



UNITED NATIONS  
ECONOMIC COMMISSION FOR AFRICA

**IMPLEMENTATION OF TRADE AND TRANSPORT LEGAL INSTRUMENTS**

**EXECUTIVE SUMMARY**

**(DRAFT)**

## **Introduction**

In recent decades, regional integration has been on the agenda of several African governments, in the spirit of the Abuja Treaty towards the formation of the African Economic Community (AEC).<sup>1</sup> Through economic integration, African countries can sustain socio-economic development, enlarge their markets and promote the region's overall competitiveness in the global market. To achieve the goal of integration, however, regulations must be put in place to enforce their implementation and set uniform standards across the board.

In November 2010, an expert group meeting took place in Addis Ababa to review and update the existing compendium of trade and transport facilitation legal instruments compiled by the Sub-Saharan Africa Transport Policy Programme (SSATP) in 2003.<sup>2</sup> One of the key outcomes of the meeting was a strong recommendation for monitoring and evaluation of these legal instruments. Specifically, it was recommended that UNECA and partners assist Regional Economic Communities (RECs) and corridor management institutions in assessing the implementation of existing trade and transport legal instruments as a necessary tool to advance policy making and progress towards the Continental Free Trade Area (CFTA).

This report is a response to the recommendation from the 2010 Experts' Meeting to provide an assessment on the status of signing, ratification and implementation of the legal instruments on trade and transport facilitation identified in the updated compendium<sup>3</sup>. It provides an assessment from the international, regional and national perspective on the status of implementation of legal instruments related to trade and transport. Its findings and recommendations are based on insights from representatives of the RECs, public sector, corridor organizations and the private sectors. The report also identifies challenges in implementation, proposes possible solutions to overcome them, and evaluates implementation gaps at the national, regional, and international level.

This assessment is designed to guide countries in their efforts to implement legal instruments for trade and transport facilitation and also to provide tools for policymakers and reformers within the RECs as to priority areas for intervention and supporting efforts of national governments.

## **GENERAL FINDINGS**

Findings of this study confirm that African countries are implementing trade and transport legal instruments at varying degrees through several regional, national and bilateral efforts, creating a challenge for convergence towards the Continental Free Trade Area (CFTA). Although several agreements have been reached, the key challenge as confirmed by earlier studies is in their implementation, which varies due to economic, political and geographical constraints.

The study also reveals that dissemination of the rules in addition to monitoring and evaluation of their implementation has been neglected, therefore resulting in poor information for implementers and end-users. From interviews, transport business owners in East Africa stated that policy updates are usually made available via notifications from the government or through the media; however, it is usually insufficient or does not reach the majority of users. In some cases, poor information results in poor planning and inability to predict transport costs and delays along corridors. An informed private sector will have the power to drive change or advocate for governments to implement rules effectively.

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<sup>1</sup> [South Sudan](#) is the newest member state of the African Union, joining on 27 July 2011. Morocco withdrew from the African Union.

<sup>2</sup> <http://www4.worldbank.org/afr/ssatp/Resources/SSATP-WorkingPapers/SSATPW73.pdf>

<sup>3</sup> The 2003 compendium has been revised to account for new legal instruments up to 2012, as Revised SSATP Working Paper No. 73

Among three main areas of focus – free movement of people, goods, vehicles; customs procedures and documentation; and regulations for transit along corridors – infrastructure and Information and Technology (ICT), cut across as crucial areas for investment to improve implementation of the instruments. Poor coordination and communication between RECs and Member States also accounts for a decent percentage of poorly implemented instruments. The private sector also reports the lack of political will of their national governments as the greatest impediment to trade and transport facilitation.

The specific findings in the key areas of focus are summarized below;

### **FREE MOVEMENT OF PERSONS AND GOODS**

Notable progress has been made in the area of free movement of people, with most RECs having adopted a regional protocol based on the principle of free movement without visas, which are fully enforced in the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC). In June 2013, the Communauté Economique et Monétaire d'Afrique Centrale (CEMAC) Heads of States reached an agreement on the abolition of visa requirement for all CEMAC citizens effective January 1, 2014. Zambia and Tanzania recently ratified the 2005 SADC Protocol on Free Movement, which requires ratification of at least three-quarters of its member states for it to enter into force. The protocol guarantees visa free travel into any of the SADC countries that have ratified it.

EAC is making similar attempts through the Common Market Protocol, which is however, experiencing some delays against its targeted implementation date of 2015.

Non-implementation of free movement of persons stems from a multitude of factors including multiple memberships to RECs, slow harmonization of national law with regional agreements, peace and security issues, fear of loss of jobs for citizens and xenophobia. Implementation is particularly challenging for countries belonging to multiple RECs in instances where free movement has entered into force in one REC, and not in the other, as is the case for the East African Community (EAC) or SADC states that are also members of the Common Market for Eastern and Southern Africa (COMESA). In certain RECs, such as the EAC, the interpretation of the regional agreement of free movement differs from country to country. For instance, Uganda only recently began issuing visitor passes to citizens from East Africa for a stay no longer than two months, contrary to the six-month provision in the Common Market Protocol. Tanzania also issues a three month stay to EAC citizens; however, it is in the process of revising its Immigration Act of 1995 to comply with the provisions of the Common Market Protocol.

The complexity of managing multiple memberships and challenges of free movement creates an opportunity for the COMESA-EAC-SADC Tripartite to lead towards convergence of regulations on immigration for a large population of Africans. In line with this, the tripartite agreement makes reference to facilitating the movement of business persons in Article 29. The Tripartite has promising prospects for creating mutual benefit across the three RECs and as a result increasing intra-African trade.

### **CUSTOMS AND TRADE LIBERALIZATION**

With regards to trade liberalization, an element of free movement, all RECs have realized the benefits of intra-regional trade in principle, as is obvious through the majority being the World Trade

Organisation (WTO) members and ratifications of the General Agreement on Tariffs and Trade (GATT). However, the World Customs Organisation (WCO) conventions have seen less ratification, especially the 1999 Revised Kyoto Convention, which is a crucial element African states must consider for advancement in trade and customs matters. Only 30% of African States, excluding North Africa, is party to the Kyoto Convention, which sets international best practices for customs matters. This reluctance to modernize and adopt expedited ways of working hampers on Africa's trade volumes and competitiveness with respect to developed markets.

## **MARITIME AND PORT FACILITIES**

Some progress has been made with regards to adoption of key maritime conventions, such as the 1965 London Convention on facilitation of international maritime traffic. 22 of 114 contracting states are in Africa excluding North Africa. CEMAC made the most visible attempt at incorporating international best practices in maritime transport into its Shipping Code. Other countries also became party to the Abidjan Maritime Charter of ECOWAS and the 1977 Accra Convention on the Institutionalization of the Ministerial Conference on Maritime Transport. The challenge is that most of countries are unable to implement these conventions in practice at the ports mostly due to poor infrastructure and low use of ICT for electronic data sharing, as recommended in these conventions. Also due to low volumes of maritime transport continent-wide, fewer investments have been made in this regard.

## **REGIONAL TRANSIT GUARANTEE SCHEMES**

The 1975 Geneva Customs Convention on the International Transport of Goods (TIR Convention) requires that goods travel in secure vehicles or containers, and duties and taxes at risk be covered throughout the transit journey by a regionally recognized guarantee. It also calls for mutual recognition of guarantees and transit documentation by regional bodies. Like the Convention on the Contract for the International Carriage of Goods by Road (CMR), the TIR, was not popular in Africa, excluding North African countries, however, it served as a basis for some regional conventions, such as the Northern Corridor Agreement<sup>4</sup>. The TIR Convention, ratified by only Liberia in Africa, excluding North Africa, calls for the simplification of formalities for international transport, especially at borders.

All RECs have integrated transit guarantees into regional requirements for transport of goods, however, only COMESA and SADC have shown significant progress in implementation. COMESA has recently implemented the Regional Customs Transit Guarantee (RCTG), which is operated via insurance companies, and has shown to be a reliable model, subject to its sustainability. The private sector is generally content with the guarantee system within SADC. ECOWAS, through the Inter-State Road Transit (ISRT) Convention instituted a Guarantee Scheme, however, the private sector remains frustrated with having to obtain a new bond for every country in the transit journey. The inefficiency of the scheme reflects a lack of regional cooperation and additional costs to the private sector.

## **INTER-STATE ROAD TRANSPORT**

Facilitating inter-state road transport also encompasses managing vehicles conducting transit. RECs must balance facilitating traffic with maintaining controls to preserve road conditions. For international conventions, the 1948 Convention on the Contract of International Carriage of Goods, 1949 Geneva Convention on Road Traffic and the 1968 Vienna Convention on Road Signs and Signals are relevant and have seen very few ratifications or accessions from Africa excluding North Africa.

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<sup>4</sup> Northern Corridor Agreement covers Kenya, Rwanda, Burundi, Uganda and Zaire

Although most RECs have successfully adopted regional vehicle standards, except for EAC, which is in the process of adopting a harmonized axle load limit, implementation is often times lacking, inconsistent and arbitrary. Additional effort must be made by member states to comply with regional standards.

Several attempts have been made within ECOWAS for intra-regional harmonization of axle loads as specified in the ECOWAS Land Transport Programme. The general experience in ECOWAS revealed that varying axle load limits created unpredictability along journeys. Countries which made an attempt at implementation of the 11.5tonnes per axle in West Africa were eventually frustrated because their truckers became uncompetitive relative to those from non-compliant member states, as in the case of Nigerien and Ghanaian trucks. The stakes for non-compliance are high; overloading puts pressure on already weak road infrastructure in the region. Since Member states are responsible for ensuring compliance at the national level, the private sector must be given a realistic deadline for compliance, given that the short to medium term costs of compliance will be significant for businesses.

### **THIRD PARTY MOTOR VEHICLE INSURANCE**

International best practices indicate that vehicles in transit must possess insurance coverage in every country of transit or purchase a regional third party motor vehicle insurance scheme. Although the 1948 Convention on the contract of International Carriage of Goods (CMR) was not ratified or acceded to by any African states excluding North Africa, it sets stage for liability in the event of accident and damages and mandates vehicle insurance for inter-state transport of goods. 50% of African states excluding north Africa, are also party to the 1949 Geneva Convention on Road Traffic (replaced by the 1968 Vienna Convention on Road Signs and Signals), which defines requirements for vehicles conducting road transport. Third party motor vehicle insurance has been one of the most successfully translated concepts from international legal instruments into regional law. ECOWAS-CEMAC-COMESA-SADC Insurance schemes work on the basis of cooperation between insurance companies and national bureaux responsible for managing the system.

Although an insurance card is mandatory and strictly inspected at all borders, the private sector in East and West Africa, attest to serious challenges in the claims settlement process which is in unclear, tedious and lengthy. In the event of an accident, transporters are left stranded in the transiting country and are unable to access help even when they report to the Bureau. Other challenges include language and translation barriers between Member States, putting truck drivers at the mercy of corrupt officials who take advantage of their ignorance. Within ECOWAS, insurance companies have lamented the existence of falsified Brown Cards and efforts by the private sector to defraud the system.

### **TRANSIT TRAFFIC AND LANDLOCKED COUNTRIES**

For transit trade, landlocked and transit countries which have not already done so, should make efforts to streamline movement along corridors through accession to international transit conventions such as the 1965 New York Convention on Transit Trade of landlocked countries and the Montego Bay Convention. These conventions have generally seen less ratification from coastal states, reflecting a reluctance to grant access for landlocked countries. For example, Senegal and Nigeria are the only two coastal states which ratified the New York Convention to date. However, some progress has been made through corridor organizations such as the Central Corridor Transit Transport Facilitation Agency (TTFA), the Northern Corridor Transit Transport Coordination Authority (NCTTCA) and the Maputo Corridor Logistics Initiative, which is described by the private sector as one of the most successful of its kind in the region. However poor infrastructure from roads, ports and rail networks create a major obstacle for transit trade continent-wide. The cost of transit trade in the region discourages intra-regional trade, attributing most of its costs to unpredictability, checkpoints, informal fees and unnecessary delays.

## **RECOMMENDATIONS FOR IMPROVING IMPLEMENTATION OF LEGAL INSTRUMENTS**

### **General Recommendations for Key Players in Implementation of Legal Instruments**

1. UNECA, with the support of development partners can assist countries who are yet to ratify key international conventions in the ratification process by publicizing the benefits of membership to legal instruments through several available studies and assessments. For example, UNECA can complement the efforts of each REC by developing an inventory of conventions, based on the study findings, that need to be ratified and attaching a manual of how ratification must be carried out. The booklet should also contain instructions for accession to each of the outstanding instruments, and set deadlines for accession to speed up the process
2. RECs must go beyond drafting legal instruments, but also monitor and evaluate progress made on each instrument. The status of implementation of legal instruments should be verifiable in the reporting system created by technical departments which should include details of how they are applied. A specific record-keeping matrix is needed for international conventions to keep track of the issues, date of signature, ratification or accession, and likewise for regional protocols.
3. RECs and Member States should make information available on regional regulations for trade and transport, through public awareness campaigns and signs along corridors and borders. An informed private sector will become more compliant and be in a stronger position to advocate to their governments for changes.
4. Since a large percentage of regional trade is conducted primarily via road transport, special attention must be given to mobilizing resources for upgrading road networks and maintaining them, and considering rail networks, especially for transit trade.
5. For proper implementation of policies, RECs and implementers in member states must coordinate activities to ensure that all facets of agreements signed are taken into account from the moment of their entry into force.
6. **Bilateral Agreements:** Regional integration implies the gradual scraping (or phasing out) of existing bilateral agreements; however the practice in all RECs is that in several cases bilateral agreements are more enforced by member states than regional protocols and in fact they contribute positively in some instances. That notwithstanding and in order to derive added value from bilateral agreements between countries and ensure their coexistence in the least disruptive manner with regional or international conventions, RECs should hold a well-documented catalog of all trade and transport bilateral agreements and evaluate their compatibility or otherwise with other regional or international legal instruments. RECs must ensure that regional protocols are drafted with the appropriate legal status which do not require additional bilateral agreements to enter into force, i.e. automatic applicability.

### **Free Movement of People**

7. Members of SADC who are yet to ratify the Protocol on Free Movement of People should be given a deadline to do so, such that the Protocol can enter into force.
8. CEMAC states should ensure implementation of the new agreement on free movement of people which will become effective on January 1, 2014
9. Member States within RECs should ensure uniform application of rules on visa requirements and immigration, and evolve towards regionally harmonized travel documentation.
10. COMESA-EAC-SADC Tripartite should leverage its existing agreement and harmonize regulations on free movement of people, in line with its fundamental goals which will further lead to increased intra-African trade.

## **Customs, Trade and Transit Regimes**

11. Member States should strive to incorporate ICT in trade facilitation reform which will contribute immensely to streamlining procedures, reducing opportunities for corruption and delays. Interconnectivity of Customs will also enhance information exchange and cooperation between member states.
12. ECOWAS should leverage expedite approval on the Regional Customs Interconnectivity project which will contribute immensely to facilitating transit, especially in the implementation of the ISRT Guarantee Scheme.

## **Road Transport – Regulations and Documentation**

13. EAC should speed up discussions at the legislative assembly on the Axle Load Harmonization Bill
14. The private sector within ECOWAS Member States should be given a reasonable deadline to comply with axle load limits in the region and begin implementation in unison.
15. Member States should adopt an electronic system of issuance of insurance cards which will help to streamline the process and ensure the genuineness of cards issued. ECOWAS is already in discussions about an electronic Brown Card system which will tackle these issues.
16. Member States should also audit motor vehicle insurance companies to ensure that pending claims are settled, in line with the provisions of third party vehicle insurance.

## **Corridor Management**

17. Encourage implementation of the Almaty Programme of Action (APoA) through corridor performance monitoring and diversifying transportation networks, such as investments in rail infrastructure to create freighting options for landlocked countries.
18. Member States must make a firm commitment to support corridor organizations in their efforts at improving the competitiveness of the region. These organizations should be empowered as channels for public and private sector collaboration in trade facilitation.
19. Member States and corridor organizations should involve the private sector in developing trade and transport facilitation programs since they are the end-users of these initiatives. Governments must ensure that policies developed promote the efforts of the private sector, rather than hampering trade.

## **CONCLUSIONS**

To achieve the benefits of signed agreements and move towards the CFTA, RECs must leverage existing opportunities in relatively functional policies, as in the case of the COMESA-EAC-SADC Tripartite. Harmonizing policies will foster convergence and ultimately create larger trading opportunities continent-wide. Similar opportunities exist with regards to road transport regulation, standards and documentation. For example, ECOWAS, COMESA and SADC currently operate similar third party vehicle insurance schemes, which can be adopted and harmonized into a continent-wide scheme in view of the CFTA.

To ensure full implementation, national governments must evaluate the suitability, adaptability and process of becoming party to international legal instruments and identify the duration and changes necessary to be in full compliance. Failure to take these elements into account results in a gamut of signed policies which have no effect in practice. Furthermore once ratified or acceded and made applicable by law in the member states, these legal instruments must be properly documented and

disseminated to the general public who are the consumers of trade and transport instruments. Governments must also mobilize resources to support these policies. The private sector also has a shared responsibility in compliance and advocacy to ensure that policies are being implemented and meet their objectives. Finally, governments must track progress using proper monitoring and evaluation tools. Recording progress from region to region will allow for learning, leveraging on past successes, and finally convergence towards a continental free trade area.