Private International Law – two institutions that are dedicated to the harmonisation and unification of laws.

As scholars, we are good at identifying problems, but we often omit to articulate the role that we can play in addressing the problems we identify. As students of African international economic law, we should show greater interest in and commitment to legal harmonisation, as a means of advancing intra-African trade.

I note that, comparatively, scholarly initiatives have played a key role in harmonising private laws elsewhere in the world. For instance, in Asia, a private initiative by scholars and academics aims to create a model law, called the Principles of Asian Contract Law. Similarly, the Principles of European Contract Law were drafted in 1998 by the Commission on European Contract Law (hereinafter, the Lando Commission). Meanwhile, there is the Organisation for the Harmonisation of Business Law in the Caribbean (OHADAC). Since its formation in 2010, OHADAC has already produced a model law for commercial companies, and there are projects for the harmonisation of private international law and the law on international commercial contracts.

Similarly, there is a need to reform domestic laws and dispute settlement systems, so that they can address the cross-border legal problems generated by international commercial intercourse. A great deal has been written about dispute settlement under the AfCFTA. Some have demonstrated how it is modelled after the WTO's dispute settlement system. As such, it represents a regression from the innovations and achievements of regional economic communities, including the individual standing to bring claims.

Ultimately, however, the mechanisms for resolving disputes between private traders engaging in intra-African trade are more significant for the AfCFTA's success. There is a need to set up and provide resources for the commercial divisions within our respective national High Courts, in order to expeditiously handle commercial cases and strengthen the legal and physical infrastructure for alternative dispute resolution, especially arbitration. Is there a case for an African Commercial Court, as Professor Onyema and others have proposed? A recent study by the School of Oriental and African Studies shows strong support for this proposition.

AVOIDING THE PERPETUATION OF INEQUALITIES

While we explore ways through which the AfCFTA can be brought to the people, we should equally be concerned about whether free trade under the Agreement will generate benefits for all through 'trickle-down' growth. It is trite to mention that there are winners and losers in free trade – it is not always an all-win endeavour. In free trade agreements, the participating countries might not benefit equally from the gains of trade.

Obeng-Odom has observed that "inequality is Africa's worst problem, but the official AfCFTA Agreement largely ignores it and promotes economic growth instead"¹⁶. The benefits of the AfCFTA should not be captured by the few and powerful on the continent. As Tayo has observed: "In most African countries, economic power is closely linked to political power. Economic elites can co-opt production policies in their favour and perpetuate their dominance."¹⁷

I therefore reiterate, the benefits of AfCFTA should not be unevenly distributed, as has been the case with many resource allocation issues on the continent. However, free trade under the AfCFTA could accentuate existing inequalities in Africa unless appropriate measures and interventions exist.¹⁸

One such measure or intervention is investment in human capital – governments that invest in their people (the country's most important natural resource) are likely to benefit most from free trade under the AfCFTA.¹⁹ By human capital, I refer to

16 Franklin Obeng-Odom, *The African Continental Free Trade Area* (2020) 79(1) AMERICAN JOURNAL OF ECONOMICS AND SOCIOLOGY 167, at 185.

17 <https://blogs.lse.ac.uk/africaatlse/2021/06/18/will-african-continental-free-trade-area-afcfta-increase-inequalities-issues/>

18 Obeng-Odom, *Supra* Note 16, at 181.

the knowledge, skills, competencies, and attributes that are embodied in individuals to facilitate the creation of personal, social, and economic well-being. Human capital is critical for development; it enhances productivity and global competitiveness. It is essential to the effective functioning of a country's economic, social, and political institutions.

The positive correlative relationship between investment in human capital and economic growth is too strong to merit serious debate. Regrettably, the extant data suggests that the level of human capital is very low across much of Africa. Consequently, deliberate and adequate investment in human capital is necessary for African countries to be able to reap the benefits of free trade under the AfCFTA. In particular, Aziegbe-Esho and Verhoef have noted that investments in human capital by both governments and the private sector:

Should be directed towards developing capacity in the identified areas of competitive advantage, in developing the knowledge and skills required to enhance productivity in the area of country-specific comparative advantage.

...Targets should be set to educate and train citizens in specialist areas relating to the area of comparative advantage in the required post-secondary educational and vocational institutions.

Nevertheless, the prospect that the AfCFTA could accentuate existing inequalities in Africa should not be viewed from the perspective of individuals alone. Significant inequalities also exist between whole countries in Africa, with some being more advanced, developed, and resource-endowed than others. There is a clear 'development divide', just as in other parts of the world. For example, it is estimated that Nigeria, South Africa, and Egypt account for around 50% of Africa's GDP. Accordingly, the AfCFTA brings together unequal economies with varying production capacities.

However, this is not necessarily a bad thing: the more advanced, developed and resource-endowed could be champions and anchors of intra-African trade, much like Germany and France champion and sometimes bankroll European integration efforts. At the same time, there should be measures to address the needs of the less advanced, less developed, and least resource-rich countries to ensure that free trade does not worsen their positions.

19 Ebenezer Aziegbe-Esho and Grietjie Verhoef, *Reaping the Benefits of African Continental Free Trade Agreement (AfCFTA) - The Role of Human Capital Development* (2023) 15 AFRICA REVIEW 1.

CONCLUSION

In conclusion, let me once again express my appreciation to the Conference organisers for inviting me to deliver this keynote address. I look forward to the coming days of engaging academic exchanges, discussions, and debate. We are living in challenging times. However, in challenges, one can sometimes find opportunities and learn important lessons. I venture that there are indeed opportunities for Africa in these times.

As scholars of African international economic law, we are uniquely placed to draw attention to important lessons, expose opportunities, and in concrete ways, articulate for our leaders, legislators, and policy-makers how best to take advantage of these opportunities. This Conference provides a unique context for us to do so.

Welcome to Accra.