Symposium Introduction: Protocol on Women and Youth in Trade - Unpacking “Inclusivity”

By:

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There have been many important developments on the continent since the official start of trading under the African Continental Free Trade Area (AfCFTA) in January 2021. Keen to stimulate discussion of the ambitious development objectives which have animated the AfCFTA project and their potential to be realized by the effort as currently conceived, the Institute for Global Law and Policy (IGLP) at Harvard Law School, Afronomicslaw.org, and the Firoz Lalji Institute for Africa (FLIA) at the London School of Economics and Political Science came together in early 2023 to co-sponsor a discussion series entitled “Assessing Developments in the Negotiation and Implementation of the AfCFTA”. The first session of the series was convened online by the IGLP on April 17, 2023, and centered on the Protocol on Women and Youth in Trade (the Protocol) which is currently being negotiated.

As session conveners and moderators, we sought to bring into conversation different perspectives of what inclusion means under the AfCFTA and on the extent to which the Protocol might foster inclusivity. The Protocol is important for this conversation because trade negotiations rarely seek direct input from women and youth and tend to sideline specific questions about their potential losses from trade liberalization. The AfCFTA Secretariat was invited to provide the institutional perspective and approach to inclusion along with an update on the status of the Protocol. Marie Clarisse Avore Bekale, Principal Legal Officer at the Secretariat brought years of legal experience, including specialization in legal drafting. Other panelists provided views of inclusion through Pan-African feminist, economist, gender and political economy in law, and other lenses. Informed by their vast experience in myriad fields including international trade, macro and microeconomics, international law, political economy, and women's rights, the panelists unpacked the question of inclusion through nuanced discussion of women and youth with emphasis on their internal diversity and diversity of the contexts in which they reside.

In her introductory remarks, Bekale characterized inclusion as a cornerstone of the AfCFTA whose purpose includes fostering inclusive socio-economic development, gender equality, and structural transformation. This "transformation" includes formalizing the informal cross-border trade that is dominated by women and youth. Bekale emphasized that the AfCFTA Agreement is gender neutral but raises genuine distributional concerns because it could have unequal benefits for women and also for youth. For example, large and technologically advanced firms could outcompete small women- and youth-led firms that engage in cross-border trade. Inclusion therefore involves a recognition of the "systemic, structural, financial, and other challenges" that women and youth face in cross-border trade, which is why the Secretariat has collaborated with a few UN agencies to convene a series of large-scale consultations with youth and women, including entrepreneurs. The drafting committee will incorporate the findings of these consultations into the Zero Draft of the Protocol in order to foster inclusive trade. Bekale also stressed that the Protocol falls under the general framework of the African Union and is not meant to duplicate any other instruments such as the Maputo Protocol and African Children's Charter. While existing instruments consider women and youth in diverse roles, this Protocol will focus on their roles as entrepreneurs,

exporters, importers, and informal cross border traders.

Throughout the session, panelists underscored the heterogeneity of women and youth and their contexts. Based on her work at the United Nations Economic Commission for Africa, Nadia Hasham underscored the diversity within the category of "youth" and the challenges of capturing this group statistically. With regard to context, representing YouLead Africa, Sodfa Daaji contended that it is crucial to consider African countries' different levels of development and the expected speed of trade liberalization under the AfCFTA. Applying a global political economic lens reveals the simplicity of a homogenous description of African countries under the umbrella of developing and least developed countries. Given that, as Fatimah Kelleher from the Nawi -Afrifem Macroeconomics Collective reminded us, three countries make up almost half of the continent's gross domestic product, we must pay attention to the contextual realities within which trade liberalization falls.

The diversity of roles was another key consideration. Although much of the discussion around the Protocol focuses on women and youth as entrepreneurs, traders, and to a certain extent producers, this is insufficient. As Kelleher stated, when the Protocol premises itself on inclusion—particularly gendered inclusion—and focuses on a few roles that women hold (i.e., entrepreneurs and producers), it distracts from the wider structural issues of gender equality that trade liberalization brings. The multiple unmentioned roles that women play intertwine with the dynamics of free trade and, as Kelleher put it, the "myopia" of the current approach leaves much to be desired. Chantal Thomas from Cornell Law School suggested that while the "subtextual figure" of the woman or youth as entrepreneur is rightly celebrated in instruments like the anticipated Protocol, such a singular focus obscures questions of solidarity and structural inequality. Along the same lines, Daaji and Kelleher indicated that the dynamics triggered by trade liberalization, such as the expansion and contraction of sectors, bring into play other roles that women play such as; women as workers, taxpayers, users of public services, and consumers. For Kelleher, the multiplicity of roles complicates the implications of these dynamics which results into a series of "unintended consequences". These dynamics—particularly contraction—test the resilience of women producers as they are pitted against larger and more seasoned producers. Another scenario she presented involved women custodians of common land who could be

affected as the AfCFTA's focus on food security facilitates large-scale agro-business.

Echoing the mantra of the Persons with Disabilities movement—"nothing about us without us"—the panel discussion reiterated the importance of women and youth participation. Some panelists called for greater involvement in all processes leading to the Protocol's adoption and raised concerns about the unavailability of drafts of the Protocol for the public. Given that women make up at least half the population, Luwam Dirar of Western New England University School of Law contended that women's demands for inclusion are not demands "for extra special treatment". Daaji further decried the fact that although women and youth are drivers of trade on the continent, the attempt to engage them has been insufficient. "Inclusivity is expensive", someone told her. However, she thought far more resources could be directed to consultations so that inclusivity goes "beyond a select few to become a reality for others".

Nevertheless, panelists' views of participation differed. Hasham celebrated the novel approach that the AfCFTA Secretariat is taking to the negotiations by ensuring representation of women and youth in each member state delegation. She recognized the importance of participation, but also highlighted the practical challenges it raises particularly because of the diversity of the constituencies and the different forms of social organization across African countries. A, few panelists also urged caution regarding participation. For Kelleher, the AfCFTA Secretariat must ensure that participants are well informed so that they can bring to the discussions an understanding of the potential impact of the AfCFTA in their sectors. In closing remarks, David Kennedy of the IGLP suggested that there is a danger to focusing on participation in the various processes at the expense of "assessment of people's exposure to losses".

Another preoccupation of the participants was language. Thomas indicated that although the increased discussion of the gendered aspects of international trade and addition of gender chapters to trade instruments is welcome, there is a danger that such instruments simply do "lip service". She and Dirar contended that it is important to interrogate whether these instruments offer or fall short of giving concrete commitments. Dirar drew attention to the historical unfolding of gender chapters in African instruments highlighting the

conceptualization of emancipation that hierarchically positioned agendas, prioritizing decolonization and relegating gender equality. As such, there was a proliferation of non-justiciable gender-sensitive provisions in regional and sub-regional instruments. However, Hisham suggested that there was an opportunity to build on the gender vocabulary in instruments at the sub-regional level.

Several panelists considered whether “gender” and “equality” language might inhibit addressing the distributional concerns that the Protocol aims to tackle. Kelleher argued that it might be better to not have a Protocol rather than have one that distracts from addressing these issues. Similarly, Dirar suggested that it might be necessary to move from terms like “equality for fear of diluting its impact”. Thomas also stressed that while it is important to consider the needs of underserved populations, often the solutions are “structural reforms that address underlying dynamics of inequality” rather than gender-specific responses. Consequently, investing in infrastructure or support for unpaid care work, for example, can sometimes be the best thing governments can do for informal women traders.

The panel also underscored the complexity and far-reaching impact of trade. Thomas pointed out that given the Continent’s colonial past, the AfCFTA is positive because it provides an alternative to the export-dependent center-periphery trade. Nevertheless, she emphasized the importance of paying close attention to how dynamics triggered by trade liberalization affect diverse groups. Asking about inclusion helps us move beyond the trade theory of comparative advantage that disguises the vast array of contextual circumstances that have been demonstrated over again in free- trade Areas. The North American Free Trade Agreement and the opening of the US-Mexico border, for example, led to consequences such as displacement of local farmers due to dumping of subsidized agricultural products from the US and creation of “surplus labor supply” that became cheap and precarious, later exploding into labor migration across the US-Mexico border.

Kelleher critiqued the assumption of AfCFTA implementation within an “intra-African vacuum”, foregrounding the role of international actors who influence government policies through loan conditionalities and Foreign Direct Investment. This will affect the autonomy of different countries, including their

monetary and fiscal power, thereby influencing their ability to cushion certain dynamics of trade and potentially undermining gender equality once the AfCFTA is implemented.

Particular attention must also be given to what Kelleher referred to as the "onus put on national contexts". For Hasham, inclusion primarily "happens at the level of implementation and not at the level of the trade agreement itself". Kennedy argued that because questions of inclusion are often taken as secondary in free trade agreements, they are "off loaded" on member states where members of underprivileged group then have to seek "special consideration or remediation" that goes beyond existing national inclusion strategies or, alternatively, to ask the government to carve out exceptions to free trade, which are difficult to justify especially when they are competing with the "winners" in leading sectors. As such, Kennedy proposed a different approach where rather than starting with the idea of free trade creating gains and then thinking about how to distribute them, one starts with an account of the "structural and political economies on which free movement is going to fall" (i.e., the people, sectors, industries, workers, winners and losers within and between nations) and then designs the agreement "with a political-economic view about where the gains should go". He admitted that although this is difficult to do politically, one can imagine it intellectually and in economic and social terms.

The distinguished panelists demonstrated that the question of inclusion is multifaceted. This multifaceted question cannot be adequately conceptualized in the quintessential dichotomies of losers versus winners or large economies versus small ones. A better approach would be complex and granular in its conceptualization, paying more attention to the political economies of the contexts upon which legal arrangements like the AfCFTA will fall.

We hope that this introduction and contributions from three of the panelists along with two guests provide useful food for thought as we continue reflecting on what inclusivity might look like and how it might be realized within the AfCFTA.

Note: Although Joy Kategekwa had planned to join the panel, she was unable to do so due to unforeseen circumstances.

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