

International Journal of **Economics** (IJECON)

**Gender Mainstreaming in Kenya's Trade Agreements: The Africa
Continental Free Trade Area**

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Article History

Received 20th February 2023

Received in Revised Form 5th March 2023

Accepted 17th March 2023



Abstract

Purpose: The aim of this paper is to investigate whether the Treaty establishing the African Continental Free Trade Area (AfCFTA) Agreement is gender mainstreamed. Specifically, the study investigates how gender related issues are represented in the Agreements establishing the AfCFTA; analyses whether the Agreement establishing the AfCFTA commits to addressing the challenges that women face in participating in employment and trade; describes the contexts in which gender issues are mentioned in the Agreement; investigates whether the Agreement perpetuates gender inequality, is accommodative of gender issues without addressing inequality, or is gender transformative.

Methodology: The paper uses textual analysis to check whether gender related words are used in the text and in what context. The paper also checks whether there is commitment to meeting gender related commitments and uses the Fletcher (2015) gender equality continuum as a conceptual framework to classify the Agreement as exploitative, accommodative or transformative.

Findings: The analysis finds that although there is an attempt to use gender related words, there is lack of commitment in the Agreement to implement these commitments. The intended inclusion of the Protocol on Women and Youth in Trade in the Agreement is expected gender mainstream the Agreement.

Unique Contribution to Theory, Policy and Practice: The paper contributes to policy and practice on the negotiation and drafting of trade agreements not only by the Kenyan government but also by other African countries. That trade agreements should be negotiated and drafted with the intention of making effective implementation possible. Gender issues should not only be explicitly included in the trade agreements, but they should also be implemented and evaluated for their effectiveness.

Keywords: *Gender, Empowerment, Trade Agreements, Africa Continental Free Trade Area, Gender Equality Continuum*

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INTRODUCTION

The United Nations Department for Economic and Social Affairs (UNDESA) (2022) reports that world population reached 8 billion in November 2022 and argues that global population will grow to around 8.5 billion in 2030, 9.7 billion in 2050 and 10.4 billion in 2100. The increase in population is due to decrease in mortality and increased life expectancy at birth. Sub Saharan African countries' population is expected to grow through 2100 to contribute to more than half of the global population increase anticipated through 2050.

According to the Kenya National Bureau of Statistics (KNBS) (2022), Kenya's population is projected to reach 70 million in 2045 as shown in Figure 1.

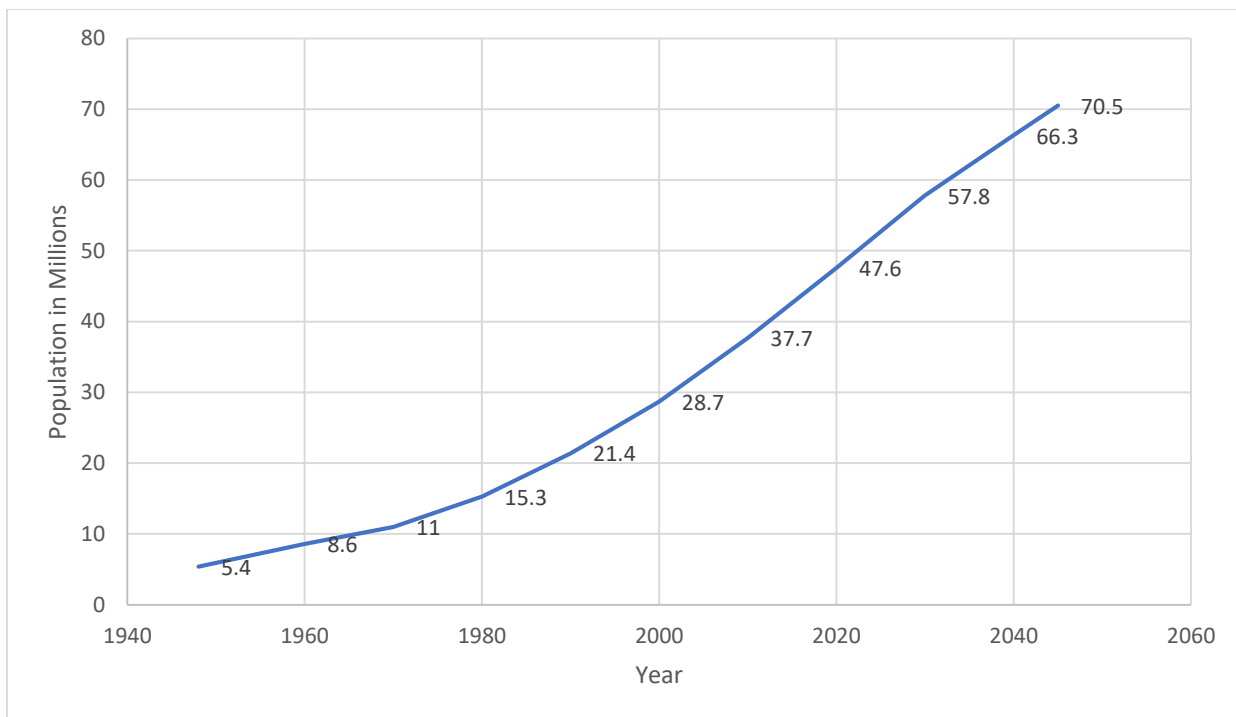


Figure 1: Kenya's Population Growth -1948-2045 Population (Millions)

Source: Kenya National Bureau of Statistics (2022) 2019 Population and Health Census: Analytical Report on Population Projections Vol.XVI

Since the mid-1960s, the sex ratio of males to women in the global population has been higher than men but this is expected to even out in 2050 according to the United Nations World Population Prospects (2022) due to different demographic trends.

However, in many countries, Kenya and other African countries included, on average, female face a lower mortality rate at birth compared with males and this was exacerbated by COVID-19 pandemic where more males died compared to females. Hence, the number of females in the world are more than that of males at older ages. For example, in 2021, women comprised 56% of the global population aged 65 years and older.

In countries such as Kenya, Zimbabwe and South Africa, the proportion of females is higher than that of men. In Kenya, the proportion of women out of the total population is projected to be higher than that of males as shown in Figure 2. Since women make up more than half of Kenya's population and thus deserve to share fully in the conceptualization, planning and implementation of all development policies. There is therefore a need for a people centered approach to development that incorporates women as this would bring about sustainable development in Kenya.

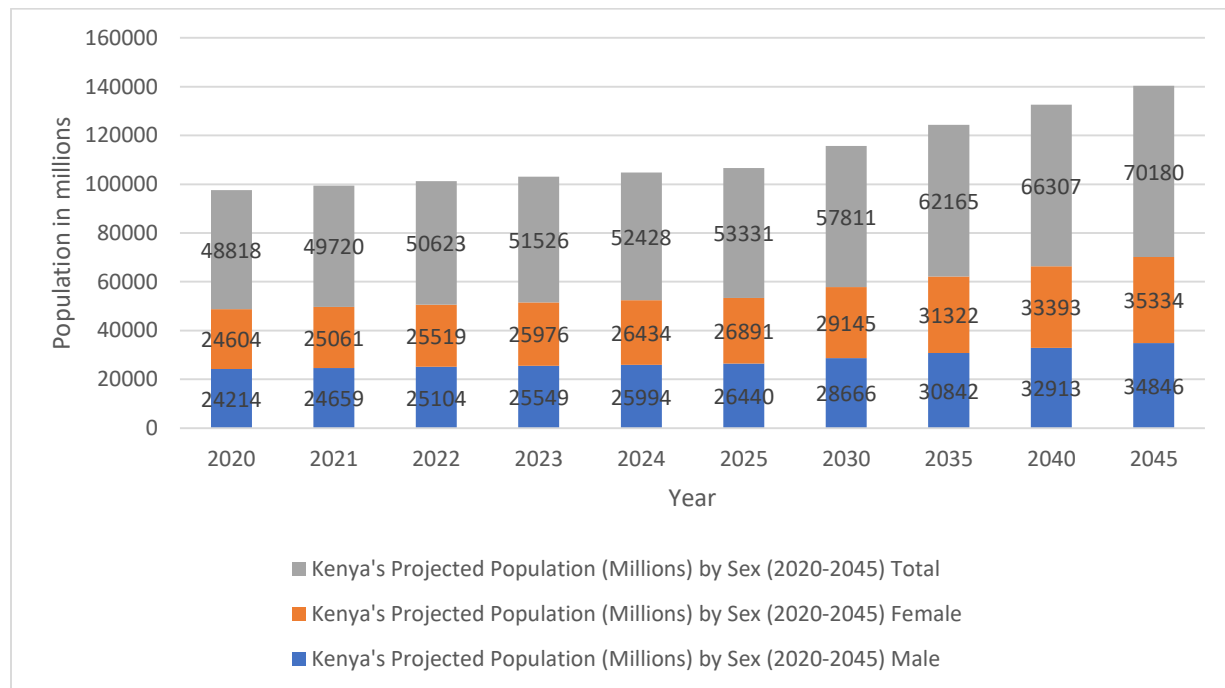


Figure 2: Kenya's Projected Population (Millions) by Sex (2020-2045)

Source: Kenya National Bureau of Statistics (2022) 2019 Population and Health Census: Analytical Report on Population Projections Vol.XVI

According to OECD (2018) women in Kenya participate in international trade in terms of being entrepreneurs, as workers, as well as consumers. As workers, Kenyan women participate in the labor force either through self-employment or as employed by others. As shown in Figure 3 female labor force participation rates remain low compared to those of men due to various challenges that women face which make it difficult for them to participate effectively in the labor force whether as employees or employers.

Nevertheless, even though they may not participate in the labor force, they still participate in international trade through the consumption of goods and services produced domestically and those that are imported into the country. This means that changes in the prices of imports and exports as well as changes brought about by trade agreements could have a positive or negative effect on the women.

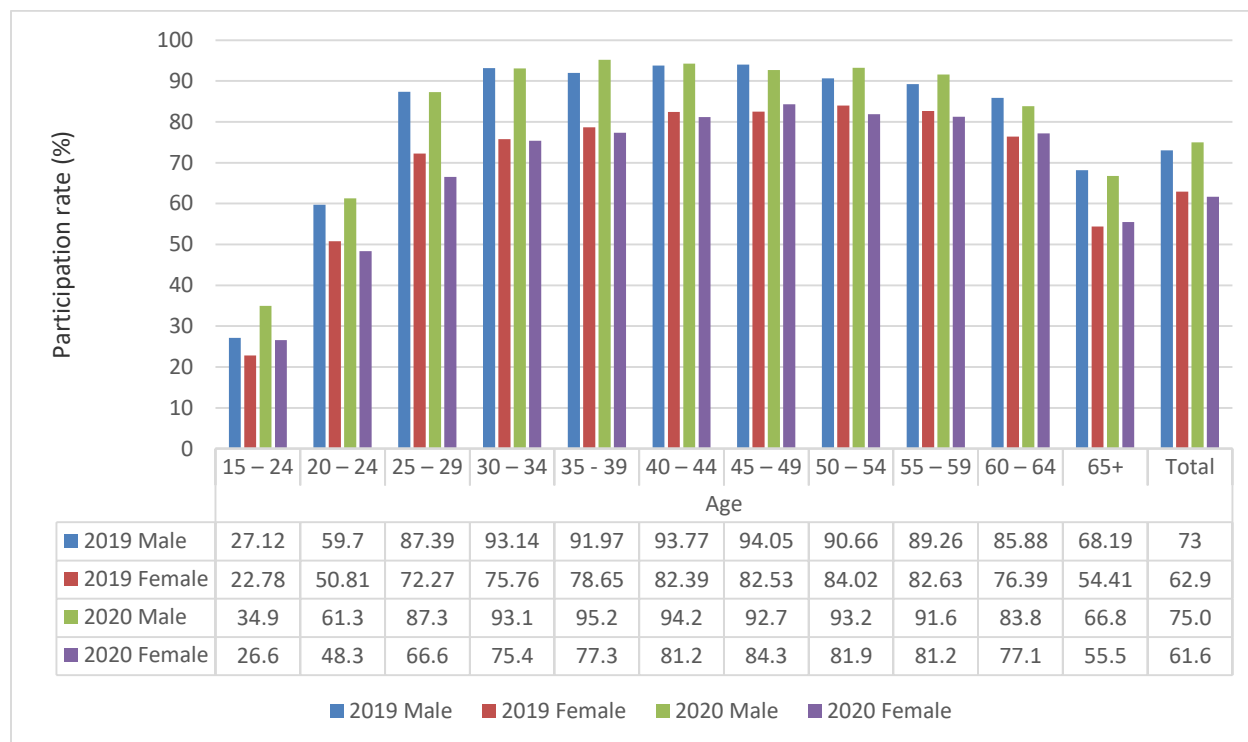


Figure 3: Kenya Labor Force Participation Rate by Sex and Age – 2019 and 2020

Source: Kenya National Bureau of Statistics Kenya Continuous Household Survey Program (KCHSP) – 2019 & 2020

The Kenya National Bureau of Statistics (KNBS) (2022) shows that out of the total number of employed persons in 2021, 15.3 million were in the informal sector while only 3.1 million were in the formal enterprises which comprise both wage employees and the self-employed (Table 1). The informal sector covers mainly small businesses where employment is mostly casual and not based on any contractual arrangements. Majority of micro and small enterprises are mainly informal (KNBS, 2022).

Table 1: Employment in Formal and Informal Sector in Kenya 2016-2021 (,000)

Category	2016	2017	2018	2019	2020	2021
Wage employees	2683.20	2792.20	2859.80	2928.40	2741.10	2,907.3
Self-employed & unpaid family workers	132.5	139.4	152.2	162.7	156.1	163.7
Informal sector	12749.90	13539.60	14283.60	15051.60	14508.00	15,261.8
Total recorded employment	15565.60	16,471.7	17,295.5	18,142.7	17,406.7	18,332.8

Source: KNBS, Economic Survey 2022

Women entrepreneurs are female individuals or groups of individuals who start, organize, and operate a business. The businesses mainly fall under the micro, small, and medium-sized enterprises (MSMEs). Kenya has about 7.5 million MSMEs, which employ over 15 million people across a

variety of industries and contribute about 44% of the GDP (Kenya National Bureau of Statistics, 2016) but only a quarter (26%) of the MSMEs are licensed as shown in Table 2.

Table 2: Ownership of Firms by License Status and by Gender

Form of ownership	Licensed (%)	Unlicensed (%)
Male Only	48	31
Female Only	32	61
Male-Male Partners	3	0.4
Female-Female Partners	1	1
Male-Female Partners	17	6
Total	100	100

Source: Kenya National Bureau of Statistics (2016): *Micro, Small and Medium Enterprises Basic Report*

The KNBS (2016) survey of Micro, Small, and Medium Enterprises (MSMEs) found that 48% of the licensed firms were owned by males. On the other hand, the biggest proportion of unlicensed MSMEs were female-only owned at 61%. The types of businesses that women participate in are in wholesale and retail, manufacturing, and accommodation among others as shown in Figure 4.

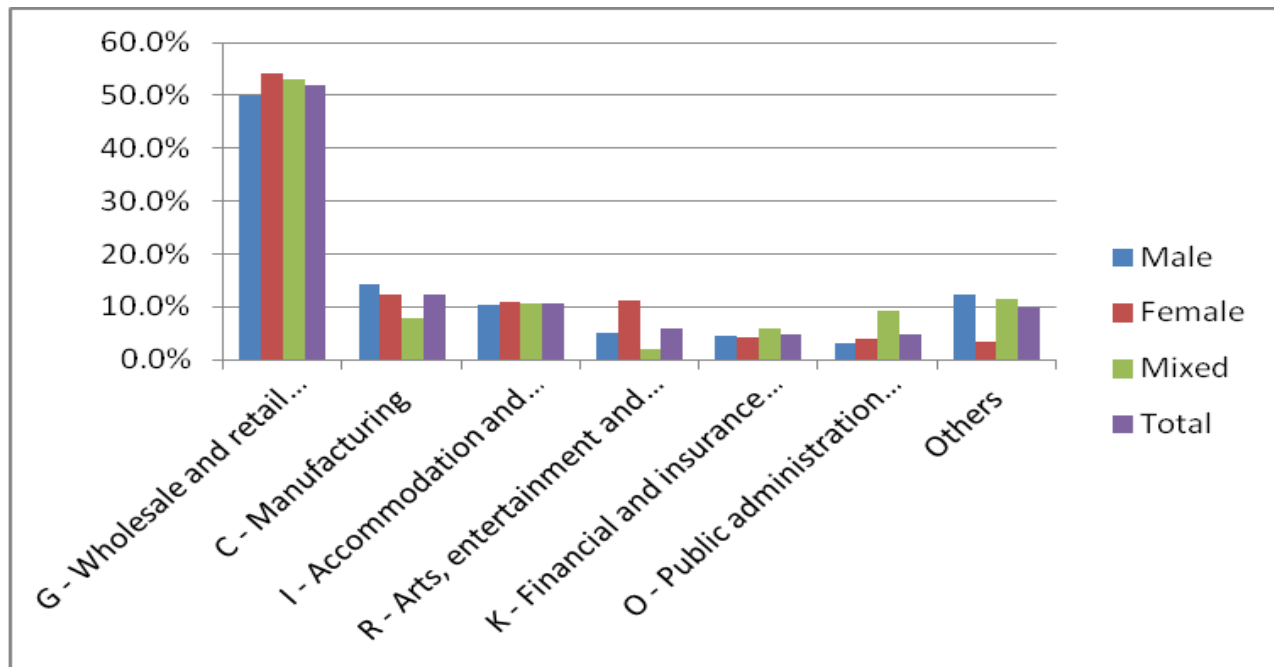


Figure 4: Type of Entrepreneurships in Kenya by Gender (2016)

As Figure 4 shows, there are more women running wholesale and retail businesses compared with other types of businesses. However, the World Bank (2018) Enterprise Survey for Kenya shows that the proportion of women female participation in ownership of firms is only 47.5% and the proportion of firms with majority female ownership is only 13.2% implying that majority of firms in Kenya have male ownership as shown in Table 3.

Table 3: Indicators of Female Ownership of Firms and Employment in Kenya

Indicator	Proportion (%)
Proportion of firms with female participation in ownership	47.5
Proportion of firms with majority female ownership	13.2
Proportion of firms with a female top manager	18.1
Proportion of permanent full-time workers that are female (%)	31.6
Proportion of permanent full-time production workers that are female (%)	26.8
Proportion of permanent full-time non-production workers that are female (%)	38.3

Source: World Bank (2018) *Enterprise Survey: What Business Experience*,

<https://www.enterprisesurveys.org/en/data/exploreconomies/2018/kenya#gender>

Table 3 also shows that majority of firms are managed by males since only 18.1% of firms had a female top manager. Inequality is also seen in terms of the proportion of permanent full-time workers where only 31.6% of firms had full time female workers implying that most women work as casuals with no benefits at all. In terms of full-time production workers, the proportion of female workers stands at 26.8% while those that are employed on a full-time bases but considered nonproduction were 38.3%.

Challenges that Women Face

According to ILO (2021), women face certain cultural and economic constraints that makes it difficult to participate in education and formal employment including participating in international trade. For example, majority of poor women in Kenya live in rural and in urban informal areas. They face the challenge of combining education and training with other responsibilities such as farming, household chores, volunteer as well as community work plus other care responsibilities. These are difficulties that are particularly much more pronounced in societies and communities where families are often less willing to invest in a girl's education based on established practices of female genital mutilation, early marriages, gender based violence, low pay for women's work, family beliefs regarding women working outside their homes, in addition to gender based expectations that girls and women will do most of the household chores (ILO, 2021). As a result, educational and skills disadvantages accumulate throughout women's lives as basic education is the foundation for further skills development. ILO (2021) data set also shows that there are discrepancies in literacy between women and men. The World Bank data shows that 79.8% of literate Kenyan adults are female compared to 85.5% males.

Generally, women face a higher probability of being employed as free laborers in the family compared to men, and in Kenya, more women are informally employed. This limits women's chances of accessing education and training whether in house training or refresher courses which can improve their skills (ILO, 2021). Skills training programs can improve employment and earnings for women workers. Some of these skills training programs are informal apprenticeships offered for those youthful school dropouts and for adults outside of teaching in formal schools or Technical and Vocational Education and Training (TVET). However, ILO data shows that there are fewer women in informal apprenticeships. This is the system that is traditionally used in training in many countries with a large informal economy (ILO, 2021). Generally, this would mean

that women are left with no alternative and will then acquire their skills through unstructured, informal on-the-job training as opposed to informal apprenticeship where men would train under an experienced master craftsman in a small firm.

Nevertheless, it should be noted that higher skills for women do not necessarily mean high participation in formal employment or even in trade. In most cases, when women can acquire skills for work as is the case for those who are able to pursue secondary, university and even TVET education, they most often face social-economic and cultural constraints that get severe especially if they get married or bear children. The challenges pose as barriers to their making full use of those skills already acquired. For example, where public provision of childcare facilities is lacking as is in most public facilities in Kenya, childbearing remains one important reason why women may not continue participating in trade (formal/informal) hence stopping to use their skills, or it is the reason that they are unable to enter trade at all (ILO, 2021).

Since trading frontiers are being expanded by technology then technology should help women leapfrog some of the challenges of participation. However, although technological as well as social and legal considerations have advanced the ability of women to participate in trade, these drivers and efforts are not enough and hence the need for more interventions. For example, although gender equality laws are embedded in the Constitution of Kenya, they have been insufficient to address the challenges of women participation in trade. For example, for women to participate in e-commerce, they require use of technology such as computers, mobile phones, internet, electricity, and need to have digital skills. However, majority of women in Kenya lack digital skills and training. KNBS (2021) found that only 18,544,529 or 44.4% of Kenya's population own mobile phones. However, out of the total female population, the proportion of those who owned a mobile phone was only 43.2% compared to their male counterparts at 45.5%, respectively (KNBS 2021). The KNBS (2019) census report shows that only 50.4% of Kenyan households have access to electricity and 19.3% have access to solar power. At the same time, smartphone penetration is only 27%.

According to World Bank (2022), only 30% of Kenyans had access to internet in 2020 due to the high cost of internet. According to a survey done by a United Kingdom firm, it is much more expensive to access internet in Kenya compared to other countries in the East African region. In Kenya it costs US\$2.25, Tanzania US\$0.75 and US\$1.56 in Uganda for one gigabyte of internet data.

Gender gaps in digital skills, expensive internet access, low data access through mobile phones, and difficulties in access to digital devices and the internet in most cases translate into lower participation of girls and women in digital learning opportunities. This further worsens gender inequalities in participation in trade.

Women businesses, due to their informal nature face financial challenges. Table 4 shows enterprise access to finance from 2006 to 2021 by sector derived from data from KNBS 2021 Finaccess report.

Table 4: Enterprises Access to Finance 2006-2021 by Sector %

Year	Formal	Informal	Excluded
2006	26.7	32.1	41.3
2009	40.4	26.8	32.7
2013	66.7	7.8	25.4
2016	75.3	7.2	17.4
2019	82.9	6.1	11.0
2021	83.7	4.7	11.7

KNBS Finaccess Household Survey 2021

The KNBS (2016) found that in the five years preceding the survey, 54.9% of businesses that eventually closed down were owned by females compared to 33.6% of businesses owned by males.

From an economic point of view, most women lack entrepreneurship skills and capital to run and grow their business. Majority of women operate informal businesses without registration, poor business records, no business plans and hence find it difficult to translate their businesses from informal to formal enterprises. Due to lack of entrepreneurial skills, most women entrepreneurs in Kenya are inadvertently trapped in informal and low productivity businesses. They lack access to markets for their products, due to a restricted lifestyle mainly doing unpaid family care or domestic work. They can only sell their produce to middle me/women who may visit their farms at very low prices. This leads to low profits if any, and this further impacts negatively on their social economic welfare.

Only 29% of Kenya women have the capacity to fully participate in economic, cultural, and political life (KNBS, 2020). This is attributed to lack of confidence in themselves as well as lack of negotiation skills to participate in international trade as they have not been exposed to international trade negotiations. Few trade agreements are negotiated with women in mind, and neither are women involved in the formulation of trade policies.

Participation in International Trade

Participation in international trade allows firms to expand, raise standards for efficiency, import materials at lower cost, and acquire updated and better technologies. However, trading also requires that firms deal with customs and trade regulations, and often firms are also required to obtain export and import licenses (World Bank, 2018). The World Bank Enterprise Survey for Kenya found that only 21% of firms participated in international trade. However, a study by Chacha, Kirui and Verena (2022) found that only 1819 out of 51749 (3.5%) of active firms participated in export trade.

In 2017, World Trade Organization (WTO) members agreed to a Joint Declaration on Trade and Women's Economic Empowerment (WTO, 2017), which aims to increase women's participation in trade. The provisions in this declaration included sharing on gender-related information in Trade Policy Reviews; lowering of barriers for women in trade and identifying Aid for Trade as an initiative to help develop the tools for crafting gender-responsive trade policies. Like many other declarations, the provisions in this document were non-binding.

WTO (2022) states that commitments for gender equality in trade agreements are essential to implementing sustainable development objectives and ensuring that women and men can equally benefit from trade opportunities. It is important that negotiators of trade agreements should be cognizant of this information so that women issues are not taken as an afterthought but should be at the core of the trade agreements negotiations.

Women and International Trade

World Bank and World Trade Organization (2020) argue that international trade increases women's wages and salaries and closes the gender inequality gap. This analysis shows that opening of trade by the African countries among themselves would lead to an increase in women's salaries relative to those of men hence helping reduce the gender gap and decrease inequality. Trade also creates better jobs for women as sectors involved in exports are more likely to formally employ more women meaning more benefits, training, and job security. This is likely to reduce the level of informality of women's employment. Trade openness through elimination of import tariffs is likely to increase women's welfare as research by the World Bank and World Trade Organization (2020) found that from a sample of 54 developing countries, eliminating import tariffs led to a raise of real income for female-headed households compared to male-headed households.

Gender Mainstreaming Trade Agreements

International trade and trade rules and agreements can have differential impacts on different groups of people and communities. UNCTAD (2018) argues that international trade has left a certain segment of the international community behind. And among those that have been left behind are women. UNCTAD contends that although trade liberalization and global value chains (GVCs) have provided new employment opportunities for women, in most cases job quality, wages, prospects for skill development and advancement have remained limited making it hard for women to adjust to shocks as well as the men do. To alleviate the situation, UNCTAD argues that trade agreements, if well negotiated and gender mainstreamed can play a role in prioritizing women's well-being. Trade agreements must include specific reference to gender equality and women's economic empowerment as recommended by UNCTAD (2018).

UNCTAD (2018) argues that for those trade agreements that have gender chapters, they are only a "soft" component of the agreement or mere intentions or aspirations as they do not establish gender related rules to be complied with or even thresholds to be reached. Dommen (2021) contends that it is important to define metrics against which to gauge whether trade agreements are meeting the gender equality objective. For Kenya, this would enable it to identify ways to design gender-responsive measures for inclusion in future agreements.

In most cases, parties to the trade agreement are not obliged to harmonize the gender related legislations, the chapters are excluded from the dispute settlement mechanism and finally, the agreements do not refer to their possible impact on women. If an impact assessment of a trade agreement is found to have a negative impact on women, then the negotiation of that agreement should be put on hold. However, in most cases, most impact assessments of trade agreements are usually done after the negotiations have been done and trade agreements ratified by the concerned state parties.

In the last decades, the international debate on the role of trade agreements and trade policies in advancing gender equality and women's economic empowerment has increased, gaining momentum at the 11th Ministerial Conference of the World Trade Organization (WTO) held in Buenos Aires in 2017 (WTO, 2017; Wagner, 2012). The steps taken so far to address gender in trade policy do not seem particularly bold, and there is a discrepancy between "strong" commitments and rather "light" implementation. The Declaration on Trade and Women's Economic Empowerment during the 11th WTO Ministerial Conference is another example of a mild approach to mainstreaming gender in trade. In the Declaration, the delegates declared that they would work together in the WTO to remove barriers for women's economic empowerment and increase their participation in trade; and ensure that Aid for Trade supports tools and know-how for analyzing, designing, and implementing more gender-responsive trade policies. These were just declarations of intent, and no legal commitment or implementations were mentioned (WTO, 2017).

The issue of women and trade was revisited during the WTO MC12 in Geneva in June 2022 when it was acknowledged that trade and trade policy can have different outcomes on men and women; that women face more obstacles to trade participation than men and that trade can foster women's economic empowerment. This means therefore that to advance gender equality, then WTO agreements should be developed with a gender consideration and in such a way that they are gender responsive (WTO, 2022). During the MC12, an event titled, "unlocking Trade for Women's Empowerment and Sustainable Development", was organized jointly between WTO and International Trade Center (ITC) during which different perspectives from entrepreneurs as well as enabling organizations were highlighted with the aim of effectively increasing women's participation in international trade.

Trade policies and trade agreements can play a role in promoting fair and inclusive trade systems conducive to women's economic empowerment. World Bank and World Trade Organization (2020) argue that firms that engage in international trade as well as foreign owned firms that are part of the global value chains employ more women. An enabling trade and business environment is essential for women to reap the full benefits of trade. This is particularly important in the agriculture sector where women are globally largely employed, facing constraints in accessing domestic and international markets due to widespread gender inequalities and lack of capacity to meet international standards (Food and Agricultural Organization (FAO), 2011; Organization for Economic Cooperation and Development (OECD), 2021). International trade affects women differently from men. The adverse effects of trade are more severe for women, especially in fragile contexts in developing and least-developed countries (World Bank-WTO, 2020). Mainstreaming gender in trade agreements and policies, whose gender- distributional effects can vary both across and within countries, can increase the opportunities of women to access secure and decent employment and participate in a fair business and trade environment.

Having a gender-neutral trade agreement (assuming identical or neutral treatment of women and men in the agreement) might constitute discrimination against women if the agreement resulted in or has the effect of women not participating fully or taking up the opportunities offered by the agreement because the drafters did not recognize the pre-existing gender-based historical disadvantages and inequality that women face (Dommen, 2021).

Globally, gender considerations have been increasingly incorporated, although still limitedly, in a few trade agreements, mainly as non-binding provisions (Monteiro, 2021; World Bank and WTO, 2020). According to Monteiro (2018) a small number of trade agreements in the form of preferential trade agreements (PTAs) refer explicitly to women and gender-related issues. However, the gender related provisions vary greatly in terms of structure, location, language, and scope. The most common gender related provision is in the form of labor discrimination but with no clear commitment and therefore leaves a lot in terms of the trade agreements effectiveness in advancing gender equality and women's economic empowerment.

The International Trade Centre (2020) found that some recent or amended Preferential Trade Agreements (PTAs) such as the one of Canada with Chile and Israel contain standalone gender chapters. Gender mainstreaming strategies are also adopted in a few country trade policies. Der Boghossian (2019) found that over the period 2014-2018, about 70% of trade policies of 111 WTO Members targeted women's empowerment in at least one policy measure and out of the 77 WTO Members promoting women-supportive trade policies, 15.5% included gender measures in agriculture and fisheries.

International Trade Centre (2020) investigated the gender responsiveness of 73 trade agreements signed by 25 Commonwealth countries. The study found that 67% of the agreements failed to mainstream gender concerns and were therefore considered gender-blind or gender neutral. The study also found that 28% of the agreements had used some best practices to mainstream gender concerns although they had significant scope to improve. On the other hand, 5% had used best practices to mainstream the agreements and hence there was no or only a negligible scope for further improvement and were therefore considered to have an 'advanced' level of gender responsiveness.

A further 35% had at least one gender-explicit provision such as social development, human rights, labor, or general anti-discrimination commitments included. Approximately 40% of the agreements made no explicit reference at all to gender. However, they had attempted to refer the General Agreement on Tariff and Trade (GATT) exceptions or public morals exceptions that might be interpreted to include gender considerations.

Trade agreements signed by many African countries show evolving levels of gender responsiveness. For example, the ITC (2020) found that out of the 62 trade agreements concluded by African countries, 23 contain at least one provision explicitly mentioning women and gender, mostly in the cooperation area. The Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA) signed in 1993 and the Treaty Establishing the East African Community (EAC) signed in 1999 show a high level of gender responsiveness with whole gender chapters.

This notwithstanding, gender issues in African trade agreements tend to be addressed under the domain of social affairs rather than of economic or labor rights. The topic of women's entrepreneurship and micro, small medium-size enterprises (MSMEs) is not frequently covered (Laperle-Forget, 2022).

“Gender mainstreaming ensures that these agreements promote more equitable opportunities rather than perpetuate inequalities” (International Trade Centre, 2020, pp 5).

The Africa Continental Free Trade Area agreement promises development that is inclusive and sustainable by creating opportunities for women which will lead to their empowerment both socially and economically at the national, regional, and international levels (African Union, 2021).

What does the changing nature of cross-border connectivity mean for firms, and in particular micro, small and medium enterprises and women-owned enterprises trying to break into this expanded regional market? The AfCFTA opens new opportunities, makes it easier for new players to build a regional reputation, reduces market research costs and expands outreach. However, it may increase existing gaps between SMEs and large firms, or between women-owned and men-owned enterprises if the former are not able to use increased cross-border connectivity to their advantage due to various challenges.

The African Continental Free Trade Area (AfCFTA), which spans 54 African countries, has the potential to support a market of over 1 billion people, contribute more than 3 trillion US Dollars to global GDP, and substantially increase Africa's share of global trade.

The AfCFTA can open significant opportunities for women entrepreneurs and producers. The ITC (2020), in a survey of 70 African women's business associations found that 70% of them have not been meaningfully involved in the ongoing trade negotiations in the AfCFTA, and their members are not taking advantage of existing regional trade agreements.

To make the AfCFTA work for women entrepreneurs and producers, women entrepreneurs should have the capacity and resources critical for their participation in and taking advantages of the opportunities provided by the AfCFTA.

The Agreement Establishing the Africa Continental Free Trade Area (AfCFTA) was adopted on 21st March 2018 and entered into force on 30th May 2019. Trading under the agreement commenced on 1 January 2021, after a sixth month delay because of the impact of COVID-19. However, the negotiations on protocols on intellectual property rights, investment and competition policy were to be concluded in phase 2 while negotiations on protocol on e-commerce were to be done in phase 3. Kenya and Ghana were the first countries to deposit the instruments of ratification of the Africa Continental free Trade Area with the African Union Commission on the 10th of May 2018.

Objectives of the Study

Hence this study aims to investigate whether the Africa Continental Free Trade Area Agreement of which Kenya is a signatory is gender mainstreamed. Specifically, the study investigates how gender related issues are represented in the Agreements establishing the AfCFTA; analyses whether the Agreement establishing the AfCFTA commits to addressing the challenges that women face in participating in employment and trade; describes the contexts in which gender issues are mentioned in the Agreement; investigates whether the Agreement perpetuates gender inequality, is accommodative of gender issues without addressing inequality, or is gender transformative.

Conceptual Framework

According to UNWOMEN (2021) Gender Equality Glossary, gender refers to the roles, behaviours, activities, and attributes that a given society at a given time considers appropriate for women and men. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities.

Fletcher (2015), on the other hand defines gender as a process of judgement and value which is related to stereotypes and norms of what it is to be masculine or feminine. Regardless of one's born sex category, certain forms of femininity and masculinity are given greater value than others and with certain forms of dominant masculinity usually having the greatest access to power and resources.

To investigate the gendered impact of a program, project, policy or any form of intervention, it is therefore important to do a gender analysis. There is no one accepted way of doing a gender analysis since it depends on one's way of thinking and interpreting the concept of gender.

From the two definitions of gender given above, if one takes UNWOMEN's definition of gender, then analyzing the gendered aspect of a program, policy, project, or any intervention would involve focusing on the differences between men and women within these programs, policies, projects, or interventions by for example asking: are there equal numbers of men and women involved in the intervention and, if not, why? In other words, this analysis looks for change in differences and inequalities in the binary categories of women and men.

On the other hand, taking Fletcher's (2015) definition as a starting point, then analyzing the gendered aspect of a program, policy, project, or any intervention would involve examining the judgements, stereotypes and norms related to masculinity and femininity that occur in the program's, policy's, project's, or intervention's context and, from there, explore the effect these stereotypes and norms had on the intended intervention outcomes. This analysis looks for change in the process of judgement and value that rewards certain forms of masculinity and femininity while punishing others. In other words, whether change has occurred during the intervention in judgements, stereotypes and norms related to masculinity and femininity, and the effects of those changes.

However, with the goal of gender equality, one can conceptualize a gender equality continuum of a program, policy or any intervention as starting from a position of being gender blind to a position where the goal of gender equality is achieved as shown in Figure 5.

Fletcher (2015) argues that gender is one of the indicators of differences along which human beings tend to judge each other. Other indicators include disability, ethnicity, gender identity, race, sexual orientation, sexuality, or socio-economic status. These indicators of difference intersect to increase marginalization, exclusion, and inequity in economic and social outcomes. Gender affects the way we see each other, interact with one another, the institutions we create and operate in, the ways in which those institutions operate, and who benefits or suffers as a result.

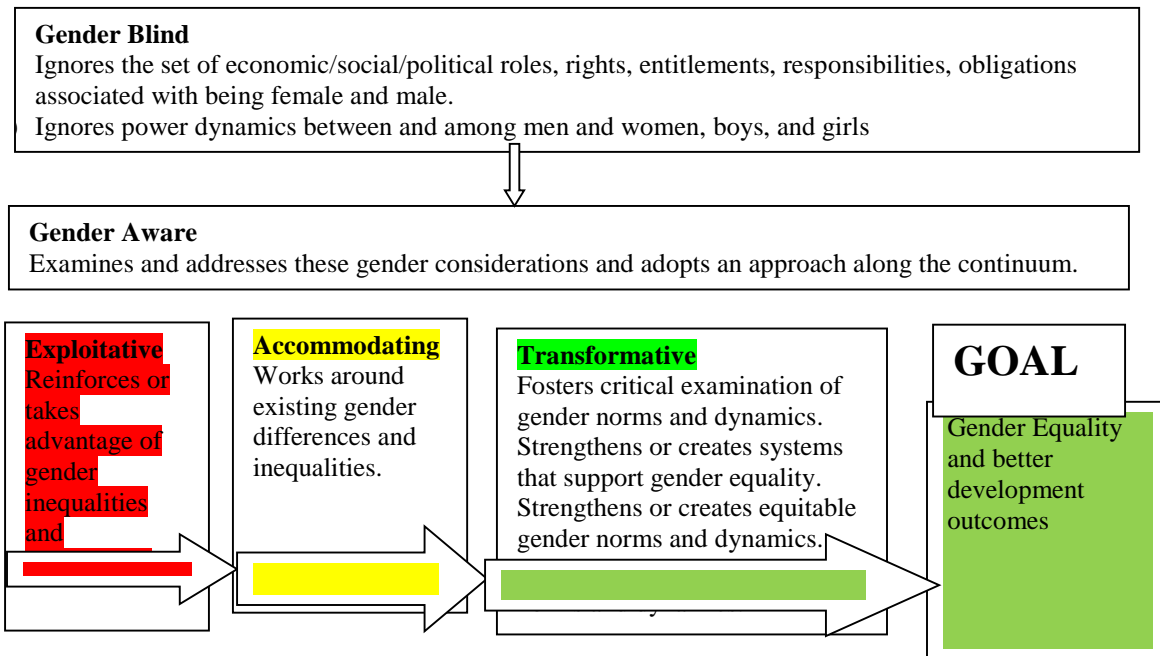


Figure 5: Gender Equality Continuum

Source: Adopted from Fletcher (2015), *Addressing Gender In Impact Evaluation: What Should Be Considered? A Methods Lab Publication*. London: Overseas Development Institute & Melbourne: Better Evaluation.

Exploitative gender programs, policies or interventions are those that intentionally or unintentionally reinforce or take advantage of gender inequalities and stereotypes in the pursuit of project outcome, or whose approach exacerbates inequalities. This approach can be harmful and can undermine their objectives in the long run.

Accommodating gender programs, policies or interventions are those that acknowledge but work around gender differences and inequalities to achieve project objectives. Although this approach may result in short term benefits and realization of outcomes, it does not attempt to reduce gender inequality or address the gender systems that contribute to the differences and inequalities.

Transformative gender programs, policies or interventions are those that seek to transform gender relations to promote equality and achieve program objectives. This approach attempts to promote gender equality by fostering critical examination of inequalities and gender roles, norms and dynamics; recognizing and strengthening positive norms that support equality and an enabling environment and finally promoting the relative position of women, girls and marginalized groups, as well as transforming the underlying social structures, policies and broadly held social/gender norms that perpetuate gender inequalities.

METHODOLOGY

Textual Analysis of the Agreement Establishing the Africa Continental Free Trade Area

Caufield (2022) defines textual analysis as a broad term for various research methods used to describe, interpret, and understand texts. The author argues that all kinds of information can be gleaned from a text, starting from its literal meaning to the subtext, symbolism, assumptions, and values it reveals. A text can be a piece of writing, such as a book, a document, an email, or a transcribed conversation. It can also be any object whose meaning and significance you want to interpret in depth.

Social scientists use textual data to draw empirical conclusions about social relations. Textual analysis in the social sciences sometimes takes a more quantitative approach, where the features of texts are measured numerically. For example, a researcher might investigate how often certain words are repeated in social media posts, or which colors appear most prominently in advertisements for products targeted at different demographics. Some common methods of analyzing texts in the social sciences include content analysis, thematic analysis, and discourse analysis (Caufield, 2022).

The aim of the textual analysis in this context is to investigate how gender related issues are represented in the Agreements Establishing the AfCFTA. Trade agreements can be the arena in which gender inequality is reproduced, or challenged (Fürsich, 2018), depending on the texts in the agreement.

Wolfgang, Seiermann and Skougarev (2019) posit text-as-data method as comprising a variety of research tools that allow a researcher to gain new insights on trade agreements. Treating the texts of preferential trade agreements as data can help one find answers to policy questions, such as the impact of trade agreements on international trade; features of trade agreements that are decisive in increasing trade and under what conditions; similarities of trade agreements across countries and regions; similarities and differences between investment chapters in international trade agreements and bilateral investment treaties; and similarities of provisions on particular topics such as gender, labor, environment, among others across different treaties.

In the text analysis on trade agreements, one can look at the explicit mention of gender, sex, women, girls, or related terminology, including the international instruments promoting women's rights, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Beijing Declaration and Platform for Action for the Rights of Women and Girls (thereafter the Beijing Platform), the Buenos Aires Declaration on Trade and Women's Economic Empowerment or the UN Sustainable Development Goal 5 on gender equality (SDG 5).

The study, first looked at the presence or absence of explicit and or implicit references to gender related terms such as gender, women, gender equality, women's empowerment, capacity building, micro, small and medium enterprises, informal sector, human rights, aid for trade, social development, sustainable development, development finance, technical assistance, entrepreneurs, tax, incentives, subsidies, poverty reduction, cross border and training, their frequency and location in the text; the level of commitment of gender provisions, specificity of measures, and

accountability for example, implementation, monitoring, dispute settlement and evaluation mechanisms.

Data Set

The dataset was composed of two documents, i.e. The Agreement Establishing the African Continental Free Trade Area downloaded from the African Union Website¹ and the AfCFTA Protocol on Investment². Given that there were only one documents, the text analysis was conducted manually based on text mining techniques³, allowing for a more in-depth analysis of words in their meaningful textual context⁴. If the document made no references, whether explicitly or implicitly to gender related issues, then it would be classified as gender blind or gender insensitive. If it made references, whether explicitly or implicitly to gender related issues, then it would be classified as gender sensitive. However, it did not propose ways and means of overcoming gender differences and inequalities, it would be classified as accommodative while if it went beyond being gender sensitive and proposed ways of overcoming gender inequality, it would be classified as gender transformative.

¹ <https://au.int/en/treaties/agreement-establishing-african-continental-free-trade-area>

² The text will now be submitted to the Assembly of Heads of States for review and adoption at its next ordinary session scheduled in February 2023.

³ Text mining techniques include a suite of analysis tools that allow one to extract, classify and analyze information from unstructured or semi-structured data (texts), turning text into data for analysis building quantitative representation of texts through natural language processing (NLP). Still limitedly applied to agricultural and trade domains, text-as-data methods can provide meaningful information and insights on policy documents and regulatory texts. Over the last decades, trade agreements have increased in number and complexity, making more difficult to analyze and compare their contexts in order to estimate their impact on international trade and welfare (UNCTAD). Text-as-data methods can offer predictive analysis of trade agreements, identification of patterns in treaty design, similarities and differences across trade agreements, chapters, and provisions on particular topics.

⁴ Note: text mining using R (tm package) can be conducted later on.

RESULTS

Figure 6 shows the textual analysis of the Agreement establishing the African Continental Free Trade Area.

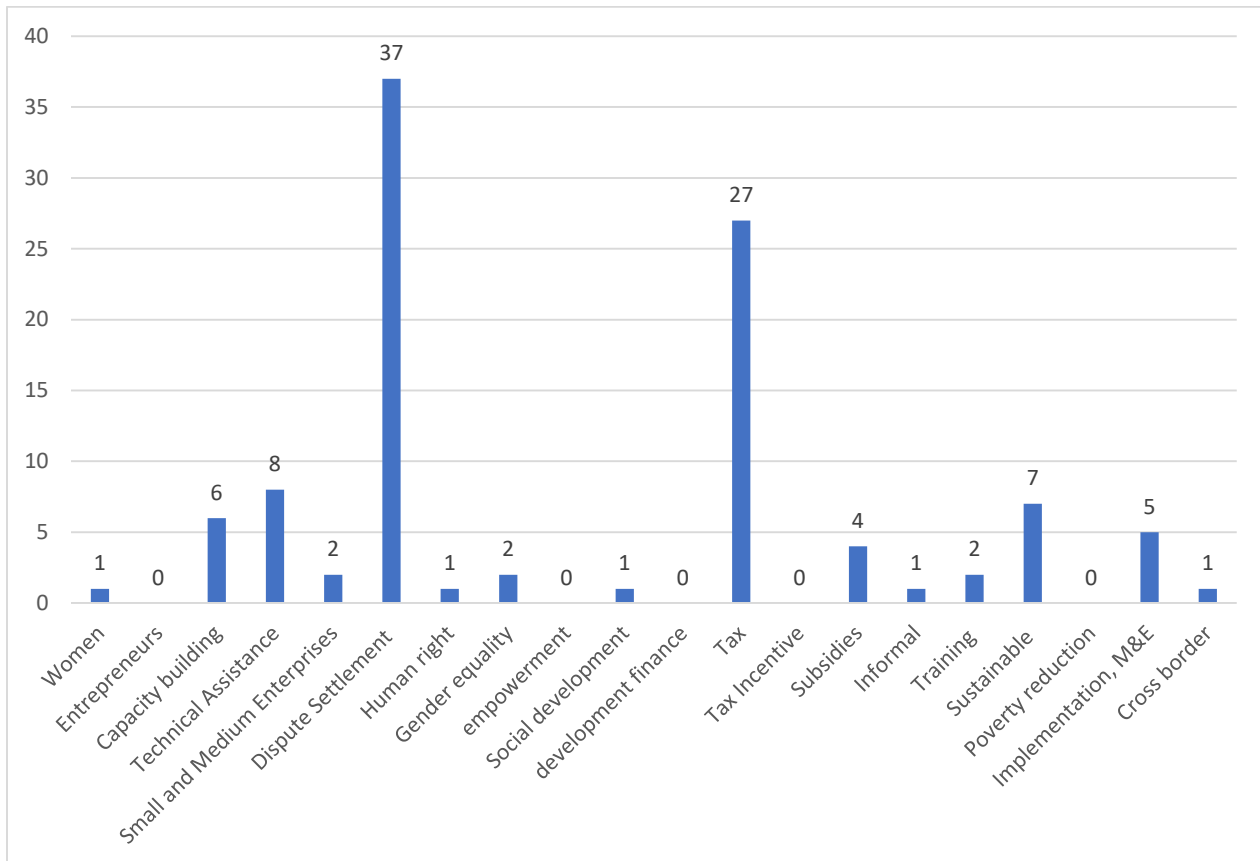


Figure 6: Textual Analysis of the Agreement Establishing the African Continental Free Trade Area

Context

In its **preamble** the agreement states: “Recognizing the importance of international security, democracy, human rights, gender equality and the rule of law, for the development of international trade and economic cooperation”.

Part II Article 3 which deals with general objectives, one of the general objectives of the AfCFTA is to promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties. No commitment to achieve this objective is mentioned.

In the Protocol on Trade in Goods, Article 2 which deals with objectives of this Protocol, objective (f) is on “enhanced socio-economic development, diversification and industrialization across Africa”. No commitment to achieve this objective is mentioned in this protocol.

In the **preamble** of the Protocol on Trade in Services, the agreement states: “desirous to create, on the basis of progressive liberalization of trade in services, an open, rules based, transparent, inclusive and integrated single services market which provides economic, social and welfare-enhancing opportunities across all sectors for the African people; and “desiring to harness the potential and capacities of African services suppliers, in particular at the micro, small and medium levels, to engage in regional and global value chains”. No commitment to achieve this objective is mentioned in this protocol.

In the objectives of the protocol on Trade in Services, one of the specific objectives of this protocol is to “promote sustainable development in accordance with the Sustainable Development Goals (SDGs)”; and another is to “promote research and technological advancement in the field of services to accelerate economic and social development”. No commitment to achieve this objective is mentioned in this protocol.

In the general obligations on disciplines of the protocol on trade in services, Article 7 on special and differential treatment, the Agreement states that “In order to ensure increased and beneficial participation in trade in services by all parties, State Parties **shall** “accord special consideration to the provision of technical assistance and capacity-building through continental support programs”. This makes it obligatory to accord technical assistance and capacity building but not specifically to MSMEs or women businesses.

Article 27 of the Protocol on Trade in Services deals with Technical Assistance, Capacity Building and Cooperation. It states that: State Parties agree, **where possible**, to “mobilize resources, in collaboration with development partners, and implement measures, in support of the domestic efforts of State Parties, with a view to, (a) building capacity and training for trade in services; (d) improving the export capacity of both formal and informal service suppliers, with particular attention to micro, small and medium size; women and youth service suppliers; and (g) addressing quality and standards needs in those sectors where State Parties have undertaken commitments under this Protocol with a view to supporting the development and adoption of standards”. Article 27 would have benefited women and youth entrepreneurs as well as MSMEs, but commitment is lacking. The Agreement says “State Parties agree, **where possible** hence making it optional.

AfCFTA Protocol on Investment

In December 2022, the AfCFTA negotiators included a protocol on investment in the Agreement. The Protocol on Investment to the Agreement Establishing the African Continental Free Trade Area (AfCFTA) draft was concluded in October 2022 and adopted at the ministerial level by the AfCFTA Council of Ministers. The text will now be submitted to the Assembly of Heads of States for review and adoption at its next ordinary session scheduled in February 2023.

Figure 7 shows textual Analysis of the AFCFTA protocol on investment.

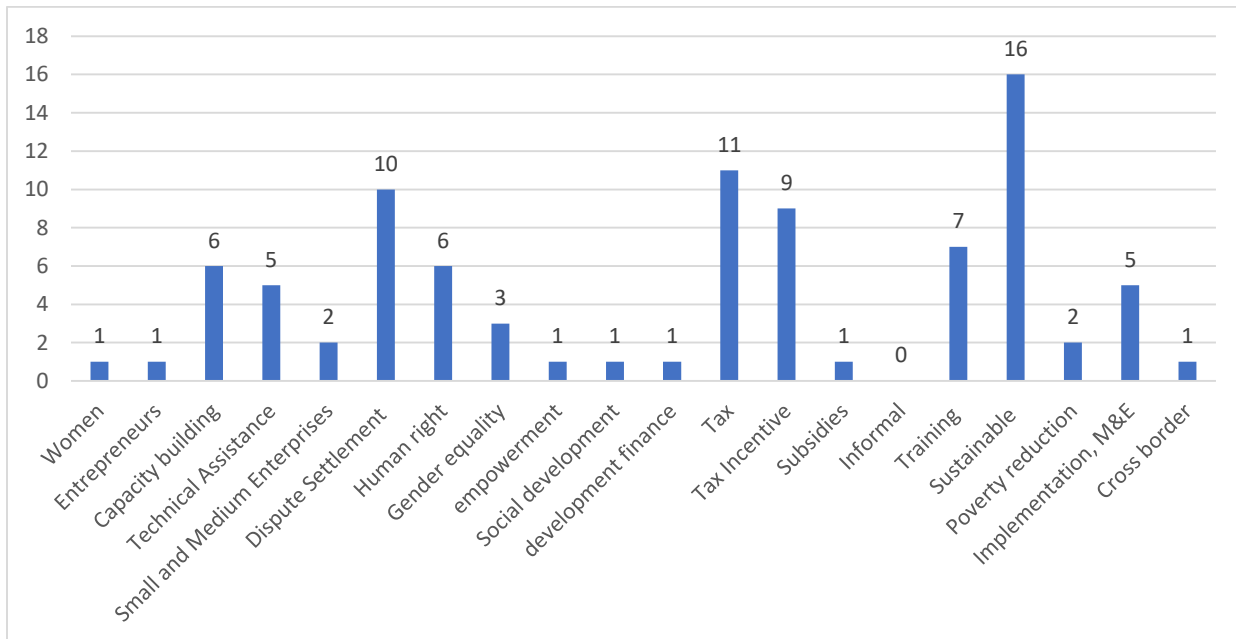


Figure 7: Textual Analysis of the AFCFTA protocol on Investment

Note: The protocol on investment has an implementation section but no mention of monitoring and evaluation.

Context

In the preamble of the protocol on investment, the Agreement states: “**Recognizing** the important contribution investment can make to the sustainable development of the State Parties, including the reduction of poverty, increase of productive capacity, economic growth, the transfer of technology, and the furtherance of human rights and human development while understanding that sustainable development requires the fulfilment of the economic, social and environmental pillars that are embedded within the concept”; “**Desiring** to promote within State Parties an overall attractive investment climate conducive to the development of a more vibrant and dynamic private sector that encourages mutual beneficial partnerships, facilitates job creation, promotes technology transfer, supports long-term economic growth and contributes effectively to social development and the fight against poverty”; “**Reaffirming** the right of State Parties to regulate within their territories and to introduce new measures with a view to meeting national public policy objectives and to promoting sustainable development objectives”; and “**Reaffirming** the importance of encouraging investment activities that benefit **underrepresented groups, including women, youth and small and medium enterprises**. One would expect a very strong commitment to fulfilling these very broad objectives but they are missing.

Article 7 on investment promotion and facilitation, the protocol states: States Parties **commit** to promote investments that contribute to **gender equality and the empowerment of women** (note the **absence** of the word “**shall**” implying that there are no consequences if a State Party does not commit to promote such investments that contribute to gender equality and empowerment.

Article 23 on pursuit of development goals, the protocol states that a state party **may** introduce measures to **promote domestic development** and local content one of them being measures to address historically based economic disparities suffered by identifiable ethnic or cultural groups due to **discriminatory or oppressive measures**, including **marginalization against such groups** prior to the adoption of this Protocol. The use of the word “**may**”, makes implementation of this article optional. A State Party may or may not implement this article.

Article 24 on encouragement and support on investments, the protocol states: State Parties **may** introduce incentives in order to attract investments. Such incentives **may** include among others:

- a) Financial incentives in the forms of investment insurance, grants or loans at concessionary rates;
- b) Subsidized infrastructure or services, market preferences;
- c) Development-oriented incentives to encourage preferential markets schemes and specific investors within the region;
- d) Incentives for technical assistance, technology transfer requirements; and
- e) Investment guarantees.

This article would greatly benefit women entrepreneurs since most of them lack finances to participate in international trade, lack technological knowhow and more so in information technology which would greatly benefit them to participate in e-commerce. However, the use of the word **may**, implies that a state party is not obliged and there are no legal consequences if this is not done.

Article 25 on human resource development, the protocol states that State Parties **shall** develop national policies to guide investors in developing human capacity of the labour force. Such policies **may** include incentives to encourage employers to invest in training, capacity building and knowledge transfer and in developing such policies, State Parties **shall** pay particular attention to the needs of youth, women and vulnerable groups. The use of the words **may**, and **shall**, in the same sentence negates the whole idea making such policies not legally binding and not obligatory.

Article 29 on **business ethics, human rights and labor standards**, the Protocol states that investors **shall** comply with the International Labor Organization (ILO) standards, including the ILO Fundamental Principles and Rights at Work; and. not use child labor or forced and compulsory labor; and eliminate discrimination in respect of employment and occupation. However, this protocol makes no mention of monitoring and evaluation of how this article will be followed up in case of a breach by a State Party.

Article 34 on corporate social responsibility, the protocol states that “Investors and their investments shall **use their best efforts** to: strive to promote gender equality and inclusiveness in their activities”. Any State Party can claim that they used **their best effort** if this article is not implemented.

The Protocol on Women and Protocol on Youth in the AfCFTA (An afterthought)

In November 2022, the African Union Assembly, during their 13th Extraordinary session agreed to include a protocol on women and youth in trade in the AfCFTA Agreement. They committed to inclusiveness in the operation of the AfCFTA by coming up with interventions that support women, young Africans and small and medium enterprises. They also committed to integrate informal cross border traders into the total economy by implementing the simplified trade regime (STR).

After regional and country stakeholder consultations, it was found that the challenges that women face are different from those of the youth. The AU Assembly agreed to have two substantial chapters: one of Women in Trade and another on Youth in Trade. The AfCFTA Protocol on Women and Youth in Trade is a subsidiary instrument of the AfCFTA Agreement, and the Protocol will form an integral part of the Agreement upon adoption by the AU Assembly, and part of the single undertaking upon entry into force. In order not to contradict the objectives of the AfCFTA, it is important that the Women and Youth in trade Protocol should be aligned to the objectives of the AfCFTA Agreement. Having the Women and Youth in Trade Protocol gender mainstreams the Agreement establishing the AfCFTA with the goal of achieving gender equality and women economic and social empowerment.

Conclusion

It is important to note that though gender related words are mentioned in this Agreement, no commitment is made on how these issues are to be addressed. Most of the areas where gender related issues are mentioned are just statements of intent and no implementation is mentioned, and State Parties are under no obligation to implement those particular articles where gender related issues are mentioned.

Based on this textual analysis although this Agreement mentions gender related issues, and using Fletcher (2015) Gender Equality Continuum, it would be classified as gender aware/sensitive but since it does not go beyond mentioning and no action is expected in the implementation, then it can be said to be accommodative and not transformative.

Based on this textual analysis, although this Protocol of Investment in the Agreement Establishing the AfCFTA mentions gender related issues, and using Fletcher (2015) Gender Equality Continuum, it would be classified as gender aware/sensitive. However, in some articles, the Protocol does not go beyond mentioning and no action is expected in the implementation as statements of intent and the use of the word “may”, “best efforts” dilutes the article hence making it non-legal and not binding at all. This protocol can therefore be said to be accommodative and not transformative.

Recommendations

Based on the research findings, the study recommends that drafters of trade agreements should be well versed with gender issues. They should always have a check list to check compliance with gender sensitivity before and after the drafting of the agreements. Trade agreement negotiators should go beyond making trade agreements gender aware/sensitive but to make them transformative. To ensure more inclusivity of the trade agreements, negotiators should consult

widely with relevant stakeholders and more so the women entrepreneurs. Before adopting trade agreements, an impact assessment should be done to ensure that any negative impacts are addressed. It is also important for State parties to the agreements to monitor and evaluate the implementation of the trade agreements and more so the gender related issues. Implementation of the gender related issues should be obligatory, and the trade agreement should indicate consequences of failure to implement. The drafting language should not be vague as this gives room for failure to implement the gender related issues.

Area of Further Study

By the time this study was conducted, the Protocol on Women and Youth in Trade had not yet been adopted by State Parties. This study recommends a follow up study to investigate whether the Protocol on Women and Youth in trade will have gender mainstreamed the AfCFTA.

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