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Digital trade in Africa: implications for inclusion and human rights

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*Prepared by the African Trade Policy Centre of the
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High Commissioner for Human Rights and the Friedrich-Ebert-Stiftung*

Background

In July 2017, the African Trade Policy Centre (ATPC), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the *Friedrich-Ebert-Stiftung* (FES) in Geneva launched a groundbreaking joint report entitled *The Continental Free Trade Area in Africa: A Human Rights Perspective*. The publication critically assessed the human rights dimensions of what is to be the biggest trade agreement since the establishment of the World Trade Organization.

Significant headway was subsequently made and the landmark Agreement Establishing the African Continental Free Trade Area was signed in Kigali on 21 March 2018 by 44 member States of the African Union. As at 20 February 2019, a total of 52 member States had signed the Agreement and 18 member States had ratified it. The Agreement will enter into force once it has been ratified by 22 member States. Given the momentum behind the Agreement, that target is expected to be achieved by the first anniversary of its signing.

The signing of the Agreement has led to discussion on whether it should cover e-commerce. The view has been expressed that if the Agreement is to fulfil its potential in transforming African economies, it must also include a clear digital strategy. At the same time, although the digital economy and the dynamism generated by digital trade solutions create a significant opportunity, these also present challenges that will need to be addressed in a way that is consistent with inclusion, transparency, people-centred governance and the attainment of human rights.

In that context, the three collaborating organizations have agreed to focus the next phase of their triangular partnership on assessing the inclusion and human rights implications of digital trade, in the context of Africa's trade policy underpinned by the Agreement. The main outcome of the partnership will be a joint publication of ATPC, OHCHR and FES, entitled *Digital Trade in Africa: Implications for Inclusion and Human Rights*, which is to be launched in the coming months. The publication will cover a number of human rights themes including public participation, the right to development, the right to work, digital literacy and skills, access to information, privacy, digital identity, and groups in focus such as young people, women's rights, and business and human rights.

Applying the human rights lens

Digital trade offers an innovative tool for industrial leapfrogging and income convergence, and human rights can provide firm ground for a consistent policy framework and principled action. Finding the right balance between innovation and regulation is key in the area of technology, and specifically in digital trade. A human rights lens can assist in identifying those whose inclusion and participation is vital in order to harness the full benefits of digital trade. A human rights approach is crucial to assessing: (a) broader issues of connectivity across the continent; (b) access to and use of technology platforms, tools and services; (c) privacy and data protection; and (d) the impact of digital trade on the enjoyment of a range of human rights.

Human rights issues include:

- a. *Right to equality and non-discrimination.* This includes barriers and offline discrimination as well as discrimination in relation to participation in the digital space. Real-life barriers include poverty, lack of economic access, and state failure in the protection of rights, especially women's rights.
- b. *Privacy and access to information.* This also links with violence and other security risks, which are often used as pretexts for surveillance and restricting access to information. Legal protection is also often lacking.
- c. *Freedom of speech and expression, assembly and association.* This includes the creation, expansion or updating of governance to ensure the use of and access to necessary means of communication.
- d. *Right to work, to an adequate standard of living and other labour rights.* There is a lack of equality of opportunity in digital trade, access to skills, credit and finance. Digitalization could also exacerbate the situation of those in precarious working conditions with insecure wages, and increase casual or freelance work and unstable contracts.
- e. *Right to education.* Digital technologies can enhance the right to education but access to those technologies by women and girls remains limited, furthering an already marked gender divide in Africa. Harnessing technologies is key to ensuring that inequalities are not aggravated, and digital education and literacy are needed to create equitable societies.
- f. *Right to development.* The right to development lies at the core of the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which emphasize the need for connectivity, access to technology and mechanisms to harness the benefits of digital development.

Human rights exist regardless of offline or online status. The emergence of new technology systems, platforms and ideas creates an opportunity for human rights to be a guiding framework for digital technology and development in Africa. At the same time, human rights discourse is disruptive in that it challenges the unjust power dynamics that sometimes exist in the realms of business, trade and development. Moving into the digital trade space offers human rights practitioners a new platform to apply past successes and innovate future safeguards. Thus, we need to have an active and participatory debate on the controls, on limits and on creating coherence among regulatory regimes.

In carving out the relationship between human rights and digital trade in Africa, it is important to recognize that countries in Africa are party to a wide range of human rights treaties, including the *African Charter on Human and Peoples' Rights*. Article 3 of *Agenda 2063: The*

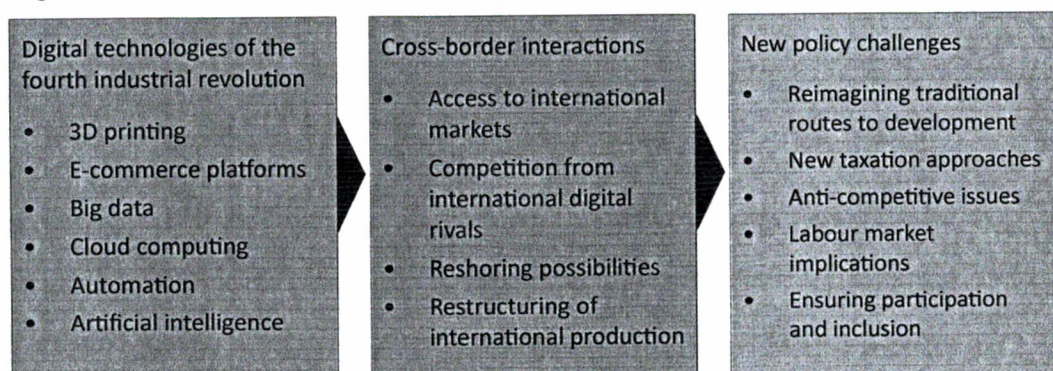
Africa We Want of the African Union includes a legal underpinning for considering human rights in the digital economy agenda of Africa, and expresses the continental aspiration of an Africa of economic growth, opportunities, good governance, respect for human rights, and justice and the rule of law.

Updating the policymaker toolkit in the digital era

Digitalization offers new opportunities for trade. The digital economy can lower barriers to entry and help connect micro-, small and medium-sized enterprises with global markets and value chains, through the provision of the supportive services necessary to facilitate their exports. Communication networks and e-commerce platforms are facilitating new opportunities for businesses and workers in developing countries. Professional service platforms, for instance, connect professionals in developing countries to freelance opportunities around the world. Digital applications are already being leveraged to promote innovation and entrepreneurship — including the empowerment of women as traders — and mobile and digital solutions are filling credit gaps. The digital economy also offers new possibilities for productive job creation for young people, who are typically quicker at adapting to new technologies and developing new digital solutions.

These gains are not automatic, however, and the digital economy also presents immense challenges for the continent in the context of the digital divide. Owing to the concentration of digital technologies in the advanced world and the skills-biased nature of digitalization, the main beneficiaries of the digital economy are currently the most developed countries and a few countries in Asia, a fact that risks reducing the ability of Africa to resolve its unemployment problem and take the traditional route to industrialization. At the same time, inequalities in access to technology at the national level are typically rooted in structural and historical discrimination, so groups that have already been left behind, stay behind. These include groups with limited access to education, literacy, and skills, as well as poor, low-income households with limited access to food, energy, water, sanitation and decent jobs. There are also concerns that digital trade generates network effects that can lead to market concentration and stifle competition, and that it may make it easier for international companies to further distort their taxable income through transfer pricing.

Figure: Model of digital trade and its policy implications



The response must be an updating of policymaker toolkits to face emerging opportunities and challenges of digital trade, and ensure inclusive outcomes that safeguard human rights. It is crucial that countries in Africa refrain from taking a passive approach towards digitalization: instead they must adopt an active, deliberated and principled approach to closing the ongoing digital divide, which affects both access to and the use of technologies. Preliminary recommendations that will be contained in *Digital Trade in Africa: Implications for Inclusion and Human Rights* point to the following eight policy updates:

Digital trade in Africa

- a. New approaches to manufacturing-led development will be required, including investments in digital prerequisites, such as digital education and skills, particularly for women and young people;
- b. Digital technologies and supporting infrastructure must be made available, affordable and accessible, with equality and non-discrimination underpinning the rights of access and use;
- c. There is a need for a collaborative and consensus-based approach at the multilateral level to facilitate improved digital technology transfer to least developed countries;
- d. The African Continental Free Trade Area should be used as a platform to establish institutional arrangements for cooperation on the digital economy, and develop appropriate continental policy frameworks that promote a conducive environment for cross-border e-commerce and address challenges related to data storage, privacy and control and ownership;
- e. Innovative adjustments to taxation will be required to address the increased importance of intangibles, such as intellectual property and data, as foundations of profit, and the greater scope for profit shifting in digital business models;
- f. Competition authorities must develop new tools to deal with increasing market concentration and the innovative role of e-commerce platforms, which operate, in many respects, as utilities;
- g. As unionization becomes less effective in fragmented and transitional work environments, government policy must increasingly reinforce wages, social protections and labour standards;
- h. Given the existing gender digital divide, the collection of qualitative and quantitative gender-disaggregated data on the participation of women in the digital economy should be prioritized to inform meaningful dialogue and policymaking.