A Case for Democratic Legitimacy of the AfCFTA Process

By:

Babatunde Fagbayibo

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The adoption of the Agreement Establishing the African Continental Free Trade Area (AfCFTA) on 21 March 2018 at the extraordinary African Union (AU) summit in Kigali, Rwanda continue to receive overwhelming support across the continent. If properly implemented, the projection is that the AfCFTA will be the largest free trade arrangement in the world, increase intra-African trade by 52% by 2022, thereby stimulating Africa's economic development and global positioning. The number of countries that have thus far adopted the agreement further match this positive outlook. As at of early 2019, there have been 49 signatories and 18 ratifications, out of the minimum requirement of 22 ratifications needed for it to become law. South Africa has ratified the document, and is expected to deposit the instrument of ratification by February 2019. **Democracy is imperative** While the economic benefits of implementing the AfCFTA remain a key discursive focus, there exists very little consideration of the role of democratic norms and values within its operational context. Put differently, the question that has not been fully conceptualised is how democratic elements such as inclusivity, openness and genuine participation of

civil society should shape member states' engagement in AfCFTA activities at both the national and transnational levels. The expectation that the AfCFTA Protocol will 'recognise the importance of … democracy, human rights, and the rule of law' is yet to be realised.

The umbrella instrument, Agreement establishing the AfCFTA, makes no express reference to the formal and substantive adherence to democratic norms in the implementation matrix. Reference to 'sustainable and inclusive socio-economic development, gender equality' in Article 3(e) of the Agreement appears more like a nominal insertion than an ideal that should be at the heart of implementation. Although some may argue that the Agreement be interpreted within the context of existing AU normative frameworks on democracy and human rights, such exclusion still speaks to the prevalent breach of such principles in practise. This is, however, not to say the mere inclusion of the principles of democracy will automatically amount to its practise. Rather, the idea of stipulating such principles provide a symbolic imperative for setting realisable parameters for application. In other words, it provides standards for assessing the actions of member states in implementing AfCFTA. The importance of centring democratic norms in the implementation of the AfCFTA cannot be under-emphasised. As shown in the Nigerian case, lack of consultation with broader civil society can prove to be an obstacle. Moreover, the independence of national institutions such as the judiciary, parliamentary and technocratic agencies are central to ensuring that citizens meaningfully benefit from the AfCFTA arrangement. In addition, the choices regarding tariff and non-tariff barriers are bound to affect citizens in multi-dimensional ways, and as such accord them the right to engage. Lastly, the breakdown of democratic order enhances the possibility of political instability, a situation that is antithetical to the facilitation of trade and investment.

The way forward

The centralisation of democratic practise in the implementation of AfCFTA will require serious commitment on the part of national and regional officials involved in negotiating the process. A key first step in this respect is the express inclusion of respect for democratic values in the Agreement. In this regard, Articles 3 (General Objectives), 4 (Specific Objectives), 5 (Principles), and 16 (Transparency) should make explicit references to the following

imperatives:

- how the Agreement derives its legitimacy from Articles 3 and 4 of the AU Constitutive Act;
- how specific AU human rights and democratic governance instruments should guide institutional and normative AfCFTA processes;
- the roles of the African Commission on Human and Peoples' Rights and the African Peer Review Mechanism (APRM) in assessing the democratic and human rights commitment of member states to the AfCFTA process;
- publishing and disseminating laws and regulations on AfCFTA in local languages, encouraging traditional African methods of consultation, and ensuring that there is a robust feedback from organised and broader civil society on such matters, and;
- the importance of establishing participatory processes at the national sphere to gauge the phases of AfCFTA

The second measure in this regard is the need to incentivise member states' compliance with democratic norms and values in the implementation of AfCFTA. In this respect, member states should be assessed against identifiable standards such as:

- the quality of national institutions, transparent electoral process;
- innovative methods of disseminating information on AfCFTA to the wider community;
- timely and robust response to civil society concerns;
- focus on skilling and including marginalised groups such as women, youth, disabled and small scale farmers in all AfCFTA activities; and
- demonstrated genuineness of commitment to AfCTA agreements.

Where a member state has a favourable score, such member state should then be given access to a range of options that may include technical assistance, grants for infrastructure development, and discount on financial contributions to the AfCFTA funds. By committing to democratic norms and values, member states will not only have laid the fertile ground for the robust actualisation of AfCFTA goals but also emphasise the centrality of the choice of Africans in determining how best to move the continent forward.

Babatunde Fagbayibo is an Associate Professor of International Law at the University of South Africa, Pretoria, South Africa
b.fagbayibo@gmail.com

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