



CARIBBEAN-AFRICAN TRADE WEBINAR SERIES

FEATURING

H.E. MR. WAMKELE MENE
Secretary-General of the AfCFTA

KEYNOTE ADDRESS
22 June 2021
10:00 AST/ 14:00 Ghana Time

FACILITATORS

CARIBBEAN	AFRICA
Dr. Jan Yves Remy Shridath Ramphal Centre, UWI	Ms Kholofelo Kugler Trade Policy Exchange

THEMES/SPEAKERS

WEBINAR 1: KEYNOTE ADDRESS AND SCOPE AND GOVERNANCE, 22 JUNE 2021	WEBINAR 2: NEWER-AGE ISSUES (E-COMMERCE, GENDER, MSMEs), 30 JUNE 2021
Mr. Junior Lodge, Caribbean Trade Consultant	Mr. Prudence Sebahizi, AfCFTA
Mr. Matthew Wilson, ITC	Ms Trudi Hartzenburg, Tralac
WEBINAR 3: TRADE REGIMES (GOODS, SERVICES, AND INTELLECTUAL PROPERTY), 9 JULY 2021	WEBINAR 4: INVESTMENT REGIMES, 13 JULY 2021
Ms Gladys Young, CARICOM	Mr. Tsotetsi Makong, TRAPCA
Dr. Chantal Ononliwu, CARICOM	Prof. Makane Mbongue, University of Geneva
WEBINAR 5: DISPUTE SETTLEMENT REGIMES, 22 JULY 2021	
Dr. Jan Yves Remy, SRC & Mr. Claude Chase, Trade Lawyer	Dr. Olabisi Akinkugbe, Afronomicslaw & Ms Kholofelo Kugler, TPE

Logos at the bottom: UWI, SRC, tralac, trapca, AfronomicsLAW

Rapporteurs' Report on CARIBBEAN-AFRICA TRADE WEBINAR SERIES

Prepared by Kholofelo Kugler and Jan Yves Remy

Key Takeaways

- The Caribbean and African regions **share many characteristics** and development goals, but the two regions also have their own idiosyncrasies, challenges, and ambitions.
- While the start of the integration processes that remain today started in the 1960s (Africa) and 1970s (Caribbean), both regions have failed to achieve their full goals and suffer from **implementation deficit**, due in part to the inter-governmental model of integration.
- Traditional issues like trade in goods and services remain important. However, both regions must prioritise "**newer**" **generation** issues like climate change, youth, e-commerce, gender equality, and MSME support to ensure sustainable and meaningful development.
- **Sustainable development** in the integration and economic development of both regions must be front and centre in all economic policy spheres and these regions must influence and prioritize policy-making in the spheres of international investment and trade law.
- While international disciplines remain relevant to each region, it is vital that both regions adopt laws and policies that **reflect their local domestic market conditions**. Most business activity in the Caribbean and Africa is conducted by MSMEs. Therefore, commitments and policies undertaken by the regions must help and not hinder the successful integration of these players into regional and international markets.
- **Rules-based systems**, underpinned by effective dispute resolution mechanisms, are vital achieving the regions' economic development goals. The jurisprudence from the Caribbean's regional dispute settlement system has succeeded in resolving disputes arising from (economic) treaty violations; whereas African regional dispute settlement mechanisms have upheld the rule of law through the adjudication of mostly non-economic disputes. Effectiveness of these systems is best measured against standards that reflect, and are adapted to local socio-economic, cultural, and political realities.
- The **collaboration between Africa and the Caribbean** continue in structured and more intentional manner to continue knowledge and information sharing and to foster mutual economic gains. The first Africa-CARICOM Summit held on 7 September 2021 between Heads of Government of Africa and the Caribbean Community is a positive and welcome development.

Introduction

Africa and the Caribbean share a close relationship and common development objectives. They often join forces and share common negotiating positions in international economic fora like the World Trade Organization (WTO). Their collaboration in the Organisation of African, Caribbean, and Pacific States (ACP) over the years has also deepened their relationship and informed the way both regions relate to their former colonial powers in the European Union. However, economic relations between the regions are underexploited, at best, and trade flows remain low. According to International Trade Centre's (ITC) Trade Map, in 2020, Africa's exports to the Caribbean Community (CARICOM) region represented 0.02% of Africa's total exports, while its imports from the Caribbean constituted 0.12% of its total imports. In comparison, CARICOM's exports to Africa represented 0.11% of CARICOM's total exports, while the region's imports from Africa constituted 0.13% of its total imports. CARICOM's import basket of African products comprises overwhelmingly of petroleum from west Africa.

Recent developments, including the conclusion of the Agreement Establishing the African Continental Free Trade Area (AfCFTA) offer concrete opportunities for CARICOM/Africa trade and investment to grow and for both regions to achieve economic prosperity.

The Caribbean-Africa Trade Webinar Series (webinar series) was organised to advance the relationship between the regions and to develop more formal and frequent exchanges between the relevant stakeholders, including office bearers, institutions, academics, and the private sector. The webinar series is the collaborative effort of the Shridath Ramphal Centre for International Trade Law, Policy and Services (SRC) of the University of the West Indies (UWI), Cave Hill, Barbados, in partnership with Afronomicslaw.org; Trade Law Centre (tralac), Stellenbosch, South Africa; the Trade Policy Training Centre in Africa (TRAPCA), Arusha, Tanzania; and the P.J. Patterson Centre of UWI, Mona, Kingston, Jamaica.

This objective of the webinar series was to share information and knowledge with stakeholders in Africa and the Caribbean who are interested in the regions' trade and investment regimes and possible business opportunities.

About the Webinar Series

The webinar series was held over a period of five weeks in June and July 2021 and was formally opened with a Keynote address by H.E. Wamkele Mene, Secretary-General of the AfCFTA. It covered various themes common to both Caribbean and African regional integration processes: scope and governance; new areas such as e-commerce, micro, small, and medium enterprises (MSMEs), gender, the green economy; trade regimes (goods, services, and intellectual property (IP)); investment regimes; dispute settlement regimes. (See below for details of presentations given in each Webinar and the [SRC Barbados YouTube Page](#) for video recordings).

It was co-moderated by Dr Jan Yves Remy, Director of the SRC and Ms Kholofelo Kugler, Co-founder of the Trade Policy Exchange. (See Annex for detailed programme of events, speakers and times.)

Webinar Series Highlights

- Webinar 1: Keynote and Scope and Governance Issues

In this keynote address, **Amb. Wamkele Mene** explained that the AfCFTA seeks to address how Africa independently starts building a meaningful internal trade and investment relationship. An obvious way is to significantly increase intra-Africa trade, which is currently at 15-18%. There is immense economic opportunity in Africa. Pre-COVID-19, African countries experienced exceptional economic growth – although from a low base. In fact, the continent was host to six of the 10 fastest growing economies. The African economy is valued at US\$3.4 trillion and is expected to grow to US\$8 trillion in 2035.

The AfCFTA has made good progress thus far. The Agreement has to date been ratified by 38 of 55 African countries. The eventual objective is for the AfCFTA to become a customs union. The value proposition and economic benefits that Africa stands to reap from this free trade agreement (FTA) are enormous. The Agreement covers trade in goods, services, investment protection and facilitation, competition policy, intellectual property, digital trade, and youth and women. It seeks to adopt a duty-free regime for 97% of all traded products within 15 years and to reduce non-tariff barriers. There is an opportunity to establish regional value chains with a potential customer base of 1.2 billion people. The agreement puts development front and centre - acknowledging the diversity of State Parties and their different levels of development. There are also concrete plans to address capacity gaps in different countries with targeted capacity building activities. H.E. Mene expressed hope that the AfCFTA becomes a vector for job creation and meaningful and sustainable economic development.

Mr. Prudence Sebahizi (AfCFTA Secretariat) explained that the economic governance and institutional structures in Africa are multiple and complex. Regional integration in Africa did not start with the AfCFTA – it has been a long journey that started even before African countries' independence from colonial regimes. The Abuja Treaty of 1991 is an important instrument that sets out Africa's integration objectives — the goal is to achieve full economic integration by 2028. Africa is divided into eight regional economic communities (RECs)¹ that have played their part in integrating the continent. Although these RECs are at different stages of integration, with the EAC and COMESA being the most advanced, they are the building blocks of the eventual customs union that the AfCFTA has progressed further.

The success of the AfCFTA will depend largely on its implementation. All State Parties must develop implementation strategies that address, inter alia, national policy, relevant institutions, stakeholder engagement, and strengthening national capacities issues. It is important for the AfCFTA to create an inclusive trade environment. Some of the issues with which African countries must grapple are how to maximise regional integration while protecting the growth of national economies, developing effective national implementation committees,² ensuring that there are strong platforms for exchange and consultation, and balancing continental objectives and obligations with other trade agreements and obligations. The AfCFTA allows State Parties to exclude 3% of products from liberalisation based on food security, national security, fiscal revenue, livelihood, and industrialisation needs.

1. Community of Sahel-Saharan States (CEN-SAD); Common Market for Eastern and Southern Africa (COMESA); East African Community (EAC); Economic Community of Central African States (ECCAS); Economic Community of West African States (ECOWAS); Inter-Governmental Authority on Development (IGAD); Southern African Development Community (SADC); and Arab Maghreb Union (UMA).

2. The national committees are platforms for stakeholders to meet regularly to ensure that their interests are safeguarded.

On institutional matters, REC Secretariats have a lot of experience in regional trade and capacity building. The AfCFTA is ready to work with these Secretariats and the national implementation committees.

Mr. Junior Lodge (Independent Consultant, Caribbean) highlighted that Caribbean regional integration has followed the classical arc from an FTA to Customs Union with a Common External Tariff (CET) to the “CARICOM Single Market and Economy (CSME)”. However, at present, the endeavour to create a single market is aspirational as the objectives set out in the Revised Treaty of Chaguaramas have not yet been fully implemented. While CARICOM is in many ways ahead of Africa in its regional integration endeavours, like the African RECs, it has also suffered from an implementation deficit. Its members are a community of 15 states (excluding Monserrat) that revere and jealously guard their sovereignty, which has hindered the regional integration process.

As compared to Africa, the Caribbean's economy is much smaller – it was valued at US\$90 billion in 2019. The CARICOM region is heavily trade-dependent, particularly on extra-regional trade. The region's top three trading partners are the United States, European Union, and China. The region's small island states and territories are also highly indebted. This indebtedness and the fact that the region is not physically contiguous, making inter-regional travel (and trade) difficult, contribute to the implementation challenges. Other impediments include the frequent natural disasters: according to the United Nations Economic Commission for Latin America and the Caribbean, since 2000, Caribbean has experienced more than 350 incidents of natural disasters. These natural phenomena have economic infrastructure consequences as well as fuel high debt in the region.

The lack of progress in the Caribbean's regional integration is a call to action. The weight of the State as the pre-eminent development actor has been large. It is perhaps important to look at other development actors (non-state actors) and the roles they can play in development. It would also be prudent to exploit the low-hanging fruits. For example, to implement variable geometry, facilitate the free movement of people, focus on skills training, and try to leverage private sector involvement to reinforce economic resilience. It could also be helpful to seek inspiration outside of the region. The AfCFTA is interesting but follows the same model as the Caribbean – it is also top-heavy. Perhaps other models, like the Pacific Alliance model, should be explored.

Trade opportunities between the Caribbean and Africa should be explored. Africa is a huge market with large growth potential. However, there are infrastructural challenges, particularly transport/maritime links between the regions. Currently, trade between the two regions is dominated by trade in petroleum between Gabon and Trinidad and Tobago – the latter refines the petroleum to export to other markets. There are large opportunities in services and digital trade – an agenda must be developed that both regions can explore. Concrete elements that the regions can explore together include the following:

- **The blue economy:** including bioprospecting. The two regions should establish a common research agenda that includes developing an adequate regulatory framework.
- **Industrial standards:** to build on the work of the African Organisation for Standardisation (ARSO) and CARICOM Regional Organization for Standards and Quality (CROSQ). The next step is to develop standards in novel areas of economic innovation such as innovation products and renewable/sustainable development products.
- **Digital trade of creative products:** both regions are strong in the creative industries and can overcome the lack of trade infrastructure to trade these products and services.

- **Developing trade and development agendas:** looking at, for example, the WTO's Trade Facilitation Agreement to see how special and differential treatment (S&DT) can be incorporated into new trade agreements.
- **Effective tax governance:** not only focusing on tax havens but on financing for sustainable development.
- **Facilitating business development:** by facilitating conversations between the private sectors in both regions. Business support organisations must talk to each other, and businesspeople must be brought included in the dialogues between the two regions.

- Webinar 2: The New Economy Issues: MSMEs, E-commerce, Green Economy, and Women

Mr. Matthew Wilson (ITC) commented that MSMEs, E-Commerce, the Green Economy, and Women in Trade are still considered "new age" issues. However, governments and policy makers in Africa and the Caribbean must prioritise them. In fact, there is a moral and economic responsibility to create pathways around these pillars. For example, in **women and trade**, the WTO adopted the Buenos Aires Declaration on Women and Trade in 2017 and ITC has a SheTrades outlook tool where the women in business landscape can be assessed on a sectoral, country, and regional level. SheTrades has done ground-breaking work with women entrepreneurs in both the Caribbean and Africa. The lessons that have been learnt are the following:

- In order to adequately support women in trade, gender disaggregated data is necessary.
- We need a proper definition of a "woman-owned business" to develop appropriate policies to support them.
- We must improve gender mainstreaming in public policy. This includes developing clear policies to protect women from sexual harassment and clear laws that prohibit gender-based discrimination in, for example, access to credit.
- We need to continue making progress in digitisation, including in business registration and providing one-stop shop portals to provide guidance on starting a business, regulatory compliance, and import-export measures and incentives. Digitisation is important because it removes gender-based barriers and discrimination that exist in physical interactions.
- We must initiate training for financial institutions on lending to women-owned business. These institutions still think that lending to women businesses is risky, while the evidence shows otherwise.
- We can close the gender gap in access to finance by, for example, expanding national or regional financial instruments and tailoring them specifically for women.

Regarding **climate change** and **MSMEs**, [the SME Competitiveness Outlook on the green recovery](#) indicates that small businesses have been most affected by COVID-19. Survey participants indicated that two-thirds were strongly affected with a quarter in danger of closing down. The main reason is that smaller businesses are less resilient than larger ones. In the Caribbean, 90% of businesses are considered small firms. While the COVID-19 crisis might pass, climate change poses a larger and more permanent threat. Therefore, action on addressing the effects of climate change must be swift and immediate. Businesses in the Caribbean need to take measures to make themselves resilient to climate change and regional governments must adopt supportive measure to drive resource efficiency, the use of digital and green technologies, and leverage green finance. Measures that can be taken include the following:

- Continue use of solar panels.
- Use agricultural waste better.
- Prepare to face the growing number of environmental regulations on exports (sustainability standards have increased from 15 in 1989 to over 260 in 2020). Many MSMEs will need support to adapt. If the region wants to use trade agreements to increase trade and incomes then it is vital to support MSMEs to meet those standards and to invest in innovation.
- As the vast majority of Caribbean MSMEs are services based, there is opportunity for them to "go green" and eco-innovate, while simultaneously boosting their competitiveness.
- Leverage public- private partnerships on the green economy and review tariff structures and import regulations to ensure easier access to green goods.
- Explore financial incentives to facilitate imports and innovation of green technology in the region. ITC's regional [green2compete hub](#) in Barbados could support regional green efforts.

With **e-commerce** negotiations advancing at the WTO, digital affordability and access becoming central during the pandemic, and the success of the Caribbean's digital nomads' schemes, digital access and readiness must be a priority in the region. This includes rolling out free wi-fi in public spaces, expanding bandwidth and digitalising services (from banking to health).

The Caribbean can take concrete steps to advance these issues, including:

- Ensuring that the region is climate proof. CARICOM must take leadership on tackling these regional challenges and opportunities. Perhaps it is time to revise the Revised Treaty of Chaguaramas to include climate change or even women and trade.
- The region must channel investment into innovation into these areas. For example, training might be necessary for banks and financial institutions to invest in and lend money to green innovation or to support women entrepreneurs to prepare bankable projects and strategies.

Ms Trudi Hartzenberg (tralac) explained that women constitute more than 50% of the African population and the median age in Africa is 19 years – this means that the African population is mainly young and female. Therefore, the AfCFTA's success depends on giving opportunities to these demographics. The AfCFTA will include protocols on Women, Youth, and MSMEs. Climate change is not included. However, as the AfCFTA is driven by State Parties, there is always an option to include it.

The **women and trade** agenda is not new in Africa. For example, the 1983 Treaty of ECCAS already recognised women issues. African countries have started developing policies to address gender discrimination. However, solutions to what gender mainstreaming means, what the women-specific challenges are, and how they will be resolved must be developed. African RECs, including the AfCFTA, have women-focused provisions. However, most provisions on women empowerment are not binding and instead are generally set out in preambles and general objectives and extolled in hortatory/best-endeavour language.

There have been some initiatives to address traders' problems like the online COMESA-EAC-SADC Non-Tariff Barriers (NTB) Reporting, Monitoring, and Eliminating Mechanism. However, 99% of the complaints are made by men. It is thus important to understand the specific challenges that women traders face before proposing solutions. We know that women suffer harassment and abuse at the border and most NTB are at the borders – practical solutions are thus necessary. We also know that small-scale traders face challenges accessing credit and trade finance. Perhaps fintech could resolve some of these problems and perhaps banks and traditional financial institutions could accept less traditional collateral methods.

Women still face challenges in getting involved in trade policy development. They are still under-represented in policymaking roles in institutions in Africa and their capacity building is not prioritised. Tralac has done a lot of work on trade and women, with a focus on building capacity in women policy makers. The institution has partnered with the likes of the International Chamber of Commerce and United Parcel Services. It has also created a hub that provides women policy makers with, inter alia, information resources and networking opportunities.

E-commerce negotiations have not started under the AfCFTA and have been slated into Phase III. This presents a window of opportunity to contribute useful analysis and share information from relevant non-state stakeholders. E-commerce has been on the agenda of African institutions, including the African Union (AU) for a long time. Digital integration is integral to economic development in Africa. The issues addressed in legal and policy instruments should be broad and include how to tackle the digital divide, inequality, and exclusion that are endemic to the digital economy in Africa. These obstacles are taking on a new manifestation in the digital age. Women and children are being left behind and the COVID-19 pandemic has highlighted these disparities. The AfCFTA e-commerce negotiations cannot wait for individual countries to adopt comprehensive digital regulation. A good example of digital trade regulation is in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) where unequal partners concluded an agreement on this issue. The AfCFTA E-commerce Protocol must include technical support based on variable geometry and adapted to local idiosyncrasies. There must also be a technical agenda that speaks to access to digital infrastructure like computer facilities and the internet.

- **Webinar 3: Trade in goods and services**

Ms Gladys Young (CARICOM Secretariat) focused on the services and goods aspects of CARICOM. CARICOM goes further than just traditional trade and includes disaster management and functional cooperation. CARICOM and its CSME are regulated by various provisions covering a wide range of topics and in some instances, regulate different member states in different ways.

Regarding **trade in services**, the free movement of CARICOM nationals is covered in Chapter 3 of the Revised Treaty of Chaguaramas. The definition of a CARICOM national includes citizens of the 14-member nation states and Montserrat nationals. This definition is also important for investment. Companies benefiting from the intra-regional investment regime are those that are substantially owned and effectively controlled by a CARICOM national. This definition has posed challenges for investment where companies do not fulfil the defined thresholds.

The benefits accruing to CARICOM nationals in services trade include the right of establishment. Member States are obligated to remove restrictions and not to lower standards and regulations (standstill clause), with relevant exceptions for government exclusions. The main modes of services consumption and provision are under Mode 4 (temporary movement to provide services) and Mode 2 (temporary movement to consume services). Under the regime, wage earners can travel to seek employment in other CARICOM states. There are categories of CARICOM "skilled nationals", which are university graduates, artistes, musicians, sportspersons, media workers, nurses, teachers, artisans with a Caribbean Vocational Qualification (CVQ), holders of Associate Degrees or a comparable qualification, and household domestics with a CVQ or an equivalent qualification. These categories have been expanded from their original five. These categories of persons are entitled to a temporary definite stay of six months and then can get indefinite stay for as long as they are providing the service. These commitments are at the regional level and Member States are required to implement them. Some Members try to set specific levels of qualifications but that it is not what has been agreed, employers must determine those. There are general exceptions, including undesirable persons and those persons who become a drain on the country's purse. Refusal of entry has been established in the jurisprudence of the Caribbean Court of Justice (CCJ), which has been instrumental in assisting CARICOM to establish policies emanating from the treaty. There are still challenges in terms of restrictions and levels of qualification etc. To limit these restrictions, CARICOM is harmonising regulations, including company and IP registration.

The focus under the goods regime is on the CET and Rules of Origin (RoO). The CARICOM CET is established under Article 82 of the Revised Treaty of Chaguaramas. The CET is more uncommon than common as it includes various lists of departures, which include possibilities to apply tariffs that are lower or higher than the CET. There are also conditional duty exemptions – Member States may exempt goods from duties without seeking Council for Trade and Economic Development (COTED) authorisation. There are, however, products that cannot be exempted. CARICOM RoO are established under Article 84 of the Revised Treaty. One difference between the Caribbean and Africa is that the Caribbean does not have that many primary products so the RoO are not as strict in order to allow imports of inputs from other regions. Both the regimes for the CET and RoO are being revised.

Going forward, CARICOM is committed to improving transparency and information sharing and presenting documents in an easily searchable manner. CARICOM must be responsive to new developments in a quick and timely manner to address needs of Member States, nationals, and investors.

Mr. Tsoetsi Makong (Trapca) posited that international economic law seeks to bring to life economic theories that have certain assumptions that will yield certain determined results. However, are those assumptions yielding those expected results? Developing countries and least developed countries (LDCs) have been chasing theories and not adopting rules that reflect national economic realities. Therefore, these countries must ensure that the theories that they apply work for them.

Africa has numerous trade regimes, and each has the objective to reach economic integration. These agreements are independent and are only linked by the Abuja Treaty. Therefore, Africa must be careful not to go through disintegrating through integration because of the spaghetti bowl effect and Member States belonging to various RECs and other sub-regional agreements.

In most trade negotiations involving African countries (and other developing regions), **goods and services** regimes are negotiated separately. Even within goods, different aspects are negotiated in silos. For trade agreements to work, goods and services must be negotiated together and reflect national market realities. Countries must ensure interlinkages between various sectors that are liberalised at the vertical and horizontal levels. It does not help to liberalise certain sectors when the related regulations create market access barriers. Intra-Africa trade is still very low. Although Africa has plenty of arable land, the region imports 60% of its food from outside of the continent. It is thus important that trade law and international economic law are practical and not an academic exercise. Obligations and commitments must be based on actual data. African countries can leverage these extra-Africa trade flows to attract investment.

In Africa, the MSMEs represent 95-98% of business entities. However, MSMEs cannot meet the applicable RoO. MSMEs are important to the African economy, and they will represent the majority of entities seeking to exploit opportunities under the AfCFTA. There are some initiatives across the continent to try to boost MSME participation in trade – this needs to be top priority.

In the field of services, like CARICOM, there are some RECs, like ECOWAS, that have had significant success in facilitating freedom of movement of people. There are plans to do this at the continental level. However, there is some hesitation from many countries because of immigration challenges. It is necessary to make linkages between the services and goods regimes – it serves no purpose that people can cross borders if goods cannot and vice versa. Therefore, it is necessary to have the infrastructure in place, e.g., security and traceability, to build trust amongst State Parties.

Regarding, **IP**, LDCs in Africa have already compromised the flexibilities granted at the WTO because of their REC commitments. That said, Africa and the Caribbean have an opportunity to become the standard-setters in traditional knowledge, genetic resources, and folklore, which have not advanced much in multilateral platforms.

- Webinar 4: Investment

Dr Chantal Onanaiwu (CARICOM Secretariat, OTN) focused her presentation on CARICOM's investment regimes, and in particular (i) the existing governance framework; (ii) efforts to promote CARICOM as a single investment space; and (iii) CARICOM's goals to attract investment that fosters sustainable development.

The Caribbean's investment governance framework comprises various legal instruments, including domestic law, contracts, and investment treaties. The domestic instruments include incentives, special economic zones, and a few countries (like Antigua and Barbuda, Guyana, and Trinidad and Tobago) have dedicated investment laws that apply to both domestic and foreign investors. There are also Bilateral Investment Treaties (BITs) between CARICOM and third countries. All CARICOM members, excluding Monserrat, have signed at least one BIT. The extent and number of these BITs varies. For example, Jamaica, Barbados, and Trinidad and Tobago have more than 10 BITs (some of them are with African countries but they are not in force). These treaties have the usual provisions, including some sustainable development provisions. However, the majority are older generation BITs, with a few exceptions like the ones between Brazil and Guyana and Suriname, respectively. There are no intra-regional BITs.

The Revised Treaty of Chaguaramas and the Revised Treaty of Basseterre (regulating the Organisation of Eastern Caribbean States (OECS)) regulate intra-CARICOM and OECS investment. These treaties provide for, inter alia, the right of establishment; commitments to remove barriers (e.g., free movement of staff, capital, and the ability to establish subsidiaries); non-discrimination; and investor-state dispute settlement (ISDS) before the CCJ. The OECS also has its own investment provisions that include the requirement to harmonise fiscal incentives.

There have been some internal developments seeking to improve the investment regulatory infrastructure in the CARICOM region. Members have been trying to streamline regulations to make the Caribbean a single investment market. This objective seeks to eliminate the race to the bottom by harmonising investment incentives. The CARICOM Investment Code is also being developed, which will include sustainable investment objectives like encouraging responsible investments and non-regression undertakings. The overall perspective has been to provide a supportive development environment.

COVID-19 has hit the region hard because of its dependence on tourism as a source of income. Nevertheless, there have been important lessons learnt, including, how to attract investments that foster sustainable development. Caribbean countries seek to adopt strategies to "build back better" for a post-COVID sustainable recovery. In that regard, Member States must review their existing investment treaties to ensure that they are aligned with their sustainable development goals and that any new treaties that are signed also advance the same goals. The treaties under negotiation (e.g., CARICOM Investment Code) and the model treaty text that has been developed for inclusion in external trade agreements already reflect these goals. These instruments include the following:

- Explicit reference to sustainable development as a treaty objective; the scope of protected investors and investments has been refined;
- The limitation or exclusion of certain investor protections to safeguard the state's right to regulate; and
- The limitation or omission of ISDS and improvements to ISDS procedures, including dispute prevention and alternative forms of dispute resolution.

Additionally, CARICOM countries (particularly Dominica and Grenada) are currently participating in the WTO Structured Discussions on Investment Facilitation for Development and in these negotiations have advocated for elements that support sustainable development outcomes.

Prof. Makane Mbengue (University of Geneva) commented that there has been a major shift the global investment regime, such as the limitation or elimination of ISDS. The Caribbean and Africa have an opportunity to influence and participate in this shift.

Article 4(c) of the AfCFTA states that the parties must cooperate on investment, competition policy, and intellectual property rights. These Phase II negotiations are intended to be completed on 31 December 2021. The future Investment Protocol can influence the investment landscape in Africa. It presents opportunities and risks. Experience shows that integrating intra-Africa investment policies has not worked, e.g., the Pan-African Investment Code (PAIC) that was launched in 2012. Member States have decided to accept PAIC as a model treaty and not as an agreement in of itself. It was difficult for African countries to find consensus on several issues, which could undermine the integration efforts. Even the sub-regional investment initiatives, like COMESA, have not been very successful in reaching full consensus in their investment agreements. Unlike trade integration, it seems like countries are more hesitant to engage in investment integration.

The three main challenges in the African investment framework are **reducing** fragmentation of the investment law landscape, **consolidating** the reform efforts of sustainable development, and **re-boosting** the Africanisation of investment law.

Regarding **reducing**, the various RECs have different investment initiatives. Some are based on hard law such as the SADC Finance and Investment Protocol (2006), the COMESA Investment Agreement (2007 and 2017); and ECOWAS (the Supplementary Act (2008) and the ECOWAS Common Investment Code (ECOWIC (2018)). Some are based on soft law like the SADC Model Investment Treaty (revised) and the EAC Model Investment Treaty. The regional arrangements are then added to domestic investment laws, intra and extra Africa BITs, and domestic contracts. Hopefully, the AfCFTA will defragment the investment law landscape otherwise the future Investment Protocol will merely be an added layer of regulation that will add to the spaghetti bowl of investment instruments in Africa.

Regarding **consolidation**, Africa is at the forefront of sustainable development provisions in the newer generation investment agreements. These include investor obligations, environmental issues, corruption, and social-political obligations. These new provisions might well pose a challenge for African states who will now have sustainability provisions *inter se* but not necessarily *vis-à-vis* extra-Africa investment, unless the State Party has an investment agreement with the same provisions. In late 2020, the AU adopted a Ministerial Declaration on the Risks of Investor–State Arbitration for COVID-19 Measures, which raises awareness of the issue among AU member states and invites them to explore all available options under international law to mitigate this risk. The AU proposed the suspension of ISDS, which was not widely supported by African countries.

Finally, with respect to **re-boosting**, Africa's role as a rule-maker must be reignited. African countries are not going in the same direction and there is a divergence of views in, for example, investment facilitation and ISDS. Hopefully, State Parties can overcome their differences and conclude the Investment Protocol.

• Webinar 5: Dispute Settlement

This webinar followed a slightly different approach from the previous ones with presenters Prof. Olabisi Akinkugbe (Prof. Akinkugbe, Afronomicslaw.org) and Mr. Claude Chase (Mr. Chase, Trade Lawyer) answering questions director posed by the moderators.

Question 1: Briefly describe the main features of the 'dispute settlement systems'/ courts that have been set up to administer/interpret/apply rules in African and Caribbean regional economic communities.

Prof. Akinkugbe

The international court regimes in Africa are many and diverse. There are 12 continental and sub-regional courts, many of which were established in the late 1990s to early to mid-2000s. At the continental level, a noteworthy court is the African Court on Human and People's Rights where 250 cases have been initiated; however, only about a dozen have proceeded to judgments. The AfCFTA also introduces the Dispute Settlement Protocol, which is modelled on the WTO Dispute Settlement Mechanism (DSM). There various regional courts and tribunals including those established under the RECs and other regional arrangements like Organisation pour l'Harmonisation en Afrique du Droit des Affaires (Organisation for the Harmonization of Business Law in Africa) (OHADA). The operations of sub-regional courts have exhibited a high level of independence, with some exceptions like the

now disbanded SADC Tribunal. What is unique about state-state dispute settlement in Africa is that, with a few limited exceptions in COMESA and the EAC, Member States have generally not brought trade and investment disputes to regional courts.

Mr. Chase

The Caribbean court landscape is a lot simpler than Africa's. CARICOM was established in 1973, and in 2001, the Revised Treaty of Chaguaramas established the CCJ, which was inaugurated in 2005. This infused the rule of law in the CARICOM in trade regime, which has become a rules-based system. As compared to the African regional courts that follow the WTO model, the CCJ is quite unique and has the following characteristics:

- It is a standing permanent tribunal;
- It is composed of seven judges, including a President;
- It has dual jurisdiction - it is domestic and international court in one. For those Member States that have accepted this jurisdiction, it is an appellate court in civil and criminal matters. It also has original, compulsory, and exclusive jurisdiction on the Revised Treaty of Chaguaramas and secondary community law;
- It has Caribbeanised international law in that it has been a leader in the way that domestic law is incorporated into international law. The court follows a teleological approach, clearly keeping the objectives of Caribbean integration in mind when interpreting rights and obligations;
- Access to the court is not exclusively state-state as direct access of private parties allowed. As a result, there has been a lot of activity; and
- It also has advisory jurisdiction.

The CCJ also enjoys a lot of independence because it is not financed by Member States. When it was inaugurated, the Member States contributed to a trust fund of USD100 mil and court operates on the investment proceeds of those funds. Moreover, except the President, the judges are not appointed by Member States but by the CARICOM Regional Judicial and Legal Services Commission. Judges also have a long tenure, they can serve until they are 72 years old, which can be extended to 75 years.

Question 2: How have these Courts fared, in terms of their utilization/nature of the decisions/compliance record? Have they been “effective”? By which/whose metrics?

Prof. Akinkugbe

For example, the ECOWAS Court of Justice was established in 2001 and went approximately seven years without hearing a case. Then the subject matter jurisdiction and who had legal standing were changed from treaty (economic) issues and state-state litigants to human rights issues and individuals. The *Afolabi Oladjide v Nigeria* case was the first to open litigation to individuals on human rights. On the other hand, the Campbell case which challenged Zimbabwe's farm expropriations during the Mugabe regime led to the closure of the SADC Tribunal as a result of blocking judicial appointments.

When assessing compliance, impact, and effectiveness of regional courts, we need to avoid using a Eurocentric lens. In fact, compliance matrices in African regional courts also may not match what we consider compliance from a national court perspective. We therefore need to adopt the relevant cultural, socio-economic, and political lenses when assessing the effectiveness of African regional courts. For courts like the ECOWAS Court of Justice, their effectiveness lies in the ability of individuals to bring a case to name and shame governments when they have been denied access in national courts. African regional courts have also succeeded in resolving disputes in alternative / non-litigious means, which is also a factor that indicates their effectiveness to resolve disputes.

Mr. Chase

The effectiveness of the CCJ also depends on whose/which matrix is adopted. However, the CCJ has been effective when you look at its utilisation, access to litigants and providing a way for them to enforce their rights, its compliance rate, and the way it fosters security and predictability.

Regarding **utilisation rates**, the CCJ is being used by litigants. Between 2008-2021 the court has rendered 35 judgments. While the Court was initially conceived as a forum to resolve State-State disputes, thus far, all disputes have been brought by private litigants, which drives its utilisation. The CCJ also provides **access to justice** for all economic operators in region. Its jurisprudence on free movement of goods and persons and the administration and maintenance of CET has shaped community law and regional integration. Additionally, the CCJ **compliance rate** has been excellent — there has been temporary but not permanent non-compliance. The Revised Treaty of Chaguaramas requires Member States to domesticate the CCJ's judgments to ensure compliance. All in all, the CCJ has advanced the rule of law in CARICOM and fosters **legal security and predictability**.

Question 3: How do the Courts treat domestic law? How have they advanced/set back/not affected at all the rule of law or the regional project of the communities of which they form part? Has their jurisprudence been impactful at all? If so in what ways?

Prof. Akinkugbe

Regional court judges are aware that they are not operating in domestic courts systems. This is evident in the way they frame their judgments, instructing Member States to comply. Regional court judges are also particularly sensitive to Member States sensibilities because litigants are not obliged to exhaust domestic remedies so in many cases, the regional courts are the courts of first instance. However, the judges are careful to only deal with human rights violation and to shy away from constitutional issues.

The regional courts have advanced the rule of law. The ECOWAS Court of Justice's mega-politics jurisprudence (that involved political and election cases) is indicative of the Court's masterful handling of sensitive cases that induced compliance. However, again, these dispute settlement systems must be understood on their own terms matters, bearing in mind the unique socio-economic, cultural, and political realities in which they exist.

Mr. Chase

The CCJ has absolutely advanced the rule of law in Caribbean regional integration. The rules-based system permeates its jurisprudence. For example, the CCJ offers compensation to litigants that can demonstrate a treaty violation by a Member State. This compensation is not mandated in the treaty, but nevertheless advances the rule of law and provides confidence to litigants that they can recover what they have lost when their rights have been violated or curtailed. The CCJ's largest impact has been in granting leave to private individuals to access the court. In addition, its jurisprudence on free movement of persons has advanced regional integration – the Court ruled that this is a fundamental right granted to CARICOM citizens and is subject to limited exceptions.

Annex: Webinar Series Programme

WEBINAR	DATE	SPEAKERS
Webinar 1: Keynote Address and Scope and Governance Issues	22 June 2021, 10:00 AST/ 16:00 CEST	<ul style="list-style-type: none"> Keynote address: H.E. Amb. Wamkele Mene, Secretary-General of the AfCFTA Opening remarks: H.E. Prof. Amb. Richard Bernal OJ, Research Fellow, P.J. Patterson Centre <p>Speakers</p> <ul style="list-style-type: none"> Africa: Mr. Prudence Sebahizi, Chief Technical Advisor, AfCFTA Caribbean: Mr. Junior Lodge, Caribbean Trade Consultant
Webinar 2: MSMEs, e-Commerce, Green Economy, and Women and Trade	30 June 2021, 10:00 AST/ 16:00 CEST	<p>Speakers</p> <ul style="list-style-type: none"> Caribbean: Mr. Matthew Wilson, Chief, Special Projects (Partnerships, Resource Mobilisation, Relations with UN RCs), International Trade Centre Africa: Ms Trudi Hatzenberg, Executive Director, tralac
Webinar 3: Trade Regimes: Goods, Services, and Intellectual Property	9 July 2021, 10:00 AST/ 16:00 CEST	<p>Speakers</p> <ul style="list-style-type: none"> Caribbean: Ms Gladys Young, Senior Legal Officer, CARICOM Africa: Mr. Tsotetsi Makong, Trade Law Expert, Trapca
Webinar 4: Investment Regimes	13 July 2021, 10:00 AST/ 16:00 CEST	<p>Speakers</p> <ul style="list-style-type: none"> Caribbean: Dr. Chantal Onanaiwu, Trade Policy & Legal Specialist, CARICOM Africa: Prof. Makane Mbengue, Professor of International Law, University of Geneva
Webinar 5: Dispute Settlement Regimes	22 July 2021, 10:00 AST/ 16:00 CEST	<p>Speakers</p> <ul style="list-style-type: none"> Africa: Prof. Olabisi Akinkugbe, Founding editor, Afronomicslaw.org and Assistant Professor, Dalhousie University, Canada Caribbean: Mr. Claude Chase, Trade Lawyer