



United Nations  
Economic Commission for Africa

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## Briefing Paper Series

**Emerging Trends in the Negotiations under WTO:  
Pertinent Issues of Concern to African Countries**

# **Trade and Labour Standards under WTO Negotiations**

**No. 9  
April 2001**



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Economic Commission for Africa**

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# **Trade and Labour Standards under WTO Negotiations**

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## Executive Summary

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Conditions of work started being regulated by international agreement at the end of the nineteenth century. The International Labour Organization (ILO) was established with the objective of promoting social justice in the process of generating economic growth. It created a general system of norms that are used as labour standards in respect of protection of the rights and working conditions of workers. From 1919 to 1999, 181 conventions and 189 recommendations were adopted by the International Conference. After the Second World War, the focus of labour standards was on important issues of human rights, economic development and social justice.

The relationship between trade and international labour standards has become a matter of high controversy between developed and developing countries. Developed countries have indicated their desire to include labour standards in the purview of the World Trade Organization (WTO), claiming the existence of a link between regulation of conditions of work and international competitiveness. Developing countries (including Least Developed Countries (LDCs)) reject the proposal, considering it an indirect but strategic means of promoting protectionist measures. The level of socio-economic development of African countries limits their ability to implement the provisions of the international standards.

Regardless of their lack of capacity, African countries are being obliged to undertake fundamental changes in their internal organization. Current conditions of employment and work in Africa show that steps are being taken to increase the possibilities of proper utilization of human resources by matching people and jobs.

The fact that these countries are opposing the inclusion of the new issue of trade and labour standards on the WTO negotiating agenda should not be taken

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as a lack of recognition of the importance of labour standards in sustainable economic development. On the contrary, African countries attach importance to labour standards, while they oppose the possible use of such standards as trade-restrictive or protectionist measures.

They need to adequately orient themselves to prevailing conditions regarding international trade and work towards common positions that may help to strengthen their negotiating capabilities. Technical assistance is regarded as a method of facilitating the creation of an enabling environment by providing the necessary expertise, funds and facilities.

In conclusion, the paper asserts that labour standards provide guidelines for improving working conditions and affirms that making labour standards binding wherever feasible may be acceptable as long as the competitiveness of countries is not eroded. African countries should strive to create an enabling environment for improving conditions of work. They should also combine their efforts in the negotiation process and promote wider participation by all stakeholders.

## 1. Introduction

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1. A new global trade and economic order was launched with the enforcement of the Uruguay Round Agreements (URA) and the establishment of the World Trade Organization (WTO) in 1995 to oversee the implementation of the URA. Henceforth, the world trading system is to be governed by a legal framework of multilaterally agreed concepts, principles and rules. Since the URA incorporates complex and diverse issues, further negotiations became necessary to improve on it and to enhance the commitments as well as the participation of countries.

2. As the participation of African countries in the Uruguay Round Negotiations was very inadequate, the impact of the agreements on their economies and their long-term development needs to be assessed fully. These countries have to prepare themselves continuously in order to present and defend their interests effectively and influence the direction and outcome of negotiations. This explains the failure of the WTO Ministerial Conference in Seattle during which countries refrained from making decisions that were not in their interest. However, the continuous process of negotiations within the WTO has increased the need for countries to be conversant with issues that are likely to be included in the post-Seattle negotiations. In this context, the ECA is assisting African countries to improve and upgrade the skills of their trade negotiators.

3. Even if labour standards are not currently subject to WTO rules and regulations, some developed countries (WTO members) have proposed that labour standards should be taken up by WTO working groups and conferences as an issue for discussion.



4. The idea of regulating conditions of work by international agreement originated towards the end of the nineteenth century. Many labour problems had reached a stage of being treated on an international basis even before the establishment of the International Labour Organization (ILO) in 1919. From the outset, the ILO has given serious consideration to international regulation of conditions of work and the protection of workers.

5. The Declaration of Philadelphia, which was issued in 1944, asserts the primacy of social objective in international policy and defines this objective as being the attainment of conditions that enable human beings to pursue both their material well-being and their spiritual development, regardless of race, creed or sex, in an atmosphere of freedom, dignity, economic security and equal opportunity.

6. From 1919 to 1999, the International Labour Conference adopted 181 Conventions and 189 Recommendations. Originally, the main thrust of standards was on working conditions.

7. After the Second World War, the focus of conventions was on important issues of human rights. The Declaration of Fundamental Principles and Rights at work, adopted in 1998, marked a reaffirmation of the obligations ensuing from membership in the organization. Hence, many countries regard the ILO as the competent authority for issuing and supervising the application of labour standards. Moreover, they consider any attempt to create a linkage between trade and labour standards to be a threat to their interests.

8. This paper addresses emerging issues of trade and labour standards under WTO negotiations that are pertinent to African countries. It comprises four

sections including the introduction. Section two addresses International Labour Standards. Section three reviews labour standards in the African context. The fourth section is the conclusion.

## **2. International Labour Standards**

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### **2.1. Definitions in the ILO Context**

9. International labour standards are instruments prepared by the ILO for the use of member states and the international community at large, defining minimum standards in areas of ILO competence. These instruments relate to matters of universal interest such as freedom of association, forced labour, the protection of women and young workers, the search for employment, occupational safety and health, hours of work, paid vacation, labour-management relations, social security, labour inspection, etc.

10. There is also a distinction between international labour standards concerned with fundamental human rights and those focusing on material conditions of work.

### **2.2. Principles in the ILO context**

11. One of the main objectives of the ILO, as indicated in its constitution, is to eliminate unfair competition based on oppressive working conditions. It is clearly stated in the Declaration of Philadelphia (1944) that labour should not be treated as a commodity, thus recognizing the dignity of labour. This principle invites action against socially unacceptable any oppressive working conditions. Accordingly, forced labour was rejected as unacceptable and apartheid denounced.

12. A second principle places greater emphasis on the advantages arising from factor endowments that are artificially enhanced by oppressive utilization of the labour force. In this case, labour standards serve as a value to be promoted within the context of universally recognized human rights.



13. The concern has been to establish a general system of norms that could be used as labour standards in respect of promoting economic growth, which obviously includes trade development, the protection of rights (such as that of association) and improved working conditions.

14. The unethical use of labour has been seen from different perspectives. One such perspective is that of forced labour, which is the subject of Convention No. 29 of 1930 and Convention No.105 of 1957. Recruitment of indigenous workers is another case that is dealt with in Convention No. 50 of 1936. The use of prison labour, which many countries condemned, was a subject on which the ILO and GATT sought an international agreement. Convention No.138 also recognizes that flexibility is required in deciding the area of application, particularly in relation to the type of work, as child labour takes many forms. Inadequate levels of pay engendering exploitation and discriminatory practices that involve infringement of workers' dignity are two essential aspects of conditions of work, in which economic and social considerations come into play. However, it is important to note that wages are difficult to cover adequately through international agreements as they depend on local conditions relating to various kinds of positions or categories of workers as well as the labour-market situation.

### **2.3. Core Labour Standards**

15. Since its establishment, the ILO has built a body of international labour standards, of both a regulatory and promotional nature, to bring about improvement in working and living conditions and in defense of human rights. Among these standards, seven represent core labour standards since they deal with fundamental labour issues.



16. Many of the standards make provision for consultation of employers and workers organizations in the framing of national labour laws by member states. Among the core labour standards, there are those related to fundamental human rights that go beyond the regulation of the material conditions of employment to protect fundamental values of freedom and equality, and to ensure the material well being as well as the personal dignity of workers. They incorporate the following regulations:

**2.3.1. Freedom of Association and Effective Recognition of the Right to Organize and Collective Bargaining (Convention No. 87, 1948)**

17. This standard aims at enabling workers and employers to exercise their right to organize for furthering and defending their interests freely. It provides that workers and employers, without any distinction whatsoever, have the right to establish and join organizations of their own choosing with a view to furthering and defending their respective interests by drawing up their own constitutions and rules, electing their representatives in complete freedom, organizing their administration and activities. It also lays down a series of guarantees for the functioning of organizations without interference by public authorities.

18. The convention calls for the provision of adequate protection for workers, particularly against the refusal to employ them due to trade union membership, and dismissal or any other prejudice due to union membership and participation in trade union activities.

### **2.3.2. Freedom of Employment (Convention No. 29, 1930)**

19. The objective of this convention is the suppression of forced labour. It provides for the gradual abolition of forced labour in all its forms. Five categories of work (compulsory military service, certain civic regulations, prison labour, work done in cases of emergency and small communal services) fall outside the scope of the convention.

### **2.3.3. Abolition of Forced Labour (Convention No. 105, 1957)**

20. This standard calls for the immediate and total suppression of forced or compulsory labour for political reasons, as a method of mobilizing and using labour for economic development purposes, as a measure of labour discipline, as a punishment for having participated in strikes and as a means of racial, social, national or religious discrimination.

### **2.3.4. Equal Opportunity and Equal Remuneration (Convention No. 100, 1951)**

21. States that ratify this convention undertake to encourage and, as long as it is compatible with the methods in force for determining remuneration rates, to ensure the application to all workers of the principle of equal pay for work of equal value by means of national legislation, collective agreements or systems for determination of remuneration rates or a combination of these means.

### **2.3.5 Discrimination in Employment and Occupation (Convention No.111, 1958)**

22. This convention calls for a national policy to eliminate discrimination in employment, training and working conditions on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and to promote equality of opportunity and treatment.

### **2.3.6 Abolition of Child Labour (Convention No.138, 1973)**

23. This convention aims at the abolition of child labour and stipulates that at the time of ratifying the convention, each state should specify the minimum age for admission to employment or work. The provisions include that this age should not be less than 15 years, except in developing countries and LDCs that may specify 14 years as a minimum age. For any type of employment or work which is hazardous to the health, safety or morals of young persons, the minimum age is not to be less than 18 years or 16 years under special conditions in consultation with concerned employers' and workers' organizations. Limited categories of employment or work may be excluded from the application of the convention where problems of implementation are encountered, e.g. where the economy and administrative facilities of the ratifying country are not sufficiently developed. Work done in schools for vocational and technical education does not fall within the scope of the convention.

24. Full implementation will take time. However, an international consensus has emerged stressing the need to take immediate steps towards abolishing the worst forms of child labour, which include denial of access to education and the conscription of children into military service.



### **2.3.7 Convention Banning the Most Intolerable Forms of Child Labour**

The new standard seeks to:

- Identify priority areas of action;
- Focus on the worst forms of child labour;
- Ensure that immediate action is taken, irrespective of the level of development;
- Ensure special protection for younger children; and
- Call for global cooperation and action.

25. This new convention focuses on child labour covered by Convention No. 138 as well as Convention No. 29 and other international instruments dealing with abolition of slavery and the United Nation Convention on the Rights of the Child.

### **2.4. Other International Labour Standards on Major Labour Issues**

#### **2.4.1 Social Policy/Basic Aims and Standards (Convention No. 117, 1962)**

26. The purpose of this convention is to direct all policies to the welfare and development of the population and to the promotion of social progress. It deals with improvement of standards of living, migrant workers, remuneration of workers, non-discrimination in education and training. It calls for efforts to avoid the disruption of family life and traditional social units by the study of migratory movements and action in town and country planning and prevention of congestion in urban areas. The convention provides that consideration be given to the elimination of chronic debt, control of land alienation, land ownership and use, and the fostering of cooperatives by practical means.



#### **2.4.2. Occupational Safety and Health (Convention No. 155, 1981)**

27. This convention aims at promoting national policy on occupational safety and health. It embraces all economic activities and all workers, with only some exclusions such as maritime, shipping, fishing or other workers for whom special problems are recognized. It calls for the formulation, implementation and periodic review of a coherent national policy on occupational safety, occupational health and working environment by each ratifying state, with a view to preventing accidents and health hazards arising in the course of work, and also minimizing the causes as far as possible. Provision is made for the adoption of laws or regulations or any appropriate methods such as training, for taking preventive measures right from the stage of design of the work place, including the introduction of the use of machinery, substances etc. and for undertaking labour inspection.

28. It renders employers responsible for supplying protective clothing as well as equipment and for ensuring that the work place, machinery, equipment, processes, substances etc. under their control are safe.

29. Considering the standards which are of interest to African countries, it is important to refer to the Guarding of Machinery Convention No. 118 of 1963, the Maximum Weight Convention No. 127 and Recommendation No.128 of 1967, the Safety and Health in Construction Convention No. 167, 1990, and the Chemicals Convention No.170 along with Recommendation No, 177 of 1990. Other instruments on the subject comprise Recommendation No, 164 of 1981 and the Occupational Health Services Convention No. 171 of 1985.

#### **2.4.3. Social Security**

30. The ILO has defined social security in terms of public measures that address three types of needs or contingencies:

- The need for medical care;
- The loss or substantial reduction of earnings due to sickness, maternity, employment injury, or due to old age, invalidity, death of bread winner or unemployment; and
- The costs associated with raising children.

31. Other instruments that have been adopted more recently to guarantee a higher level of protection than that provided in Convention No. 102 consist of the Employment Injury Benefits Convention (No. 121) of 1964; the Invalidity, Old-age and Survivors' Benefits Convention (No.130) of 1969, and the Employment Promotion and Protection against Unemployment Convention (No.168) of 1988.

#### **2.4.4. ILO Declaration on Fundamental Principles and Rights at Work, 1998**

32. This Declaration aims at reconciling the desire to stimulate national efforts to ensure that economic and social policies are mutually reinforcing for the attainment of sustainable socio-economic progress and the need to recognize the diverse situations, capabilities and choices of ILO member states. All members are required to respect promote and realize, in accordance with the constitution and principles pertaining to fundamental rights, which are subject to the conventions on:

- Freedom of association and the recognition of the right to collective bargaining;
- The elimination of forced labour;
- The effective abolition of child labour; and
- The elimination of discrimination in respect of employment and occupation.

## 2.5. Current Issues under Discussion in the WTO Framework

33. The relationship between trade and international labour standards is an area of great controversy between certain industrialized countries such as the United States on one hand, and African and other developing countries on the other. The contention of the industrialized countries is that there is a link between regulation of conditions of work and international competitiveness that warrants inclusion of a social clause in the WTO Agreements so that trade sanctions may be imposed in the event of non-compliance.

34. Developing countries reject the proposal, considering it as an indirect but strategic means of promoting a protectionist measure that erodes their comparative advantage. They disagree with the proposal that issues relating to international labour standards fall within the domain of the WTO.

35. Determining which labour standards to consider "core" standards has also proved difficult. Some countries limit the composition of core labour standards to those relating to fundamental human rights while others attempt to include standards that embrace economic rights relating to working conditions like holidays. At the workplace, the distinction between human rights and economic rights is not clear. A standard such as the one on the elimination of employment



discrimination, which may be regarded as economic right, can equally be considered a fundamental human right. Nevertheless, the following five labour standards are regarded by some developed countries as trade related:

- Freedom of association;
- Right to collective bargaining ;
- Prohibition of forced labour;
- Equality of treatment and non-discrimination in employment; and
- Minimum age.

36. Although the United States, France, Belgium and other developed countries have attempted to have labour standards included in multilateral trade agreements at different points in time, no provisions on labour standards were included in the Uruguay Round. However, the commitment made by the Chairperson of the Marrakesh Ministerial Meeting in April 1994 opened the door for further discussion. The issue was raised again during the first WTO Ministerial Conference at Singapore in 1996 because developed countries felt that increased trade liberalization had exposed their products to unfair competition from developing countries where labour standards are low. However, developing countries resisted all allegations of unfair competition. They held that any lack of observance of core labour standards did not provide them with any important source of advantage. They also expressed concern that once core standards related to human rights were included, others associated with working conditions -- which are dependent on a given level of development -- would be introduced, thereby increasing the opportunities for developed countries to take retaliatory measures in cases of non-compliance. The concern of many developing countries and LDCs is that inclusion of a "social clause" will result in abuses and will be used to protect the products of developed countries.



37. Thus, the concerns of African and other developing countries are evident in the final Singapore Ministerial Declaration on core standards, which expresses the renewed commitment of developing countries to observe internationally recognized core labour standards and their continued acknowledgment that the ILO is the competent body to set and deal with such standards. The use of labour standards for protectionist purposes was rejected categorically, while a general agreement was reached to the effect that the comparative advantage of WTO members, particularly that of low-wage developing countries and LDCs, should in no way be questioned.

38. However, the United States and other developed countries seem not to agree on the significance of the Singapore Declaration. Nevertheless, it is difficult or even unlikely that industrialized countries will be able to obtain an international agreement on the use of trade sanctions to attain compliance with core labour standards. The opposition of developing countries and LDCs to the inclusion of a social clause in multilateral trade agreements with sanctions attached to it has grown stronger since the Singapore Conference, as evidenced during the aborted Seattle conference.

39. A Handbook for Trade Negotiations from Least Developed Countries produced by UNCTAD in 1999<sup>1</sup> affirms that increased international trade facilitates enhancement of economic development. It however indicates that research so far carried out does not confirm a linkage between trade and labour standards. This shows that the concerns by developed countries over the negative impact of low labour standards in developing countries and LDCs is not well established nor founded. The handbook also reveals that workers in developing

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<sup>1</sup> UNCTAD: *Future Multilateral Trade Negotiations: Handbook for Trade Negotiations from Least Developed Countries*. Geneva. 1999

countries and LDCs are likely to be harmed by international harmonization of standards relating to conditions of work to which trade sanctions are attached.

40. Divergences on international labour standards in relation to trade appear to be irreconcilable. It is argued that interfering with the free play of market forces through the imposition of labour standards undermines the socio-economic growth of developing countries and LDCs, since their comparative advantage lies in their abundant and unprotected labour supply. The contention is that unrestricted global competition leads to a deterioration in conditions of work, resulting in political instability and declining wages, all of which generate a chain reaction of market contraction and under-consumption (Aljendro Portes, 1994).

41. However, the concept of a fair labour standard can be used for protectionist purposes simply by setting standards at a level that would effectively bar imports from countries with low labour costs, thereby preventing them from getting a comparative advantage. If the main purpose is to assure workers in developing countries of a fair share of the fruits of industrial progress, standards would have to be more flexible and some discretionary judgment would be involved in deciding whether the legitimate demands of workers are being frustrated. If, on the other hand, the main purpose were to safeguard fair competition in the world market against abuses in the form of "sweated labour", then the focus of interest would be on the market conditions caused by the practice rather than on conformity or non-conformity with labour standards.



### 3. Labour Standards in the African Context

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#### 3.1. Conditions of Employment and Work in Africa

42. Economic growth had been on the decline in Africa for two decades until it started recovering in 1995 when the region as a whole attained 2.9 per cent growth in per capita income<sup>2</sup>. This compares favourably with the 0.7 per cent and 2.1 per cent growth recorded in 1993 and 1994, respectively. GDP growth for the 33 African LDCs was 2.7, 1.6 and 2.4 per cent in 1993, 1994 and 1995, respectively. The recovery continued in 1996 and 1997 due to relatively strong growth in export earnings, better weather and a decrease in civil strife. However, in sub-Saharan Africa in particular, even if such growth can be sustained in the coming decade, it will not be strong enough to reverse the marginalization of the subregion or to make much impact on the efforts to alleviate the widespread poverty. Hence, the main challenge is to turn this recovery into sustained economic growth, with the aim of attaining the 6 per cent annual growth target for Africa set by the United Nations. Only a few countries in the region were able to sustain or surpass this target in the three years mentioned above.

43. The majority of the African workforce (about 70 per cent) is engaged in agriculture, often at subsistence level. The conditions of the vast majority are characterized by declining living standards, rising unemployment and increasing poverty. As the continent has a fast-growing work force, with about 9 million<sup>3</sup> new job seekers entering the labour market each year, unemployment and underemployment are widespread, with informal sector activities accounting for over 60 per cent of existing jobs. Application of labour laws is not widespread and overall working conditions are poor.

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<sup>2</sup> *Economic Commission for Africa – Economic Report on Africa, 1999*

### **3.2. Promulgation and Observance of Labour Laws and Labour Organization**

44. African countries have labour laws based on ILO Conventions and Recommendations that reflect the outcome of working class struggle, and the diffusion of ideas, values and practices from the developed world. International standards are used as points of reference and sources of inspiration in the drafting of national legislation. These imported labour standards are not readily adaptable to the African economic and social reality.

45. With greater integration of global markets, firms in Africa have to compete not only on the basis of price but also increasingly in terms of quality, conformity to standards, innovative capabilities and quick response to customer requirements.

46. Demand for skilled labour has risen significantly due to globalization. New information technology has made a very significant impact on globalizing production and integrating financial markets. Moreover, it has created technological diffusion and facilitated the adoption of new forms of work organization. Thus, the availability of a skilled labour force, coupled with access to new technology and its proper adoption, has become necessary for satisfactory economic performance. Concurrently, countries are increasingly obliged to invest in capacity building due to rapid liberalization of trade and the related competition pressures. In order to be globally competitive, a country must be able to generate sustainable growth in output and employment through the mobilization of resources (including skills) and the development of infrastructure. At the same time, opportunities and incentives for training many workers are reduced by the

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<sup>3</sup> *World of Work – The Magazine of the ILO; No. 33 – February 2000*



same factors that undermine long-term employment relationships and exclude low-skilled workers from employment.

47. Increasing competition and new technology have motivated firms to attain greater price competitiveness, improved quality, greater flexibility, prompt response to customers and the ability to produce new goods and services quickly. As the traditional system -- with narrowly specialized jobs -- is becoming unable to cope with the changes in the productive environment, African countries are being forced to make fundamental changes in their internal organization, including the job descriptions of workers.

48. Labour standards are devised as guidelines for corrective or preventive action and as instruments that encourage and promote more constructive and socially acceptable practices. They provide the enabling institutional setting for social investment <sup>4</sup>.

49. For example, the installation of strong employment services can influence labour markets. It helps to increase the possibilities of movement of human resources by matching vacancies to job seekers and thereby contributing towards the attainment of full employment and greater productivity. The establishment of effective inspection services in turn provides an important method of protecting workers from occupational hazards.

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<sup>4</sup> ILO; *Creating Economic Opportunities - The Role of Labour Standards in Industrial Restructuring*; edited by Werner Sengenberger and Duncan Campbell; Geneva; 1994.

### 3.2.1 Child Labour

50. Child labour is a serious problem in Africa, with about 80 million children, constituting 40 per cent of children between 5 and 14 years of age, working in different economic sectors. Many children and young people are in agriculture performing tasks such as tending livestock. In urban areas, they are found in petty street commerce and shop keeping, and some are even found in industry.

51. Child labour is mainly born of poverty, which has forced many families to keep their children away from school and utilize their labour to add to their family income. Children who have no parents or guardians are also exposed to untimely employment. Working children lack education and training. Whatever on-the-job training they may have is often rudimentary. They work under extreme conditions for long hours and low wages, regardless of whether the work they do equals or surpasses the workload of an adult. Children are exploited because of their docility, lack of education and skills, and their presumed aptitude for certain types of work, notably work that requires rapid movement or dexterity.

52. The most vulnerable and exploited child workers are found in domestic service, commercial agriculture, quarrying and mining, the tourist and the informal sectors. In this regard, employment service establishments should direct children and young people towards suitable occupations and should provide education opportunities for those who are below school-leaving age. The adverse effect of work on the health of children, their physical growth and education as well as personality development is also worth noting.

53. Even if the legal provisions pertaining to the employment of children and young people are, in general, related to international conventions and recommendations, actual conditions of employment and work are frequently not



subject to any controls. There is frequent exploitation of children under the pretext of apprenticeship, mainly in the service sector (in garages, other workshops, merchandise shops, etc).

54. Although the ultimate goal of Convention No. 138 is the total abolition of child labour, this will require concerted action and time. The immediate need, however, is to proceed with the abolition of the most intolerable forms of child labour such as employment of children in bonded conditions and hazardous work, which is likely to jeopardize their health, safety or morals. This concern has prompted the adoption of the provision on the effective abolition of child labour as part of the ILO Declaration of Fundamental Principles and Rights at Work in 1998 by the International Labour Conference, which included African members (governments and social partners) along with those of industrialized countries.

55. As children working under the worst forms of labour cannot wait for longer term developmental issues to be resolved before they are relieved from intolerable conditions, African countries have to take action in conformity with the Convention. In this respect, the draft Programme of Action against Child Labour in Commercial Agriculture, adopted by a tripartite meeting held in Tanzania in 1996, can serve as a guiding instrument. It was adopted in order to harmonize actions against child labour and address the problem in a variety of ways, including ratification of Convention No. 138, promulgation of appropriate legislation and formulation of child labour policies.

### **3.2.2. Conditions of Employment and Work of Women**

56. A large proportion of women in Africa is engaged in agricultural work, in addition to the wide range of their domestic chores. They are frequently found in such occupations as weeding, picking and sorting. A significant percentage is

engaged in informal sector activities. Women are finding work in export processing zones in some African countries such as Mauritius, as well as in micro-enterprises and micro-financed schemes. Still, these fields of employment have low skill content, low productivity, low pay and limited prospects for advancement. Such jobs are the first to disappear in the event of economic disaster and the last to be covered by social protection schemes. Two essential aspects of their conditions of work are inadequate levels of pay - engendering exploitation - and discriminatory practices that involve infringement of their dignity.

57. Employment of women in various formal sector establishments has also been increasing. However, there is a lack of adequate policies to prevent the exploitation of working women. For example, discrimination in the application of legislation relating to wages has to be abolished. Adequate consideration should also be given to the provision of education and vocational training facilities for women. The fact that a large percentage of African countries have ratified Convention No. 100 of 1951 is an encouraging sign of efforts to establish remuneration without discrimination based on sex. However, enforcement presents a serious problem.

58. Legal instruments concerned with different aspects of conditions of work are usually based on the terms of international conventions, e.g., Convention Nos. 118, 167, 170 and 171. In this connection, it is worth noting legislations concerning hours of work, occupational safety and health, social policy etc. There is often a problem of effective enforcements due to the general inadequacy of well-trained labour inspection personnel, equipment and other facilities such as means of transport.



### 3.3. Concerns of African Countries Regarding Labour Standards

59. Some people regard trade liberalization as a major driving force for development, from which developing and least developed countries can make substantial gains in the world economy. Others fear that it has negative effects on social rights and aggravates social inequalities. Developed countries are concerned about the competition of cheaper imported goods from developing countries. Developing countries are also concerned that their weak economies may not be able to cope with competition from developed countries in a liberalized trade environment. They consider that their national policies may be increasingly dictated by international obligations or constraints resulting from globalization.

60. Concerns about the effects of labour standards on competitive advantages of African exporters have been expressed before. However, the subject attracted greater attention after proposals were made to include it in trade negotiations that followed the Uruguay Round, signed at Marrakesh in April 1994.

61. Another concern is that the development of African countries has been constrained by inadequate infrastructure as well as shortcomings in human resource development and utilization. Weaknesses in economic policy formulation and management, low levels of domestic resource mobilization, and high rates of population growth have also contributed to the slow pace of progress. Other hindrances include poor performance in agriculture and the inadequacy of legal and institutional frameworks. Another major constraint has been their continued vulnerability to natural disasters. In countries that have faced calamities, efforts were concentrated on immediate disaster relief rather than fully addressing long-term reconstruction and poverty eradication. Moreover, African countries have not been able to benefit from the trade liberalization process because their weak

economies continue to be dependent on very few commodities for export earnings and development.

62. Furthermore, African countries risk further marginalization due to their weak institutional and supply capabilities as well as inadequate access to markets, capital and technology. Marginalization of these countries in world trade may be occurring because of their inability to expand productive capacity and diversify their economies.

63. Therefore, it is desirable to adopt a gradual approach to trade liberalization. African countries need to support and promote their enterprises, invest in production, marketing and export expansion as well as diversification in view of the trade liberalization drive that has increased pressures toward specialization in products with the highest comparative advantage.

64. Many African countries are preoccupied with problems arising from accession to WTO membership as well as the implementation of various WTO agreements. They have administrative, institutional and financial problems. They are unable to fulfill obligations and actualize benefits. They also have major difficulties in identifying specific negotiating interests and priorities as well as articulating development strategies in the context of which they would select and pursue their interests and priorities.

65. Their full and effective participation in the WTO process is constrained by various problems, which include the following:

- Weak institutional infrastructure;
- Shortage of skilled personnel;



- High cost of maintaining an adequate permanent delegation in Geneva to undertake WTO related tasks and activities ;
- Complexity of WTO rules and regulations; and
- Inability to make domestic institutions and regulations compatible with WTO requirements.

66. Although WTO agreements include provisions for special and differential treatment for developing and least developed countries, they are time-bound and last for rather short transitional periods. Thus, it is not clear how the development concerns of African countries can be dealt with in short transition periods, after which all countries will be subject to the same obligations.

67. African countries, while considering the application of labour standards, must address the development dimension as an issue of major concern. This is because lasting improvement of conditions rests primarily on the extent of economic development and industrial effectiveness. In this context, it must be noted that domestic enterprises in Africa should not be unduly subjected to competition from big foreign firms. At the same time, they should not risk economic loss by not participating in international trade since such participation may act as a moral, social and technical impetus for them to improve their conditions of labour.

68. The ability of these countries to undertake changes in order to improve working conditions is determined by the strength of their economies, their capacity to provide adequate employment to their workforce, their economic and industrial growth, the dynamism of their industrial leadership and the strength of their trade unions. Thus, there are several causes (i.e. human, physical and institutional) accounting for the weakness of existing labour standards in Africa. Therefore,

there is a need for serious studies regarding the proposed inclusion of labour standards in trade-related issues.

69. The constraints mentioned above have a bearing on the apparent reluctance of African countries to accept the rapid expansion of the multilateral trade agenda to include issues of trade and labour standards.

70. There has been considerable debate on the controversial issue of core labour standards and international trade mainly because there is a proposal to link developing countries' access to developed countries' markets to the observance of these labour standards by developing countries. One view is that African and other developing nations gain an unfair advantage when they export their products without meeting minimum labour standards. On the other hand, although African countries understand the value of enforcing core labour standards, they are concerned that the inclusion of labour standards in WTO regulations may itself constitute an unfair trade practice as the sanctions involved may serve protectionist purposes. They recognize the importance of labour standards for economic development, higher incomes and social progress and that child labour and discrimination against women and minority groups are detrimental to development.

71. International interest in labour standards is ostensibly based on the ethical judgment that an acceptable, minimum standard of working conditions and welfare is necessary for the proper development of human character and the satisfaction of basic human wants. The idea is to defend such a standard wherever it has not been attained. This means that countries where standards are poor should strive to improve them.

72. Thus, the fact that developing countries and LDCs are opposing the inclusion of trade and labour standards in the negotiating agenda should not be viewed as a

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lack of recognition of the importance of labour standards for sustainable socio-economic development. These countries attach the appropriate importance to labour standards but they oppose the possible use of the standards as trade restrictions or protectionist measures. This is evident in the following provision of the Ministerial Declaration issued at the 1996 Ministerial Conference in Singapore.

73. "We (Ministers) renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO secretariats will continue their existing collaboration".<sup>5</sup>

74. Thus, the WTO Ministerial Conference did not give the WTO any mandate relating to labour standards. The later re-emergence of labour standards as a trade-related issue seems to be in response to the desires of some developed countries. In this connection, the United States had proposed the setting up of a WTO Working Group on Trade and Labour Standards at the Seattle Ministerial Conference to deal with trade and socio-economic issues (employment, social protection, core labour standards, forced labour and national labour standards). However, the proposal is yet to be adopted. Since the constraints stated earlier take time to be removed, the participation of African countries in such a working

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<sup>5</sup> UNCTAD- A Positive Agenda for Developing Countries in Future Trade Negotiations- Brainstorming Meeting on Issues Related to the World Trade Organization, Addis Ababa, Ethiopia, 24-28 January 2000.

group cannot be effective, at least at a desirable level, even if more efforts are exerted.

75. From the point of view of international trade, an increase in the production of export goods need not necessarily lead to an increase in employment. On the contrary, the utilization of capital-intensive or automatic installations can keep the rate of increase in employment very low. Of greater impact is the question of what measures should African countries adopt with their foreign exchange earnings to tackle unemployment. More detailed and specific research on commodity markets is needed, primarily to increase the foreign exchange earnings of these countries in order to improve the employment situation.

76. Trade liberalization promotes economic progress, which in turn facilitates social development. Export promotion can make a significant contribution to economic as well as social progress.

77. There is common agreement that all countries, including the less developed countries in Africa, should respect fundamental labour standards, even if they should not accept anything that goes against fair treatment of their trade issues.

78. While people live in a world of great disparities in wealth and economic development, many African countries are suffering from low growth, inefficient resource allocation, low productivity, problems of debt servicing, inequitable income distribution, unemployment, underemployment and poverty. To address these issues, positive policy incentives and the ratification of core labour standards should be given priority. Wherever it exists, the practice of exploitative labour is a moral outrage and an affront of human dignity. It has serious adverse implications for human capital development. The process of expansion of trade should not expose workers to exploitation. Therefore, expansion of trade should not violate



workers' rights. It should rather stand for the well being of workers in particular and society in general.

79. The concern of all developing countries and LDCs, as mentioned earlier, is that the proposed issue is a convenient cover for "protectionist measures" against their competitive low-cost exports. Indeed, matters pertaining to employment, social protection, core labour standards, forced or exploitative child labour and derogation from national labour standards require action from the perspective of basic human rights as well as that of economic and social development. All these issues are underpinned by a concern to give priority to sustainable livelihoods across various economic activities and not just trade.

### **3.4. Possible Positions and Negotiating Strategies**

80. As seen in previous sections of this paper, the main point of discussion has been whether international labour standards should be included among trade-related issues. Therefore, African countries need to design their own negotiation strategies and positions in order to safeguard their interests in a more tangible and convincing manner. Negotiating strategies and positions considered appropriate for African economies include the following:

- The question of who is competent to deal with labour standards should be treated in depth by a special body operated jointly by concerned international organizations, with the effective participation of African countries, so that the objectives of standards which transcend the stated trade concerns may be given due attention in the process of standard setting and implementation. Recognition of the aims and objectives enshrined in the constitution of the ILO and the Declaration of Philadelphia is of paramount importance.

- African countries must pursue labour standards as integral parts of economic and social progress for realization of social justice. Although labour standards ought to be recognized as desirable elements in the development process, it is more strategic to address them in terms of whether or not they focus on socially oriented aspects of development so that economic growth may be harmonized with social progress, efficiency with equity and change with stability.
- Since “core” labour standards deal with fundamental human rights, they can be viewed separately from matters strictly related to trade. Hence, their universal ratification need not require much lead time in consideration of the inadequate capacities of ratifying countries, of course within the realm of the ILO.
- It should be recognized that core labour standards need to be reviewed and updated so that they may be speedily accepted, ratified and implemented adequately to serve all economic and social sectors.
- African countries must give due emphasis to the betterment of conditions of employment and work if their development programmes are to progress in the most efficient and effective manner possible. They need to give priority to the development dimension. They must develop capacity or create conducive conditions to implement agreements before they accept labour issues in trade negotiations that are bound to result in binding regulations.
- African countries must determine their policies and priorities and intensify their capacity building activities in order to stand on equal footing in any international or bilateral fora relating to trade.
- African countries must ensure that they are given full access to all special measures, particularly those in favour of the least developed ones.
- African countries have to map out strong national economic and social policies that enable them to respond to the challenges posed by the world economy and to obtain fair terms of trade. These policies ought to be framed in a way that



enables African countries to respond collectively to the challenges and other requirements of the negotiations. Their participation in any working group set up or to be set up within the WTO will be made more effective through concerted action.

### **Box 1. Africa's Participation in WTO Activities**

- ❖ Concerns about the ability of African countries to participate effectively in WTO activities have been increasing right from the establishment of the organization following the conclusion of the Uruguay Round at Marrakech in April 1994. African countries have been marginalized in the trade liberalization process because their economies are weak and dependent on very few commodities for export earnings. They are not adequately integrated in the process due to their inadequate access to markets, capital and technology as well as the weakness of their institutional and supply capabilities. Their participation is further constrained by a shortage of qualified personnel.
- ❖ Other constraints include their financial inadequacy and weak institutional infrastructure. Insufficient knowledge of WTO rules and the inadequacy of the provisions for special and differential treatment (SDT) also hinder their effective participation.
- ❖ Since no working group has been set up so far to discuss issues of trade and labour standards, there has been no formal participation by African countries. Problems related to accession (very few countries having applied for membership) and implementation of agreements are forcing African countries to adopt a gradualist approach to consideration of issues relating to trade and labour standards.

### **Box 2. Technical Assistance**

- ❖ Technical assistance from concerned organizations of which the ILO is the most relevant, is seen as a method of facilitating the creation of an enabling environment by providing the necessary expertise, funds and facilities. It should be regarded as an important precondition for meeting obligations arising from the ratification of conventions.
- ❖ Technical assistance projects on standards can be developed, provided that adequate resources are made available by funding institutions concerned with labour standards. A balanced and broad-based strategy of technical cooperation and efficiency of operations can be ensured through the participation of social partners in the planning or programming as well as the implementation and evaluation of technical cooperation projects.
- ❖ The capacity to undertake research and dissemination of information should be adequately developed by setting up relevant units in government bodies responsible for labour matters.
- ❖ In order to ensure satisfactory application of labour legislation and social policies, African countries must have competent and effective labour administrations and employers and workers' organizations that are conversant with labour matters. Technical assistance is needed to promote and support the teaching of international labour standards provisions and for training specialists in the preparation of national labour laws and trade negotiations.

- ❖ The trends in technical assistance show that Africa received a considerable proportion of ILO technical cooperation funding between 1993 and 1997, although the amount declined from 40.4 per cent of the total in 1993 to 38.8 per cent in 1997 \*. The WTO has also embarked on making contributions that focus on helping the least developed countries to create the capacity to build the necessary institutions and to train the people whose expertise is needed for drawing up appropriate trade policies and effective negotiation.

\* ILO- *The Role of the ILO in Technical Cooperation - Report to the International Labour Conference, 87<sup>th</sup> Session, Report VI, Geneva, 1999.*



#### 4. Conclusions

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81. Labour standards, particularly those dealing with fundamental human rights, provide highly desirable guidelines for improving working conditions. A country that has ratified a convention is required to observe the provisions and to report the measures taken to that end. However, since non-compliance is not subject to penalties, some developed countries members of the WTO have expressed their desire to have labour standards included in the realm of the WTO under the pretext of fair competition. The idea of making the standards binding wherever feasible may be acceptable, provided it is done without eroding countries' competitiveness and so long as the issue is handled by the competent international body, the ILO.

82. African countries should strive to create an enabling environment for improving conditions of work by taking a mixture of social, legal and economic measures and improving the social and political climate in order to attain healthy economies or at least a climate conducive for meeting the basic needs for freely chosen work in humane conditions. Concurrently, they need to improve their capacity in order to be able to ratify and observe the provisions of international labour standards. This calls for the attainment of the requisite socio-economic conditions and institutional settings. It is, therefore, essential that they give due attention to the development dimension as a basis for fostering the observance of international labour standards.

83. As research undertaken to establish whether there is a link between trade and labour standards does not positively answer the query, proposals for including labour standards in trade agreements lack a sound footing. The proposals are also liable to create pressure on African countries to the extent of putting a brake on economic development. Thus, the concerned countries should avoid inclusion of

labour standards in trade agreements in order to protect their comparative advantage in having a favorable relationship between productivity and wages. Moreover, such a move will provide them with protection against the imposition of standards that cannot be considered attainable due to their low level of development.

84. It is important to note that both the supporters and opponents of the inclusion of labour standards in trade agreements are in favour of improved working conditions in the countries concerned. This could provide a basis for making a package of provisions to which all countries can subscribe and implement in all economic sectors in a way that meets the objections of opponents. Such provisions must be made and implemented in a manner that does not entail adverse effects on employment and economic growth in the countries concerned.

85. Given the need to promote employment and economic growth, it is proper that African countries should seek to take advantage of the abundant human resources that constitute their great comparative advantage. It is also necessary for them that manageable standards should be identified -- for example, those on fundamental human rights) and observed.

86. International labour standards must be drawn up on a universal basis and differences in national conditions as well as levels of development must be accommodated by including appropriate devices for flexibility. A great deal of effort needs to be exerted in the process of standard setting. Wider participation of stakeholders is desirable in the preparation, ratification and promotion of the observance of international labour standards within as well as among African countries. To this end, technical cooperation should be encouraged and effectively utilized by resorting to the most efficient system possible.

87. With regard to strategies and possible negotiating positions, African countries should combine their efforts in order to attain the most satisfactory results in the negotiation process. Involvement of social partners, i.e. workers' and employers' organizations, is essential for giving these countries' negotiating positions a more realistic and strong base while at the same time increasing the chances for observance of standards.



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**Annex 1 List of Ratifications of Conventions by African Countries**

Country	Convention Number							
	29	87	98	100	105	111	122	138
1. Algeria	X	X	X	X	X	X	X	X
2. Angola	X	-	X	X	X	X	-	-
3. Benin	X	X	X	X	X	X	-	-
4. Botswana	X	X	X	X	X	X	-	X
5. Burkina Faso	X	X	X	X	X	X	-	-
6. Burundi	X	X	X	X	X	X	-	-
7. Cameroon	X	X	X	X	X	X	X	-
8. Cape Verde	X	-	X	X	X	X	-	-
9. Central African Republic	X	X	X	X	X	X	-	-
10. Chad	X	X	X	X	X	X	-	-
11. Comoros	X	X	X	X	X	-	X	-
12. Congo	X	X	-	-	-	-	-	-
13. Cote d'Ivoire	X	X	X	X	X	X	-	-
14. Democratic Republic of Congo	X	-	X	X	-	-	-	-
15. Djibouti	X	X	X	X	X	-	X	-
16. Egypt	X	X	X	X	X	X	-	-
17. Equatorial Guinea	-	-	-	X	-	-	-	X
18. Eritrea	-	-	-	-	-	-	-	-
19. Ethiopia	X	X	X	-	-	X	-	-
20. Gabon	-	X	X	X	X	X	-	-
21. Gambia	X	-	-	-	-	-	-	-
22. Ghana	X	X	X	X	X	X	-	-
23. Guinea	X	X	X	X	X	X	X	-
24. Guinea Bissau	X	-	X	X	X	X	-	-
25. Kenya	X	-	X	-	-	-	-	X
26. Lesotho	X	X	X	X	X	X	-	-
27. Liberia	X	X	X	-	X	X	-	-
28. Libyan Arab Jamahiriya	X	-	X	X	X	X	-	X
29. Madagascar	-	X	X	X	-	X	X	-
30. Malawi	X	-	X	X	-	X	X	-
31. Mali	X	X	X	X	X	X	-	-
32. Morocco	X	-	X	X	X	X	-	-
33. Mauritius	X	-	X	-	X	-	X	X
34. Mauritania	-	X	-	-	X	X	-	-
35. Mozambique	-	X	X	X	X	X	X	-
36. Namibia	X	X	X	-	-	-	X	-
37. Niger	X	X	X	X	X	X	-	X
38. Nigeria	-	X	X	X	X	-	-	-
39. Rwanda	-	X	X	X	X	X	-	X
40. Sao Tome and Principe	X	X	X	X	-	X	-	-
41. Senegal	X	X	X	X	X	X	-	-
42. Sierra Leone	X	X	X	X	X	X	-	-
43. Seychelles	X	X	X	X	X	-	X	-
44. Somalia	X	-	-	-	X	X	-	-
45. South Africa	X	X	-	-	X	X	-	-
46. Sudan	X	-	X	-	X	X	X	-
47. Swaziland	X	X	X	X	X	X	-	-
48. Tanzania	X	-	X	X	X	-	-	X

Country	Convention Number							
	29	87	98	100	105	111	122	138
49. Togo	X	X	X	X	-	X	-	X
50. Tunisia	X	X	X	X	X	X	X	X
51. Uganda	X	-	X	X	X	-	X	-
52. Zambia	X	X	X	X	X	X	X	X
53. Zimbabwe	-	-	X	X	X	-	-	-
Total	44	36	46	41	41	38	15	12

Source: ILO - International Labour Conference, 87<sup>th</sup> Session 1999, Report III, Part 2, Geneva, 1999.