



African Centre for Biodiversity (ACB) Comments on the Challenges and Prospects of the AfCFTA

2 June 2020

Thank you for the opportunity to submit commentary on the African Continental Free Trade Area (AfCFTA) as it relates to food and agriculture. The input here by the African Centre for Biodiversity (ACB), which is based in Johannesburg, South Africa, centres around three areas of concern: 1) the kind of food systems that in its current form the AfCFTA will most likely lead to; 2) the problem of democratic accountability and transparency and what it means for who gets to define the food and agriculture related outcomes of the Free Trade Area; and 3) concerns around the development of IP Protocol as it relates to food and agriculture.

1) What the AfCFTA means for agriculture and food systems in Africa

It is increasingly being widely acknowledged that industrial food systems have devastating ecological and social impacts. The COVID-19 situation, and other shocks hitting the African continent, like Ebola, the locust invasions, and the fall army worm, point to the increasingly intense interactions between climate change, ecological degradation and agriculture. The key thrust in terms of the AfCFTA and agriculture is to build regional food value chains to replace the massive annual food imports for consumption. The prioritisation of regional value chains may be an improvement on global value chains, but this still does not in itself address a number of critical factors in terms of ecological sustainability and social equity:

- The assumption is still the standardisation and therefore industrialisation of food systems. A big part of the approach in the AfCFTA in general is about building African corporate power. How will supporting the increased industrialisation and corporatisation of food systems increase inequality, centralise wealth in corporate actors, reduce the power of small farmers, traders and distributors? All over the world there is a push back against industrial and corporate-controlled food systems because of these effects. Instead of promoting such a system, there is an opportunity here for the AU to instead support people- and nature-centred food systems, as is embodied in the increasingly well-known idea and movement of food sovereignty. There is therefore a question here of what is considered agricultural development. Is it an outdated 20th century modernisation, Green Revolution vision, or is it one appropriate to social and environmental justice in a time of civilisational crisis?
- In further relation to corporate power, there are two questions. 1) Are the Rules of Origin strict and well-considered enough to prevent the further infiltration of non-African (especially European Union) corporations in African food systems, as is

already a prominent trend? 2) At the moment the driving trend of the AfCFTA has been trade liberalisation through elimination of tariff and non-tariff barriers between African countries. However, trade on its own will not lead to manufacturing and development outcomes. It needs to be regulated in line with social and economic objectives, firstly; and secondly, needs to be accompanied by targeted state development policies that subordinate trade to democratically-derived development agendas. In the case of agriculture, where most of the African agro-food sector is still characterised by small scale farmers, traders and distributors, the removal of trade barriers will surely simply open the way for existing, powerful African agro-food corporations (such as South African ones) to displace these existing actors, without alternatives. There also still remains the potential for non-African agro-food corporations to play a similar role.

- Overall, then, and as the COVID-19 crisis has highlighted, the focus on food systems should be to localise them as far as possible. Stronger regionalisation of food systems for the sake of regionalisation will create long value chains that in turn are more vulnerable to disruptions and shocks, and will therefore increase the vulnerability of African food systems. A scaled approach therefore needs to be taken to agro-food systems, where localisation is the key objective, and regional integration is about knowledge flow between farmers and people-centred food traders and distributors, and about supplementation and support of locally-centred food systems.

2) Democratic Decision Making and Civil Society Involvement

So far there has been a deep democratic deficit in the construction of the AfCFTA, at two levels. Firstly, at the AU negotiating level, where negotiations have taken place behind closed doors and where civil society has been excluded from the negotiating table. There has been mention of an AfCFTA Consultative Dialogue Framework. However, we have yet to have sight of this and so the question is still open as to whether it facilitates sufficient democratisation of the process.

Secondly, between civil society and national governments. At the moment, citizens and civil society in national contexts know virtually nothing of the negotiating positions that their governments are taking to the process, such as on the negotiation of the Protocols. Governments are expected to consult their societies on their National Implementation Strategies of the Agreement. As of yet, no countries have presented these and it is not clear whether any have undertaken such a consultative process.

In relation to the whole process, but also to agriculture and food, such democratisation is critical, otherwise an untransparent process further facilitates the influence over the process of powerful actors to skew processes in their favour. For example, the Alliance for a Green Revolution in Africa (AGRA) has already established the Regional Food Trade Coalition and indicated its intention to influence policy in relation to the AfCFTA to ensure agricultural development is directed towards Green Revolution and industrialisation approaches. But AGRA is completely unaccountable to the citizens of the Continent and so, given their role in expanding the role of the global corporations in the agricultural sector, their role in policy

constitutes vested interest representation at the expense of open democratic participation and deliberation.

The above calls for two immediate interventions:

- 1) The AU negotiating and planning processes must be completely opened up to civil society participation
- 2) Guidelines that governments must adhere to in their national-level consultations that ensure transparency and democratic accountability in what such governments agree to through the AfCFTA, must be developed

3) Issues on the planned Intellectual Property (IP) Protocol

As far as we understand, second phase negotiations of the Agreement are delayed due to the COVID situation. This provides an opportunity for democratising the process. This includes incorporating a view beyond a narrow IPR regime. A general approach in terms of agriculture here should be based on necessities of biodiversity and farmers rights. It is worrying to hear that ARIPO is playing a role in developing the IP Protocol. ARIPO has promoted UPOV 1991 on the continent, which increases the rights of commercial breeders over seed and genetic resources, and reduces the power of small farmers over their seed, farming, and the preservation of genetic diversity. Instead, three approaches must be taken here:

- 1) The AfCFTA must not be used as an opportunity to further the agenda of the corporate seed sector to push for draconian plant breeders' rights and undermine farmers' rights through inter alia, national level as well as harmonisation of plant variety protection laws based on UPOV 1991. An example of such a harmonized PVP law is the Arusha Protocol for the Protection of New Varieties of Plants. This regional framework is principally aimed at ensuring regionally seamless and expedited trade and seed production of commercially-bred seed varieties for the benefit of multinational seed companies. It is also part of the legal and institutional architecture designed to facilitate the transformation of African agriculture from peasant-based to an inherently inequitable, and ecologically unsustainable, agricultural model, based on an out-dated Green Revolution/industrial agricultural model. It is a mechanism designed to coerce African countries into joining UPOV 1991. UPOV 1991 is a restrictive and inflexible international legal regime that grants extremely strong intellectual property rights to commercial breeders and undermines farmers' rights. Both the Arusha Protocol and UPOV 1991 provide for very narrow exceptions to breeders' rights, with regard to the use of farm-saved seed by smallholder and peasant farmers, especially women farmers who are often the custodians of seed. This regime undermines age-old farming practices that form the backbone of seed, agricultural, and food systems in the ARIPO region. It also erodes the implementation of Farmers' Rights as outlined in the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Since both the Arusha Protocol and UPOV 1991 focus principally on strengthening breeders' rights, it pointedly ignores the contribution of farmers to the conservation and

development of plant genetic resources for food and agriculture across the continent, as recognised explicitly in the ITPGRFA.

- 2) African farmers have for centuries undertaken innovations in farming and protection of genetic diversity without IP frameworks. The question then is to protect this knowledge and genetic diversity from corporate looting. Hence the ITPGRFA must be a key guiding framework for this Protocol as it relates to agriculture, Article 9 of which protects farmers' rights.
- 3) The recently-passed UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) should be a another key guide in pursuing a rights-based approach to agricultural and food system development in terms of continental development approaches. Furthermore, specifically in relation to seed, genetic diversity and intellectual property, Article 19 of the UNDROP provides further particular guidance with regard to rights in relation to seed, genetic diversity, traditional knowledge, benefit sharing for the use of plant genetic resources for food and agriculture, rights to decision making, the rights of peasants and other rural people to maintain, control, protect and develop their own seeds and traditional knowledge, and the prerogative for the state to support these systems financially, through research and so on. Where states do consider seed policies, plant variety protection and other intellectual property laws, they must take into account and respect the rights, needs and realities of peasants and other people working in rural areas. The UNDROP must be a guiding framework on these matters – indeed, no African country voted against the approval of the Declaration at the UN, and so such a recommendation made here should not be seen as controversial.

Thank you.