US Suspends Four Countries from AGOA: Reassessing the Human Rights Trade Nexus

By:

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Introduction

The US Government announced on October 30th that the Central African Republic (CAR), Gabon, Niger, and Uganda will be removed from the list of 35 sub-Saharan African (SSA) countries that are eligible for market access under the African Growth and Opportunity Act (AGOA). The announcement came on the eve of the 20th AGOA Forum in Johannesburg, South Africa, on the 2nd to 4th of November 2023. According to the US Government, CAR and Uganda have engaged in gross violations of internationally recognised human rights. The US Government also claims that Niger and Gabon have not established or are not making continual progress towards establishing the protection of political pluralism and the rule of law. The US government also claims that despite intensive engagement with these countries, they have failed to address concerns about their non-compliance with the AGOA human rights eligibility

criteria.

This essay reflects on the decision, which is not the first by the Biden administration in the last few years. It argues that the recent decision by the US is an example of developed countries using trade incentives and sanctions to achieve their geopolitical interests in Sub-Saharan Africa (SSA) under the pretext of promoting human rights standards. It is also argued that the US's current application of human rights-based trade conditionality under AGOA unduly shifts the focus from the initiative's primary goal, promoting economic development in SSA through increased US-Africa trade. Political and social change in Africa appears to be of more significant concern than evaluating the effectiveness of AGOA and the calls for its renewal beyond 2025.

The essay contends that the economic ramifications of these recent suspensions of the CAR, Gabon, Niger, and Uganda have the potential to disproportionately impact vulnerable groups in these countries that are dependent on access to the US market under AGOA for their livelihood. Furthermore, a critical examination of the US policy towards SSA under AGOA reveals potential biases and double standards in applying human rights conditionality in trade. This view is premised on the argument that the selection process is highly subjective and may be more about geopolitical alignment than human rights per se.

Background Context: The Trade and Human Rights nexus

To provide some context, trade agreements have increasingly become a tool for interstate diplomacy, used in enforcing human rights, often focusing on worker rights, freedom of movement, cultural expression, political participation, women's rights, and children's rights. Unilateral preferential trade agreements (PTAs) introduced by developed countries for developing countries like AGOA, the EU-OACPS Partnership Agreement and the UK's Developing Country Trading Scheme (DCTS) require signatories to uphold fundamental civil, political, economic, and cultural rights as part of the conditionalities for gaining tariff-free access to the markets of developed country partners under these agreements (see Aaronson, 2011; Curtice & Reinhardt, 2023). However, achieving human rights objectives through trade agreements, especially in the context of North-South trade relationships, is problematic for several reasons,

as discussed below.

How effective are these human rights conditionalities in PTA?

There is inconclusive evidence that countries with bad human rights records will change because of punitive trade sanctions in preferential trade agreements like AGOA. The literature focusing on the effectiveness of PTAs and other trade agreements in promoting human rights presents a range of perspectives. Scholars, such as Hafner-Burton (2005), propose that strict standards in trade agreements can effectively influence human rights compliance in these countries. She argues that a coercive approach incentivises states to adhere to human rights norms due to the tangible trade benefits at stake. Other scholars such as Goodman and Jinks (2004) cast doubt on the simplicity of this correlation between a coercive approach and compliance of states with human rights standards, arguing that this '…approach fails to grasp the complexity of the social environment within which states act' (ibid, 625).

According to the coercive theory of compliance, PTAs can incentivise countries to comply with international human rights principles. Applying this theory to the recent decision by the US to deselect four countries for AGOA eligibility, it is believed that these countries could be motivated to comply with human rights standards to maintain their access to the US market. Presumably, this is because they stand to lose tangible benefits from free access to the US market if they do not comply. In effect, a country like Uganda would be pressured to change its stance on LGBTQ rights to keep its access to the US market. However, the challenge with this thinking is that Uganda is among the SSA countries with a poor utilisation rate under AGOA. As of June 2023, approximately 10.75% of Ugandan exports to the US qualified for zero-tariff treatment under AGOA. Niger ranks even lower, with approximately 0.04968% of Nigerien exports qualifying for zero-tariff treatment under AGOA in 2021. Gabon and CAR have better utilisation rates, with about 57.01% of Gabon's exports to the United States under the AGOA scheme for the year 2022 and approximately 54.28% of the CAR's exports to the United States qualifying for zero-tariff treatment under AGOA in the year 2022 up to December. Compared to SSA countries with the highest utilisation rate, such as Kenya and Lesotho, which have utilisation rates of 88% and 99%, respectively, Uganda, the CAR,

Gabon and Niger have not maximised the benefits of AGOA. As such, there is little evidence from the data to suggest that the US has garnered considerable traction in its trade relations with these four countries to leverage in its advocacy for human rights compliance. If anything, this move will undermine progress to enhance the utilisation rate of these countries under AGOA. Except the primary aim of AGOA is to effect political and constitutional change in another sovereign state, I would assume that increased trade that leads to economic development in SSA should be the priority of the US in its relationship with Africa under AGOA.

You will recall that Ethiopia was removed from the AGOA eligibility list by the Biden administration in 2021 due to the ongoing civil conflict in Ethiopia's northernmost region of Tigray. In the run-up to its suspension from AGOA, Ethiopia was making significant progress in utilising AGOA. As such, Ethiopia has had much to lose by the US withdrawing its AGOA eligibility. This aligns with the coercive leverage logic discussed earlier. The Government of Ethiopia has repeatedly expressed its displeasure at being removed from AGOA and has been lobbying to get reinstated, demonstrating that the US has some leverage here. However, the question remains: will removal from AGOA facilitate a resolution of the crisis? As of October 2023, the UN Special Advisor on the Prevention of Genocide, Alice Wairimu Nderitu, had expressed grave concern at the continued presence of most indicators and triggers in the UN Framework of Analysis for Atrocity Crimes, highlighting risk factors for genocide. This indicates that AGOA de-listing, while a big blow to the economy of Ethiopia, may not necessarily translate to a change in attitude by the Ethiopian government towards human rights standards in Tigray, at least not in the short to mid-term.

More so, we also have to consider the human rights of all those affected by the job losses in Ethiopia and potentially in the four countries recently affected by AGOA suspensions. This is imperative given the lack of conclusive evidence that AGOA suspension would lead to tangible changes. In the case of Ethiopia, it has been argued that excluding Ethiopia from AGOA will not end the violations, given the involvement of multiple actors in the conflict. The threat of genocide in the Tigray region calls for urgent action from the international community. However, is removing Ethiopia from the AGOA eligibility list the most effective way to achieve this outcome? The same question applies to the most recent

suspensions.

Who bears the brunt? The potential domino effect of US AGOA policy

Denying SSA countries AGOA eligibility will disproportionately harm vulnerable groups who are not responsible for the policies their governments are accused of. Uganda has already criticised the US decision, arguing that terminating its AGOA status would harm farmers and small businesses in this impoverished African country (see Nation, November 2023). Ethiopia brought up a similar issue when its AGOA status was terminated in 2021. In that instance, it was estimated by Ethiopian government officials that its removal from AGOA eligibility could cost the country 1 million jobs. The Ethiopian government also stressed that the decision of the US was misguided because it failed to take into account the well-being of ordinary citizens, especially the livelihoods of more than 200.000 low-income families, primarily women who have nothing to do with the conflict. This is particularly instructive given the leaps and bounds that Ethiopia has made to increase its utilisation of market access under AGOA. Despite its good intentions, AGOA's human rights eligibility requirements have severe consequences for citizens of these countries. Farmers, small enterprises, and labourers who are not the authors of US-criticized policies suffer when AGOA eligibility is suspended.

Double Standards and bias in a highly subjective process exacerbate power asymmetry in US-African relations

Serious human rights breaches in AGOA countries should elicit tough measures from the US. However, the US's response does not appear to be objective and impartial. For example, Uganda has been accused of gross violations of internationally recognised human rights. Specifically, the US government takes issue with the Ugandan anti-gay law adopted in May 2023. Suppose it is the US's policy not to offer trade concessions under AGOA to any SSA country that passes anti-gay laws. Why does the same standard not apply to its relationship with countries with a similar profile? For example, Ghana's Parliament unanimously passed an anti-gay bill in July 2023. Gassebner and Gnutzmann-Mkrtchyan (2018), commenting on this point, argue that the US' choices to exclude nations from GSP eligibility are influenced not by the labour rights of such countries but rather by their alignment with the foreign policy of the US.

An analysis of The 2022 HUMAN FREEDOM INDEX by the Cato Institute and the Fraser Institute provides an alternative perspective of the human rights records of the 35 SSA countries on the AGOA eligibility list. A reading of this report raises questions about the impartiality of the US's recent decision. A purview of the human rights records and ranking of all 35 SSA countries eligible for AGOA market access on The HUMAN FREEDOM INDEX indicate only one of the four countries suspended from AGOA - the CAR - feature in the top ten SSA countries with the worst human freedom rankings.

It is unclear why the other countries in the top ten list do not receive the same outcome as those de-selected. The obvious argument is that other countries on this list have made '…continual progress in meeting the requirements.' This phrase is, however, vague and deliberately left ambiguous to allow the US wriggle room to pick and choose who gets the axe from the AGOA. For example, what satisfies the 'continual progress requirement?' Who determines if continual progress has been met? How is continual progress measured? Looking at the deliberations and lobbying that took place in the run-up to this announcement highlight how subjective and politicised the process is. For example, there were calls from several US lawmakers for South Africa to be de-listed because of its ties to Russia. Also, there were calls for reinstating Ethiopia, but it was argued that 'sufficient progress had not been made.' It is quite sad that African countries should be the subject of such politicking and lobbying in Washington. It is also a stark reminder of the power asymmetry in the US-Africa trade relationship.

Recommendations

We welcome the call by President Biden urging Congress to reauthorise and modernise AGOA. To modernise AGOA, the US must rethink its approach to implementing the conditionality criteria under AGOA. While human rights are essential, their application should not cause undue economic harm to the most vulnerable populations of countries that are already impoverished. The idea that the governments of these countries have failed to address US concerns about their non-compliance with the AGOA eligibility criteria despite sustained engagement indicates that a different tact is required in these circumstances. Working with Civil Society Groups and Non-Governmental Organisations with localised knowledge of the situations in these countries could achieve more

without causing undue economic hardship to vulnerable groups. This would require strengthened support for local NGOs and civil society in AGOA countries to champion human rights from within. Alternatively, or in addition, the US should consider more constructive incentives for incremental progress in human rights practices in AGOA countries of concern.

If the human rights breaches are of the gravity to warrant urgent intervention, targeted sanctions against specific individuals or entities responsible for these human rights violations would minimise broader social and economic fallout while maintaining pressure on those at fault. It is also imperative that localised impact assessments are carried out to understand the potential socioeconomic consequences of AGOA suspension on vulnerable groups. These assessments should guide the US in tailoring its responses to human rights violations in a manner that does not exacerbate poverty or instability.

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