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TRADING UNDER THE AFRICA CONTINENTAL FREE TRADE AREA AGREEMENT: TOWARDS A LEGAL FRAMEWORK FOR THE IMPLEMENTATION OF THE PROTOCOL ON WOMEN IN NIGERIA

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ABSTRACT

The African Continental Free Trade Area (AfCFTA) Agreement represents a transformative opportunity for African economic and regional integration. Central to its inclusive vision is the Protocol on Women and Youth (the Protocol), which seeks to enhance the participation of these critical groups in intra-African trade. Using the doctrinal legal analysis and policy-oriented inquiry, this paper discusses the need for Nigeria to develop an inclusive, integrated, and gender-responsive approach to implementing the AfCFTA Agreement; trade-related gender sensitivity of the legal framework for implementing the AfCFTA Protocol with specific focus on Women; and the need to address existing legal and institutional gaps to help Nigeria unlock the productive capacities of women, enhance competitiveness and drive innovation. The paper demonstrates how a robust legal framework will ensure compliance with AfCFTA obligations and position Nigeria as a leader in promoting inclusive trade policies. The paper vehemently argues that the existence of a comprehensive legal framework tailored to Nigeria's domestic need and its ability to dismantle barriers to women's participation in intra-African trade holds excellent potential for the country to fully harness the benefits of the Protocol. The paper concludes that prioritising the implementation of the Protocol through appropriate legal measures is essential for fostering equitable economic growth and securing Nigeria's strategic interests in the evolving African trade landscape.

Keywords: AfCFTA, harassment, trade, cross-border trade, inclusive trade, informal trade, women

1. INTRODUCTION

A crucial aim of economic integration is to create a single market for trade in goods and services by removing barriers to allow unrestricted movement of goods, services, and persons. The African Continental Free Trade Area (AfCFTA) Agreement created the largest Free Trade Area (FTA) in the world, building a single market for a

population of about 1.3 billion people,[1] which is expected to grow to 2.5 billion by 2050.[2] It has 54 State Parties with a combined Gross Domestic Product (GDP) of about $ 3.4 trillion.[3] The Agreement is unique and ambitious as it simultaneously aims to achieve economic integration, industrialisation, and sustainable development. Since coming into force, initiatives, tools, and steps have been adopted to remove barriers and fast-track the free movement of goods and services through the e- Tariff Book,[4] Guided Trade Initiative (GTI),[5] and the Pan African Payment and Settlement System (PAPSS),[6] among others. The AfCFTA is expected to increase intra-Africa trade and stimulate production by developing regional value chains, strengthen the capacities of African companies, and integrate them into the global value chain, among others.[7]With this aim in mind, there is an urgent need to tackle the challenges that could hamper the ability of the AfCFTA Agreement to achieve its objectives.

Africa is said to have the highest percentage of women entrepreneurs globally.[8] This remarkable achievement occurred despite operating in an environment constrained by a lack of capital that disproportionately impacts women for several reasons, including discrimination and dearth of collateral, which results in 38% lower monthly profit than enterprises owned by their male counterparts.[9] For instance, women entrepreneurs received less than 7% of funding from venture capital (VC)

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1 AfCFTA: Overview, <https://au-afcfta.org/about/>accessed 20 January 2025.

2 African Union, Operational Phase Of The African Continental Free Trade Area Launched February 05, 2025, <https://au.int/en/articles/operational-phase-african-continental-free-trade-area-launched#:~:text=The%20trade%20observatory%20will%20have,Heads%20of%20State%20and%20Government> accessed 20 January 2025.

3 AfCFTA (n.1)

4 It is a web-based resource that provides businesses with essential tariff and rules of origin information. AU, Digital Tools, <https://au-afcfta.org/digital-tools/> accessed 3 March 2025.

5 AU, Guided Trade Initiative, <https://au-afcfta.org/guided-trade-initiative/> accessed 3 March 2025.

6 PAPSS is a centralised Financial Market Structure that enables the efficient and secure flow of money across African borders. More information on this is available at, <https://au-afcfta.org/operational-instruments/papss> accessed 3 March 2025.

7 African Union, Operational Phase Of The African Continental Free Trade Area Launched February 05, 2025, <https://au.int/en/articles/operational-phase-african-continental-free-trade-area-launched#:~:text=The%20trade%20observatory%20will%20have,Heads%20of%20State%20and%20Government> accessed 26 January 2025.

8 Anzetse Were**,** How women stabilise and grow economies in Africa, https://oecd-development-matters.org/2022/10/04/how-women-stabilise-and-grow-economies-in-africa/; Reuters, How can we make sure they get funded?, <https://www.reuters.com/business/sustainable-business/comment-africa-has-highest-proportion-women-entrepreneurs-how-can-we-make-sure-2023-04-12/> accessed 26 January 2025.

9 The African Development Bank Group Gender Strategy 2021 –2025 Investing in Africa's women to accelerate inclusive growth, <https://www.afdb.org/en/documents/african-development-bank-group-gender-strategy-2021-2025> accessed 26 January 2025.

investment despite making up 20% of founders.[10] Furthermore, limited access to digital technology aggravates the negative impact of funding constraints for women[11] For instance, women are 10% less likely to own a mobile phone and 23% less likely to use mobile internet than men in sub-Saharan Africa according to Reuters analysis of how women can be funded.[12]

In West and Central Africa, informal cross-border trade among women is said to represent more than 60% and generates between 40-60% of the Gross Domestic Product (GDP) of their countries. In comparison, they make up 70% in the Southern Africa Development Community (SADC) axis.[13] A data-gathering project commissioned by the Africa Export-Import (AFREXIM) Bank, the United Nations Economic Commission for Africa (ECA), and the Economic Community of West Africa (ECOWAS) on Informal Cross-Border Trade (ICBT) captured data along the Lagos- Abidjan Corridor and selected formal border posts and strategic market places.[14] The project recorded the volume of ICBT as $22.8 million between 1st October 2022 and 31st January 2023.[15] Upon gender disaggregation of the data on the total value of the ICBT, it was found that women dominated ICBT in ECOWAS by 74% of the total value.[16]

Interestingly, men traded a wider range of manufactured goods, beverages and livestock, while women mostly traded food items.[17] Consequently, food items accounted for 60% of the products traded, while manufactured goods and beverages accounted for 12% each,[18] and only 1.2 times more women also traded in manufactured goods.[19] Regarding payment methods, bank transfer, cash, cheque, and mobile money payment methods were dominated by women, while men leaned towards credit.[20] This is despite the 2019 UNECA survey observation that cash was the only mode of payment in the Abidjan-Lagos corridor.[21]

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10 Reuters, How can we make sure they get funded?, <https://www.reuters.com/business/sustainable-business/comment-africa-has-highest-proportion-women-entrepreneurs-how-can-we-make-sure-2023-04-12/> accessed 26 January 2025.

11 The African Development Bank Group (n. 6)

12 Ibid

13 AFDB, Women in informal cross-border trade in Sub-Saharan Africa: an untapped potential to feed, integrate and industrialize Africa, <https://blogs.afdb.org/fr/investing-gender/women-informal-cross-border-trade-sub-saharan-africa-untapped-potential-feed> accessed 2 February 2025.

14 UNECA, Informal Cross-Border Trade in the Economic Community of West African States (ECOWAS) region 2023, <https://repository.uneca.org/handle/10855/50209> accessed 2 February 2025.

15 Ibid.

16 UNECA, Informal Cross-Border Trade in the Economic Community of West African States (ECOWAS) region 2023

17 Ibid.

18 Ibid.

19 UNECA, Enhancing the quality of informal cross-border trade in the Economic Community of West African States, <https://repository.uneca.org/bitstream/handle/10855/46372/b1199650x.pdf?sequence=1&isAllowed=y > accessed 2 February 2025.

20 AFDB/UNECA (n. 10)

21 UNECA (n. 16)

The project also detected that these traders face several challenges, including administrative and trade formalities such as differences in operating hours, restrictions on the transportation of small quantities of goods, language barriers, limited information on cross-border trade requirements and procedures, lack of relevant documentation, and varied implementation of regional policies such as the ECOWAS Trade Liberalisation Scheme and numerous checkpoints. The infrastructure challenges they faced include a lack of requisite infrastructure and equipment, sanitation, poorly maintained and narrow roads, no facilities or sheds to protect against weather, lack of proper storage and warehouse facilities at marketplaces, and inadequate restrooms at some marketplaces and border crossings. The security challenges include the presence of jihadists and terrorists at some border crossings.

Furthermore, many of these people have few or no alternative employment opportunities,[22] and face sexual harassment and limited capital to expand or boost business. Others identified in the UNECA report include corruption and extortion, high cost of movement of persons, and multiplicity of government cross-border regulatory bodies. It was also found that across six trade corridors in West Africa, at least 40% of small-scale traders have no or only informal schooling, which makes completing statutory declarations at borders challenging for them, and limited understanding of cross-border trade requirements.[23]. The project concludes that the challenges identified here disproportionately impacted women.[24]

The AfCFTA Protocol was adopted in recognition of the role of women in the success of AfCFTA and the desire to address their challenges and eliminate the barriers that prevent them from participating in trade. Critical to its success is implementation, which happens on a tiered level at regional and national levels, respectively. Therefore, State parties play a crucial role in successfully implementing the Protocol. This paper analyses the domestic implementation framework for the Protocol to ensure an efficient and sustainable increase in the participation of the Nigerian women in trade under the AfCFTA. Although the Protocol is on Women and Youth, this paper focuses particularly on women with a view to acquiring a gender-based perspective to implementation. The paper commences with an introduction, which is followed by a conceptual discourse that highlight some critical terms. The next is an overview of gender-related trade legal instruments in Nigeria, followed by discussions on some indicators of a responsive legal framework, observations and recommendations before concluding.

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22 World Bank, *Monitoring Small-Scale Cross-Border Trade In Africa: Issues, Approaches, & Lessons*, <https://documents1.worldbank.org/curated/en/301441606885368757/pdf/Monitoring-Small-Scale-Cross-Border-Trade-in-Africa-Issues-Approaches-and-Lessons.pdf> accessed 23 February 2025.

23 Ibid.

24 UNECA (n.16)

2. CONCEPTUAL CLARIFICATIONS

2.1. Inclusive trade

Trade literally means a symbiotic relationship between people or entities involving exchange of goods and services, usually for money or an agreed medium of exchange.[25] Its importance hinges on its penchant for driving economic growth, poverty alleviation, and sustainable development. Although indubitably beneficial, it is different for women due to its uneven distribution. According to the World Bank,[26] uneven distribution of trade benefits, normally skewed against women, is the result of many challenges that confront women, including systemic legal, institutional, and socio-economic barriers.[27] Inclusivity as it relates to trade is to ensure that all individuals, regardless of gender, have equitable opportunities to participate in and benefit from trade. It speaks to the larger issue of removing barriers and enhancing women's capacity to engage in trade effectively. Inclusive trade refers to trade policies, legal frameworks, and institutional mechanisms designed to ensure equitable participation and benefit-sharing among different societal groups, including women, , and marginalized communities.[28] Inclusive trade goes beyond market access by addressing systemic barriers that prevent full participation in trade activities, particularly women, giving rise to emphasis on gender mainstreaming.[29]

Achieving inclusive trade and empowering women in trade requires a comprehensive legal, institutional, and economic reforms. While international frameworks such as the Convention for the Elimination of All Forms Discrimination Against Women (CEDAW),[30] AfCFTA, and the WTO Buenos Aires Declaration,[31] provide a foundation for gender-inclusive trade policies, significant barriers remain, particularly in Nigeria where socio-economic, political, legal, institutional and religious barriers continue to plague women in trade.

2.2. Empowerment for women in the context trade

Economic empowerment for women in the context of trade refers to increasing women's capacity to engage in trade. It entails the removal of structural blocks, and ensuring equal opportunities in domestic, regional, and global markets according to

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25 The Economic Times, What is Trade, <https://m.economictimes.com/definition/trade> accessed 1 march 2025.

26 World Bank, Women, Business and the Law Report, 2022, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099071624120594545> accessed 28 February 2025.

27 Ibid.

28 Hoekman, B., & Shepherd*, Trade and Gender: Advancing Inclusive Trade Policies* (2022)

29 Dommen, Caroline, Mainstreaming Gender in Trade Policy: Practice, evidence, and ways forward (2021;10.13140/RG.2.2.18704.74249).

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31 WTO, *Buenos Aires Declaration on Women Trade* (2017), <https://www.wto.org/english/news e/mc11_12dec17_e.htm> accessed 2 March 2025.

the Organization for Economic Cooperation and Development (OECD),[32] which also stressed that empowering women in trade is not just a social imperative but an economic one, as gender-inclusive trade policies can significantly boost economic growth.[33] The imperatives of empowering women stems from the fact that countries that mainstream gender into trade policies have seen improved outcomes for women traders. According to the government of Canada, the country's Gender-Based Analysis Plus (GBA+) approach that ensures that all trade agreements undergo a gender impact assessment before implementation had positively impacted the country's trade.[34]

In Africa, while policies seeking to mainstream gender considerations exist, their impact is far from impressive. In African countries such as Nigeria, Ghana, Togo and Kenya, among others, there are persistent complaints and reports of gender barriers,[35] despite the existence of mechanisms and instruments for fostering gender mainstreaming in these countries.[36] As noted earlier, gender mainstreaming involves addressing barriers through legal reforms, targeted financial support, and capacity-building initiatives will ensure that women can fully participate in and benefit from trade. For Nigeria to fully harness the benefits of the Protocol therefore, government and stakeholders must entrench an environment that foster an inclusive trade, so as to help unlock the full potential of women, which will in turn, lead to broader economic growth and sustainable development.

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3. OVERVIEW OF THE AFCFTA PROTOCOL ON WOMEN IN TRADE

The Protocol is divided into five parts: Part I covers general provisions, Part II covers principles and general provisions, Part III covers women in trade, Part IV covers institutional arrangement, and Part V covers final provisions. The objective of the Protocol is to support and enhance the effective participation of women in trade in intra-Africa trade, promote value addition and innovation for increased imports and exports by Women in Trade, support the inclusion of women into regional and continental value chains, and support measures that promote the formalisation of the trade activities of women.[37] It covers trade policies, interventions and support.[38]

It seeks to create preferential market access for women through relevant enabling legal instruments.[39] It also seeks to promote and facilitate the empowerment

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32 OECD, Empowering Women in Trade: Policy Frameworks and Best Practices (2021), <https://www.oedc.org/en/publications/trade-and-gender_6db59d80-en.html> accessed 28 February 2025.

33 Ibid.

34 Government of Canada, Gender-Based Analysis Plus: 2022-23 Departmental Results Report, Women and Gender Equality Canada, <https://www.canada.ca/en/women-gender-equality/transparency/departmental-results-report/2022-2023/gender-based-analysis-plus.html> accessed 28 February 2025.

35 SheisAfrica, Gender Mainstreaming in Africa (2020), <https://sheisafrica.eu/2020/01/27/gender-mainstreaming-in-africa> accessed 1 March 2025.

36 Ibid.

37 Article 2(1)(a)-(g)

38 Article 3

39 Article 4(1)

and the effective integration of women in trade, amend or repeal legislations; identify, and progressively eliminate discriminatory practices against women in trade, promote quality education and information awareness programmes on trade, enhance the productive capacity of women in trade, strengthen and support associations of women in trade responsible for coordinating and advocating trade issues, collect and share information on best practices relating to the inclusion of women in trade, and take such other measures aimed at eliminating prejudices against women, … [incomplete idea] and promote equality for women in trade -.[40]

It further seeks to strategically involve women in policy formulation and national implementation,[41] and harmonise programmes to support women in trade. It enjoins State Parties to 'the extent possible', adapt their national policies and programmes to facilitate the effective implementation of regional and continental programmes on women in trade. In specific terms, states are to facilitate access to affordable financial instruments, services, and guarantees that are adapted to trading activities by women in trade, incentivise the creation of funding schemes in sectors with high potential for growth and in high-value sectors with low participation of women in trade, establish and/or strengthen business development services to train women in trade in financial literacy and services; and facilitate access to relevant knowledge and information on financial products and services and make it available to women in trade.[42]

State Parties are also expected to develop productive and export capacity, provide appropriate educational and training programmes, in collaboration with any relevant institutions, to improve the technical capacity and compliance with regulatory requirements and standards for women in trade, provide access to trade information, establish mechanisms to promote and protect the intellectual property rights of women, promote in formal cross-border trade, simplify documentation, procedures, and processes for small-scale cross border trade and assist them to comply, enforce trade facilitation instruments, and other related international instruments to support women engaged in small scale cross-border trade, collect and share disaggregated data, ensure protection against harassment etc, provide digital regulatory and institutional frameworks support women in trade to facilitate access to digital trade platforms, tools and solutions to trade, support women-owned or led micro, small and medium-sized enterprises, promote cooperation to support and enhance the effective participation of women in intra-African trade and their inclusion in regional and continental value chains. … [incomplete idea]

Having done an overview of the provisions of the Protocol, it is worth noting that in line with the objective of the Agreement, the Protocol considers the peculiar

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40 Article 7(a)-(g)
41 Article 8
42 Article 9-10

challenges that state parties struggle with that often hamstring implementation. These include lack of inter-agency collaboration, policy and legal inconsistencies, and funding challenges for instance. Consequently, regarding inclusive socio-economic development, requiring State Parties to implement the provisions Article 7 suggests substantial implementation being given to State Parties. This could have significant implementation for addressing some of the challenges that women in trade face. This makes their participation in strategic decision-making important. Where a challenge is not considered 'appropriate', it could impact socio-economic inclusion of women in trade. This can be illustrated by the need to provide designated rest areas for women along trade corridors. If due to shortage of funds, infrastructure projects are to be prioritised, as a result, if designating rest areas specifically for women is considered 'not appropriate' it could result in non-inclusion of women in trade. Such decision could possibly be because women traders were not part of the decision-making process, which could be enabled by the discretion suggested by Article 7 of the Protocol. Indeed, such scenarios could be prevented by strategic implementation.

4. OVERVIEW OF GENDER-RELATED TRADE LEGAL INSTRUMENTS IN NIGERIA

The framework of gender-related trade instruments is fragmented, topical and sectoral. This section will overview gender-related trade instruments broken down into instruments that provide access to the market, ensure economic empowerment, and protect women against violence and harassment. The discussion is segmented into international and Nigerian domestic frameworks.

4.1 Instruments that create economic opportunities and provide access to work

4.1.1. *International*

i. Discrimination (Employment and Occupation) Convention[43]

This instrument prohibits treatment in employment or occupation, or discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin. The protection against violence and harassment in the world of work, ensures easy access to appropriate and effective remedies. It also provides safe, fair and effective reporting and dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work. Furthermore, it protects the privacy of the individuals involved and provide sanctions.

Where appropriate, it provides victims of gender-based violence and harassment adequate access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support, services and remedies. By doing so, it ensures that workers have the right to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger

[43] 158 (No.111)

to life, health or safety due to violence and harassment, without suffering retaliation or other undue consequences. They equally have a duty to inform management. The significance of this instrument to the implementation of the Protocol in Nigeria is that women engaged in cross-border trade have reportedly experienced harassment around the borders and trade corridors.[44] This instrument could provide international benchmark for integrating protective measures and mechanisms against harassment of women in trade into the implementation framework.

ii. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The Convention seeks to eliminate all forms of discrimination against Women in all spheres of line, including economic, social and political spheres.[45] It is central to the efforts towards the advancement of women. Article 2 provides, among other things, for the adoption of appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women. It further provides for the establishment of legal protection of the rights of women on an equal basis with men, and the adequate protection of women against any act of discrimination, through competent national tribunals and other public institutions. Under the Article, states are to refrain from engaging in any act or practice of discrimination against women.

When it comes to cross-border trade, women have been reported to experience discrimination in the form of confiscation of their goods, requests for sexual favour instead of detention, and payment of higher bribes than men. This reflects what occurs in many borders across Africa, including West Africa.[46] Such experiences make women traders feel unsafe, and are reported as a key factor that prevents women, especially those engaged in small-scale trade, from participating in trade.[47] Considering that women face discrimination at borders, the Preamble to the Protocol requires state parties to be mindful of this instrument. Therefore, a domestic legal framework for the implementation of AfCFTA in Nigeria should specifically establish the necessary measures to protect women from such discriminatory practices at borders, including putting effective reporting mechanisms in place.

iii. International Labour Organisation, Convention Concerning the Elimination of Violence and Harassment in the world of work and Recommendation No. 206 concerning the elimination of violence and harassment in the world of work

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44 Olivier Walther and Leena Hoffmann, Gender Dynamics of Cross-Border Trade in West Africa (2021) Available at SSRN: <https://ssrn.com/abtract=3830755> accessed 20 May 2025.

45 CEDAW; AU, THE ENGINE OF TRADE IN AFRICA: Amplifying the voices of women across Africa on how to make the AfCFTA Protocol on Women and Youth work for development (2022).

46 Paul Brenton, Elisa Gamberoni, and Catherine Sear (Eds.), Women and Trade in Africa: Realizing the Potential, p.59

47 AU, THE ENGINE OF TRADE IN AFRICA: Amplifying the voices of women across Africa on how to make the AfCFTA Protocol on Women and Youth work for development (2022).

In its preamble, Convention 190 recalls the Declaration of Philadelphia, which reaffirms the fundamental principles of the International Labour Organisation (ILO) and demonstrates the link between social justice and lasting peace.[48] The declaration affirms human beings are entitled to pursue material wellbeing and spiritual development in conditions of freedom, dignity, economic security and equal opportunity.[49] The Convention also recalls other relevant international instruments, including the Universal Declaration of Human Rights (UDHR), and recognises the right of individuals to a violence and harassment free world of work. This includes gender-based violence and gender-based harassment.[50] Most importantly, the Convention recognises that violence and harassment in the world of work can constitute a violation of human rights or abuse, and avers that violence and harassment are a threat to equal opportunity. The convention also recognises that violence and harassment affect the quality of public and private services and may particularly prevent women from accessing, remaining and advancing in the labour market. It acknowledges that gender-based violence disproportionately affects women and girls, hence the need for a gender-responsive approach to addressing the problem.

Article 1(1) of the Convention defines violence and harassment as unacceptable behaviours that could cause physical, sexual or economic harm, including gender-based violence and harassment. It applies to violence and harassment that occur in the world of work, during or linked to work, or those arising out of work in the workplace during work-related trips, through work-related communications, in employer-provided accommodation, or on commute to or from work.[51] Recommendation 206 was made to supplement those recommended in the Violence and Harassment Convention, and is expected to be read along with the Convention. It recommends factors that State Parties should consider when adopting and implementing an inclusive and integrated gender-responsive approach to tackling the problem of violence and harassment in the world of work. The significance of Convention 190 is that it extends the definition of the world of work to include cross-border trade corridors. Borders are places of business for women in cross-border trade; therefore, in addition to protection against discrimination, they should also be protected against violence and harassment. Therefore, given that studies have found women in cross-border trade to be susceptible to violence and harassment such as those mentioned in (ii) above, Recommendation 206 could guide Nigeria to develop a gender-responsive

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48 Article II, ILO Declaration of Philadelphia, https://webapps.ilo.org/static/english/inwork/cb-policy-guide/declarationofPhiladelphia1944.pdf

49 Article II(a), ILO Declaration of Philadelphia

50 ILO, Convention 190 CONVENTION CONCERNING THE ELIMINATION OF VIOLENCE AND HARASSMENT IN THE WORLD OF WORK https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_721160.pdf

51 Article 3(a)-(f), ILO, Convention 190 CONVENTION CONCERNING THE ELIMINATION OF VIOLENCE AND HARASSMENT IN THE WORLD OF WORK

approach to addressing violence and harassment against women in cross-border trade. Reforms in that regard could eliminate some of the barriers that hamper the participation of women in trade. This is particularly compelling given that the introductory part of this paper indicates that women along the West Africa trade corridor mostly trade in agricultural products, particularly food items.

4.1.2. National

i. The 1999 Nigerian Constitution

The Constitution of the Federal Republic of Nigeria, 1999, as altered (CFRN), contain explicit provisions for promoting and protecting human rights of all citizens and residents. Given that the International labour Organisation Convention cautions that some acts of violence and harassment could constitute a violation of human rights and advices State Parties to consider human rights instruments in implementing the Convention, it is worth drawing attention to the fact that the human rights provisions of the Constitution should be considered alongside other human rights and protection instruments when developing a gender-based solution for gender sensitive cross-border trade issues.

ii. Violence Against Persons (Prohibition) Act, 2015

The Violence Against Persons (Prohibition) Act (VAPPA) was enacted to eliminate violence against persons. It focuses on establishing a safe environment, public and private life, and prohibits all forms of violence. It prohibits rape, violence, coercion, compulsion, frustration of investigation, giving false statement, assisting offenders, and economic abuse, among others as offences.[52] Furthermore, it prescribes punishments for the offences along with appropriate penalties for offenders.[53] While VAPPA does not explicitly mention women in informal trade, certain provisions can be interpreted to offer safeguards against violence and abuse that may affect them where they occur during cross-border trade. , including section 12 that prohibits economic abuse, such as forced financial dependence or economic abuse. This is applicable given that Nigeria is a State Party to the ILO Convention, CEDAW and other instruments that protect against violence and harassment.

iii. Labour Act

Article 2 of the Convention on Eliminating Violence and Harassment in the World of Work defines its scope to cover employees and other persons in the world of work, those working irrespective of their contractual status, and individuals in exercising authority, duties and responsibilities of employer in both public and private sector in formal and informal economy of rural and urban areas. Section .91(1) defines a worker as follows:

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[52] S.1-12, VAPPA

[53] A copy of Violence Against Persons (Prohibited) Act 2015. The Act is available at, < https://naptip.gov.ng/violence-against-persons-prohibition-department/> accessed 2 March 2025.

> *"worker" means "any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour, but does not include- (a) any person employed otherwise than for the purposes of the employer's business; or (b) persons exercising administrative, executive, technical or professional functions as public officers or otherwise; or (c) members of the employer's family; or (d) representatives, agents and commercial travellers in so far as their work is carried on outside the permanent workplace of the employer's establishment; or (e) any person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or the material; or (j) any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply;"*

It excludes commercial or agricultural undertakings, undertakings where only members of the same family are employed, and any customary occupation of a kind normally carried out at home from the definition of industrial undertakings. It defines an agricultural undertaking as

> *"Any undertaking in which a worker is employed under a contract of employment for the purpose of agriculture, fisheries, horticulture, silviculture, the tending of domestic animals and poultry or the collection of the produce of any plants or trees, but does not include any such undertaking in which only members of the same family are employed."*

It should be pointed out here that the definition, like that of industrial undertaking, excludes from the definition of agricultural undertakings such undertakings in which only family members are employed.

Going by the scope of workers defined under Convention 190 above, which Nigeria is a State Party, excluding this category of persons from the definitions of workers and agricultural undertakings in the Act discriminates against family undertakings, especially those who are actively engaged in agricultural production in cottage industry. It is pertinent to note that in addition to these deficiencies, the Act

itself is obsolete and needs urgent reform, given that it is a 1971 instrument. The Act excludes a category of persons, including a substantial number of women who are active in the cottage industry and participate in cross-border trade. By doing so, the Labour Act, which is meant to protect workers, discriminates against women in trade by increasing their susceptibility and vulnerability to violence and harassment in the world of work.

5. INSTRUMENTS THAT SUPPORT ECONOMIC EMPOWERMENT AND GUARANTEE ACCESS TO RESOURCES IN NIGERIA

5.1. National Gender Policy 2021-2026

The policy was developed to strategically guide gender mainstreaming across all levels of government and tackle socio-economic inequalities. Its broad objectives are to: "bridge gender/social inclusion gaps and achieve parity in all spheres of life, Protect women's human rights and mitigate sexual and gender-based violence through appropriate buffers and related services, explore and fully harness women's human capital assets as a growth driver for national development through women's economic empowerment, advance women's participation and representation in leadership and governance, support women and girls' education, lifelong health, survival, and sustainable development, ensure that gender equity concerns are integrated into social protection, and complex humanitarian actions, legislations, and policies, ensure that the socially excluded groups (e.g. persons with disabilities, the elderly, and the poor) are mainstreamed in development practice".

Its framework revolves around four key pillars, namely: (i) *policies and legislation*; (ii) *systems and structures*; (iii) *processes, procedures and mechanisms;* and (iv) *services, goods and products*. It is periodically revised in line with its implementation plan, built-in evaluation, and sustainability mechanism. Its foundation is secured by the constitutional rights and guarantees embedded in the CFRN, national commitments and treaty obligations such as the CEDAW, the Beijing Platform of Action, the Sustainable Development Goals (SDGs), the African Charter on Human and Peoples' Rights and its Protocols for Gender Equality, etc. It offers institutional guidance for achieving gender equality and sets the minimum standards and expectations for government responsiveness to gender inclusion. However, measurable outcomes and deliverables of this framework remain discouraging. It is therefore hoped that meaningful progress will be achieved before the lifespan of this framework ends in 2026.

5.1.1. National Gender Policy Strategic Implementation Framework/Plan 2021-2026

This was developed to implement the Gender Policy with implementation focused on policy priorities to strengthen institutional procedures strategically, formulate measures to systematically identify and address gender-specific vulnerabilities,

institutionalised research and data collection, review and enhance existing strategies for capacity building in gender mainstreaming, and ensure that reporting and accountability mechanisms in gender mainstreaming are put in place.

5.2. National Women's Economic Empowerment (WEE)Policy and Action 2023

It was developed to tackle poverty in a gender-inclusive manner. It observed that women and girls make up 101.6 million of Nigeria's 211 million population, and 133 million Nigerians are multidimensionally poor. The document alluded to the fact that although women make up 49.3% of Nigeria's population, they make up 70% of the multidimensionally poor. It further observed that gender gaps and barriers exist across the spectrum of measures and indices connected to economic empowerment, power, and agency. These include poverty, financial inclusion, land ownership, school completion, digital access, and corporate representation. The Policy and Action Plan is a roadmap for the strategic implementation of national economic plans and policies across sectors, targeting women's economic empowerment.

5.3. Legal Instruments

Several laws in Nigeria contain provisions intended to ensure ease of doing business for everyone, including women. Few examples are the Finance Act, 2023, Companies and Allied Matters Act, 2021 (CAMA), Land Use Act, 1978 (LUA), Secured Transactions in Movable Assets Act,2017 (STMA), Business Facilitation (Miscellaneous Provisions) Act, 2022, and Small and Medium Enterprises Development Agency (SMEDAN) Act, 2003, among others. Each of these laws seeks to provide equal protection and opportunities for everyone. They are intended to address impediments inherent in specific sectors.

The Finance Act, 2023, reduces barriers for small businesses and women by reducing the financial burden they carry, including the tax burden. The CAMA simplified the process of company registration in Nigeria, and removed barriers to registration and entry for micro, small and medium enterprises (MSMEs), which women and youth own the majority of. Similarly, the LUA is designed to ensure the equitable distribution of land among Nigerians. Although the LUA is designed to ensure equitable distribution of land, numerous studies indicate that it is eschewed against women, as it creates a huge barrier to their ability to own property for their economic empowerment.[54]

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[54] Ekhator, Eghosa. (2019). Protecting and Promoting Women's Rights in Nigeria: Constraints and Prospects In book: Women and Minority Rights Law: African Approaches and Perspectives to Inclusive Development (pp.17-35), Eleven International Publishing, Netherlands; Mary Imelda Obianuju Nwogu, Ogochukwu Mary-Cynthia Nwogu, Women's rights protection in Nigeria: institutional framework and challenges, International Journal of Law, Volume 9, Issue 3, 2023, Page No. 52-60; Tomi Grace Obagboye, Protecting Women's Rights in Nigeria in the 21st Century: Challenges and Prospects, AJLHR 4 (1) 2020

The STMA 2017 is also critical to this discussion. This law was enacted to enhance financial inclusion, stimulate responsible lending to MSMEs, facilitate access to credit using movable assets to secure transactions, facilitate perfection of security interest in movable property and the realisation of security interest in such property, and to establish a collateral registry and provide for its operations.[55] It provides a security interest (created by an agreement between a grantor and a creditor)[56] in movable assets, provided such interest is created by an agreement securing payment or performance of an obligation;[57] and applies to a creditor, borrower or guarantor recognised under the Act.[58]

It is also important to note that the Act requires every public registry established under the Act to have an automated interface with the National Collateral Registry for Accessibility.[59] It further give room for the creation of security by registered companies through charges,[60] and provides a clear framework for securing interest through collateral, which is coherent and provides clarity for all stakeholders. The registry creates further certainty for securing credit and funding. An important role the Act is that it creates access to finance for women by making requirement for collateral easier for them to meet. The Act can assist women to circumvent some of the challenges associated with the use of land and landed property as collateral.

The Business Facilitation (Miscellaneous Provisions) Act, 2022 was enacted to provide ease of doing business, transparency, efficiency and productivity in Nigeria. It is designed to create a clear, transparent and predictable business environment that will engender confidence and stimulate productivity, it amended several business environments enabling legislations such as the CAMA to streamline, simplify and harmonise business and compliance processes.

The SMEDAN Act, 2003 established the Small and Medium Enterprise Development Agency of Nigeria (SMEDAN) to promote and facilitate development of programmes for the small and medium scale industries subsectors and connected purposes.[61] This Act is crucial to increasing the participation of women in intra-African trade under the AfCFTA. Section 8 provides establishes the Agency's functions to include "promoting and facilitating development programmes, instruments and support services to accelerate development, modernisation, networking and linkage of small and medium scale industries. Other functions are as outlined in the section thus: mobilising internal and external resources, including technical assistance for small and medium scale industries, their support institutions, trade associations, and non-governmental organisation; linking small scale

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55 S. 1(a)-(f) Secured Transactions in Movable Assets Act 2017.
56 S.3(1)
57 2(1)(a)
58 2(1)(b)
59 2(1)(c)
60 2(3)
61 Small and Medium Enterprise Development Agency of Nigeria (SMEDAN) Act, 2003.

industrialists to sources of finance, technology, technical skill development and management; and promoting and providing access to industrial infrastructure, including estates and layouts, and incubators; encouraging and promoting strategic linkages within small and medium scale industries, and between small and medium scale industries and large scale industries; recommending to the Federal Government, from time to time, in consultation with other relevant agencies and organisations on applicable tax tariff regimes and other financial incentives for promoting the development of small and medium-scale industries, among others.

5.4. Central Bank Framework for Advancing Women's Financial Inclusion in Nigeria

It is a framework developed to provide a comprehensive guide and blueprint for women's financial inclusion. Building on the National Financial Inclusion Strategy 2018, it incorporates observations from the Assessment of Women's Financial Inclusion in Nigeria (December 2019). It integrates international best practices and Nigeria's sustainable banking practice principles with a focus on gender inclusivity by providing women with financial products and services that align with the priorities in the documents described above. This included measures to support account opening, financial and digital literacy, delivery channels to serve women, systems for gender-disaggregated data collection, enabling environment required to advance financially sustainable products and delivery systems, Digital Financial Services (DFS) and Fin-tech solutions, and women leadership and staffing. It seeks to reduce or eliminate barriers to women accessing and leveraging financial products and services.

However, the extent to which the policy has been implemented to achieve its strategic objectives is anyone's guess, as Nigerian women engaging in informal trade, especially cross-border trading, continue to face the mundane challenges of harassment and lack of or limited access to facilities, including financial and digital facilities. The Central Bank of Nigeria (CBN) has signed a code for women entrepreneurs' financing**,** which was recently developed to expand financial services access and improve economic opportunities for female entrepreneurs. An effective execution of this initiative will positively impact efforts by women to engage in entrepreneurship meaningfully.

5.5. Strategy for Leveraging Agent Networks for Women's Financial Inclusion, November 2022

This is designed to close the gender gap in access to financial products and services through the use of agent-based financial services to increase the proportion of female financial service agents, to innovate and design gender-centric financial products or interventions, and to ensure that different stakeholders create strategies to close the gender gap in targeted locations. This serves the dual purpose of providing access to financial products and job creation.

5.6. National Financial Inclusion Strategy (Revised) 2018

This was developed by the CBN to systematically reduce or eliminate demand/supply side and regulatory barriers to financial inclusion, building on four strategic areas-banking, mobile banking/mobile payments, linkage models, and client empowerment. It also identified four priority areas for guideline and framework development: tiered Know-your-customer (T-KYC) regulations, agent banking regulations, national financial literacy strategy, and consumer protection. Through this strategy, the CBN seeks to create a level playing field through inclusive access to finance, including through regulatory requirements and conditions.

5.7. Micro, Small and Medium Enterprises Development Fund (MSMEDF) Guidelines (Revised – August 2014)

This was also developed by the CBN to reduce the financing gap holding back the development of MSMEs and its contribution to economic development. In reducing the financing gap, the guidelines earmarked 60% of the fund to provide financial services to women. It is designed to derisk financing and crowd-in funding to finance MSMEs. Doing so can increase access to finance and possibly reduce the cost of financing.

5.8. National Policy on Micro, Medium, and Small Enterprises[62]

This policy was developed to provide a coherent, harmonised, strategic and sustainable approach to addressing the challenges facing MSMEs.[63] It was preceded by a background diagnostic study which reviewed internal and external factors to the firm, including the business environment, infrastructure, international trade, globalisation, and macroeconomic framework. The diagnostic study identified low capabilities in the MSMEs subsector in the areas of entrepreneurial, managerial, and technical capacities, unreliable infrastructure, harsh business environment, poor service delivery, heavy regulatory burden, low international competitiveness, and high incidence of the informal sector as factors hampering the growth and competitiveness of the subsector.[64] Most importantly, it identified absence of coherent policy and institutional coordination and promotion framework which aggravates the situation in the subsector.

The policy adopted an inclusive approach to addressing the challenges facing MSMEs. In doing so, it recognised the disproportionately high number of women in this subsector, acknowledged the marginalisation of women-owned businesses, and

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[62] National Policy on Micro, Medium, and Small Enterprises, <file:///C:/Users/AfCFTA%20NIGERIA/Downloads/National%20Policy%20on%20Micro,%20Small%20&%20Medium%20Enterprises_2015_1661866330.pdf> accessed 23 February 2025.

[63] Ibid

[64] Ibid

recognised their potential benefit to the economy. It also observed that several interventions targeting women empowerment were produced by several government ministries, departments, and agencies (MDAs). Nevertheless, prevailing data and current challenges facing women entrepreneurs indicate that these has had limited impact on harnessing the potentials of women in MSMEs. Having the policy in place is a step toward strategic coordination of interventions that could channel the right resources toward empowering and enabling women to participate in intra-African trade as envisaged by the AfCFTA.

Other gender mainstreaming instruments include the *National Policy on Gender in Basic* Education (2021), which was designed to eliminate gender disparities in education, the *National Action Plan on Gender and Climate Change* (2020) designed to mainstream gender into national climate change initiatives, the *National Gender Policy in Agriculture* (2019) designed to mainstream gender into agricultural, and the *National Digital Economy Policy and Strategy* (2019) which ensures gender inclusion in leveraging digital technologies. The existence of these frameworks shows Nigeria's willingness to operate an inclusive environment for women to thrive in their chosen businesses, including informal cross-border trading. However, translating policy objectives into practical outcomes remains a challenge. The country must therefore, do more in the area of policy implementation.

5.9 Instruments That Protect Women in The World of Work That Protect Against Violence and Harassment, And Set Standards/ Rules for Treatment

Nigeria is a party to several international and regional treaties and instruments that seek to protect women from all forms of violence and harassment. Women in ICBT have been documented to go through various forms of harassment and violence, including those of sexual nature, and extortion. To that end, international and domestic instruments are designed to protect women from all forms of violence. Additional instruments to those discussed above include, the UDHR,[65] International Covenant on Civil and Political Rights (ICCPR),[66]International Covenant on Economic, Social and Cultural Rights (ICESCR), [67] the Convention on the Political Rights of Women (CPRW);[68] the Convention on the Nationality of Married Women (CNMW),[69] the

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[65] Adopted by GA resolution 217 A (III) of 10 December 1948, <https://www.un.org/en/about-us/udhr/history-of-the-declaration#:~:text=By%20its%20resolution%20217%20A,the%20vote%20but%20none%20dissenting.> accessed 27 February 2025.

[66] Adopted by GA resolution 2200A(XXI), 16 December 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> accessed 27 February 2025.

[67] Ibid.

[68] GA resolution 640 (VII), 31 March 1953, <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVI-1&chapter=16&clang=_en > accessed 25 February 2025.

[69] Adopted by GA resolution 1040 (XI)1 of 29 January 1957. It entered into force 11 August 1958, in accordance with article 6, <https://www.un.org/womenwatch/directory/convention_nationality_of_married_11047.htm> accessed 2 March 2025.

Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, [70] the CEDAW,[71] Beijing Platform for Action (BPA), SDGs, [72] the Convention on the Elimination of All Forms of Racial Discrimination (CEFRD), [73] Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT),[74] and the Convention on the Rights of the Child (CRC).[75] While some of these instruments protect against harassment and violence, others entrench equality and protect against discrimination. Importantly, these instruments are not mutually exclusive and together, they can strategically protect women from harassment, violence, and discrimination as they engage in intra-African trade. as well as several state laws. Nigeria must necessarily leverage these provisions alongside domestic laws and policies for a more effective protection and inclusivity.

6. INDICATORS OF A RESPONSIVE IMPLEMENTATION LEGAL FRAMEWORK

As mentioned in the introductory part of this paper, the AfCFTA Agreement is designed as a trade, industrialisation, and development tool. Therefore, a responsive implementation legal framework for the AfCFTA Protocol on Women and Youth that is gender-responsive intended to reduce or eliminate disparity, empower, create an enabling business environment, provide access to finance and digital technology, and enhance the capacity of women to increase productivity and effectively participate in trade under the AfCFTA. As we have seen from the analysis in the National Gender Policy, gender gaps exist across all the spectrum of empowerment. Therefore, recreating a responsive implementation environment involves closing these gaps and adopting a more coherent approach to addressing challenges. Therefore, a responsive implementation for the Protocol should address the challenges by the largest group of cross-border traders in Nigeria, which are the women ICBTs. The framework should do the following:

- Remove barriers to access to finance.
- Make their business environment easier to operate in by making compliance processes and procedures simpler and easier to navigate.

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70 Adopted by GA resolution 1763 A(XVII) of 7 November 1962, <https://treaties.un.org/doc/treaties/1964/12/19641223%2002-15%20am/ch_xvi_3p.pdf> accessed 2 March 2025.

71 Adopted on 18 December 1979 by the UN General Assembly. It entered into force on 3 September 1981 per Article 27 (1) <https://www.un.org/womenwatch/daw/cedaw/> accessed 15 February 2025.

72 United Nations, "The 17 Goals" <https://sdgs.un.org/goals> accessed 15 February 2025.

73 GA resolution 39/46 of 10 December 1984, the <https://legal.un.org/avl/ha/catcidtp/catcidtp.html> accessed 30 January 2025.

74 Adopted by GA resolution 2106(XX), 21 December 1965, <https://treaties.un.org/doc/Publication/UNTS/Volume%20660/volume-660-I-9464-English.pdf > accessed 30 January 2025

75 The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of November 20, 1989. It entered into force on September 2, 1990, in accordance with Article 49.

- Address infrastructural challenges that create barriers to trade; and
- Align the domestic implementation framework with the provisions of AfCFTA Agreement's Protocol on Women, and all other protocols to ensure efficient and sustainable increase in the participation of Nigerian women in intra-African trade.

7. OBSERVATIONS AND RECOMMENDATIONS

In the course of this paper, several observations have been, the basis upon which the following recommendations are made.

i. *Provision of a clear coordination framework and mechanism*- It is incontrovertible that Nigeria's approach to gender mainstreaming is indeed fragmented. This has possibly impacted the effective and successful implementation of some inclusivity initiatives and measures. In this regard, the AfCFTA has a Coordination Office whose mandate requires it to coordinate and facilitate the implementation of the Agreement. It can coordinate mainstreaming of required interventions and initiatives by mobilising critical and strategic stakeholders on a need's basis.

ii. *Enhanced access to finance*- This requires multifaceted approach given the diverse nature of challenges that need to be addressed. Nevertheless, it should be pointed out here that the challenges to be addressed relate to those hampering the ability of women to participate in trade. For example, it has been recognised that poor digital skills and lack of access to digital tools and technologies such as mobile phones limit access of businesses to financial products and services. While the Secured transaction Act brings them closer to finance, addressing the technology and tools gap will provide access to the products and services. Financial literacy also plays a role in this regard. Most of those involved in ICBT sell food and operate at the lower level of the agricultural value chain. Nigeria already has a Strategy for Leveraging Agent Networks for Women's Financial Inclusion. This can be explored to bring financial products and services closer to women cross-border traders.

iii. *Imperatives of skills acquisition and capacity building*- Regarding capacity building, various traders have different needs and require different levels of skills and capacity building. In addition to those provided by SMEDAN, traders may require specific tailored training to navigate the intra-African market. The framework should capture and provide for that.

iv. *Provision of adequate export trade and infrastructure*- The framework should address all supporting infrastructure. For instance, it has been observed that women operate across borders sometimes with no shelter and limited sanitary facilities. It should also coordinate the relevant agencies responsible for

ensuring these facilities are in place to coordinate the strategically procure and deploy export trade facilitation infrastructure to the correct locations.

v. *The need to simplify processes and procedures*- low literacy level has been identified as a barrier to compliance with procedures. Therefore, simplified trade regime is a commendable tool, and the domestic legal framework should ensure that simplification of processes and procedures occurs from the initial stage, and not just at the point of export/crossing. For instance, for MSMEs who seek to export consumable goods, the compliance procedures for National Agency for Food and Drug Administration (NAFDAC),[76] for example should be simplified for ease and sustainability of compliance.

8. CONCLUSION

As the largest population of informal traders in Africa, women face numerous challenges and barriers that prevent them from enjoying substantial benefit from intra-Africa trade. The Protocol on Women in Trade is adopted to address those challenges and remove barriers preventing women from trading across Africa. The success of the Protocol depends highly on sustainable implementation at national level. State parties are expected to effectively align their domestic laws, policies and regulations with the Protocol. The implementation framework in Nigeria is fragmented, this need to be streamlined for effective coordination and implementation. That notwithstanding, there are legal instruments that are responsive and provide support to the process. While some of the instruments are supportive, other legislations may require amendment, repeal or enactment to address some gaps. Doing so will create the necessary coherence that will create a responsive and enabling legal framework for the implementation of the Protocol in Nigeria in a manner that will enable the country to realise the potential of the AfCFTA. This will, indeed be beneficial to Nigerian Women in trade.

[76] More information on the activities of NAFDAC is available at, <https://nafdac.gov.ng> accessed 3 March 2025.