The Effect of Recent Coups in Africa on the African Continental Free Trade Agreement

By:

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Introduction

There has been a wave of incessant coups in Africa, starting in Mali in 2020. Since then, it has unprecedentedly spread to 6 countries in 3 years. Other countries include Guinea (2021), Chad (2021), Sudan (2021), Burkina Faso (2022), Niger (2023), and most recently, Gabon in August 2023 have experienced coups. The coup leaders deposed elected leaders, forestalled elections, or even overthrew leaders who held on to powers for over 50 years. It has also caused the rise of a faction among African leaders. Countries with military regimes declare support for one another and daring regional bodies like the Economic Community of West African States (ECOWAS) to take any disciplinary action. This post examines the effect of the rising political instability in African countries on the African Union's (AU) effort to implement the African Continental Free Trade Agreement (AfCFTA).

African Continental Free Trade Agreement (AfCFTA)

The AfCFTA is a trade agreement among 55 AU members that creates a single market for goods and services across Africa, facilitates the free movement of people, and spurs economic growth and development across the continent. Alongside regional economic communities, the AU aims to boost preferential trade in goods and services, economic development, and industrialization. Indeed, the AfCFTA trade areas will be the "largest free trade area since the formation of the World Trade Organisation." Since the Agreement entered into force on 30 May 2019, it has garnered 54 signatories. As of February 2023, 46 of the 54 countries have ratified the Agreement. Ratifying countries, including those now under military regimes (Mali, Niger, Chad, Burkina Faso, Gabon, and Guinea).

One of the principles that drives the implementation and operationalization of AfCFTA is reciprocity. This principle is the bedrock for the ongoing negotiations to finalize protocols on all aspects of the agreement, including those on trade in goods and services and dispute settlement (phase I), Intellectual property rights, investment, and competition policy (phase II), and Digital trade and women and youth in trade (phase III). All AU member states (including those that haven't ratified the AfCFTA Agreement) will participate in the negotiations, the outcome of which must be unanimously accepted. The free trade area can only take effect when all protocols are finalized and ratified by at least 22 countries. To fast-track the process, the AU themed 2023 as the year for " Acceleration of AfCFTA Implementation."

Effect of the Political Instability on AfCFTA Implementation

The political instability in some of the AU countries may hinder meaningful progress on the negotiations on protocols relating to trade and investments. For example, in response to the coup in Niger in 2023, ECOWAS announced travel and economic sanctions against Niger, which caused ECOWAS members to close borders with Niger, ban commercial flights banned, halt financial transactions, freeze national assets, and end aid to Nigeria. ECOWAS also threatened to use force if the leaders of a coup didn't reinstate the democratically elected president within one week. The AU ratified these measures and suspended Niger, as it did with other countries (Guinea, Mali,

Burkina Faso, and Sudan), whose democracy has been truncated.

Clearly, Niger coup leaders dismissed the ECOWAS threat. Instead, it retaliated by cutting off trade relations with Nigeria and Togo. As an act of solidary, military leaders in Mali and Burkina Faso also pledged support for Niger, warning that any military intervention in Niger is a declaration of war on them. It appears that countries under the military regime are forming a regional bloc. With the shared opposition to France and its Western allies and a growing preference for Russian partnership, Mali, Burkina Faso, and Niger are merging into a de facto anti-west Francophone faction within Ecowas. This will affect trade relations within the ECOWAS and the AU because countries under military regimes may be afraid to open trade relations with other countries due to differing political ideologies.

The present political situation raises an implementation and interpretational quagmire that the AU must resolve. Although Mali, Burkina Faso, Gabon, and Chad may have signed and ratified the AfCFTA, it is unlikely that they will participate in or support AfCFTA negotiations because the AU has suspended them. However, Article 27 of AfCFTA provides that a state party can only withdraw its membership 5 years after becoming a member. Article 27(2) also provides that a withdrawal notice shall not be effective until 2 years after receipt of the notice. This provision raises the query of whether countries that signed and ratified the AfCFTA under a democratic regime can withdraw under the military regime before the expiration of 5 years. The AU suspension of these countries also raises the question of whether they are automatically removed from AfCFTA.

Similarly, the sacking of democratically elected officials may affect the political support that the AfCFTA enjoys. Previous democratic leaders in some of these military regimes, for example, Mohamed Bazoum and Issoufou Mahamadou in Niger, championed the signing of the AfCFTA. The AU acknowledged that the AfCFTA received the attention of Member States due to the lobbying at the highest level by Mr. Mahamadou. Considering the political instability in Mr Mahamadou’s country and the uncertainty surrounding Niger’s membership in the AfCFTA, it is doubtful whether he can continue to play a leading role. Other African leaders must emerge to fill this vacuum to garner the political will needed to implement AfCFTA. Indeed, it has been noted that “the AfCFTA is on

track. But having a trade agreement is one thing and political will is quite another. Yet, that's what the AfCFTA needs most in this nascent stage."

Beyond the likelihood of waning political support for the AfCFTA, economic sanctions that isolate African countries in the Sahel region from intra-African trade mean that the integration and liberalization of African markets would continue to be a mirage. The Sahel region has one of the largest aquifers in Africa with immense potential for renewables, including abundant solar energy capacity. It has been noted that "in terms of natural resources, the Sahel is one of the richest regions in the world and is abundant with oil, natural gas, gold, phosphates, diamonds, copper, iron ore, bauxite, biological diversity, and precious woods, among many other assets." The economic sanctions on these countries mean the resources are landlocked within their borders. Isolating the countries would result in a reduced trade volume across Africa, the collapse of hundreds of businesses, a dip in locally generated revenue, and increased transaction costs for small businesses. These are antithetical to AfCFTA's Vision of "an integrated, prosperous and peaceful Africa."

Countries in the Sahel region are geographically strategically located. The region plays an intermediary role between North Africa and sub-Saharan Africa. Therefore, the problems in the Sahel have a much broader impact, affecting countries to the south and north, including Libya, Algeria, and Egypt. Trade routes and developmental projects across Africa are intrinsically linked to this region. For example, the recent border closure between Nigeria and Niger affects the Trans-Saharan Gas Pipeline project. The pipeline, which passes through Niger, was expected to link Warri in Nigeria to Algeria's major Hassi R'Mel gas hub. Similarly, the trade route between the port of Cotonou in Benin and Niamey is one of the busiest in Africa. The recent sanction on Niger made Benin closed its borders against Niger, making it further difficult for imports bound for Chad. This impasse has led several truck drivers to become frustrated and trapped within the borders. These developments set back the AfCFTA agenda for the free movement of people and industrial development. Although the AfCFTA was expected to increase intra-regional trade by at least 80%, the 2023 UNCTAD Report notes that intra-regional trade in Africa remains weak. The 2023 World Trade Statistics Review shows that the major export destinations of African mineral resources (precious metals) are China, India, the United States, and Spain. Considering the current events in Africa, it is unlikely

that the statistics will change in 2024.

In sum, the recent coups may make the trade relations worse than it was pre-AfCFTA. With the economic sanctions and political bickering across Africa, African countries may continue to search for markets outside the continent, which leaves them vulnerable to countries in the Global North.

Way Forward

Going forward, the successful negotiation and implementation of AfCFTA protocols on investment and trade will depend on the extent to which political stability and the rule of law are entrenched in African countries. The rule of law dictates that every person should be subject to the law. Cultivating a rule of law norm involves building democratic institutions that support the rights of Africans to choose their leaders. A shared normative understanding of the rule of law among African countries would enhance cooperation and collaboration among African countries. With this understanding, it is easier for African countries to pursue common interests on economic integration matters.

Therefore, the AU must understand the intersection between the rule of law and trade. It must proactively address bad governance and undemocratic practices that may lead to military intervention in African countries. Article 24 of the African Charter on Democracy, Elections and Governance provides that "[w]hen a situation arises in a State Party that may affect its democratic political institutional arrangements or the legitimate exercise of power, the PSC [peace and security Council] shall exercise its responsibilities in order to maintain the constitutional order in accordance with relevant provisions of the Protocol Relating to the Establishment of the Peace and Security Council.' This provision gives pre-emptive powers to the AU to intervene in cases where elected members refuse to leave office after their tenure or in cases of constitutional coup. As Babatunde Fagbayigbo rightly noted, "the capacity for re-invention, either through sham elections or keeping the presidency in the family, aptly sums up the tragic state of political development on the continent."

The Big task ahead of the AU is to find ways to promote a shared commitment to the rule of law among African countries. This is because the first objective of the AU is to achieve greater unity, cohesion, and solidarity between African

countries and African nations. The AU must return to the drawing board to find ways to deliver this goal as it implements the AfCFTA. In doing this, the AU must adopt a carrot-and-stick approach to persuade countries under military regimes to observe the obligatory principles of the rule of law, which requires strong democratic practices and institutions.

Conclusion

The AfCFTA is an economic initiative that depends on strong democratic practices founded on the rule of law across Africa. However, considering the rise of military regimes in Africa, there are emerging sharp differences on the rule of law in the continent. The latest wave of military coup threatens the AfCFTA's vision of a borderless regime where Nigerian traders do business with Malian traders without trade barriers. This development calls into question the AU's role to unite African countries in terms of their commitment to the rule of law in order to consolidate the AfCFTA's progress over the years. In implementing the AfCFTA, the AU must work with other regional bodies to ensure that the AfCFTA does not become one of the failed attempts of African trade integration.

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