

## SIDE EVENT AT THE NGOs FORUM FOR THE 77TH ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

16 October 2023

### Summary Record

#### 1. Overview of the NGOs Forum

The Forum on the Participation of NGOs in the Ordinary Session of the African Commission on Human and Peoples' Rights (ACHPR) also known as the [NGOs Forum](#) is an advocacy platform established to promote networking among human rights NGOs and other stakeholders for the promotion and protection of human rights in Africa. Usually held before the ACHPR's periodic sessions, this year, the Forum took place from 16 to 18 October 2023 in Arusha, Tanzania. The theme for the Forum was 'The Year of AfCFTA: Acceleration of the African Continental Free Trade Area Implementation.' The Forum was organised by the African Centre for Democracy and Human Rights Studies.

#### 2. Overview of the Side Event: Applying the UN Guiding Principles on Business and Human Rights (UNGPs) to digital trade practices in the African Continental Free Trade Area (AfCFTA)

Based on the theme of the year on implementation of the AfCFTA, the [UN Human Rights Office](#) through its [B-Tech Africa Project](#) organised a side event on 16 October 2023 at the NGOs Forum for the 77th Ordinary Session of the ACHPR. Supported by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), the side event focused on the application of the [UN Guiding Principles on Business and Human Rights](#) to digital trade practices in the [African Continental Free Trade Area \(AfCFTA\)](#). Tech and trade policy experts spoke on various aspects of regional digital trade policy in Africa, leveraging the UNGPs as a framework for ensuring rights-respecting digital trade practices and identifying the role of regional institutions such as the African Union Commission, the African Commission on Human and Peoples' Rights and the AfCFTA Secretariat in ensuring that digital trade practices protect human rights. The experts who spoke at the side event included:

- **Maria Andrea Echazu Agüero**, Human Rights Officer, Right to Development Section, Office of the UN High Commissioner for Human Rights (OHCHR)
- **Edrine Wanyama**, Programme Officer, Collaboration on International ICT in Eastern and Southern Africa (CIPESA)
- **Dr John Ikubaje**, Senior Political Officer, African Union Commission
- **Dr Kebene Wodajo**, Senior Research Fellow, Institute for Business Ethics, University of St. Gallen

#### 3. Participation

The speakers at the side event explored key issues on regional digital trade policies in Africa, their implications for human rights and the potential of applying the UNGPs to these policies. The side event was divided into two panels to tackle two main questions:

- 'What are the current policy gaps in the application of the UNGPs to regional digital trade practices in African contexts?' and
- 'How can critical stakeholders address policy gaps in regional digital trade and human rights? How can the UNGPs be applied to address these gaps?'

The side event began with the first panel session and **Dr Wodajo** presented on the important role of regional human rights institutions in ensuring rights-respecting digital trade policies in Africa. She noted that as far as human rights protection are concerned, institutions such as the ACHPR play a key role in setting the human rights tone in the region and this includes human rights-related issues on digital trade. **Dr Ikubaje** discussed the work of the African Union so far with respect to business and human rights. He noted that while there are considerable progress in the development of the AU Draft Policy on Business and Human Rights, there is still need for more work to ensure that businesses practices are aligned with human rights principles. **Edrine Wanyama** discussed the role of the civil society in ensuring that digital trade policies are in line with international human rights standards such as the UNGPs. He highlighted some of the challenges that will make such role difficult including the current disposition by States towards the protection of online rights which is in opposite direction of the regional drive towards digital transformation. **Maria Andrea Echazu Agüero** shared that the right to development, which is one of the key rights that the AfCFTA promotes is not mutually exclusive of policies that protect and promote human rights.

The second panel focused on the role of key stakeholders in working towards rights-respecting digital trade practices in the AfCFTA. The speakers highlighted that while it is important for regional institutions and other key stakeholders to look inward and maximise their respective mandates, there is need for continued dialogue and collaboration among stakeholders. They noted the need for the development of more instruments backed by strategic implementation plans for key actors on rights-based digital trade policies in Africa. Some of the key takeaways from their recommendations are further discussed below.

#### 4. Key Takeaways

- **Call for a multi-stakeholder and continental consultation on digital trade policies and human rights in Africa:** There is currently a policy gap with respect to digital trade and human rights in Africa. While there are ongoing efforts by the AfCFTA Secretariat to adopt the E-Commerce/Digital Trade protocol, public information about its content and how it addresses stakeholders' concerns on human rights implications of adverse digital trade practices is limited. Therefore, there should be wide consultations not only on AfCFTA's key instruments on digital trade but also on the importance of ensuring that key stakeholders are on board to identify challenges posed by problematic digital trade practices and co-design policy solutions for them. For example, there is a policy gap with respect to consumer protection and digital trade in Africa and consultations such as this can lead to policy development in that regard.
- **Call for the ACHPR to maximise its mandate as the premier human rights institution in Africa:** According to the panel, the African Commission could consider articulating its commitments to technologies and human rights and could also lean into the pillars of the UNGPs in Africa more generally as it falls squarely on its mandate as the 'norm formulator' on human rights. The ACHPR should also call on member states to include how they have complied with their international human rights obligations on rights-respecting digital trade. The ACHPR can expand the mandate of existing working groups whose work relates to business and human rights to include reports on developing digital trade policies for member states. Furthermore, the ACHPR should build on its [Resolution 550 on Business and Human Rights](#) to include a component of digital trade and human rights.
- **Call for the AfCFTA Secretariat to take deliberate actions towards addressing human rights concerns in digital trade practices in the region:** The panel recommends that the AfCFTA Secretariat should work closely with regional institutions to come up with guidelines for states with respect to digital trade practices. Such collaboration could include the African Union Commission, the ACHPR, UN Human Rights Office in particular through its B-Tech Project, private sector, civil society, academia and other key stakeholders to develop effective rights-respecting digital trade

practices in Africa. This will involve opening up the negotiation of its instruments for diverse stakeholders' input which will generally lead to stronger legitimacy and faster implementation.

- **Maximization of existing initiatives on business and human rights are expedient:** It was recommended that existing initiatives on business, human rights and technology in Africa should be mapped and built on. For example, the Working Group of the AU on Business and Human Rights should consider reviewing its work to include a component of technologies and human rights in general. This review might benefit from the work already done by the B-Tech Project on the implementation of the UNGPs in the tech sector.
- **Member states and domestic actors play an important role in domestic implementation of regional initiatives:** Member states should be included in conversations about regional policies as they are the main duty bearers in the implementation of such policies in domestic contexts. This is important because while regional institutions may adopt useful instruments on rights-respecting trade practices in the region, member states are usually the ones who apply these instruments in their respective contexts. Therefore, in order to ensure meaningful implementation of policies on digital trade and human rights in Africa, domestic state actors such as Government Ministries, Departments and Agencies (MDAs), national human rights institutions, academic institutions, civil society, technology businesses, international trade organisations should be involved.
- **Digital rights challenges should be addressed for rights-respecting digital trade policies to be meaningful in Africa:** Problematic policies on digital rights on the continent require urgent attention. These policies include laws and practices that erode digital safety and trust which pose threats to the realisation of digital transformation efforts in the region. For example, not only are internet shutdowns rife in the region, but online platforms are also banned at will and there is a rise in loss of personal data in addition to inadequate data protection standards in the region. The cost of internet access in Africa is also expensive while the rural-urban and gender digital divide continues to widen. Therefore, stakeholders such as State actors should carry out rigorous legislative and policy analyses on these challenges to inform evidence-based policy making in Africa.
- **Civil society organisations are critical in the design and implementation of digital trade policies:** Civil society are important in the facilitation of rights-respecting digital trade policies on the ground in Africa due to their functions. However, such facilitation will require targeted capacity building for civil society on digital transformation with focus on the importance of human rights in technologies. Together with other critical stakeholders, civil society should call for comprehensive review of laws on digital policies which could lean into the key objective of the B-Tech Africa project itself.