

# Towards the African Economic Community: Legal and Historical Perspectives

W Shumba\*

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## Author

Willie Shumba

## Affiliation

University of South Africa

## Email

wshumba@hotmail.com

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## Abstract

This article submits that the 1963 *Charter of the Organisation of African Unity* provided a legal foundation for continental economic integration. This was followed by successive declarations and legal agreements such as the *Lagos Plan of Action*, the *Treaty Establishing the African Economic Community* and the *Constitutive Act of the African Union*, all of which became more explicit. While the Organisation of African Unity of 1963 and the African Union of 2002 respectively pronounced the direction of the continental organisations, the *Treaty Establishing the African Economic Community* was then established to translate the vision into actionable activities towards a continental economic community through the establishment of the Regional Economic Communities that would ultimately be the foundation blocks for the integration of the continent. The article shows that all the Regional Economic Communities have a strong legal appeal to achieve African unity and the desire to integrate African economies. Consequently, the African Union has to date attained a continental Free Trade Area and is still to attain a continental customs union and the common market using the same legal architecture, these being stages in developing an African Economic Community. The article also demonstrates that the various Regional Economic Communities owe their existence to the *Charter of the Organisation of African Unity* or the *Lagos Plan of Action* or the *Abuja Treaty*, all under the umbrella of the *Constitutive Act of the African Union*.

## Keywords

*Abuja Treaty*; African Union; African Economic Community; common market; customs union; free trade area; *OAU Charter*; Organisation of African Unity.

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## 1 Introduction

The historical background of economic integration in Africa shows that the evolutionary process towards the African Economic Community (AEC) has a strong underpinning in the law. Economic integration is a multidisciplinary topic with influences from subjects such as politics, economics, law and diplomacy. The vision for economic integration in Africa or elsewhere is inspired by politics but many other factors, such as the required legal instruments, come into play to turn the vision into reality. This article was designed to determine the relationship between economic integration in Africa and some of the identified agreements created under the Organisation of African Unity (OAU) and its successor, the African Union (AU). The paper will demonstrate the linkage between these agreements with the development or operations of the Regional Economic Communities (RECs) recognised by the African Union (AU) together with the African Continental Free Trade Area (AfCFTA). The road towards the AEC will show how all these disciplines, particularly the legal aspect, have been entwined in order to attain the current achievements.

Economic integration involves the implementation of measures designed to liberalise trade among states, and it extends beyond simple cooperation on trade policies.<sup>1</sup> There are various stages to economic integration. The depth of integration will therefore vary, and the deeper it gets, the more the participating parties cede some issues of national sovereignty. Economic theory identifies five forms of integration, these being a Free Trade Area (FTA), a Customs Union (CU), a Common Market (CM), economic union and complete economic union.<sup>2</sup>

The FTA is an early stage of economic integration where the participating countries agree to trade amongst themselves without tariffs and non-tariff barriers (NTBs), but each of them maintains its own external tariff with third parties.<sup>3</sup> The other end, that is, an economic community goes beyond the free movement of goods and services. It involves total economic integration

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\* Willie Shumba. BAdmin (Hons) MA (Unisa) LLM (Nottingham Trent University) MBA (Zim). African Union Commission's Trade and Customs Expert. Visiting Lecturer, National University of Science and Technology, Zimbabwe. E-mail: wshumba@hotmail.com. ORCID: <https://orcid.org/0000-0001-9017-1863>. This contribution is partially based on research done for the author's doctoral thesis, titled *Legal Texts on Trade Facilitation: Comparative Analysis of the World Trade Organisation and the African Continental Free Trade Area*.

<sup>1</sup> Balassa Theory of Economic Integration 2.

<sup>2</sup> Balassa Theory of Economic Integration 2.

<sup>3</sup> Krugman, Obstfeld and Melitz *International Economics* 246.

in which social, fiscal, taxation and monetary policies are harmonised and overseen by a supranational authority whose decisions are binding on the participating members.<sup>4</sup> The AEC envisaged in the *Treaty Establishing the African Economic Community* (the *Abuja Treaty*) involves the setting up of a single African currency, a single African central bank and an African Monetary Union.<sup>5</sup> It follows that the economic community envisaged by the *Abuja Treaty* is a stage after the common market.<sup>6</sup> This would represent total economic integration. The *Abuja Treaty*, however, sets its mind beyond economic integration and refers to common policies in several sectoral areas of socio-economic development<sup>7</sup> together with elements of continental universal suffrage.<sup>8</sup> Some regional trade agreements (RTAs), such as that of the East African Community (EAC), aspire to the furthest level of integration by proceeding into a political federation.<sup>9</sup>

This article analyses the legal provisions that underpin the path to the AEC. It shows that, since the adoption of the *Charter of the Organisation of African Unity*<sup>10</sup> (the *OAU Charter*) in 1963, economic integration in Africa has been fully grounded in some agreed treaty and legislative frameworks.

## 2 The Organisation of African Unity

Cooperation amongst independent African states featured from the 1950s as various countries attained their independence. This culminated in the formation of the OAU in 1963, when thirty-two African Heads of State and Government met in Addis Ababa, Ethiopia, and adopted the *OAU Charter*, which formally established the organisation.<sup>11</sup> The *OAU Charter* was an international treaty or agreement. The *Vienna Convention on the Law of Treaties* (the VCLT) defines a treaty as an express agreement which creates binding obligations between states.<sup>12</sup> The term "treaty" therefore includes various types of international agreements.<sup>13</sup> The *OAU Charter* was therefore an international treaty whose membership comprised independent

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<sup>4</sup> Balassa Theory of Economic Integration 2.

<sup>5</sup> Treaty Establishing the African Economic Community (1991) (hereafter *Abuja Treaty*) Art 6(2)(f).

<sup>6</sup> Carbaugh International Economics 266; Abuja Treaty Art 6(2)(e).

<sup>7</sup> *Abuja Treaty* Art 6(2)(e).

<sup>8</sup> *Abuja Treaty* Art 6(2)(f)(iv).

<sup>9</sup> Treaty for the Establishment of the East African Community (1999) (hereafter the EAC Treaty) Art 5:2.

<sup>10</sup> Charter of the Organisation of African Unity (1963) (hereafter the *OAU Charter*).

<sup>11</sup> Naldi Organisation of African Unity 1.

<sup>12</sup> *Vienna Convention on the Law of Treaties* (1969) (hereafter the VCLT) Art 2(1).

<sup>13</sup> Janis Introduction to International Law 15.

African states.<sup>14</sup> The objectives of the new organisation were broad and covered cooperation in areas such as the abolition of colonialism, defence and security, and the economic development of Africa.<sup>15</sup>

The establishment of the OAU was welcomed because its vision was to consolidate the independence and uplift the living standards of the continent.<sup>16</sup> Although the word "integration" was not mentioned in the objectives of the *OAU Charter*, it is evident that, amongst others, the OAU desired unity, cooperation and integration in the continent and the utilisation of these as a means to improve the lives of Africans. It can also be claimed that the OAU intended a broad and holistic form of integration.<sup>17</sup> Economic integration is implied in the *OAU Charter* where, amongst other matters, it identifies the coordination and harmonisation of economic cooperation, including transport and communications.<sup>18</sup> Economic integration, as opposed to mere international cooperation, is viewed as a process of bringing together different nation states and removing trade barriers and various forms of discrimination among the parties involved.<sup>19</sup> The *OAU Charter* implies both the sectoral and total integration of the continent.<sup>20</sup>

The *OAU Charter* therefore stands out as the first legal instrument towards an AEC. Despite the fact that the level of integration of the AEC was not mentioned in the *OAU Charter*, the political leadership had a vision of continental integration that reached that depth. Speaking during the inaugural session of the OAU, Kwame Nkrumah, then President of Ghana, concluded his statement by appealing for closer cooperation among African states and referred to the envisaged integration:

this should include proposals for setting up: a common market for Africa; an African currency; an African monetary zone; an African central bank; a continental communication system; a commission to draw up details for a common foreign policy and diplomacy; a commission to produce plans for a common system of defence; a commission to make proposals for a common African citizenship.<sup>21</sup>

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<sup>14</sup> *OAU Charter* Art I(2).

<sup>15</sup> *OAU Charter* Art II.

<sup>16</sup> Naldi Organisation of African Unity 37.

<sup>17</sup> *OAU Charter* Art II.

<sup>18</sup> *OAU Charter* Art II(2).

<sup>19</sup> Balassa Theory of Economic Integration 2.

<sup>20</sup> *OAU Charter* preamble and Art II.

<sup>21</sup> OAU 1963 [https://archives.au.int/bitstream/handle/123456789/10452/OAU\\_Summit\\_May\\_1963\\_Speeches\\_E.pdf](https://archives.au.int/bitstream/handle/123456789/10452/OAU_Summit_May_1963_Speeches_E.pdf) 53.

Similar interventions were also expressed by other Heads of States, for example Presidents Fulbert Youlou of Congo Brazzaville<sup>22</sup> and Hubert Magu of Dahomey.<sup>23</sup>

In terms of economic integration, the OAU managed to lay the necessary groundwork for the realisation of a Pan-Africanist vision involving trade and economic issues.<sup>24</sup> With the attainment of democratic elections in South Africa in 1994, the OAU had achieved political liberation and all African countries had realised political independence. Despite the high political scores, some commentators have criticised the OAU for being incoherent in resolving continental issues such as peace and security, democracy and human rights.<sup>25</sup> The author considers that political independence on its own and the laying of a firm ground for deep economic integration were major achievements during the OAU era.

### 3 Lagos Plan of Action

While consolidating the political independence of African states in the 1970s, the OAU and United Nations Economic Commission for Africa (UNECA) engaged African states in the 1960s and 1970s in an attempt to do groundwork for the establishment of an AEC.<sup>26</sup> This resulted in a policy document, the *Lagos Plan of Action for the Economic Development of Africa, 1980-2000* (the *LPA*) of 1980 which was a broad strategy for an economic development-orientated blueprint for the integration and growth of Africa.<sup>27</sup> The *LPA* was an economic developmental declaration by the OAU Heads of State which was designed to turn the visionary strategic desire of the OAU into actionable plans. The *LPA* was a comprehensive document comprised of a preamble, thirteen chapters and four annexes, including resolutions and a *Final Act of Lagos* (the *FAL*).<sup>28</sup> Each one of the chapters focusses on a specific area of development relevant to Africa.<sup>29</sup>

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<sup>22</sup> OAU 1963 [https://archives.au.int/bitstream/handle/123456789/10452/OAU\\_Summit\\_May\\_1963\\_Speeches\\_E.pdf](https://archives.au.int/bitstream/handle/123456789/10452/OAU_Summit_May_1963_Speeches_E.pdf) 34, 35. Congo Brazzaville is also commonly referred to as Republic of Congo.

<sup>23</sup> OAU 1963 [https://archives.au.int/bitstream/handle/123456789/10452/OAU\\_Summit\\_May\\_1963\\_Speeches\\_E.pdf](https://archives.au.int/bitstream/handle/123456789/10452/OAU_Summit_May_1963_Speeches_E.pdf) 41; Dahomey is now Benin.

<sup>24</sup> Robson Economic Integration 12-13.

<sup>25</sup> Welz Integrating Africa 7.

<sup>26</sup> Mangeni and Juma *Emergent Africa* 49.

<sup>27</sup> *Lagos Plan of Action for the Economic Development of Africa, 1980-2000* (1980) (hereafter the *LPA*) Annex I and II.

<sup>28</sup> The article will therefore make reference of the *LPA*. The *Final Act of Lagos* (hereafter the *FAL*) is an Annex of the *LPA*.

<sup>29</sup> As an example: Chapter II deals with Industry; Chapter VII focusses on trade and finance; Chapter XI on energy; and Chapter XII on women and development.

The *LPA* was a strategic document with a commitment to implement economic integration in stages over the two decades of the 1980s and 1990s.<sup>30</sup> The *LPA* set aside the 1980s for the establishment of RECs in each of the regions in Africa while the 1990s were set aside for creating a CM as a step towards the AEC by 2000.<sup>31</sup> UNECA was to act as a coordinator, marshalling technical assistance and serving as a link between the OAU and the United Nations (UN).<sup>32</sup>

Despite the pledges of the *LPA*, the plan was not implemented. Several reasons have been advanced, including a lack of desire among members in the face of other priorities.<sup>33</sup> The *LPA*'s ambition of creating an AEC for more than fifty nations by 2000 was too ambitious for the continent, which faced several economic hurdles at the time.<sup>34</sup>

The author considers that the *LPA* used rhetorical language that contained expressions of intent, or "best endeavours", without some legally binding treaty provisions to enforce their implementation. As an example, the *LPA* has no provisions for ratifications and accessions. The *LPA* is a typical example of "soft law" whose legal status is unclear with no explicit intention to create a legal obligation.<sup>35</sup> One of the characteristics of soft law is that it reflects imprecise standards or unclear guidelines.<sup>36</sup> Soft law agreements, such as declarations or statements expressing a desired vision or goal, cannot be ratified at national level. Though it lacked a push for the actual implementation, the *LPA* was, however, a bold and ambitious declaration on paper that provided insights into economic integration for Africa, and thus laid the groundwork for the *Abuja Treaty*. Although it was not strictly binding, it nevertheless proclaimed a clear expression of interest to further the OAU agenda.<sup>37</sup> The *LPA* also demonstrated that the resolutions of the Heads of State and Government might require more than a declaration to be implemented. Some declarations would require provisions to enforce implementation.

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<sup>30</sup> *LPA* and *FAL*, Annex I:II.

<sup>31</sup> *LPA* Annex I and II.

<sup>32</sup> D'Sa 1983 *JAL* 4.

<sup>33</sup> Qobo 2007 <https://issafrica.s3.amazonaws.com/site/uploads/Paper145h.pdf>.

<sup>34</sup> Naldi Organisation of African Unity 241.

<sup>35</sup> Evans *International Law* 174, 175.

<sup>36</sup> Dugard *International Law* 33.

<sup>37</sup> Qureshi and Zieglar *International Economic Law* 32.

## 4 The Abuja Treaty

While some critics questioned the effectiveness of the *LPA*, its promoters, UNECA and the OAU, used it as a foundation for further consultations within the continent to establish appropriate time lines and treaty language.<sup>38</sup> Both UNECA and the OAU have been instrumental in establishing institutions designed to accelerate African unity and economic integration.<sup>39</sup> These efforts culminated in OAU member states signing the *Abuja Treaty* in 1991, which came into effect in 1994 after attaining the required number of ratifications.<sup>40</sup> The *Abuja Treaty* is one of the most fully subscribed AU treaties with 54 member states having signed it, while 50 had ratified it as of January 2023.<sup>41</sup>

The *Abuja Treaty* is a standalone agreement that articulates a clear plan to establish an AEC.<sup>42</sup> It can be regarded as the apex treaty of the AU in terms of its vision, guidelines, objectives and time frames of the continent's agenda on economic integration. It creates a continental framework for cooperation with the goal of achieving economic stability, promoting self-sufficiency, and improving the standard of living in Africa.<sup>43</sup> As an international treaty, the *Abuja Treaty* sets out a legal framework designed to deepen the integration of African economies. It is based on the principles of international law and derives its vision of the AEC from the principles of the *OAU Charter*.<sup>44</sup> Further, it embraces the concept of using the RECs and the five geopolitical regions of the continent as the foundation upon which to build an integrated continent.<sup>45</sup>

### 4.1 Objectives of the Abuja Treaty

The *Abuja Treaty* makes it clear that the AEC is a subsidiary of the AU, implying that it derives its authority from the umbrella organisation.<sup>46</sup> The broad goals of the *Abuja Treaty* include the complete integration of African

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<sup>38</sup> Khadiagala 2011 <https://www.econstor.eu/bitstream/10419/109596/1/wp-085.pdf>.

<sup>39</sup> Mwale "Historical Background to the Formation of COMESA" 31.

<sup>40</sup> Hwang 2009 *Journal of International and Area Studies* 130.

<sup>41</sup> AU 2023 [https://au.int/sites/default/files/treaties/37636-sl-TREATY\\_ESTABLISHING\\_THE\\_AFRICAN\\_ECONOMIC\\_COMMUNITY.pdf](https://au.int/sites/default/files/treaties/37636-sl-TREATY_ESTABLISHING_THE_AFRICAN_ECONOMIC_COMMUNITY.pdf).

<sup>42</sup> *Abuja Treaty* preamble.

<sup>43</sup> *Abuja Treaty* Art 4(1).

<sup>44</sup> *Abuja Treaty* preamble and Art 4(1).

<sup>45</sup> *Abuja Treaty* Art 1(1)(d).

<sup>46</sup> *Abuja Treaty* Art 98(2).

economies.<sup>47</sup> One of the specific objectives of the AEC is to establish free trade agreements (FTAs) in Africa and to liberalise trade on the continent.<sup>48</sup>

The *Abuja Treaty* is an agreement designed to marshal and coordinate various activities in order to promote cooperation and the development of Africa.<sup>49</sup> It therefore comes up with an orderly manner of establishing and/or strengthening RECs and then riding upon these structures in order to achieve its aims.<sup>50</sup> At some stage the RECs would merge into a continental customs union and common market and continental structures would then feature to manage continental affairs.<sup>51</sup> The issue of trade facilitation is indelible and the *Abuja Treaty* mentions the harmonisation and standardisation of procedures in order to ease the cross-border flow of goods throughout the continent.<sup>52</sup>

#### **4.2 Implementation stages of the Abuja Treaty**

The *Abuja Treaty* identified six sequential stages for the establishment of the AEC within forty years of the treaty's entry into force.<sup>53</sup> In general these stages adhere to the Balassa approach of a methodical deepening of integration beginning with the free trade agreement through to an economic union.<sup>54</sup> Although the *Abuja Treaty* makes no mention of a continental FTA, it recognises that a continental customs union (CU) cannot bypass the FTA stage in any of the RECs.<sup>55</sup> The *Abuja Treaty* therefore refers to consolidating the FTA in the individual RECs.<sup>56</sup> It was therefore more practical and pragmatic to establish a continental FTA than to consolidate FTAs in all the RECs. The AfCFTA was therefore established in line with the vision of the *Abuja Treaty*, using the most practical alternative route that considered that a continental FTA was a necessary precursor for a continental CU.<sup>57</sup>

Table 1 summarises the stages outlined in the *Abuja Treaty*, all leading towards the attainment of the AEC. Each stage has a clear timeframe,

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<sup>47</sup> *Abuja Treaty* Art 4(1)(a)-(c).

<sup>48</sup> *Abuja Treaty* Art 4(2)(d).

<sup>49</sup> *Abuja Treaty* Art 4(1).

<sup>50</sup> *Abuja Treaty* Art 4(2).

<sup>51</sup> *Abuja Treaty* Art 6(2)(f).

<sup>52</sup> *Abuja Treaty* Art 39.

<sup>53</sup> *Abuja Treaty* Art 6(5).

<sup>54</sup> Balassa Theory of Economic Integration 2.

<sup>55</sup> *Abuja Treaty* Art 6(2)(c) and (d).

<sup>56</sup> *Abuja Treaty* Art 6(2)(c).

<sup>57</sup> *Agreement Establishing the African Continental Free Trade Area* (2018) (hereafter the *AfCFTA Agreement*) preamble and Art 3(d).



stating what must be achieved by a certain date.<sup>58</sup> These stages involve liberalising trade in goods, eliminating barriers to trade, and taking measures to ease the flow of goods during international trade. Most of the RECs have accomplished the first three stages, although the degree of achievement differs.

**Table 1: Roadmap for the establishment of the African Economic Community**

Stage	Key tasks	Time frame	Relevant legal articles in the <i>Abuja Treaty</i>	Comments by the author
1	Consolidate existing RECs; build new RECs in regions where none exist	1994 to 1999	Article 6(2)(a)	This has been achieved. Each of the regions had a REC by 1999.
2	Stabilise and eliminate tariff and NTBs within RECs, as well as coordinate and harmonise activities	2000 to 2007	Article 6(2)(b)	A lot of work on the elimination of tariffs and NTBs was done. This is, however, a continuous activity.
3	Establish FTAs and CUs in each REC	2008 to 2017	Article 6(2)(c)	This was achieved.
4	Establish a continental CU	2018 to 2019	Article 6(2)(d)	Not achieved as of January 2023
5	Establish an African Common Market, including rights to the establishment, residence and movement of people	2020 to 2023	Article 6(2)(e)	Not yet attained
6	Create a single currency and establish other continental institutions to support the implementation of the AEC	2024 to 2028	Article 6(2)(f)	Not yet attained
	Latest date for the implementation of the AEC	2034	Article 6(6)	Operationalise AEC within forty years of the <i>Abuja Treaty's</i> entry into force

<sup>58</sup> *Abuja Treaty* Art 6.

The above table also illustrates that the establishment of the AEC would be premised upon the efforts and achievements of the RECs. The following are some examples illustrating the requirements to move to the next level of integration:

- Third stage – within a period of no more than ten years;<sup>59</sup>
- Fifth stage – within a period of no more than four years;<sup>60</sup>
- Sixth stage – within a period of no more than five years.<sup>61</sup>

The dates in Table 1 are thus extrapolated from 1994 when the treaty entered into force, with the next stage dependent on the completion of the preceding stage and on the condition that the total transition is completed within forty years, which translates to 2034.<sup>62</sup> There is also enough time between the completion of the sixth stage and the latest date for the implementation of the AEC. The *Abuja Treaty* is therefore offering a more realistic framework of time lines than the *LPA*, which had stipulated a straitjacket period of twenty years for the establishment of the AEC. Unlike the *LPA*, which was merely a declaration, the *Abuja Treaty* is a legally binding international agreement couched in treaty language. It is clear on who may sign, ratify or accede to the treaty.<sup>63</sup> It is also explicit on the requirements for its entry into force.<sup>64</sup> Further, there are provisions regarding the settlements of disputes.<sup>65</sup>

### 4.3 Observations on the Abuja Treaty

The *Abuja Treaty* derives its existence at the outset from the *OAU Charter*. The *OAU Charter* was succeeded by the *Constitutive Act of the African Union* (hereafter *AU Constitutive Act*) which acknowledges the importance of the treaty and refers to it three times in its preamble.<sup>66</sup> Some of the objectives of the *AU Constitutive Act* are aligned with the principles and undertakings in the *Abuja Treaty*.<sup>67</sup> The *AU Constitutive Act*, however,

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<sup>59</sup> *Abuja Treaty* Art 6(2)(c).

<sup>60</sup> *Abuja Treaty* Art 6(2)(e).

<sup>61</sup> *Abuja Treaty* Art 6(2)(f).

<sup>62</sup> *Abuja Treaty* Art 6(5).

<sup>63</sup> *Abuja Treaty* Arts 100, 102.

<sup>64</sup> *Abuja Treaty* Art 101 reads: "This Treaty shall enter into force thirty (30) days after the deposit of the Instruments of ratification by two-thirds of the Member States of the OAU."

<sup>65</sup> *Abuja Treaty* Art 87.

<sup>66</sup> *Constitutive Act of the African Union* (2000) (hereafter the *AU Constitutive Act*) preamble.

<sup>67</sup> *AU Constitutive Act* Art 3(a), (c), (j) and (l).

asserts its supremacy and supersedes any inconsistencies that may be in the *Abuja Treaty*.<sup>68</sup> It is therefore clear that economic integration in Africa, as espoused in the *Abuja Treaty*, derives its existence from the *OAU Charter* and its successor, the *AU Constitutive Act*. Economic integration is therefore driven by Africa, using the legal instruments of the AU.

An interesting observation is that, despite using the *General Agreement on Tariffs and Trade (GATT)* language and tone on matters involving trade, the *Abuja Treaty* does not make any reference to the then existing *GATT* 1947, which was operational at the time of its signature in 1991. Although the negotiations of the *Abuja Treaty* ran in tandem with the period of the Uruguay Round of 1986 to 1993, the treaty maintained its Africanness by not relying much on *GATT* 1947, and it uses very little that language. Chapters II and V of the *Abuja Treaty* used the common *GATT* terms, for example, by referring to FTAs, CUs, the elimination of barriers to trade and the most favoured nation (MFN) principle. This demonstrates that, although the continent was developing its own specific framework of trade and economic integration, it respected the fact that trade or integration in Africa must be conducted within certain principles of *GATT* and appropriate international standards.

The *Abuja Treaty* must therefore be reckoned as a solid legal blueprint that consolidated all previous efforts and legal texts to guide continental integration. The author reckons that the *Abuja Treaty* will for some time remain as a well-researched international agreement.

## 5 Organisation of African Unity to the African Union

The objectives of the OAU were broad and covered wide-ranging areas of cooperation including the abolition of colonialism, cooperation in matters of defence and security, and the economic development of Africa.<sup>69</sup> As noted above, one of the milestones for the OAU on the economic front was the conclusion of the *Abuja Treaty* in 1991. The *Abuja Treaty* itself reveals that for three decades following the formation of the OAU, the agenda for Heads of State and Government had been seized with the matter of the AEC.<sup>70</sup> With the advent of the new millennium, the OAU acknowledged the need for institutional reforms in order to confront the new century from a well-coordinated position of strength, and it accordingly transformed itself into

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<sup>68</sup> *AU Constitutive Act* Art 33(2).

<sup>69</sup> *OAU Charter* Art II.

<sup>70</sup> *Abuja Treaty* preamble.

the AU in July 2002.<sup>71</sup> The Heads of States and Governments adopted the *AU Constitutive Act*, which repealed the *OAU Charter*.<sup>72</sup>

The replacement of the *OAU Charter* with the *AU Constitutive Act* did not affect the status of the *Abuja Treaty*, which remained as a stand-alone treaty dealing with the implementation of a roadmap towards establishing an AEC. The *AU Constitutive Act* reinforces the position stated in the *Abuja Treaty*. The preamble to the *AU Constitutive Act* refers to the *Abuja Treaty* three times and mentions the need to accelerate the implementation of its provisions.<sup>73</sup> There is alignment between the *Abuja Treaty* and the *AU Constitutive Act*, and it is clear that the *AU Constitutive Act* calls for the speedy implementation of the *Abuja Treaty*.<sup>74</sup> The alignment between the *Abuja Treaty* and the *AU Constitutive Act* was also demonstrated when the Pan-African Parliament (PAP), as required under the *Abuja Treaty*,<sup>75</sup> was created under the *AU Constitutive Act* in 2001, well ahead of time.<sup>76</sup> The PAP is therefore one of the AU's organs, whose purpose was to broaden the participation of African people in the continent's agenda on economic development and integration.<sup>77</sup>

The *AU Constitutive Act* is therefore an important pillar which plays a positive role in the realisation of the AEC and the facilitation of its speedy implementation.

## 6 Regional Economic Communities of the African Union

The term "Regional Economic Community" (REC) is used in the *LPA, Abuja Treaty* and *AU Constitutive Act*, although none of them defined it.<sup>78</sup> The *Abuja Treaty* also called for the establishment of RECs where none existed, and it was from these RECs that the AEC was to be gradually established.<sup>79</sup> The *Abuja Treaty* makes numerous references to RECs as building blocks for deeper continental integration.<sup>80</sup> It also calls upon member states to

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<sup>71</sup> AU Assembly of Heads of State and Government First Ordinary Session, Decisions and Declarations of the Assembly: The Durban Declaration in Tribute to the Organization of African Unity on the Occasion of the Launching of the African Union AU Doc ASS/AU/Decl.2(I) (2002).

<sup>72</sup> *AU Constitutive Act* Art 2.

<sup>73</sup> *AU Constitutive Act* preamble.

<sup>74</sup> *AU Constitutive Act* Art 3(c).

<sup>75</sup> *Abuja Treaty* Art 6(2)(f)(iv).

<sup>76</sup> *Protocol to the Treaty that Established the African Economic Community Relating to the Pan-African Parliament* (2001); *AU Constitutive Act* Art 17.

<sup>77</sup> *Abuja Treaty* Art 14; *AU Constitutive Act* Art 17(1).

<sup>78</sup> For example, refer to the *LPA* and *FAL* Annex I:II (B)(1) and *Abuja Treaty* Art 6(2)(a).

<sup>79</sup> *Abuja Treaty* Art 28(2).

<sup>80</sup> Examples are Arts 4, 6(2), 28 and 88 of the *Abuja Treaty*.

consolidate and strengthen the existing RECs.<sup>81</sup> The *Abuja Treaty* therefore regards RECs as a means of achieving the AEC.<sup>82</sup> Rather than limiting a REC to economic integration, the *Protocol on Relations Between the African Union and the Regional Economic Communities* established a broader and holistic definition of a REC as a "regional grouping of African states organised into a legal entity by treaty with economic and social integration as the main objective."<sup>83</sup>

The AU recognises the following eight RECs as pillars for building the AEC: the Arab Maghreb Union (AMU), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Community of Sahel-Saharan States (CEN-SAD), the Economic Community of West African States (ECOWAS), the Inter-Governmental Authority on Development (IGAD), and the Southern African Development Community (SADC).<sup>84</sup> The term "REC" has become unique to the AU, and as noted above it is used to refer to its eight blocks. There are many cases of overlapping and all fifty-five countries of the AU belong to at least one of the RECs. These eight regional groupings are the sole RECs upon which integration in Africa will be built. Africa has a total of fourteen regional groupings, six of which are not recognised as RECs and building blocks under the *Abuja Treaty*.<sup>85</sup> It should be emphasised that some of the six groupings not recognised as RECs are well advanced in their integration efforts and contribute to an extent towards the continent's agenda. As an example, it should be acknowledged that although the Southern African Customs Union (SACU) is not a REC, it has played an important role in economic integration towards the SADC and the AfCFTA when considered that it is a CU and operates a common external tariff (CET) with its partners. Because SACU members operate a CET, they are obliged to adopt common positions at some of the international trade forums.

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<sup>81</sup> *Abuja Treaty* Art 28(1).

<sup>82</sup> *Abuja Treaty* Art 28(1).

<sup>83</sup> *Protocol on Relations Between the African Union and the Regional Economic Communities* (2008) (hereafter *Protocol on Relations Between AU and RECs*) Art 1.

<sup>84</sup> AU Assembly of Heads of State and Government Seventh Ordinary Session, Decisions and Declarations of the Assembly: Decision on the Moratorium on the Recognition of Regional Economic Communities (RECs) AU Doc ASS/AU/Dec.112(VII)-EX.CL/278(IX) (2006).

<sup>85</sup> Refer to Akonor *African Economic Institutions* 65. The six which are not RECs are: Economic and Monetary Community of Central Africa (CEMAC), Indian Ocean Commission (IOC), West African Economic and Monetary Union (UEMOA/WAEMU), Economic Community of the Great Lakes Countries (CEPGL), Mano River Union (MRU), and Southern African Customs Union (SACU).

This study has found that the RECs recognised derive some influence from the legal instruments of the AU, particularly the *LPA* and the *Abuja Treaty*. This shows the impact of the OAU, the AU and the *Abuja Treaty* on the RECs, which are the fundamental pillars and the building blocks of continental integration in Africa. The following briefly shows the influence of the OAU and its successor, the AU, on the eight RECs and ultimately on continental integration in the drive towards the AEC.

### **6.1 Arab Maghreb Union**

The AMU was established in 1989 by the *Treaty Establishing the Arab Maghreb Union* for the northern region of Africa. The founding members were Algeria, Libya, Mauritania, Morocco and Tunisia.<sup>86</sup> The AMU is the smallest of the RECs in terms of the number of countries participating. The members recognise their connection to the vision of a progressive continent. When the AMU was established the Heads of States declared:

Convinced that a developed Maghreb entity will enable our countries to support joint action with the rest of the brotherly African countries for the progress and prosperity of our African continent ...<sup>87</sup>

The treaty was signed and adopted during the OAU era, but before the *Abuja Treaty* had been adopted. It is clear, however, that the language used in referring to African unity and the economic development of the continent is consistent with that of the OAU and the *LPA*. The focus regarding cooperation to develop the African continent is compatible with the spirit of the *Abuja Treaty*, which was then not yet signed and had been an issue high on the agenda of the OAU.<sup>88</sup> The common feature among its members and which gives the REC a unique identity in Africa is the strong Arab-Islamic culture that has existed for centuries in North Africa. The geographic location of AMU members is strategic and links Africa with the Mediterranean, Europe and the Middle East.

### **6.2 Common Market for Eastern and Southern Africa**

COMESA is one of the largest RECs with a geographical area of two thirds of the African continent and almost 45% of the continent's population.<sup>89</sup> Membership of COMESA is open to countries in Eastern and Southern

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<sup>86</sup> *Treaty Establishing the Arab Maghreb Union* (1989) (hereafter the *AMU Treaty*) preamble.

<sup>87</sup> *AMU Treaty*, Declaration of the Institution of the Arab Maghreb Union.

<sup>88</sup> See para 5 above.

<sup>89</sup> COMESA 2023 <https://www.comesa.int/what-is-comesa/>; COMESA 2023 <https://www.comesa.int/quick-facts-about-comesa-2/>.

Africa.<sup>90</sup> As of 1 February 2023 COMESA had a total membership of twenty-one countries covering Eastern, Central, Southern and Northern Africa.<sup>91</sup> In terms of the continental trade agenda and business, COMESA includes countries from four of the regions in Africa, thus becoming a strategic REC of the AfCFTA. COMESA was established in line with the *Abuja Treaty*, and the *COMESA Treaty* expressly states in its preamble:

INSPIRED by the objectives of the Treaty for the Establishment of the African Economic Community and in compliance with the provisions of Article 28(1) of the said Treaty;

DETERMINED to mark a new stage in the process of economic integration with the establishment of a Common Market for Eastern and Southern Africa and the consolidation of their economic co-operation ...<sup>92</sup>

COMESA's objectives include cooperation in all fields of economic activity, promoting peace and stability amongst its members; and contributing towards achieving the goals of the AEC.<sup>93</sup> The influence of the *Abuja Treaty* on COMESA is evident.

### **6.3 Community of Sahel-Saharan States**

CEN-SAD was formed in 1998 through the *Treaty Establishing the Community of Sahel-Saharan States* (the *CEN-SAD Treaty*), which was revised in 2013.<sup>94</sup> It consists of twenty-nine members comprised of the countries across and within the Sahara Desert spanning Western, Central, Northern and Eastern Africa.<sup>95</sup> It essentially stretches from the Atlantic to the Indian Oceans and has grown to become Africa's largest trading bloc, encompassing all major cultures and languages.

CEN-SAD is one of the RECs formed after the *Abuja Treaty*. The *CEN-SAD Treaty* embraces the ideals of the OAU and the AU and it states:

Bearing in mind the Plan of Action and the Lagos Final Act of April 1980, in particular the measures aimed at the economic, social and cultural development of Africa and defining, inter alia, those relating to the creation of subregional structures and the strengthening of existing structures with a view to the gradual and progressive establishment of an African Economic Community ...

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<sup>90</sup> *Treaty Establishing the Common Market for Eastern and Southern Africa* (1993) (hereafter the *COMESA Treaty*) Arts 1(2) and 1(3).

<sup>91</sup> COMESA 2023 <https://www.comesa.int/members/>.

<sup>92</sup> *COMESA Treaty* preamble.

<sup>93</sup> *COMESA Treaty* Art 3.

<sup>94</sup> *Treaty Establishing the Community of Sahel-Saharan States* (1998) (hereafter the *CEN-SAD Treaty*).

<sup>95</sup> AUC African Union Handbook 152.

Determined to give concrete expression to the desire for economic, political, cultural and social integration in accordance with the relevant provisions of the Constitutive Act of the African Union and the Abuja Treaty of 1991 ...<sup>96</sup>

The above reference to the *LPA*, the *AEC*, the *Abuja Treaty* and the *AU Constitutive Act* attests to the fact that CEN-SAD is anchored in the AU and its legal texts. It also emphasises that CEN-SAD was created in order to advance the AU agenda of unity and cooperation and to uplift the standard of living in the continent.

#### **6.4 East African Community**

The EAC covers the Eastern region of Africa. It was resuscitated in 1999, following the signing of the *Treaty for the Establishment of the East African Community* (the *EAC Treaty*),<sup>97</sup> which entered into force in 2000. As of 1 April 2022 the membership of the EAC had grown to seven.<sup>98</sup> The *EAC Treaty* demonstrates that it aims to fulfil the aspirations of the *Abuja Treaty* and it states, in part:

CONVINCED that co-operation at the sub-regional and regional levels in all fields of human endeavour will raise the standards of living of African peoples, maintain and enhance the economic stability, foster close and peaceful relations among African states and accelerate the successive stages in the realization of the proposed African Economic Community and Political Union states and accelerate the successive stages in the realisation of the proposed African Economic Community and Political Union ...<sup>99</sup>

The EAC is aligned with the *Abuja Treaty*, and it serves as a building block for both the AfCFTA and the AEC. The member states also have a sense of solidarity, and they refer to themselves as "partner states" rather than "member states".<sup>100</sup> The use of the term "partner state" evokes close relationships of cooperation to achieve common goals.

#### **6.5 Economic Community of Central African States**

ECCAS represents the Central Africa region of the continent and as of 1 January 2022 it had eleven members.<sup>101</sup> ECCAS was established by the

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<sup>96</sup> *CEN-SAD Treaty* preamble.

<sup>97</sup> *EAC Treaty* Art 153.

<sup>98</sup> EAC 2022 <https://www.eac.int/eac-partner-states>; EAC 2022 <https://www.eac.int/press-releases/2402-the-democratic-republic-of-the-congo-joins-eac-as-its-7th-member>.

<sup>99</sup> *EAC Treaty* preamble.

<sup>100</sup> EAC 2022 <https://www.eac.int/eac-partner-states>.

<sup>101</sup> The eleven members are Angola, Burundi, Cameroon, Central African Republic, Chad, Congo Republic, DRC, Equatorial Guinea, Gabon, Rwanda, and São Tomé and Príncipe.



*Treaty Establishing the Economic Community of Central African States* (the *ECCAS Treaty*) which was signed in 1983.<sup>102</sup> ECCAS was established soon after the *LPA* and *FAL*. The *ECCAS Treaty* states:

Recalling: ... The Lagos Plan of Action and the Final Act of Lagos (April 1980), in particular the measures relating to the economic, social and cultural development of Africa and *inter alia* those relating to the establishment of sub-regional structures with a view to the gradual and progressive establishment of an African common market as a prelude to an African economic community ...<sup>103</sup>

The *ECCAS Treaty* therefore acknowledges that it is aligned with the *Abuja Treaty*. The preamble acknowledges the activities that led to the Treaty and specifically mentions that it was reached to fulfil the aspirations of the *LPA* and *FAL* by gradually moving towards a CM and finally an economic community. It can therefore be deduced that as a regional body it desires to play its role towards the development of Africa.

## **6.6 Economic Community of West African States**

ECOWAS is unique in that it was formed in 1975 by independent African states. This is different from most RECs, which were established either after the *LPA* or had an earlier history of cooperation initiated during colonial rule, such as the EAC. ECOWAS was formed because of encouragement from the ECA, the wind of Pan-Africanism that was blowing across the continent at the time, and lobbying by the private sector.<sup>104</sup> ECOWAS is one of the RECs that has grown to a high degree of integration, making it an essential pillar in the continental agenda. It was established by the *Treaty of the Economic Community of West African States* in May 1975.<sup>105</sup> The treaty was revised in 1993 and replaced by the *Revised Treaty of the Economic Community of West African States* (the *ECOWAS Treaty*).<sup>106</sup> The *ECOWAS Treaty* acknowledges the historical role of the *LPA*. It is consistent with the *Abuja Treaty* and states:

BEARING IN MIND ALSO the Lagos Plan of Action and the Final Act of Lagos of April 1980 stipulating the establishment, by the year 2000, of an African

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<sup>102</sup> *Treaty Establishing the Economic Community of Central African States* (1983) (hereafter the *ECCAS Treaty*) preamble.

<sup>103</sup> *ECCAS Treaty* preamble.

<sup>104</sup> Jebuni "Role of ECOWAS in Trade Liberalization" 489.

<sup>105</sup> *Treaty of the Economic Community of West African States* (1975) (Treaty of ECOWAS).

<sup>106</sup> *Revised Treaty of the Economic Community of West African States* (1993) (hereafter the *ECOWAS Treaty*) preamble.

Economic Community based on existing and future regional economic communities;

MINDFUL OF the Treaty establishing the African Economic Community signed in Abuja on 3 June, 1991 ...<sup>107</sup>

The objectives of ECOWAS, under its new treaty, are in consonance with the *Abuja Treaty*.<sup>108</sup> As of 1 July 2022 ECOWAS had a membership of fifteen countries from West Africa.<sup>109</sup> A comparison of the objectives of the *ECOWAS* and the *Abuja Treaties* reveals that the two are complementary. One cannot overlook the role that ECOWAS could have played in contributing towards inputs for the *Abuja Treaty*, particularly as ECOWAS has its headquarters in the city of Abuja.

### **6.7 Intergovernmental Authority on Development**

IGAD had its origins in 1986, and was formalised when the *Agreement Establishing Inter-Governmental Authority on Development* (the *IGAD Agreement*) was signed in 1996.<sup>110</sup> As of 1 January 2021 IGAD had eight members from East Africa and the Horn of Africa.<sup>111</sup> The *IGAD Agreement* states:

Convinced that Africa's ability to meet the challenges for promoting sustained economic growth, its ability to interact and compete in the global economy on behalf of its inhabitants will depend on collective self-reliance and on its determination and ability in pooling its considerable natural endowments and human resources through appropriate, sustainable and practical arrangements for co-operation as stipulated in the Treaty Establishing the African Economic Community.<sup>112</sup>

IGAD therefore recognises the *Abuja Treaty* as a reference point. IGAD's trade approach to sustainable development is therefore anchored in the *Abuja Treaty*.

### **6.8 Southern African Development Community**

As of 1 July 2022 the SADC was comprised of sixteen members.<sup>113</sup> The *SADC Treaty* underscores that the REC aims to fulfil the objectives of the

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<sup>107</sup> *ECOWAS Treaty* preamble.

<sup>108</sup> *ECOWAS Treaty* Art 3(1); *Abuja Treaty* Art 4.

<sup>109</sup> ECOWAS 2022 [https://ecowas.int/member\\_states/](https://ecowas.int/member_states/).

<sup>110</sup> *Agreement Establishing the Inter-Governmental Authority on Development* (1996) (hereafter the *IGAD Agreement*).

<sup>111</sup> AUC African Union Handbook 162.

<sup>112</sup> *IGAD Agreement* preamble.

<sup>113</sup> SADC 2022 <https://www.sadc.int/member-states>.

*Abuja Treaty*. The REC has a holistic integration agenda that includes many areas of socio-economic development.<sup>114</sup> The treaty states:

DETERMINED to alleviate poverty, with the ultimate objective of its eradication, through deeper regional integration and sustainable economic growth and development;

FURTHER DETERMINED to meet the challenges of globalization;

TAKING INTO ACCOUNT the Lagos Plan of Action and the Final Act of Lagos of April 1980, the Treaty establishing the African Economic Community and the Constitutive Act of the African Union ...<sup>115</sup>

The cornerstones of the SADC have linkages to the *LPA*, the *FAL*, the *Abuja Treaty* and the *AU Constitutive Act*. The *SADC Treaty* recognises that deeper regional integration is a key factor in sustainable development and in improving the living standards of its people. The SADC is therefore an important factor in the movement towards an operational AfCFTA and AEC.

## 7 Tripartite Free Trade Agreement

The *AU Constitutive Act* recognises the need to rationalise the activities of RECs for the AU to achieve its objectives.<sup>116</sup> Following observations that COMESA, the EAC and the SADC had shared interests and overlapping memberships, the three organisations consulted with one another regarding the need for closer cooperation and merging into one grand block, the Tripartite Free Trade Area (TFTA). This led to the *Agreement Establishing a Tripartite Free Trade Area among the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community* (the *TFTA Agreement*) in June 2015, whose preamble reads:

COMMITTED to championing and expediting the continental integration process under the Treaty establishing the African Economic Community and the Constitutive Act of the African Union through regional initiatives;

COGNISANT of the provisions establishing free trade areas in the Common Market of Eastern and Southern Africa Treaty, Treaty for the Establishment of the East African Community and the Southern African Development Community Protocol on Trade ...<sup>117</sup>

<sup>114</sup> *Treaty of the Southern African Development Community* (1992) (hereafter the *SADC Treaty*) Arts 21 and 22.

<sup>115</sup> *SADC Treaty* Art 5.

<sup>116</sup> *AU Constitutive Act* Art 3(m).

<sup>117</sup> *Agreement Establishing a Tripartite Free Trade Area among the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community* (2015) (hereafter the *TFTA Agreement*) preamble.

The *TFTA Agreement* is there to assist the three RECs to cooperate and contribute towards continental integration, and was thus designed to fast-track continental integration in accordance with the *Abuja Treaty*. It is therefore meant to resolve the issue of multiple memberships in respect of COMESA, the EAC and the SADC.<sup>118</sup> Since the three RECs still exist with their separate FTAs, the noble ideals of the TFTA remain as work in progress. The modalities of how the TFTA will exist alongside with COMESA, the EAC, the SADC and the AfCFTA can be subject to a separate debate. It must be noted, however, that essentially, the TFTA derives its foundation and inspiration from the treatise of the *Abuja Treaty*.

## 8. The African Continental Free Trade Area

### 8.1 Background

Although the *Abuja Treaty* makes no specific reference to a continental FTA, the linear steps of economic integration pass through the FTA stage before deepening to the level of a CU.<sup>119</sup> Following a series of political engagements amongst the AU's Ministers responsible for trade, the Assembly of Heads of State and Government decided to take measures to boost intra-African trade and agreed on a roadmap for the establishment of a continental FTA by an indicative date of 2017.<sup>120</sup> Trade agreements involve movement of goods across borders, and political will is a critical success factor in trade. The Twenty-Fifth Ordinary Session of the Assembly of Heads of State and Government, which was held in June 2015 in Johannesburg, South Africa, launched the negotiations which were aimed at ensuring concrete advances towards the AEC in line with the *Abuja Treaty*.<sup>121</sup> The negotiations for the *Agreement Establishing the African Continental Free Trade Area* (the *AfCFTA Agreement*) therefore commenced in February 2016. The *AfCFTA Agreement* was adopted on 21 March 2018 when it was signed by a total of 44 member states of the AU on the day of adoption.<sup>122</sup> The *AfCFTA Agreement* entered into force on 30

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<sup>118</sup> *TFTA Agreement* preamble.

<sup>119</sup> Salvatore *International Economics* 321-322.

<sup>120</sup> AU Assembly of Heads of State and Government Eighteenth Ordinary Session, Decisions and Declarations of the Assembly: Decision on Boosting Intra-African Trade and Fast Tracking the Continental Free Trade Area Assembly/AU/Dec.394(XVIII), AU Doc EX.CL/700(XX) (2012).

<sup>121</sup> AU Assembly of Heads of State and Government Twenty-Fifth Ordinary Session, Decisions and Declarations of the Assembly: Decision on the Launch of Continental Free Trade Area Negotiations Assembly/AU/Dec.569(XXV), AU Doc Assembly/AU/11(XXV) (2015).

<sup>122</sup> AU 2021 <https://au.int/sites/default/files/treaties/36437-sl-AGREEMENT%20>

May 2019.<sup>123</sup> This was a significant step contributing towards achieving the third stage stipulated in the *Abuja Treaty*.<sup>124</sup> Some of the trade liberalisation issues covered by the *Abuja Treaty* and relevant to the AfCFTA are the removal of customs duties,<sup>125</sup> the removal of NTBs,<sup>126</sup> customs cooperation,<sup>127</sup> and trade promotion.<sup>128</sup> According to the projection in the *Abuja Treaty*, a CU was supposed to have been established by 2019.<sup>129</sup> The author considers that the *Abuja Treaty* therefore established a solid foundation, with practical time frames, and though a CU is belated, the overall time frame for an AEC is flexible enough and attainable.

As of 1 September 2022 all 55 member states of the AU except Eritrea had signed the *AfCFTA Agreement* while 43 member states had ratified it.<sup>130</sup> The member states who ratify the treaty become State Parties.<sup>131</sup> The *AfCFTA Agreement* therefore mentions "Member States" when referring to the countries belonging to the AU whereas "State Party" is in respect of a Member State that has ratified or acceded to the *AfCFTA Agreement*. The signing of the *AfCFTA Agreement* and the pace at which instruments of ratification have been submitted to the AUC was fast and unprecedented.<sup>132</sup> Negotiating and concluding a trade agreement in two years among fifty-five countries that speak more than four official languages, coming from diverse cultures and with different legal systems, has been a significant success for the continent.<sup>133</sup> The success of Africa in creating its own continental FTA becomes apparent when it is considered that the history of the European

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<sup>123</sup> *AfCFTA Agreement* Art 24; AU Assembly of Heads of State and Government Twelfth Extraordinary Session of the Assembly: Decision on the Launch of the Operational Phase of the African Continental Free Trade Area (AfCFTA) AU Doc Ext/Assembly/AU/Dec.1(XII) (2019).

<sup>124</sup> *Abuja Treaty* Art 6(2)(c); *AfCFTA Agreement* Art 3(d).

<sup>125</sup> *Abuja Treaty* Art 30.

<sup>126</sup> *Abuja Treaty* Art 31.

<sup>127</sup> *Abuja Treaty* Art 39.

<sup>128</sup> *Abuja Treaty* Art 42.

<sup>129</sup> Refer to Table 1.

<sup>130</sup> Refer to AU Assembly of Heads of State and Government Thirty-Fifth Ordinary Session, Decisions and Declarations of the Assembly: Decision on the African Continental Free Trade Area (AfCFTA) AU Doc Assembly/AU/Dec. 831(XXXV) (2022). As of 6 February 2022, the following thirteen countries had not yet ratified the AfCFTA Agreement and were not State Parties: Benin, Botswana, Comoros, Eritrea, Guinea Bissau, Libya, Liberia, Madagascar, Morocco, Mozambique, Somalia, Sudan, and South Sudan. Refer also to AfCFTA Secretariat 2022 <https://au-afcfta.org/state-parties>.

<sup>131</sup> *AfCFTA Agreement* Art 1.

<sup>132</sup> Ajala, Ejiogu and Lawal 2021 *Insight on Africa* 127, 128.

<sup>133</sup> The four official languages of the AU are Arabic, English, French, Portuguese and Swahili.

Union can be traced back to 1945 when six European countries decided to cooperate, and it took them until 1957 to sign the *Treaty Establishing the European Economic Community* (the *Treaty of Rome*).<sup>134</sup>

The *AfCFTA Agreement* is therefore an AU initiative that pursues the principles of the *Abuja Treaty* toward an AEC.<sup>135</sup> While it is an African initiative, the *AfCFTA Agreement* sought to ensure that the economic relationships in trade matters complied with the *AU Constitutive Act*, the *Abuja Treaty* and World Trade Organisation (WTO) rules, and it states:

DETERMINED to strengthen our economic relationship and build upon our respective rights and obligations under the *Constitutive Act of the African Union of 2000*, the *Abuja Treaty* and, where applicable, the *Marrakesh Agreement Establishing the World Trade Organization* of 1994 ...

ACKNOWLEDGING the Regional Economic Communities (RECs) Free Trade Areas as building blocs towards the establishment of the African Continental Free Trade Area (AfCFTA) ...<sup>136</sup>

The preamble to the *AfCFTA Agreement* acknowledges the quadripartite relationship among the *AfCFTA Agreement*, the *AU Constitutive Act*, the *Abuja Treaty* and the *Agreement Establishing the World Trade Organisation*, and states. The *AfCFTA Agreement* acknowledges the importance of its forerunner, the RECs, and the fact that continental integration would be premised upon the eight RECs.<sup>137</sup> It is evident that the AfCFTA has an African context and was derived from the *Abuja Treaty* and *AU Constitutive Act*.

The AfCFTA has various general objectives, which include: a free market for goods and services; contributing to the movement of capital and natural persons; facilitating investment; laying a foundation for the establishment of a continental CU; and dealing with the challenges of multiple and overlapping memberships in RECs.<sup>138</sup> These objectives are in line with the provisions stipulated in the *Abuja Treaty*, further showing that the AfCFTA is aligned with the vision for establishing an AEC.<sup>139</sup> The *AfCFTA Agreement* therefore shares the ideals of the *OAU Charter*, the *Abuja Treaty* and the *AU Constitutive Act*.

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<sup>134</sup> Phinnemore "The European Union" 13-16; Laurent 1972 *Journal of Contemporary History* 209-220.

<sup>135</sup> *AfCFTA Agreement* preamble.

<sup>136</sup> *AfCFTA Agreement* preamble.

<sup>137</sup> *AfCFTA Agreement* preamble and definition of "RECs".

<sup>138</sup> *AfCFTA Agreement* Art 3.

<sup>139</sup> *Abuja Treaty* Art 4.

## 8.2 Key issues of the African Continental Free Trade Area

The AfCFTA is a FTA for the AU member states covering a market of over 1.3 billion people and a gross domestic product (GDP) of US\$3.4 trillion.<sup>140</sup> It represents a significant development in Africa and demonstrates how the continent can expand intra-African trade and assert itself in global trade. Once fully operational, with all eligible countries participating, the AfCFTA will be the WTO's largest FTA in terms of the number of countries.<sup>141</sup> Kuhlmann and Agutu have argued that the AfCFTA is Africa's mega-regional trade agreement with the potential to break, rewrite and redesign international trade law and its rules, having an impact beyond Africa and possibly affecting global trade.<sup>142</sup>

The author considers that several factors have contributed to the success of the AfCFTA. Firstly, there was political commitment to the cause as demonstrated by the successive political decisions, including Agenda 2063. One of the decisions which monitored if the process was on track was taken when in January 2017 the AU Assembly appointed one of its members, then President Mahamadou Issoufou of Niger, to champion the AfCFTA cause, guide the process and ensure that deadlines were met.<sup>143</sup> The appointment of a head of state to lead the process exhibited the political will to make the AfCFTA succeed. The *Abuja Treaty* was based on realism, unlike the *LPA*, which was based on political rhetoric, and it embodied the African dream. The AfCFTA was an African agenda negotiated by Africans for Africans. It built upon the successes of the RECs, resulting in groups of countries bringing rationalised positions from their configuration rather than fifty-five different negotiating positions; it utilised the advances and lessons drawn from the negotiations for the TFTA under which three RECs, representing about half of the AU member states, had negotiated, and thus laid a solid base to incorporate other countries; and its Heads of States appointed a champion and leader who was able to guide the process.

The determination to establish and implement the AEC is evident when taking into account the progress made so far in adhering to the spirit of the *Abuja Treaty* and the initiatives being undertaken to engage in real trade. Although the timelines stipulated in the *Abuja Treaty* are not on schedule,

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<sup>140</sup> World Bank African Continental Free Trade Area 1.

<sup>141</sup> World Bank African Continental Free Trade Area 1.

<sup>142</sup> Kuhlmann and Agutu 2020 *Geo J Int'l L* 753.

<sup>143</sup> AU Assembly of Heads of State and Government Twenty-Eighth Ordinary Session, Decisions and Declarations of the Assembly: Decision on the Continental Free Trade Area Assembly/AU/Dec.623(XXVIII), AU Doc Assembly/AU/4(XXVIII) (2017).

the work and achievements so far attained suggest to the author that the AfCFTA and African economic integration will be accomplished.

## 9. Remaining stages towards an African Economic Community

The next stages of integration, which are provided for in the *Abuja Treaty*, are the CU,<sup>144</sup> the CM<sup>145</sup> and the AEC.<sup>146</sup> Table 1 indicates that the CU is behind schedule while the CM will no longer be achieved in time.<sup>147</sup> It must be noted, however, that these are interim stages towards 2034 when the AEC must be fully operational. Considering the speed with which the AfCFTA was negotiated and finalised, it would be too early to predict that the AEC could not be established as scheduled. The AfCFTA has shown that the political leadership of the continent is committed to integration.

## 10. Conclusion

The vision of creating an AEC reflects Africa's commitment to improving the living standards of its people and for the continent to play an assertive role in global trade. This article has shown that economic integration is a collective continental agenda, and the RECs in the various regions of the continent are building blocks towards the economic community. Further, economic integration has always been backed up by legal instruments, and there is coordination between what happens at continental level and the various RECs. These legal provisions have been demonstrated starting from the OAU of 1963, through to the *LPA* and the *Abuja Treaty*. This trend has also been witnessed with the *AfCFTA Agreement*. The AfCFTA is a continental FTA born out of the eight RECs which are recognised by the AU, and with the objective of fulfilling an African agenda. The AfCFTA has its historical foundations in the OAU and the AU and its legal treaties are aligned with those of these organisations. The AfCFTA is related to the RECs in that they are all institutions of the AU which claim heritage from either the *LPA* or the *Abuja Treaty*, with a common agenda directed towards economic integration on the continent. The entry into force of the *AfCFTA Agreement* in May 2019 was a game changer, as it was a major step towards fulfilling the aspirations of the AEC. It is also an indication of Africa's commitment to implementing its own agreed-upon treaties. The legal texts of the AfCFTA are therefore made to comply with the trade liberalisation

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<sup>144</sup> *Abuja Treaty* Art 6(2)(d).

<sup>145</sup> *Abuja Treaty* Art 6(2)(e).

<sup>146</sup> *Abuja Treaty* Art 6(2)(f).

<sup>147</sup> CU was due in 2019 while CM is scheduled for 2023.



agenda under the *Abuja Treaty* and the AU. The AfCFTA is also part of the route leading to the establishment of the AEC by 2034. It is a significant step toward the establishment of a continental CU, a CM and an economic community.

It follows from this narrative that the RECs and the AfCFTA are part of an African agenda meant to expand trade on the continent, leading to total integration. The road towards the AEC and the total integration of the continent is therefore backed with international law as espoused under the *Abuja Treaty* and its related legislation. This vision has gradually been realised through the implementation of successive treaties such as the *OAU Charter*, the *LPA*, the *Abuja Treaty*, the *AU Constitutive Act*, and lately the *AfCFTA Agreement*. The establishment of the AfCFTA is therefore a step towards establishing a continental CU and the AEC.<sup>148</sup>

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## List of Abbreviations

AfCFTA	African Continental Free Trade Area
AEC	African Economic Community
AMU	Arab Maghreb Union
AU	African Union
AUC	African Union Commission
CEN-SAD	Community of Sahel-Saharan States
CET	Common External Tariff
CM	Common Market
COMESA	Common Market for Eastern and Southern Africa
CU	Customs Unions
EAC	East African Community
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
FAL	Final Act of Lagos
FTA	Free Trade Area
GATT	General Agreement on Tariffs and Trade
Geo J Int'l L	Georgetown Journal of International Law
IGAD	Intergovernmental Authority on Development
JAL	Journal of African Law
LPA	Lagos Plan of Action for the Economic Development of Africa

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MFN	Most Favoured Nation
NTBs	Non-Tariff Barriers
OAU	Organisation of African Unity
PAP	Pan-African Parliament
REC	Regional Economic Community
RTA	Regional Trade Agreement
SACU	Southern African Customs Union
SADC	Southern African Development Community
TFTA	Tripartite Free Trade Area
UN	United Nations
UNECA	United Nations Economic Commission for Africa
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organisation