



United Nations
Economic Commission for Africa



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

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**TRANSPARENCY, CONSULTATION AND PARTICIPATION
IN THE CONTINENTAL FREE TRADE AREA (CFTA)
NEGOTIATIONS IN AFRICA**

**Recommendations from the Multi-Stakeholder Expert Workshop on a
Potential Human Rights Impact Assessment (HRIA) of the CFTA (2015-2017)
16-17 April, Addis Ababa**

TRANSPARENCY, CONSULTATION AND PARTICIPATION IN THE CONTINENTAL FREE TRADE AREA (CFTA) NEGOTIATIONS IN AFRICA

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BACKGROUND

From 16-17 April 2015, the Economic Commission for Africa (ECA) in partnership with the Office of the High Commissioner for Human Rights (OHCHR) and the Friedrich-Ebert-Stiftung organized a **multi-stakeholder expert workshop on a potential Human Rights Impact Assessment (HRIA) of the CFTA**. The rationale is that by undertaking an HRIA at the outset of the negotiating process, this would provide negotiating countries with an evidence base and policy recommendations from which to develop effective and coherent approaches to the negotiations. This would be with a view towards realizing outcomes that are aligned with national and regional human rights and development commitments and priorities. The workshop which hosted around 40 participants from ECA, the African Union Commission (AUC), Regional Economic Communities (RECs), civil society groups, trade unions, Pan-African Chamber of Commerce and academia agreed on a number of substantive and procedural recommendations. In this paper, recommendations on ensuring transparency, consultation and participation in the CFTA negotiations are outlined and spelt out.

In principle, trade and investment agreements should be elaborated within a democratic process which provides opportunities for parliamentary approval, participation by stakeholders and access to information.¹ Transparency and participation are key human rights principles that can **transform a trade negotiation from a secretive, exclusive process to an open, transparent and inclusive one** that is acceptable to a wide range of stakeholders. This would also aid in public debates on the trade agreement by providing access to information, and ensuring active, free, meaningful participation as required under the right to development which is legally binding upon all African States.

Adopting these principles in negotiations will allow negotiators to assess and manage risk, help make trade-offs, balance trade and other obligations and ensure policy coherence between trade policy and other development policies.

This ensures that:

- the decision-making within the trade negotiation framework is subject to scrutiny by those who will be affected by it;

¹ Guiding Principles on human rights impact assessments of trade and investment agreements developed by the former United Nations Special Rapporteur on the Right to Food, A/HRC/19/59/Add.5, 2011; There is generally limited transparency in the context of bilateral and regional trade negotiations when compared, for instance to the World Trade Organization (WTO) context, even though the latter also faces its own challenges with respect to inclusion. Many concerns have been raised especially in relation to the negotiation of mega-regional and plurilateral agreements on the excessive secrecy, lack of disclosure of negotiation texts, exclusion of stakeholders and serious deficits in consultation and participation.

- the content of negotiations and the agreements are informed and improved by consulting with and participation by a broad range of stakeholders;
- that implementation of the agreement is supported by and strengthened by popular buy-in; and
- adverse impacts especially on marginalized and disadvantaged groups are mitigated by impact assessments, audits, studies and other analytical and grassroots inputs into the negotiation process

WHY ENSURE TRANSPARENCY, CONSULTATION AND PARTICIPATION IN THE CFTA NEGOTIATIONS?

As the CFTA process moves forward and the negotiations begin, it will be useful to envision in advance a plan for transparent negotiations that is inclusive and participatory. “ Average Africans need to be involved in the integration process more. This requires more information on how it works, which will also help to offer greater transparency of the process and secure greater buy-in from the populace.”²

Given that Africa’s regional integration approach transcends narrow economic considerations and is developmental in nature and focus, it lends itself naturally to an open, inclusive process for a continental agreement such as the CFTA. This could then **become the blueprint for future trade negotiations** at the level of the Regional Economic Communities (RECs) but also simultaneously **using the Regional Economic Communities (RECs) as building blocks in terms of adopting RECs best practices in terms of transparency and participation.**

HOW TO SHAPE CFTA NEGOTIATIONS?

Firstly, these principles must be broadly integrated into the principles, rules of procedure and guidelines for the negotiations, the proposed CFTA institutional framework, principles, scope and mechanisms for monitoring the CFTA negotiations.

Secondly, the processes and structure of CFTA negotiations must have entry points and create or modify mechanisms for ensuring transparency, consultation and participation.

Thirdly, there must be oversight and monitoring mechanisms put in place using the existing or a modified CFTA architecture if it is deemed possible.

1. Principles to guide the CFTA negotiations

Ensure that key principles relating to consultation and inclusive participation are covered in the negotiation mandates and governing documents.

Transparency is already covered in the 12 CFTA Negotiating Principles and should be spelt out as modalities are being worked out.³

- Emphasize public policy objectives

² Economic Commission for Africa, Assessing Regional Integration in Africa V: Towards an African Continental Free Trade Area, 2012, 23

³ CFTA Negotiating Principles- Member States driven, RECs as building blocs, variable geometry, flexibility and special and differential treatment, transparency, substantial liberalisation, MFN treatment, national treatment, reciprocity, decisions by consensus, adoption of best practices, commencement and conclusion of negotiations.

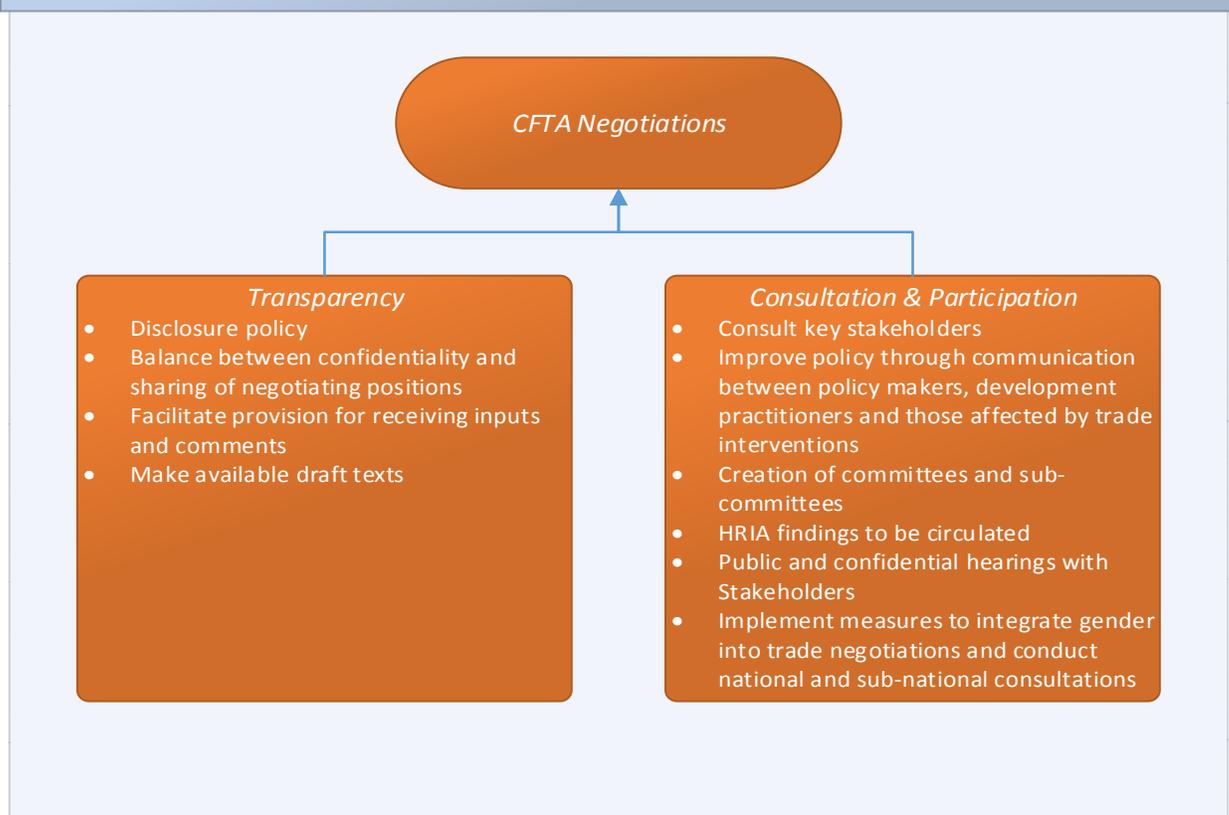
- Participation shall be ongoing throughout the negotiations
- CFTA negotiations shall be an inclusive, multi-stakeholder process –at all stages and levels of negotiation
- Access to information is crucial and transparency requires an open disclosure and dissemination policy including media outreach, awareness building, capacity building and the use of social media, webcasting and other tools, including at the grassroots levels through local hearings, traditional and social media and other means for dissemination and advocacy

2. Process and structure of CFTA negotiations

In order to enhance, build and create greater participation in the formulation and implementation of trade policy, focus should be on a more active role for all stakeholders in determining negotiation mandates and in the regular monitoring of progress; wider and deeper inter-agency collaboration, wider civil society involvement in debates via national consultations.

The effective inclusion of groups affected by a free trade agreement presupposes that they possess both the necessary information to judge the agreement in question and the capacity to participate in a discussion process. These are not automatically given but must be ensured in the process of preparing, negotiating and implementing free trade agreements if aspects of sustainability and human rights are to be adequately taken into account. Adequate time and resources need to be allowed for an effective process and structure.

Gender analysis and consultation with women's groups must be a priority in determining national priorities for trade negotiations and formulating substantive advocacy positions of governments and NGOs. This should involve significant participation of national and regional gender machineries in the decision-making process of the CFTA negotiation framework.



Consultation and participation

Existing structures for civil society participation need to be assessed by the African Union Commission (AUC). If stakeholders do not have effective channels of communication, this must be addressed. Generally consultation and participation in the CFTA negotiations must be well-planned, managed within the timeframe of the negotiations including in the areas identified by the Multi-Stakeholder Expert Workshop.

The main issue is to ensure entry points into the negotiations through existing structures; consider modalities for additional mechanisms or modification of structures such as the African Trade Forum and the African Business Council so as to include a wider range of stakeholders.

Some areas that need to be addressed are as follows:

Composition of delegations- Presently, it is the Member States' exclusive right to choose the delegations. The rationale is that member states will consult at the national level and bring views to bear on the negotiations. However, in case no robust, vibrant consultations take place at the national level, Member States should endeavour to include non-governmental stakeholders in so far as protocol and diplomatic considerations permit.

Regional and Pan-African institutions should be consulted in negotiating the CFTA agreement. The role of the Pan-African Parliament is crucial here along with the African human rights system. There is need to create strong links between the relevant national and regional institutions through consultation

and participation at all levels, involving regional actors such as Pan-African Parliament, RECs and other organizations.

Increasing space for non-governmental organizations and civil society- There is a need to create and widen spaces for civil society actors within the existing CFTA architecture or through modifying the CFTA architecture to observe the negotiations, hold side events and provide inputs and comments. The African Trade Forum, the African Business Council and the Trade Observatory should facilitate and analyse inputs and also monitor transparency, participation and inclusion in the CFTA negotiations. For this purpose they must be well resourced and capacitated to ensure that they carry out their respective functions in the architecture.

Accreditation rules and policy and observer status- This must be clearly spelt out in the Rules of Procedure and the comparative experiences of RECs and other negotiations in other regions and at an international level should guide the processes in this area. If the rules are being currently drafted and are to be adopted, this should be discussed presently. Accreditation and which meetings CSOs can attend should be outlined in advance.

Public consultation tools, forums and meetings

The European Union (EU) is supporting the launch of an online **public sector consultation tool**. This will provide for online public consultations with the wider public with internet access. The tool will facilitate comment and feedback from a variety of actors. The moderators of this online platform will analyse the information received and provide a report to the public and negotiators. In similar experiences, often a white paper is launched through these tool for discussions.

This outcome document recommends that this tool could be expanded from the start to include forums on a range of topics such as agriculture, employment and other issues that might affect a range of stakeholders.

Online platforms aside, **at least two public meetings annually** could be organized by the AUC on the progress of the CFTA negotiations. The AUC might also consider organizing an **NGO forum** specifically for the CFTA negotiations as a multi-stakeholder venue. Side events can also be organized in the margins of CFTA negotiations and meetings. Public and confidential hearings can also be conducted between negotiators and different stakeholders.

National/sub-national level participation

This is the lynchpin for participation in the trade negotiations. Without broad-based participation at this level, participation at the AUC level or participation within the CFTA negotiating architecture may only have limited effect. Participation should be broad-based, inclusive and recommendations should be transmitted into the negotiation fora. This should be embedded into the CFTA negotiations and Member States should report on the how these consultations were conducted and the key findings and recommendations.

This must include a range of actors and stakeholders such as parliamentarians, line ministries (not just the Ministry of Trade), national human rights institutions, trade unions, development and other NGOs and academics. National and sub-national committees, technical committees and working groups could be formed to devise positions on critical sectors and issues. Participation to be effective needs to be capacitated and there must be sufficient advocacy around the CFTA and what it means for nationals of member states.

Transparency

Disclosure policy – Access to information is crucial to conducting a transparent trade negotiation. Either through the above public consultation tool or complementing this tool, an online dialogue box could be created but also in addition reaching out to those without internet access through other means. This would include disseminating all documents relevant to the negotiation, uploaded and updated progressively. Processes for dissemination of information and documents along with progress updates must be put in place.

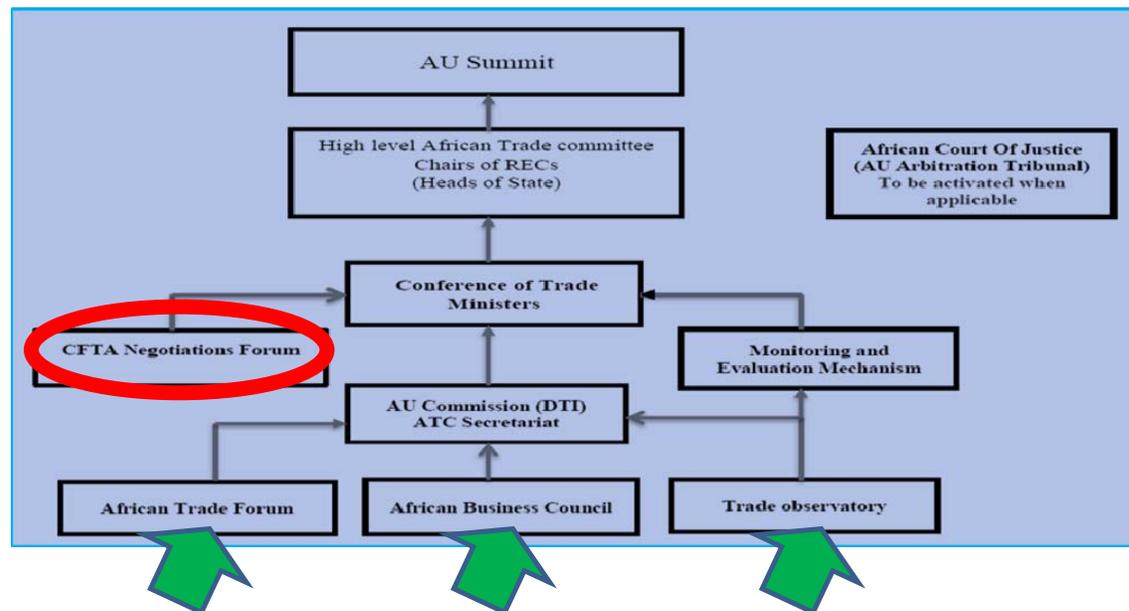
Documents to be disseminated should include expert papers, working documents of the CFTA negotiations, country positions or at least summaries in official languages. In terms of confidentiality, this can be balanced through official summaries and formation of committees that can discuss confidential documents.

Open communication and media strategy - For the public consultation tool to be effective and generally for these principles to work in practice, this must go hand in hand with awareness raising, media coverage and publicizing the opportunity to provide inputs. The **AUCs communication strategy would be key** to ensuring that people are actively brought into this process. This must include regular press releases, pre-negotiation and post-negotiation briefings (including webcasts and podcasts) and the use of social media. While keeping in mind these communications technologies, efforts must also be made to ensure participation amongst communities without access to ICTs.

The AUC presently has a trade-related newsletter which could be expanded in scope to include issues around process, inputs and comments into the CFTA negotiations.

Reliance on expert views, think-tanks and knowledge institutes with specialized experience in different sectors.

3. Oversight mechanisms and monitoring



CFTA negotiating structure- Once processes and rules are in place ensuring transparency, consultation and participation, there should be oversight and monitoring mechanisms, including through the **CFTA-Negotiations Forum**.

Bi-annual reviews could include a stock-taking of the process around the CFTA negotiations and the inclusion of stakeholders.

The African Trade Forum, the African Business Council and Trade observatory could also be used as forums for review of the CFTA process.

Roles of the AUC and ECA should be consolidated and expanded in terms of being able to raise issues in this regard and set the stage for a more inclusive, transparent process around the CFTA negotiations. The AUC as secretariat could act as a clearing house for the disclosure and dissemination of all relevant documents related to the CFTA negotiation.

The **online public consultation tool** could be used to receive feedback on process and substance of the CFTA negotiations.

At a **national level**, monitoring mechanisms could be created through parliamentary oversight, role of technical committees, and at a **regional level**, the Pan-African Parliament, African human rights system and regional networks.