

Foreword: Building the Legal Profession in Africa under the African Continental Free Trade Area Agreement (AfCFTA)

Lindelwa Beaulender Mhlongo

<https://orcid.org/0000-0002-6051-8480>

University of South Africa

mhlonlb@unisa.ac.za

Juliette Armelle Kouamo

<https://orcid.org/0000-0002-0501-1169>

University of South Africa

kouamja@unisa.ac.za

Beauty Vambe

<https://orcid.org/0000-0001-5328-3989>

University of South Africa

evambeb@unisa.ac.za

Tommy Mabala

<https://orcid.org/0009-0006-6394-297X>

University of South Africa

mabalajls@unisa.ac.za

About the 2023 African Bar Association Conference

The University of South Africa (UNISA) Principal and Vice-Chancellor, Professor Puleng LenkaBula, and the College of Law Deanery through the then acting Executive Dean, Professor John Kole, and the current Executive Dean, Professor Mpfariseni Budeli-Nemakonde, in partnership with the African Bar Association (AFBA) through the leadership of Professor Ernest Abotsi held the 2023 AFBA Conference from the 6th–10th August 2024 at UNISA, Pretoria, South Africa. The conference's theme was 'Building the Legal Profession in Africa under the African Continental Free Trade Agreement (AfCFTA).' It attracted delegates and presenters *inter alia* heads of state, presidents, former presidents, AFBA members, high ranking African Union officials, distinguished legal fraternity members, lawyers, academics and representatives of Africa's security clusters across the African continent. The theme of the Conference was centred around the AfCFTA and included the following sub-themes *inter alia* Human Rights and the AfCFTA; Armed Conflicts and Internal Security Challenges for the AfCFTA, the AfCFTA and the African Lawyer; Cross-border Movement of Goods and Services in the AfCFTA; the Role of Democratic Elections in the AfCFTA, the Energy Sector and the AfCFTA; and the Rule of Law Crisis in the Continent. The papers presented were informative, probing, critical and appreciative of African initiatives in continental economic integration. Seven papers were submitted to CILSA for publication in a themed issue that aligns with the one for the 2023 AFBA Conference. Below is a summary of the published papers.

Summary of the Articles

Navid Farnia in his article titled, 'How Imperialism Sabotages African Sovereignty: The Contradictions between Economic Sanctions and Free Trade,' highlights how sanctions regimes constitute economic warfare and are thus incompatible with free trade. The article argues that the AfCFTA cannot succeed under conditions of imperialist economic coercion. Instead, it must be undergirded by a Pan-Africanist and internationalist ideological orientation that enables all African countries to operate on equal terms and as genuine trade partners.

Willie Shumba's contribution titled, 'The Agreement Establishing the African Continental Free Trade Area: Historical Context and Evaluation of the Legal Texts,' gives an overview of the historical developments that led to the establishment of the AfCFTA. This article then analyses the AfCFTA, which comprises the overarching framework agreement and its eight protocols. Each of these protocols interlinks and contributes to the objectives of the AfCFTA through deepening economic integration. The aim is to advance the creation of a continental customs union that will lead to a common market and an economic community in the future.

Juliette Armelle Kouamo in her article titled 'Establishing an Effective Trade Litigation Mechanism under the AfCFTA: What Can We Learn from the World Trade Organization?' observes that the AfCFTA's Dispute Settlement Mechanism (DSM) is modelled after the Dispute Settlement Understanding (DSU) of the World Trade Organisation (WTO). This DSP aims to provide security and predictability to the regional trading system. However, it is common cause that the DSU of the WTO and those of the Regional Economic Communities (RECs) have not warranted the expected level of participation by African countries thereby giving rise to a trade litigation deficit. The article argues that 'the digitalisation of most (if not all) of the DSM's processes will help effectively tackle the issue of expensive procedures which limit these countries' use of formal DSM.

Lindelwa Beaulender Mhlongo in her article titled 'Analysing Contemporary Challenges, Pitfalls and Prospects of Intra-African Investment' observes that 'Africa has made strides towards achieving sustainable economic development and relations,' but the continent is yet to benefit from intra-African investment agreements. She argues that African states are still developing, and they all develop at different speeds. The article asserts that 'African countries have been endeavouring to regain control of their natural resources and economic space from transnational interests.' It offers suggestions on how Africa should strengthen the sustainability dimension of international investment agreements, preserve appropriate regulatory space for host countries and deal with the complexity of a fragmented treaty regime characterised by overlaps and incoherence.

Beauty Vambe in her article, 'Advancing the African Continental Free Trade Area (AfCFTA): Lessons from the Southern African Development Community Protocol on

Trade’ debates how the AfCFTA can sidestep the challenges experienced by RECs such as the Southern African Community Development. The AfCFTA must draw lessons—both positive and negative—from the efforts of regional economic blocs in Africa to achieve flexible trade integration.

Henos Negusse Berhe’s article titled, ‘Examining the footprints of the Agreement Establishing the African Continental Free Trade Area in Conformity with the Principle of Legality’ assesses the AfCFTA, alongside its protocols on trade in goods and dispute settlement, with respect to the principle of legality. When compared with former instruments (the Abuja Treaty, African regional economic communities (RECs) and multilateral agreements); the prospectivity and clarity of the AfCFTA’s principle of flexibility; clarity of the AfCFTA’s non-tariff barrier; and the productivity of the AfCFTA dispute settlement, there are potential problems of redundancy, loosened connectivity, divergences, lack of clarity, impracticality and inefficiency within these four areas of the AfCFTA.

Dan Kuwali in his article ‘Coercive Competition: Geostrategic Rivalry in Africa’ observes that geostrategic rivalry between the West and the East is taking centre stage in global affairs, with Africa becoming an alluring battleground. This paper addresses how Africa can mitigate the negative effects of coercive competition on the continent, as well as how the continent may benefit from its increased allure by global powers. The article urges African governments to develop a coherent strategy for dealing with global powers, avoid exacerbating their geostrategic rivalry and instead launch calibrated cooperation on matters of mutual interest for the common good.

Charles Taku in his article titled, ‘Reparations and Restitution Justice for Colonial Crimes’ demonstrates that communities and victims of colonial crimes who suffered gross violations of international human rights and serious violations of international humanitarian law are entitled to reparations and the restitution of their stolen or looted African cultural heritage. This article establishes a factual, historical and legal basis for reparations for historical crimes against Africans and the restitution of stolen African cultural heritage.