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## The African Continental Free Trade Area agreement: A catalyst for human rights

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**Summary:** *The African Continental Free Trade Area agreement marks a transformative step in Africa's pursuit of economic integration. While primarily an economic instrument, this article argues that AfCFTA holds underutilised potential as a tool for reinforcing democratic governance, particularly in addressing the persistent problem of unconstitutional changes of government. The article examines how AfCFTA's legally binding trade architecture and reciprocal market-access commitments can introduce material accountability into Africa's human rights ecosystem, where the enforcement of anti-coup norms has often been undermined by political pragmatism and geopolitical interests. Drawing on the African Union's existing but inconsistently enforced legal framework – including the African Charter on Democracy, Elections and Governance – and lessons from other regional bodies such as the European Union, the article contends that AfCFTA can be strategically aligned to incentivise compliance with democratic norms. It concludes by proposing mechanisms for integrating democratic conditionalities into the implementation of AfCFTA, with the aim of shifting the cost-benefit calculus for coup perpetrators and enabling a rules-based order that strengthens constitutional governance across the continent.*

**Key words:** *AfCFTA; economics; integration; human rights; trade*

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# 1 Introduction

The African Continental Free Trade Area (AfCFTA), though principally an economic integration initiative, holds underappreciated potential as a mechanism for enforcing key human rights norms – most critically, the prohibition on unconstitutional changes of government, including military *coups*.<sup>1</sup> Despite near-universal ratification of the African Charter on Human and Peoples' Rights (African Charter),<sup>2</sup> the continent continues to witness recurrent *coups* and the erosion of democratic norms, exposing the limits of current human rights enforcement mechanisms.<sup>3</sup> This article contends that AfCFTA, by virtue of its economic leverage and potential for rule-based governance, can serve as a catalytic force in promoting compliance with democratic norms, particularly by creating material consequences for states that come to power through unconstitutional means.

The foundational stance of the African Union (AU) against unconstitutional changes of government, articulated through commendable instruments such as the Lomé Declaration 2000<sup>4</sup> and the African Charter on Democracy, Elections and Governance 2007 (African Democracy Charter),<sup>5</sup> reflects a clear normative commitment to democratic governance.<sup>6</sup> However, despite their aspirational value, these instruments face significant challenges in practice. Compliance remains largely voluntary, and enforcement mechanisms are weak. Institutions charged with upholding these norms – such as the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court) – while normatively robust, are constrained by limited jurisdiction, political resistance and a lack of binding authority, undermining their ability to effect meaningful accountability.<sup>7</sup>

1 YA Debrah and others 'The African Continental Free Trade Area (AfCFTA): Taking stock and looking ahead for international business research' (2024) 30 *Journal of International Management* 101120.

2 African Charter on Human and Peoples' Rights (African Charter).

3 C Heyns 'The African regional human rights system: In need of reform?' (2004) 4 *African Human Rights Law Journal* 155; CA Odinkalu 'Analysis of paralysis or paralysis by analysis? Implementing economic, social, and cultural rights under the African Charter on Human and Peoples' Rights' (2001) 23 *Human Rights Quarterly* 327.

4 African Union Declaration AHG/Decl.2 (XXXVI), <http://archives.au.int/handle/123456789/571> (accessed 15 April 2025) (Lomé Declaration).

5 African Union African Charter on Democracy, Elections and Governance <https://au.int/en/treaties/african-charter-democracy-elections-and-governance> (accessed 15 April 2025) (African Democracy Charter).

6 M Ndulo 'The prohibition of unconstitutional change of government' in A Yusuf & F Ouguerouz (eds) *The African Union legal and institutional framework: A manual on the Pan-African Organisation* (2014) 251-274.

7 C Nyinevi & R Fosu 'The African Union's prohibition of unconstitutional changes of government: An uneasy choice between fidelity to principle and pragmatism' (2023) 16 *African Security* 95-119.

This article contends that AfCFTA, though not conceived as a human rights instrument, offers a novel and underexploited avenue for operationalising human rights enforcement through economic integration. By establishing a binding regime of reciprocal trade obligations among states, AfCFTA generates a framework of economic interdependence that can be tactically leveraged to promote compliance with fundamental democratic norms – particularly the prohibition on unconstitutional changes of government. In a context where traditional enforcement mechanisms under the African Charter system have been normatively robust but materially ineffectual, AfCFTA introduces the possibility of embedding conditionalities with tangible economic consequences. This potential is not merely theoretical. Comparative examples – particularly the European Union (EU)’s application of human rights conditionalities toward both external partners and internal member states – demonstrate that embedding such obligations in trade frameworks can shift compliance from a moral imperative to a strategic necessity.<sup>8</sup>

The article unfolds in three parts. First, it interrogates the nexus between unconstitutional changes of government and systemic human rights violations, arguing that *coups* are both symptomatic of governance failure and catalytic of widespread abuse. Second, it critiques the structural and legal limitations of Africa’s current human rights machinery, particularly its inability to deter or redress *coups* in a consistent and effective manner. Third, it explores how AfCFTA can serve as a complementary enforcement mechanism – specifically by integrating human rights compliance into its trade governance regime.

In doing so, the article reconceptualises AfCFTA not as a panacea, but as a critical – if currently overlooked – instrument in Africa’s evolving governance infrastructure. Its real promise lies not merely in trade liberalisation, but in the potential to construct an enforceable, rule-based continental order where economic integration serves as a vehicle for democratic consolidation and human rights accountability.

## 2 Human rights challenges in Africa

Africa’s post-independence human rights landscape continues to be destabilised by unconstitutional changes of government, particularly military *coups*, which represent both a breakdown of democratic

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8 L Bartels *Human rights conditionality in the EU’s international agreements* (2005).

order and a recurrent trigger for systemic rights violations.<sup>9</sup> Between the 1960s and 2012, African states experienced over 200 military *coups*.<sup>10</sup> While the frequency of military *coups* in Africa appeared to decline in the early 2000s, with some analysts suggesting that *coups* were going out of fashion, recent years have witnessed a troubling resurgence of this phenomenon.<sup>11</sup> Since 2012, several African countries, including Mali, Guinea, Burkina Faso, Sudan and Chad, have experienced military takeovers, underscoring the persistent failure of regional enforcement mechanisms to stem this tide.<sup>12</sup>

The recent upsurge in *coups* can be attributed to a combination of structural factors, many of which echo the causes of earlier *coups*. Persistent economic challenges, including unemployment, poverty and inequality, have fuelled public discontent with civilian governments, which are often perceived as corrupt and ineffective.<sup>13</sup> Additionally, in some cases the military has stepped in during periods of political deadlock or to depose leaders who are seen as clinging to power through undemocratic means, such as the manipulation of electoral processes or the extension of presidential term limits.<sup>14</sup> Yet, these rationalisations frequently mask power grabs that exacerbate instability and suppress accountability.<sup>15</sup>

Moreover, the AU's inconsistent responses to *coups* may have encouraged some military leaders. While there have been strong condemnations and sanctions in some instances, in other cases the responses have been more muted, particularly when the new military rulers have promised to restore civilian rule through elections.<sup>16</sup> Evidence reveals that military regimes, once in power,

9 See African Union Peace and Security Council Communiqués 2001–2025, <http://www.peaceau.org/en/resource/90-organ-peace-security-council> (accessed 15 April 2025).

10 See H Barka & M Ncube 'Political fragility in Africa: Are military *coups d'état* a never ending phenomenon?' 2012, [https://www.afdb.org/sites/default/files/documents/publications/economic\\_briefpolitical\\_fragility\\_in\\_africa\\_are\\_military\\_coups\\_detat\\_a\\_never\\_ending\\_phenomenon.pdf](https://www.afdb.org/sites/default/files/documents/publications/economic_briefpolitical_fragility_in_africa_are_military_coups_detat_a_never_ending_phenomenon.pdf) (accessed 9 September 2024); H Onapajo & D Babalola 'ECOWAS and the challenge of preventing a resurgence of *coups d'état* in West Africa: An assessment of the "zero tolerance" policy' (2024) 31 *South African Journal of International Affairs* 23.

11 See M Duzor & B Williamson 'Coups in Africa' *Voice of America* 2 February 2022.

12 Onapajo & Babalola (n 10).

13 See MD Suleiman 'Towards a better understanding of the underlying conditions of *coups* in Africa' E-International Relations 2021, <https://www.e-ir.info/2021/09/24/towards-a-better-understanding-of-the-underlying-conditions-of-coups-in-africa/> (accessed 9 September 2024).

14 See S Wiking *Military coups in sub-Saharan Africa: How to justify illegal assumptions of power* (1983); S Decalo 'Military *coups* and military regimes in Africa' (1973) 11 *Journal of Modern African Studies* 105.

15 FN Ikome 'Good *coups* and bad *coups*: The limits of the African Union's injunction on unconstitutional changes of power in Africa' Occasional Paper 55, Institute for Global Dialogue 2007 5-7.

16 PS Handy & F Djiolo 'AU balancing act on Chad's *coup* sets a disturbing precedent' ISS 2 June 2021, <https://issafrica.org/iss-today/au-balancing-act-on->

tend to dismantle democratic safeguards and consolidate authority through coercion rather than reform.<sup>17</sup> One of the most egregious violations is the arbitrary detention of political opponents, activists, and ordinary citizens, who are often arrested without due process.<sup>18</sup> These unlawful detentions serve as a tool for regimes to silence dissent and eliminate perceived threats. Additionally, extrajudicial killings are a frequent and alarming consequence, where military or rebel forces execute individuals without legal justification or trial.<sup>19</sup> Those targeted are typically seen as threats to the new regime, including dissidents, opposition leaders and activists.

Furthermore, *coups* typically result in a systematic suppression of fundamental freedoms.<sup>20</sup> Freedoms of speech, assembly and the press are severely curtailed as the new rulers seek to stifle opposition.<sup>21</sup> Media outlets are often shut down or taken over, while journalists and human rights defenders face harassment, imprisonment, or worse.<sup>22</sup> Public protests are violently suppressed, with security forces using excessive force to disperse gatherings. In many instances, regimes impose internet blackouts and restrict communications to prevent the organisation of resistance and limit the spread of dissenting information.

The societal costs of *coups* extend beyond civil and political rights. The disruption of governance leads to a collapse in the delivery of essential services, such as health care, education and public welfare.<sup>23</sup> Vulnerable groups, especially women and children, face increased risks: Women experience heightened levels of gender-based violence and exclusion from public life, while children are often displaced, deprived of education or conscripted into armed conflict.<sup>24</sup> *Coups*,

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chads-coup-sets-a-disturbing-precedent (accessed 14 August 2024); PS Handy & F Djilo 'Niger: Another symptom of Africa's weak crisis-response capacity' 2023, <https://issafrica.org/iss-today/niger-another-symptom-of-africas-weak-crisis-response-capacity> (accessed 28 August 2024).

17 Human Rights Watch Report 2015, <https://www.hrw.org/report/2015/09/17/state-fear/arbitrary-arrests-torture-and-killings> (accessed 10 August 2024); Human Rights Watch Report 2024, <https://www.hrw.org/report/2024/05/09/massalit-will-not-come-home/ethnic-cleansing-and-crimes-against-humanity-el> (accessed 10 August 2024).

18 US Embassy Conakry Report on Human Rights in Guinea 2023, <https://gn.usembassy.gov/2023-report-on-human-rights-in-guinea/> (accessed 15 August 2024).

19 I Ngima & K Kasambala *A surge of military coups in Africa threatens human rights and the rule of law* (2023).

20 As above.

21 As above.

22 J Conroy-Krutz 'The squeeze on African media freedom' (2020) 31 *Journal of Democracy* 96.

23 MO Oduoye and others 'Humanitarian crisis amid the military *coup* in Niger republic: What went wrong?' (2024) 12 *Health Science Reports* e2180.

24 Oduoye (n 23).

therefore, entrench multidimensional harm – legal, economic and social – which collectively degrade human security.<sup>25</sup>

These contemporary challenges cannot be divorced from Africa's historical context. The arbitrary borders imposed during colonial partition continue to fuel internal divisions and contestations over identity, power and resource distribution.<sup>26</sup> The absence of a shared national identity and the elite-driven nature of post-colonial state building have hindered the development of inclusive, resilient political communities.<sup>27</sup> Qobo notes that Africa's colonial disintegration obstructed the evolution of regionalism by comparison to Europe, where national identity consolidated integration efforts.<sup>28</sup> This fragmentation not only weakens internal cohesion but also provides fertile ground for military opportunism.<sup>29</sup>

The persistence of *coups* – and the ease with which military regimes often evade meaningful accountability – exposes the chronic enforcement deficits of Africa's normative human rights architecture. This article does not suggest that AfCFTA is a panacea for the enforcement of human rights in Africa, particularly in the context of unconstitutional changes of government. Rather, it explores the ways in which AfCFTA, as an economic integration mechanism with binding obligations, might serve as a complementary tool to Africa's existing human rights and governance architecture – one that is normatively rich but structurally and institutionally fragile. Any discussion of AfCFTA's potential, therefore, must begin with a critical assessment of the legal and institutional structures already in place for addressing human rights violations, particularly those linked to *coups* and other undemocratic seizures of power. The next part critically evaluates this normative architecture – its core instruments, institutional capacity and enforcement limitations – to determine whether it can effectively anchor, and be reinforced by, AfCFTA's trade-based mechanisms.

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25 As above.

26 See C Ake *Democracy and development in Africa* (2003); P Collier *Wars, guns, and votes, democracy in dangerous places* (2009); J Nwanegbo & J Odigbo 'Appraisal of the Arab Spring and democratisation project in the North Africa' (2012) 1 *ANSU Journal of Peace and Development Studies* 130.

27 Nwanegbo & Odigbo (n 26).

28 M Qobo 'The challenges of regional integration in Africa: In the context of globalisation and the prospects for a United States of Africa' (2007) 145 *ISS Paper*; F Fanon 'The trials and tribulations of national consciousness' (2017) 66 *New Agenda: South African Journal of Social and Economic Policy* 36.

29 See Ake (n 26); Collier (n 26); Nwanegbo & Odigbo (n 26).

### 3 Established structures for addressing human rights in Africa

Africa's human rights system is anchored in a broad constellation of instruments, institutions and principles. The African Charter on Human and Peoples' Rights (African Charter), established in 1981, is the foundational normative instrument for human rights protection in Africa.<sup>30</sup> The Charter is widely acknowledged for its distinctive and holistic approach to human rights, integrating civil and political rights, socio-economic and cultural rights, as well as collective rights and duties – an innovative 'three-in-one' model that has been celebrated as a pioneering framework within international human rights law.<sup>31</sup>

Articles 2 and 3 of the African Charter enshrine the principles of non-discrimination and equality before the law, ensuring that the rights and freedoms recognised in the document apply universally to all individuals, irrespective of distinctions such as race, ethnicity, gender, religion, political beliefs, social origin or other statuses.<sup>32</sup> The inclusion of 'other status' in these articles extends protections against discrimination to a wide array of marginalised groups, including those based on age, disability or sexual orientation.

The African Charter also enshrines fundamental rights such as the rights to life and personal integrity (article 4); dignity and freedom from slavery and torture (article 5); liberty and security of the person (article 6); the right to a fair trial (article 7); and freedoms of conscience, religion, expression and association (articles 8, 9 and 12).<sup>33</sup> The overarching objective of these guarantees is to safeguard

30 First Organisation of African Unity Ministerial Conference on Human Rights in Africa, 12-16 April 1999, Grand Bay, Mauritius, Grand Bay Declaration and Plan of Action, para 8 identifies the following as the causes of violations of human rights in Africa: (a) contemporary forms of slavery; (b) neo-colonialism, racism and religious intolerance; (c) poverty, disease, ignorance and illiteracy; (d) conflicts leading to refugee outflows and internal population displacement; (e) social dislocations which may arise from the implementation of certain aspects of structural adjustment programmes; (f) the debt problem; (g) mismanagement, bad governance and corruption; (h) lack of accountability in the management of public affairs; (i) monopoly in the exercise of power; (j) harmful traditional practices; (k) lack of independence of the judiciary; (l) lack of independent human rights institutions; (m) lack of freedom of the press and association; (n) environmental degradation; (o) non-compliance with the provisions of the OAU Charter on territorial integrity and inviolability of colonial borders and the right to self-determination; (p) unconstitutional changes of governments; (q) terrorism; (r) nepotism; and (s) exploitation of ethnicity.

31 C Heyns 'Civil and political rights in the African Charter' in M Evans & R Murray (eds) *The African Charter on Human and Peoples' Rights: The system in practice 1986-2000* (2002) 137.

32 Art 2 & 3 African Charter.

33 African Charter on Human and Peoples' Rights.

individuals in Africa from institutional, political and social conditions that threaten their liberties, physical integrity and fundamental freedoms. These protections extend to safeguarding individuals from extrajudicial and arbitrary killings, unlawful detention, torture and other forms of physical or psychological abuse that compromise human security. These violations have frequently been both the cause and consequence of *coups*, highlighting the urgent need for a legal framework that protects citizens from such abuses.<sup>34</sup>

Moreover, the African Charter's establishment of a normative and institutional framework for human rights protection aims to promote peace and security across the continent. It upholds due process, democratic principles and the active participation of citizens in political processes – cornerstones for addressing Africa's historical challenges regarding governance and human rights. By reinforcing these principles, the African Charter provides a critical foundation for ending human rights violations and building a more just and equitable society.<sup>35</sup> Yet, despite this expansive normative content, implementation of the Charter has been inconsistent.<sup>36</sup> The African Commission is the treaty body responsible for monitoring the implementation of the African Charter. Established in 1987, the African Commission is mandated to oversee states' compliance with the African Charter and to ensure the protection of human and peoples' rights across the continent.<sup>37</sup> Despite its efforts, the African Commission has faced significant challenges.<sup>38</sup>

One of the key issues with the African Charter is the presence of 'claw-back clauses', which allow states to limit the exercise of certain rights based on national law.<sup>39</sup> These clauses have been widely criticised for undermining the effectiveness of the African Charter and providing states with broad discretion to restrict fundamental rights.<sup>40</sup> The African Commission has attempted to address these issues through its interpretation of the Charter, emphasising that national laws must not contravene international human rights standards. Despite this, the African Commission's lack of binding enforcement power and

34 See K Kufuor *The African human rights system: Origin and evolution* (2010).

35 S Adejumobi 'Citizenship, rights, and the problem of conflicts and civil wars in Africa' (2001) 23 *Human Rights Quarterly* 148.

36 R Murray 'The African Charter on Human and People's Rights 1987-2000: An overview of its prospects and problems' (2001) 1 *African Human Rights Law Journal* 1.

37 Art 45 of the African Charter states the mandate of the African Commission.

38 Murray (n 36).

39 See E Ankumah *The African Commission on Human and Peoples' Rights: Practices and procedures* (1996); R Gittleman 'The African Charter on Human and Peoples' Rights: A legal analysis' (1981-1982) 22 *Virginia Journal of International Law* 667-714.

40 As above.



reliance on the goodwill of member states limit its effectiveness in addressing human rights violations.<sup>41</sup> Furthermore, the Commission is frequently under-resourced, impacting its ability to conduct thorough investigations and deliver timely decisions.<sup>42</sup>

The African Court, established to uphold the African Charter, continues to face structural and political obstacles.<sup>43</sup> As of 2024, only 34 AU member states have accepted its jurisdiction, and several states – such as Tanzania and Côte d'Ivoire – have withdrawn individual access after adverse rulings.<sup>44</sup> This reflects a persistent tension between sovereignty and regional accountability. Compounding this challenge is the widespread reluctance to ratify the Malabo Protocol (2014),<sup>45</sup> which seeks to transform the Court by adding an international criminal chamber with jurisdiction over serious crimes, including unconstitutional changes of government. Backed by a dedicated Office of the Prosecutor, the restructured Court – if operationalised – would represent a major step forward in addressing impunity and entrenching democratic norms across the continent.<sup>46</sup>

In parallel with its broader human rights enforcement framework, the AU has developed a robust normative and institutional regime specifically aimed at prohibiting unconstitutional changes of government.<sup>47</sup> Central to this architecture are the Lomé Declaration (2000)<sup>48</sup> and the African Democracy Charter (2007),<sup>49</sup> both of which give practical effect to article 30 of the AU Constitutive Act (2000) – the foundational provision that mandates the exclusion of any government that assumes power through unconstitutional means

41 See GL Neuman 'Bi-level remedies for human rights violations' (2014) 55 *Harvard International Law Journal* 323.

42 See RC Liwanga 'From commitment to compliance: Enforceability of remedial orders of African human rights bodies' (2015) 41 *Brooklyn Journal of International Law* 99; F Mattheis 'How to wield regional power from afar: A conceptual discussion illustrated by the case of France in Central Africa' (2022) 61 *International Politics* 145; F Söderbaum *Rethinking regionalism* (2016).

43 African Court on Human and Peoples' Rights *Welcome to the African Court*, <https://www.african-court.org/wpa/c/welcome-to-the-african-court/> (accessed 15 April 2025).

44 As above.

45 African Union Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol), <https://au.int/en/treaties/protocol-amendments-protocol-statute-african-court-justice-and-human-rights> (accessed 15 April 2025).

46 As above.

47 For full discussion, see Nyinevi & Fosu (n 7).

48 Lomé Declaration (n 4). The Lomé Declaration elaborated this by identifying military *coups*, mercenary interventions, armed rebellion and refusal to cede power after losing elections as forms of UCG.

49 Art 25(5) African Democracy Charter (n 5). The African Democracy Charter extended this definition to include 'constitutional *coups*', such as the manipulation of term limits – recognising subtler forms of authoritarian entrenchment.

from participating in AU activities.<sup>50</sup> These instruments not only affirm the AU's commitment to democratic governance but also provide a legal and institutional framework for sanctioning and deterring unconstitutional changes of government across the continent.

The African Democracy Charter strengthens enforcement by mandating the African Union Peace and Security Council (AUPSC)<sup>51</sup> to investigate unconstitutional changes of government and impose immediate suspension on offending states.<sup>52</sup> Importantly, such suspension does not relieve the state of its ongoing human rights obligations under AU law. The African Democracy Charter goes further by barring perpetrators from contesting transitional elections or holding public office – closing a common pathway to post-*coup* legitimisation.<sup>53</sup> The Charter empowers the AU Assembly to impose targeted sanctions, including personal and economic penalties.<sup>54</sup>

Crucially, the African Democracy Charter introduces the possibility of criminal accountability before a competent AU court.<sup>55</sup> The Charter also imposes binding duties on all AU member states to deny the recognition to governments formed through unconstitutional changes of government, to refuse sanctuary to perpetrators, and to ensure their prosecution or extradition.<sup>56</sup> If a member state is found to have supported or instigated an unconstitutional change of government in another, the AU Assembly is obligated under article 23 of the AU Constitutive Act to impose sanctions.<sup>57</sup>

Together, the AU Constitutive Act, the Lomé Declaration, the African Democracy Charter, the AUPSC Protocol and the Malabo Protocol form a normatively rich and legally integrated regime that aims to criminalise and deter unconstitutional changes of government. These instruments mark a decisive shift from the Organisation of African Unity (OAU)'s doctrine of non-interference toward a continental order based on democratic legitimacy and enforceable accountability.

50 African Union Constitutive Act of the African Union (2000), [https://au.int/sites/default/files/pages/34873-file-constitutiveact\\_en.pdf](https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf) (accessed 15 April 2025).

51 African Union Peace and Security Council, <https://au.int/en/psc> (accessed 15 April 2025).

52 Art 25 African Democracy Charter.

53 Art 25(4) African Democracy Charter.

54 Art 25(7) African Democracy Charter.

55 Art 25(5) African Democracy Charter.

56 Art 25(8) African Democracy Charter.

57 Art 25(6) African Democracy Charter read with art 23 AU Constitutive Act (n 50).

In practice, the enforcement of the AU's anti-unconstitutional change of government framework has been marred by selective application and strategic ambiguity.<sup>58</sup> These inconsistencies are not merely the result of legal vagueness of what constitutes an unconstitutional change of government, but reflect a strategic calculus driven by regime stability and, critically, external economic and geopolitical interests.<sup>59</sup>

Egypt's 2014 election under Abdel Fattah el-Sisi, following a military *coup*, illustrates this.<sup>60</sup> Despite clear obligations under the AU Constitutive Act and the 2010 Assembly decision on unconstitutional changes of government, Egypt faced no sanctions – its backing by powerful external actors likely insulating it from censure.<sup>61</sup> Similar dynamics were at play in Zimbabwe (2017), where the military's removal of Robert Mugabe was not classified as a *coup*, allowing Emmerson Mnangagwa to assume power through a civilian transition.<sup>62</sup> In this instance, the AU's cautious response was shaped not only by broader regional dynamics but also by the acquiescence of South Africa – a dominant economic and political actor within both the Southern African Development Community (SADC) and the AU, and a longstanding ally of the ruling ZANU-PF.<sup>63</sup> While other geopolitical considerations played a role, South Africa's influential position and strategic interest in Zimbabwe were key in tempering the AU's stance.<sup>64</sup> In Chad (2021), following the death of President Idriss Déby, the AU endorsed a military-led transitional government, largely in deference to France's security interests in the Sahel.<sup>65</sup>

58 See Nyinevi & Fosu (n 7).

59 L Nathan 'A survey of mediation in African *coups*' African Peacebuilding Network Working Paper 15 Social Science Research Council 2017, [https://s3.amazonaws.com/ssrc-cdn1/crmuploads/new\\_publication\\_3/a-survey-of-mediation-in-african-coups.pdf](https://s3.amazonaws.com/ssrc-cdn1/crmuploads/new_publication_3/a-survey-of-mediation-in-african-coups.pdf) (accessed 15 April 2025).

60 R Bush & E Greco 'Egypt under military rule' (2019) 46 *Review of African Political Economy* 529-534.

61 African Union AU High-Level Panel for Egypt Report 16 June 2014, <https://www.peaceau.org/uploads/auhpe-report-egypt-16-06-2014.pdf> (accessed 15 April 2025).

62 J Burke 'Zimbabwe's strange crisis is a very modern kind of *coup*' *The Guardian* 21 November 2017, <https://www.theguardian.com/world/2017/nov/21/zimbabwe-strange-crisis-is-a-very-modern-kind-of-coup> (accessed 15 April 2025); M Phakathi 'An analysis of the responses of the African Union to the *coup* in Burkina Faso (2015) and Zimbabwe (2017)' (2018) 7 *Journal of African Union Studies* 129-145, <https://www.jstor.org/stable/26890368> (accessed 15 April 2025).

63 LE Asuelime 'A *coup* or not a *coup*: That is the question in Zimbabwe' (2018) 5 *Journal of African Foreign Affairs* 5-24, <https://www.jstor.org/stable/26664049> (accessed 16 April 2025); BM Tendi *The overthrow of Robert Mugabe: Gender, coups, and diplomats* (2025).

64 African Union 'Statement by the Chairperson of the African Union Commission on the situation in Zimbabwe', <https://www.peaceau.org/uploads/statement-by-the-chairperson-of-auc-on-zimbabwe-ff.pdf> (accessed 16 April 2025).

65 African Union Peace and Security Council Communiqué of the 993rd PSC Meeting on Chad 22 April 2021, <https://www.peaceau.org/uploads/eng->

These cases reveal a consistent pattern of pragmatic exceptionalism, where the AU's enforcement of its anti-unconstitutional change of government framework is routinely subordinated to political and economic considerations.<sup>66</sup> This selective application not only undermines the AU's normative credibility but also lays bare the structural fragility of its human rights enforcement framework – one increasingly shaped not by the nature of the violation, but by the identity and influence of the violator. Susceptible to both internal and external leverage, the system often reflects political expediency rather than principled accountability, weakening its ability to deter or redress unconstitutional governance. As this article argues, closing the enforcement gap requires embedding democratic conditionalities into binding and significant economic instruments such as AfCFTA – where continued access to trade benefits is explicitly tied to a state's adherence to constitutional norms and democratic legitimacy.

However, impunity for unconstitutional changes of government is not driven solely by global geopolitical interests, but is deeply entrenched in the political economy of African regionalism. Powerful states within the AU, particularly those with substantial economic or diplomatic influence, frequently shape institutional responses to shield allies and maintain regional order on their own terms. These intra-African asymmetries complicate the narrative of 'external interference' and reveal that enforcement failures often stem from internal political bargains.

This has critical implications for AfCFTA's potential as an accountability mechanism. While it introduces the prospect of material consequences through trade-based conditionalities, it is not immune to the same political distortions that have undermined other AU instruments. The influence of dominant economies – such as South Africa – within AfCFTA could similarly skew enforcement in favour of strategic interests, diluting its integrity.<sup>67</sup>

Compounding these challenges is the AU Peace and Security Council's compromised legitimacy, often populated by states with poor democratic records.<sup>68</sup> Its decisions are shaped less by principled enforcement than by political bargaining, favour-trading and alliance

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communiqué-993rd-psc-meeting-on-chad-22-april-2021-2.pdf (accessed 16 April 2025); Handy & Djilo (n 16).

66 A Mangu 'The role of the African Union and regional economic communities in the implementation of the African Charter on Democracy, Elections and Governance' (2018) 5 *African Journal of Democracy and Governance* 125, 126.

67 C Alden & G le Pere 'South Africa in Africa: Bound to lead?' (2009) 36 *Politikon: South African Journal of Political Studies* 145-169.

68 See Nyinevi & Fosu (n 7).

banking, thus undermining its credibility. The persistent failure to ratify the Malabo Protocol, which would enable individual criminal accountability for *coup* leaders, reflects this deeper moral vacuum and entrenched resistance to any consequential oversight.

In sum, while the AU's normative framework on unconstitutional changes of government is legally sophisticated, it is functionally constrained by internal power dynamics, vague standards and selective enforcement. Unless these structural distortions are addressed, the regime will remain ill-equipped to deter democratic backsliding or uphold constitutional rule.

As the following parts will illustrate, AfCFTA's legally binding economic framework presents a promising, though largely untapped, opportunity to embed accountability into Africa's governance landscape by imposing tangible economic consequences for democratic violations, particularly where political mechanisms have proven ineffective. While the idea of leveraging regional integration to uphold democratic norms is not unprecedented, past efforts by other African regional blocs have been hampered by deep structural and political challenges. The next part critically examines these historical shortcomings to assess the locality of the failures.

#### **4 Challenges and historical shortcomings of African regional integration mechanisms**

The vision for regional integration in Africa dates back to the formation of the OAU in 1963, with the goal of fostering unity and cooperation among newly independent African states. However, it was not until the early 1980s that this vision gained meaningful momentum. A significant milestone occurred in July 1991 with the adoption of the Abuja Treaty, which proposed a phased approach to achieving regional integration through the creation of regional economic communities (RECs).<sup>69</sup> The RECs were tasked with facilitating the gradual integration of their respective regions through the establishment of free trade areas (FTAs), customs unions, common markets and, eventually, monetary unions. By the early 2000s, eight major RECs were actively pursuing these objectives: SADC; East African Community (EAC); the Common Market for Eastern and Southern Africa (COMESA); the Economic Community

<sup>69</sup> See E Aniche 'Pan-Africanism and regionalism in Africa: The journey so far' in S Oloruntoba (ed) *Pan-Africanism, regional integration and development in Africa* (2020) 6-19; Y Tandon 'Reflections on African renaissance and the Lagos Plan of Action' Paper presented at a conference held in Oxford, 8 February 2016.

of West African States (ECOWAS); the Economic Community of Central African States (ECCAS); the Intergovernmental Authority on Development (IGAD); the Arab Maghreb Union (AMU); and the Community of Sahel-Saharan States (CEN-SAD).<sup>70</sup>

Despite some progress, Africa's regional integration efforts have encountered several critical challenges. The first significant issue is the overlap of REC memberships. Many countries belong to multiple RECs, which has led to conflicting commitments, particularly in the formation of customs unions.<sup>71</sup> This has resulted in a complex web of overlapping regional agreements, often referred to as a 'spaghetti bowl' of integration efforts.<sup>72</sup> These overlaps have made it difficult for member states to fully commit to any single integration framework, undermining the effectiveness of trade liberalisation and economic cooperation in Africa.<sup>73</sup>

Moreover, the impact of the RECs on intra-African trade has been limited. Africa continues to trade very little with itself due to differences in trade regimes, restrictive customs procedures, administrative and bureaucratic barriers, limited productive capacity and inadequate trade-related infrastructure. These factors have significantly hindered the potential for regional integration to drive economic growth and development.<sup>74</sup>

To address some of these challenges, there have been efforts to consolidate RECs into larger, more cohesive entities.<sup>75</sup> A notable example is the Tri-Partite Free Trade Agreement (TFTA), which was

70 See S Karingi & W Davis *Towards a transformative African integration process: Rethinking the conventional approaches* (2016); E Aniche & V Ukaegbu 'Structural dependence, vertical integration and regional economic cooperation in Africa: A study of Southern African Development Community' (2016) 8 *Africa Review* 108.

71 E Aniche 'The "calculus" of integration or differentiation in Africa: Post-neo-functionalism and the future of African regional economic communities (RECs)' (2015) 36 *International Affairs and Global Strategy* 41.

72 ET Aniche 'From pan-Africanism to African regionalism: A chronicle' (2020) 79 *African Studies* 70.

73 D Luke & Z Mabuza 'State of play in the Tripartite Free Trade Area Negotiations' Paper prepared for presentation at a regional forum on Developmental Regionalism, Peace and Economic Transformation in Southern Africa, organised by ECA-SRO-SA and APN-SSRC in collaboration with the SADC Secretariat and hosted by the government of the Kingdom of Swaziland from 28 to 30 September 2016, Ezulwini, Swaziland, 2016; B Vickers 'Towards a trade policy for development: The political economy of South Africa's external trade, 1994-2014' (2015) 36 *Strategic Review for Southern Africa* 57.

74 See African Development Bank Group *Addressing regional integration challenges in Africa: Learning from the past* (2019).

75 See African Union 'Agenda 2063. The Africa we want' Final Edition April 2015, <http://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf> (accessed 10 July 2024); a vision for Africa's intra-African trade levels growing from less than 12% to 50% by 2045.

negotiated by SADC, EAC and COMESA, and signed in 2015.<sup>76</sup> This agreement, covering 26 member states with a combined population of over 600 million and a gross domestic product (GDP) of \$1 trillion, laid the groundwork for the broader AfCFTA.<sup>77</sup> However, while the TFTA represents an important precursor to AfCFTA and has only recently come into force, its early implementation has encountered the same old challenges that will serve to delay the realisation of its full objectives.

In addition to economic integration, African regional bodies have faced political and security challenges. For example, ECOWAS, initially established as an economic project, gradually expanded its mandate into political and security affairs by the 1990s.<sup>78</sup> In response to the political and security crises in West Africa, ECOWAS became the first African regional organisation to abandon the principle of non-interference in member states' domestic affairs. This shift allowed ECOWAS to play a more active role in conflict resolution and democracy promotion, notably through the creation of the ECOWAS Monitoring Group (ECOMOG), which was instrumental in stabilising countries such as Liberia and Sierra Leone.<sup>79</sup>

Despite these efforts, the enforcement of political standards, including democracy and good governance, has been inconsistent.<sup>80</sup> While ECOWAS has a record of supporting democratic developments and sanctioning authoritarian backsliding, its ability to enforce these standards has been heavily reliant on the contributions of Nigeria, which has shouldered the bulk of the financial and military burden.<sup>81</sup> Moreover, the region has struggled with enforcing sanctions on non-compliant countries, limiting the effectiveness of its democracy and governance protocols.

One key initiative to address political instability was the establishment of the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security in 1999, followed by the 2001 supplementary Protocol on Democracy and

76 Vickers (n 73).

77 As above.

78 See M Hulse 'Actorness beyond the European Union: Comparing the international trade actorness of SADC and ECOWAS' (2014) 52 *Journal of Common Market Studies* 547.

79 See SO Olarunjoba 'ECOWAS and regional integration in West Africa' (2016) 14 *History Compass* 295.

80 See V Adetula 'ECOWAS and the challenge of integration in West Africa' in J Ogunwu & W Alli (eds) *ECOWAS: Milestones in regional integration* (2009) 15.

81 See O Ogunnubi & U Okeke-Uzodike 'Can Nigeria be Africa's hegemon?' (2016) 25 *African Security Review* 110; E Lopez-Lucia 'Regional powers and regional security governance: An interpretive perspective on the policies of Nigeria and Brazil' (2015) 29 *International Relations* 348.



Good Governance.<sup>82</sup> This Protocol explicitly declared 'zero tolerance for power obtained or maintained by unconstitutional means', giving ECOWAS the authority to impose sanctions on member states that violate democratic principles.<sup>83</sup> However, the enforcement of these measures has been inconsistent, and the regional organisation continues to face challenges in maintaining democratic stability across its member states. Without sufficient resources and political will from member states, the Court's ability to hold governments accountable for human rights abuses has been restricted.

In summary, while African regional mechanisms, such as RECs and ECOWAS, have made some progress toward economic and political integration, they continue to face significant challenges. Overlapping memberships, limited trade integration, inconsistent enforcement of political standards and resource constraints have all contributed to the limited effectiveness of these mechanisms. Brown and Harman sum up African agency, or rather the lack thereof in this context, as

the ways in which Africa's political, economic, social and security actors can and do exert influence both on the continent and in global politics, as opposed to simply being passive targets or victims of other actions, is an effect not only of the continent's regional powers but also of its developing state and non-state network.<sup>84</sup>

In this context, AfCFTA stands as one of the most ambitious initiatives undertaken by the AU, aiming to create the largest free trade area in the world by the number of participating countries. AfCFTA was established, with 49 out of 55 African states signing the framework during the thirty-first AU summit in 2018.<sup>85</sup> In 2022 the AfCFTA Secretariat launched the AfCFTA Guided Trade Initiative (GTI), enabling commercially meaningful trade for eight participating countries as a pilot to test the operational, institutional, legal and trade policy framework of AfCFTA.<sup>86</sup> As of January 2024, 12 state parties have finalised the necessary legal modalities to commence trade under the GTI.<sup>87</sup>

82 Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.

83 See C Hartmann 'Governance transfer by the Economic Community of West African States (ECOWAS). A B2 case study report', SFB-Governance Working Paper Series 47, Collaborati.

84 See W Brown & S Harman (eds) *African agency in international politics* (2013) 1-3.

85 Africa Renewal 'Africa has phenomenal potential for intra-continental trade' United Nations: New York 2018, <https://www.un.org/africarenewal/magazine/august-november-2018/africa-has-phenomenal-potential-intra-continental-trade> (accessed 17 August 2024).

86 See 'Status of AfCFTA ratification' TRALAC, <https://www.tralac.org/resources/infographic/13795-status-of-afcfta-ratification.html> (accessed 30 August 2024).

87 As above.



Through the GTI, AfCTA seeks to address the historical challenges of overlapping regional agreements by gradually harmonising trade liberalisation efforts and improving competition, market access and resource allocation across Africa. As the continent deepens its integration through AfCFTA, overcoming these historical shortcomings will be crucial to unlocking its potential as a catalyst for human rights enforcement. The next part explores how AfCFTA can play this catalytic role in advancing human rights across Africa.

## 5 AfCFTA as a catalyst for human rights enforcement

While conceived primarily as a vehicle for economic integration, AfCTA holds significant – albeit underexplored – potential as a mechanism for human rights enforcement in Africa. Unlike traditional normative frameworks such as the African Charter and the African Democracy Charter – which rely on political will and lack binding enforcement mechanisms – AfCFTA establishes reciprocal economic obligations subject to legally enforceable dispute resolution. This institutional framework introduces a unique avenue to condition access to economic benefits on adherence to democratic norms and human rights standards, thereby infusing Africa’s governance regime with tangible, enforceable incentives.

Smaller RECs in Africa have struggled to leverage trade to uphold governance standards, largely due to their limited market size and geopolitical weight. They often are too fragmented to influence state behaviour in Africa, let alone command attention globally. AfCFTA, by contrast, brings together 55 AU member states into a single market of over 1,2 billion people, with a combined GDP estimated at \$2,5 trillion.<sup>88</sup> This initiative is vital, given Africa’s historically fragmented markets and low levels of intra-regional trade, with the continent’s share of global GDP and exports consistently below 3 per cent.<sup>89</sup> Projections suggest that by 2030 it could boost intra-African trade by over 50 per cent, leading to significant industrial growth, poverty reduction and increased employment opportunities, especially in sectors such as manufacturing and services.<sup>90</sup> Its primary objectives include eliminating tariffs on 90 per cent of goods, reducing non-tariff barriers and facilitating the free movement of goods, services

88 D Luke & L Sommer ‘The AfCFTA: Opportunities for industrialisation in the digital age’ (2018) 4 *Contemporary Issues in African Trade and Trade Finance* 26.

89 Global Economic Outlook *External Economic Relations Division* (2018); World Trade Organisation 2018. World Trade Organisation *WTO trade profiles* (2018).

90 World Bank *The African Continental Free Trade Area economic and distributional effects* (2020).

and investments.<sup>91</sup> This level of interdependence gives AfCFTA the potential to act as a powerful instrument for shaping state behaviour.

Although the AfCFTA agreement does not contain specific provisions dedicated to human rights enforcement, its Preamble affirms the importance of human rights, good governance and the rule of law. This symbolic inclusion, while not in itself operative, offers a legitimate interpretive basis for integrating human rights conditionalities into its implementation. This model of trade-based conditionality is not without precedent.

Since the early 1990s, the EU has systematically included human rights clauses in its trade agreements, making respect for human rights a fundamental condition of its trade partnerships.<sup>92</sup> These clauses allow the EU to suspend or terminate agreements in cases of serious human rights violations, providing a strong incentive for partner countries to adhere to human rights norms.<sup>93</sup>

The EU's Generalised Scheme of Preferences (GSP), for instance, offers developing countries reduced tariffs on exports to the EU, contingent on compliance with international conventions on human rights, labour rights, environmental protection and good governance.<sup>94</sup> Internally, these conditionalities aim to induce structural reforms in partner states by tying economic access to demonstrable improvements in governance and rights protections. Externally, they signal the EU's normative posture, asserting that trade partnerships are contingent upon adherence to foundational principles such as the rule of law, democratic accountability and

91 African Union Commission 'Agreement Establishing the African Continental Free Trade Area' 2019, <https://au.int/en/treaties/agreement-establishing-african-continental-free-trade-area#:~:text=Agreement%20Establishing%20the%20African%20Continental%20Free%20Trade%20Area%20%7C%20African%20Union> (accessed 3 August 2024).

92 European Commission Communication on the Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries COM(1995) 216 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1553006867419&uri=CELEX:51995DC0216> (accessed 16 April 2025); L Bartels 'Human rights and sustainable development obligations in EU free trade agreements' (2013) 40 *Legal Issues of Economic Integration* 297; L Bartels 'The European Parliament's role in relation to human rights in trade and investment agreements' *European Union* 2014, <http://www.europarl.europa.eu/activities/committees/studies.do?language=EN> (accessed 12 August 2024).

93 Bartels (n 8).

94 See Regulation (EU) 978/2012 of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) 732/2008 [2008] OJ L211/1; S Velluti 'The legal framework of the common commercial policy after the entry into force of the Treaty of Lisbon' in S Velluti & F Martines *The role of the EU in the promotion of human rights and international labour standards in its external relations* (2020) 39.

respect for fundamental freedoms. This strategy has produced mixed but instructive results.

The EU's suspension of Sri Lanka's GSP+ status in 2010 due to failures to uphold conventions against torture and violations of press freedom had immediate economic repercussions, particularly for the country's garment sector.<sup>95</sup> Similarly, the withdrawal of preferences from Myanmar in 1997 following forced labour abuses signalled the EU's willingness to use economic leverage to promote rights compliance.<sup>96</sup>

When Poland's Law and Justice (PiS) government established a disciplinary chamber that undermined judicial independence, the European Court of Justice imposed daily fines of €1 million in 2021.<sup>97</sup> After Warsaw refused to comply, the Commission activated its 'offset mechanism', deducting €320 million from Poland's share of the EU budget.<sup>98</sup> The General Court upheld this action in 2024, and it was only after Donald Tusk's new government pledged to restore judicial independence that the EU unfroze €137 billion in cohesion and recovery funds.<sup>99</sup> This case illustrates how trading blocs can leverage access to internal funding and trade preferences to enforce compliance – even among member states – demonstrating that economic integration can support democratic accountability.

In this context, AfCFTA's relevance is not incidental – it is strategic. AfCFTA's framework of economic interdependence offers a concrete mechanism to recalibrate the cost-benefit analysis that currently enables impunity for unconstitutional changes of government. *Coups* tend to thrive in contexts of institutional weakness, elite capture and economic marginalisation – conditions that persist in part because

95 See I Zamfir 'Human rights in EU trade agreements' July 2019, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS\\_BRI\(2019\)637975\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS_BRI(2019)637975_EN.pdf) (accessed 6 September 2024); T Kiyoyasu & T Kudo 'No 813 Re-instating the European Union's generalised system of preferences for Myanmar' (2021) *Institute of Developing Economies*, <http://hdl.handle.net/2344/00052052> (accessed 8 September 2024).

96 As above.

97 Case C-204/21 *Commission v Poland (Independence and Private Life of Judges)*, C-204/21; Order of the Vice-President of the Court of 14 July 2021 in Case C-204/21 R (see also Press Release 127/21); Order of the Vice-President of the Court of 27 October 2021 in Case C-204/21 R (see also Press Release 192/21) in *Judgment of the Court* (5 June 2023), <https://curia.europa.eu/jcms/upload/docs/application/pdf/2025-02/cp250012en.pdf> (accessed 16 April 2025).

98 Court of Justice of the European Union (n 97).

99 Human Rights Watch 'European Commission prematurely ends rule of law scrutiny of Poland' 30 May 2024, <https://www.hrw.org/news/2024/05/30/european-commission-prematurely-ends-rule-law-scrutiny-poland> (accessed 16 April 2025); European Commission 'Rule of law: Commission closes procedure under article 7(1) TEU for Poland' Press release 6 March 2024, [https://ec.europa.eu/commission/presscorner/detail/en/mex\\_24\\_2986](https://ec.europa.eu/commission/presscorner/detail/en/mex_24_2986) (accessed 16 April 2025).

violating democratic norms rarely incurs meaningful consequences. AfCFTA, by contrast, provides a legally binding trade architecture that can introduce such consequences in direct, measurable ways.

This can be achieved by conditioning access to key AfCFTA benefits – such as preferential tariffs, participation in the Guided Trade Initiative or access to investment facilitation mechanisms – upon compliance with democratic governance standards.<sup>100</sup> Member states that unconstitutionally seize power could face suspension from certain trade privileges, or targeted restrictions on economic cooperation under AfCFTA protocols. These trade-based penalties would have both symbolic and material impact, increasing the cost of political illegitimacy.

In addition to providing economic incentives, AfCFTA has the potential to strengthen the broader institutional ecosystem that supports human rights enforcement in Africa. Although the African Court operates independently of AfCFTA and is limited by the small number of states that have accepted its jurisdiction under article 34(6), AfCFTA can nonetheless enhance the Court's relevance and impact.<sup>101</sup> Integrating the African Court's jurisprudence into AfCFTA's compliance and enforcement mechanisms would significantly enhance the practical impact of its rulings. This kind of institutional alignment would mirror the EU's approach, where human rights obligations are embedded within broader architecture that also governs participation to ensure that legal and economic frameworks operate in tandem.<sup>102</sup> By linking adherence to judicial decisions with access to trade benefits, AfCFTA could transform the Court's authority into concrete leverage – reinforcing accountability and embedding rule of law compliance at the core of Africa's economic integration.

For AfCFTA, the implications are clear. By conditioning access to key trade benefits – such as preferential tariffs, participation in the Guided Trade Initiative and investment facilitation – upon compliance with democratic governance and human rights obligations, the agreement can serve as a meaningful deterrent against *coups* and authoritarian entrenchment. States that violate these norms could

100 See United Nations Economic Commission for Africa (UNECA) 'The guided trade initiative: Documenting and assessing the early experiences of trading under the AfCFTA', <https://www.uneca.org/the-guided-trade-initiative-documenting-and-assessing-the-early-experiences-of-trading-under-the> (accessed 16 April 2025).

101 See Resolution on a Human Rights-Based Approach to the Implementation and Monitoring of the African Continental Free Trade Area Agreement – ACHPR/Res.551 (LXXIV) (2023); Resolution ACHPR/Res 148(XLVI) (2009) and Resolution ACHPR/Res 367(LX) (2017).

102 See European Union Treaty on European Union art 7, [http://data.europa.eu/eli/treaty/teu\\_2012/art\\_7/oj](http://data.europa.eu/eli/treaty/teu_2012/art_7/oj) (accessed 16 April 2025).

face suspension from specific trade privileges or targeted economic restrictions under AfCFTA protocols. Such penalties would carry both symbolic and material consequences, recalibrating the cost of political illegitimacy.

While this article advances the conditionality model as a promising mechanism to uphold human rights, it also recognises its potential for disproportionate and unintended consequences.<sup>103</sup> That is, disparities in state capacity, economic resilience and political will among African states may result in uneven implementation and enforcement, potentially exacerbating regional inequalities. Moreover, the uneven distribution of economic power among African states presents both a challenge and a risk to AfCFTA's broader viability,<sup>104</sup> as seen in the suspension of GSP benefits for Zimbabwe in 2002, following allegations of human rights abuses under President Robert Mugabe. This had devastating economic effects – not on the political elite, but on small-scale farmers and vulnerable communities whose livelihoods depended on exports to the EU.<sup>105</sup> Similarly, the EU's conditionalities on Sudan in the early 2000s, ostensibly to pressure the government on human rights grounds, contributed to economic hardships that disproportionately impacted the civilian population rather than the political elite.<sup>106</sup> These examples illustrate the pitfalls of using economic leverage against human rights violators without sufficient regard for structural vulnerabilities. While the goal is to promote accountability, such measures can inadvertently harm the very populations they are meant to protect.<sup>107</sup>

For AfCFTA, these examples offer an important cautionary lesson. If trade-based conditionalities are to function as effective enforcement tools, they must be crafted with sensitivity to the economic and institutional fragility of member states. Without this, such measures risk deepening the very inequalities they aim to address – particularly on a continent marked by significant disparities in state capacity, economic resilience and political will.

103 S Velluti 'The promotion and integration of human rights in EU external trade relations' (2016) 32 *Utrecht Journal of International and European Law* 41.

104 CH Vhumunu 'The African Continental Free Trade Area. A new era for African integration or another grandiose razzmatazz?' (2020) 50 *Africa Insight* 134.

105 See J Grebe 'And they are still targeting: Assessing the effectiveness of targeted sanctions against Zimbabwe' (2010) 45 *Africa Spectrum* 3; Council Regulation (EC) 310/2002 of 18 February 2002 concerning certain restrictive measures in respect of Zimbabwe.

106 Human Rights Watch Human Rights Watch World Report 2000 – Sudan 1 December 1999, <https://www.refworld.org/reference/annualreport/hrw/1999/en/23061> (accessed 18 August 2024).

107 See A Douhan Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights in Zimbabwe United Nations 2022, <https://reliefweb.int/attachments/50c9b44b-201d-4527-943f-31e7b5f1577d/G2243707.pdf> (accessed 20 August 2024).

Therefore, for AfCFTA to advance human rights without reinforcing inequality, its conditionality framework must be not only principled and enforceable, but also equitable and context-sensitive. It must strike a balance between accountability and inclusion, ensuring that efforts to uphold democratic norms do not inadvertently marginalise the very populations they are meant to protect or entrench regional economic asymmetries.

## 6 Conclusion

With its legally binding structure and economic scope, AfCFTA offers a new kind of leverage – one grounded in the shared interest of trade and market access. By tying access to AfCFTA's trade benefits to adherence to democratic norms and human rights obligations, the agreement can help shift the cost-benefit calculation for regimes that seek to unconstitutionally seize or hold power. This approach would not replace existing institutions but would complement them by introducing material consequences for non-compliance, reinforcing the authority of regional courts and governance bodies.

Drawing on lessons from the EU's use of conditionalities, both with external partners and internally – as seen in its enforcement actions against Poland – AfCFTA can embed human rights and democratic governance into Africa's integration agenda. However, this must be done with care. Conditionalities must be equitable, context-sensitive and designed to avoid disproportionate harm to vulnerable populations.

The goal is not to transform AfCFTA into a rights-enforcement mechanism in the judicial sense, but to operationalise the values enshrined in its Preamble, the AU's Agenda 2063 and instruments such as African Commission Resolution 551. If calibrated effectively, AfCFTA can serve as a credible and consequential supplement to Africa's normative architecture – a trade-driven mechanism that deters unconstitutional power grabs, reinforces the rule of law and promotes a more stable, inclusive and rights-respecting continental order.