

Keynote Address: *Olu Akinkugbe Business Law In Africa Fellowship Conference* held at the Lagos Business School - 28th November 2018 by Dr Faizel Ismail

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It is a great honour and privilege for me to be delivering the guest lecture at such a prestigious event.

My topic for discussion today is titled:

A ‘developmental regionalism’ approach to the AfCFTA: In celebration of the 90th birthday of Chief Olu Akinkugbe CFR CON

The African Continental Free Trade Area (AfCFTA) was launched on 21 March 2018 at a Summit of the African Union, held in Kigali, Rwanda. The AfCFTA was declared, by President Paul Kagame, as “historic”. Seen from the long lens of history, this was indeed a historic event. It was the most ambitious expression yet of the dream and vision of Pan-African leaders such as Kwame Nkrumah, Jomo Kenyatta, ...and others who had begun the long journey towards African unity and integration since the de-colonisation and independence of African States in the late 1950s.

The formation of the Organization of African Unity (OAU) in 1964, re-ignited the vision of regional integration. However, it was only in the early 1980s that the vision of regional integration was to be given substantive meaning by the first executive secretary of the Economic Commission of Africa, Adedeji Adebayo – a great Nigerian intellectual who recently passed away. His influential leadership led to the launch of the Lagos Charter in 1975 and the Lagos Plan of Action in 1980. The Lagos Plan of Action called for the integration of the continent based on “self-reliance, endogenous development and industrialization”. Ten years later, the OAU adopted the Abuja Treaty (June 1991). The treaty set out a step-by-step approach to regional integration in Africa with the creation of the Regional Economic Communities (RECs) – such as ECOWAS, SADC and the EAC.

However, by the early 2000s Africa’s RECs were beginning to overlap, creating a so-called “spaghetti bowl” of overlapping regional arrangements. It is for this reason that African Leaders from SADC, COMESA and the EAC took a decision in June 2011 - to launch negotiations towards a Tripartite Free Trade Area; and in June 2015 Leaders of the African Union launched the negotiations to include the rest of Africa in a Continental Free Trade Agreement.

The major documents agreed in Kigali and the Mauritania AU Summit held in July 2018, include a Framework Agreement establishing the AfCFTA

plus three Protocols, including; the Protocol on Trade in Goods; the Protocol on Trade in Services; and the Protocol on the Rules and Procedures on the Settlement of Disputes.

These agreements form the first phase of the AfCFTA negotiations. While the negotiators agreed on the broad framework for the reduction of tariffs, the percentage of lines for each category is still to be negotiated. Trade negotiators have a saying that – “the devil is in the detail”.

The Mauritania Summit of the AU also agreed on five services priority sectors – Transport, Communication, Finance, Tourism and Business Services – for the member states to begin making ‘requests and offers’, as they advance the ‘Services’ negotiations. Phase II of the AfCFTA negotiations will include the issues of Investment, Competition and Intellectual Property Rights.

The Global Context – theory and practice of ‘Free Trade’

Today regional integration and indeed the process of globalisation and “free trade” have become major topics of political debate and controversy, across the world, expressed in Trump’s “America First” trade policies and Britain’s “Brexit”.

While several studies undertaken by economic researchers predict that the AfCFTA has the potential to increase growth, raise welfare and stimulate industrial development on the continent, there are also concerns that some countries, particularly the smaller and more vulnerable economies, may experience the negative impacts of premature liberalisation and fiscal revenue losses.

In a recent book called the *EURO*, Joseph Stiglitz, the celebrated Nobel Prize Economist argues that, for economic integration to be successful there has to be a minimal level of ‘solidarity’ so that countries that are in a stronger position help those that are in need. This principle of “solidarity” is similar to the African concept of ‘Ubuntu’ (“humanity towards others”).

Several writers, including Adebajo Adedeji, Rob Davies, and studies undertaken by UNCTAD and the UNECA have argued that the ‘sequential’ or simple ‘free trade’ European approach to regional integration is not appropriate for developing countries, especially in the African context.

Instead these researchers argue that African countries should adopt an approach to regional integration referred to as “developmental regionalism”.

Developmental regionalism is defined as “cooperation among countries in a broader range of areas than just trade” and also includes cooperation between countries on policies aimed at accelerating regional industrial development and regional infrastructure provision.

Chairperson and friends....

This is an opportune moment for African policymakers to ask a few pertinent questions. How can the AfCFTA benefit *all* African countries? How can the AfCFTA lead to economic transformative and industrialisation of the continent? How can the AfCFTA also catalyse and advance the building and strengthening of democracy and good governance in Africa?

I argue that the “developmental regionalism” approach to trade integration provides us with the best prospects for the AfCFTA to catalyse the process of transformative industrial development, cross-border investment and democracy and governance, in Africa.

In the remaining few minutes of my discussion, I review the progress being made by African countries and the continent in implementing each of the four pillars of the “developmental regionalism” approach, and argue that by adopting this approach, African Leaders will ensure that the AfCFTA benefits *all* African countries.

First Pillar: Fair Trade integration

Africa’s member states have a wide variety of categories of countries that may require special attention and specific treatment. Of the 55 African member states, 34 are LDCs, 16 are Land Locked Developing Countries (LLDCs) and six are Small Island Developing States (SIDS).

Therefore building trade agreements in favour of small and less developed economies will assist in contributing to fairer outcomes of the AfCFTA and a more balanced and mutually beneficial regional integration process.

The private sector should be the drivers – but in a socially responsible

manner

The role of the private sector in driving the process of regional integration is crucial, as the experience of Europe suggests. In Africa only a few countries have a significant private sector that have become regional “multinationals” and are driving the regional integration process.

Some critics have argued that the major beneficiaries of the AfCFTA will be those economies in Africa that have the capacity to expand their exports of goods and services into the rest of the continent. These include companies mainly from South Africa, Nigeria, Kenya and Egypt.

The South African government has recognised this reality and taken steps to discipline the role of its private sector. The government of South Africa has issued a document titled: *Guidelines for Good Business Practice by South African Companies Operating in the Rest of Africa*. The guidelines are voluntary but offer an opportunity for engagement between the South African government and the major private sector firms on their role in the rest of Africa. The principles listed in these guidelines include: building local supplier capacity; promoting employment of local labour, skills development and technology transfer; avoiding engaging in corrupt and illegal activities; and compliance with tax laws and regulations. These principles need to be complied with. Companies that invest in the rest of the continent should be accountable to their host countries.

Participation of civil society and institutions for consultation

African governments should ensure that their stakeholders: business, both big and small; trade unions; and civil society NGOs are included in the national consultation process and provide their negotiators with clear mandates for negotiations. African countries need to build effective institutions that are inclusive and enable the fullest participation of stakeholders in the negotiating process.

This will improve both the quality and the sustainability of the AfCFTA agreements. In South Africa, Nelson Mandela, in his wisdom, created the National Economic and Development Labour Council (NEDLAC), which obliges government policy makers to consult and engage with all the major stakeholders, including the trade unions, business associations and other civil society representatives, on new policies, legislation and regulations,

including international trade negotiations.

In addition, building the capacity and empowering the negotiators and stakeholders from the poorest and smallest countries will also ensure that the agreements will be fair and mutually beneficial.

Second Pillar: Building Regional Value Chains

African countries are increasingly connected to the global economy through Global Value Chains. However, they are mainly suppliers of raw materials and other low-value manufactures and operate at the lowest rung of the ladder in GVCs.

The good news is that while Africa's exports is largely made up of commodities to the developed countries, and to China, the composition of its intra-African trade is made up of more technology-intensive *manufactured* products.

Therefore the development of regional value chains and the insertion of African firms into global value chains will, by their nature, facilitate increased intra-African trade of manufactures and could contribute to sustainable long-term growth.

There are numerous industrial sectors in Africa that are ripe for the development of regional value chains; in agro-processing, pharmaceuticals, iron and steel and capital goods, clothing and textiles, leather and footwear and even in the automotive sector.

In advancing regional trade integration in these sectors – African policy makers must recognize the need to carefully nurture small and medium sized enterprises and manufacturing. Thus adequate policy space has to be available to African states to build the necessary trade and industrial policies, laws, regulations and institutions, to ensure safe and fair trade, and to build their infant industries.

In addition, these industries will need adequate attention to laws and regulations to protect the integrity of Africa's borders from illegal imports, sub-standard goods, and third country transshipment. African countries must be able to protect themselves from unfair trade, sub-standard and dumped goods from the north and south – whether this is in the form of second-hand

clothing or vehicles.

Cooperation – between Africa’s emerging entrepreneurs and industries, towards building of regional value chains, and to compete more effectively in global markets – will advance transformative industrialization, obtain a fairer share of the value we obtain from our commodities and our labour – and improve the lives of the people on our continent. The AfCFTA must facilitate this process.

Third Pillar: Cross-border Infrastructure Investment

Africa is divided into 55 states, including many landlocked (16) and least developed countries (34). The landlocked countries face very specific challenges. Botswana, Burkina Faso, Burundi, Chad, Central African Republic, Ethiopia, Lesotho, Malawi, Mali, the Niger, Rwanda, South Sudan, Swaziland, Uganda, Zambia and Zimbabwe all lack maritime access and are isolated from the world markets, and suffer high transit costs, which seriously constrain their overall socioeconomic development.

African countries are making significant progress in building, both their *hard infrastructure*, such as ports, road and rail to facilitate intra-regional trade and their *soft infrastructure*, such as customs cooperation at borders, port efficiency, and reduction of roadblocks along major transport routes.

For example much progress has been made to improve the Abidjan-Lagos corridor, which handles more than two-thirds of West African trade, transport and transit activities, as well as modernising the ports in Côte d’Ivoire, Ghana, Togo, Benin and Nigeria.

The AfCFTA has annexes on “customs cooperation” (Annex 3), “trade facilitation” (Annex 4) and on “transit” (Annex 8). All three of these issues are covered in the World Trade Organization Agreement on Trade Facilitation and must be implemented with adequate attention to the capacity constraints of the poorest countries.

Fourth Pillar: Democracy and Governance

A political sea-change has been underway in Africa since the end of the Cold War in late 1980s and early 1990. Most African states have begun

accepting multi-party systems of governance in the new millennium. Multi-party elections have begun to replace military coups. Most African countries have embraced a culture of constitutionalism, rule of law and human rights.

During the AU Summit held in Durban, South Africa in 2002, the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance was adopted. The declaration committed African countries to work together in pursuit of the following objectives: democracy and good political governance; economic and corporate governance; socio-economic governance; and the creation of an African Peer Review Mechanism (APRM).

The APRM is a voluntary platform for self-assessment and peer review of governance policies, procedures and institutions by African Union member states aimed at institutionalising and consolidating democratic governance.

The APRM is an instrument that is voluntarily acceded to by AU member states. Countries voluntarily subject themselves to being examined in governance areas within established guidelines. As at September 2018, the APRM had 37 members with Namibia and The Gambia being the most recent members to accede with 21 of its members having already undertaken a first country review.

The APRM is unique in both scope and breadth, with the review process extending to all levels of government, parliament and the judiciary as well as the private sector and civil society organizations. Several academic writers have observed that the APRM is a truly indigenous, locally owned initiative designed by Africans for Africans. This is a truly remarkable achievement that the AfCFTA must build on.

Way Forward

Thus I have argued that all four pillars of the developmental regionalism approach have begun to gain traction across Africa and have begun to reinforce and strengthen each other in practice. This approach to regional integration in Africa has great potential to catalyse and accelerate a virtuous circle of regional trade integration, transformative industrialisation, cross-border infrastructure, democracy and good governance, across the continent.

Policymakers need to make the necessary linkages both conceptually and in practice.

The launching of the AfCFTA on 21 March 2018 could become a landmark and the transition to a new phase in the historic journey of Africa to realise the dreams of the Pan-African leaders for a peaceful, prosperous and integrated Africa.

Nelson Mandela, in his visionary leadership implored his compatriots in South Africa to contribute to the prosperity and integration of the African continent, not in a spirit of paternalism – but in a spirit of Ubuntu and solidarity.

Regional integration is not just an inter-governmental process. It is far more important to be left to governments alone. The private sector, civil society and academics/intellectuals must play a robust and active role in driving the process in parallel, and in partnership with national governments.

It is in this context that the work of Chief Olu Akinkugbe needs to be celebrated. The CCLA-Olu Akinkugbe Fellowship is both visionary and instructive of how we all can contribute in small but significant ways that will build on the foundations of the great Pan-African leaders and the path-breaking initiatives of leaders such as Chief Olu Akinkugbe.

I should say – in the language of my own region in South Africa – isiZulu-Chief Olu Akinkugbe - you have displayed the qualities, not just of a Chief or Nkosi, but of an Nkosi Nkosi – Chief of the Chiefs!

It is for this reason that I have written a paper on the subject of this speech that is dedicated to you and in celebration of your contribution to regional integration in Africa. Happy Birthday! May you enjoy many more productive years!

end.

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