

# LRS POLICY BRIEF

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## Labour Provisions for the African Continental Free Trade Area (AfCFTA): Some Policy Options



# **LABOUR PROVISIONS FOR THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA): SOME POLICY OPTIONS**

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## EXECUTIVE SUMMARY

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This policy brief seeks to contribute to the trade union campaign for the inclusion of labour provisions in the African Continental Free Trade Area (AfCFTA) framework. It highlights the increasing trend towards incorporation of such provisions into trade agreements, arguing that labour provisions are necessary to promote labour rights and mitigate the potential negative effects of the AfCFTA framework on employment, workers, and trade unions in Africa.

The paper proposes four key policy options for consideration by trade unions. First, it advocates for social dialogue and the active participation of trade unions in trade-labour discourse and policy formulation to ensure that workplace and trade union issues are prioritised within trade and AfCFTA regimes. Second, it calls for the development of a trade union position on trade and employment that articulates the visions of trade unions for trade and the AfCFTA in a way that ensures consistency in advocacy. Importantly, the paper proposes that labour provisions for the AfCFTA should reference international labour standards and protocols, including: i) International Labour Organisation (ILO) Core Conventions (freedom of association, the right to form unions and bargain collectively, limitations on child labour, and the elimination of forced labour), ii) the Decent Work Agenda, iii) the ILO Declaration on Fundamental Principles and Rights at Work, iv) the ILO Declaration on Social Justice for Fair Globalisation, and v) Agenda 2063. Finally, the paper calls for the incorporation of procedural commitments within labour provisions for the AfCFTA, underpinned by social dialogue, cooperation, and tripartite institutional mechanisms to ensure active participation from all stakeholders in monitoring and advancing the implementation of these provisions.

The lessons learned from the negative effects of trade liberalisation on job numbers, employment quality, and trade union vitality in Africa underscore the need for strong and effective labour provisions to protect and promote the rights and interests of African workers and trade unions under the AfCFTA.

This policy brief seeks to contribute to the trade union campaign for the inclusion of labour provisions in the African Continental Free Trade Area (AfCFTA) framework.



# INTRODUCTION

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Inclusion of labour provisions in free trade agreements (FTAs) has gained traction in recent decades. According to data from the ILO's Labour Provisions in Trade Agreements Hub, approximately half of the FTAs concluded during this period contain labour provisions (ILO, 2024). This marks a significant shift, considering the absence of such provisions in trade agreements before the 1990s. One of the earliest FTAs with comprehensive labour provisions was the North American Free Trade Agreement (NAFTA), signed in 1992 between Canada, Mexico, and the United States (US). The NAFTA had a side agreement on labour, the North American Agreement on Labour Cooperation (NAALC) that included legally binding commitments on fundamental workers' rights and conditions of work such as health, safety and wages. (Carrère, et al., 2017). Labour provisions began appearing in FTAs on the other side of the Atlantic seven years later. The first European Union (EU) trade agreements that contained specific references to ILO conventions on fundamental workers' rights were signed with South Africa in 1999 and with the members of the African, Caribbean and Pacific Group of States (the Cotonou Agreement) in 2000 (ibid.). Fast forward to 2024, and 57 percent of the FTAs that were signed around the world included labour provisions (ILO, 2024), reflecting the growing trend of integrating labour provisions into trade agreements since the emergence of the NAALC in the 1990s.

The incorporation of labour provisions into trade agreements is crucial for workers and trade unions, as these provisions aim to mitigate the negative impacts of trade on employment and labour rights. Labour standards help create a more level playing field by ensuring that competition between firms is not based solely on lowering labour costs. Instead, by setting common benchmarks, these standards encourage firms to compete through innovation and improved practices. Trade-related labour provisions have been defined as "standard[s] which address labour relations or minimum working terms or conditions, mechanisms for monitoring or promoting compliance, and/or a framework for cooperation" (ILO, 2016: 1). In essence, such provisions are designed to protect and promote workers' rights and improve conditions of work (Carrère, et al., 2017). Typically, trade agreements with labour provisions require signatory countries to align their domestic labour laws with international protocols, while outlining procedures for consultations and/or dispute resolution on labour issues (Kamata, 2015). These aspects of labour provisions underscore their significance for workers and trade unions.

The significance of labour provisions in promoting workers' rights validates the concerns that workers and trade unions in Africa have voiced against the lack of labour provisions in the AfCFTA framework. It is in this light that **this paper supports the trade union campaign for the development of labour provisions for the AfCFTA**. The next section highlights the discourse on whether and how to incorporate labour provisions into FTAs. The paper then presents a range of policy options for trade unions, including active participation in trade-labour discussions and policy formulation, as well as the development of trade union position on trade and employment to guide advocacy efforts. The core proposal of this paper is that labour provisions for the AfCFTA must be grounded in international labour standards, including ILO core conventions (freedom of association, the right to form unions and bargain collectively, restrictions on child labour, and the elimination of forced labour), the Decent Work Agenda, ILO Declaration on Fundamental Principles and Rights at Work, ILO Declaration on Social Justice for a Fair Globalisation, and African Union (AU) Agenda 2063. Additionally, the paper calls for procedural commitments underpinned by social dialogue, cooperation, and tripartite institutional mechanisms. By combining international labour standards with social dialogue and effective implementation mechanisms, labour provisions for the AfCFTA would help safeguard the rights and interests of African workers and their trade unions. This approach provides a framework for regulating labour standards in international trade, rather than being overly prescriptive.



## THE DEBATE OVER LABOUR PROVISIONS

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The significance and impact of incorporating labour provisions into trade agreements are subject to differing opinions. In 1996, the first Ministerial Conference of the World Trade Organisation (WTO) collapsed, partly because the United States and some European countries sought to include a social clause that was aimed at preventing ‘social dumping’ in the negotiation agenda (Smith et al., 2020). Social dumping manifests in various ways, including weakening enforcement of labour regulations, undercutting of labour standards, and evasion of regulations to gain a competitive advantage. The proposed social clause required WTO member states to recognise basic labour rights and collaborate with the ILO to ensure the enforcement of these rights (Smith et al., 2020). Notably, developing countries and the United Kingdom (UK) opposed the reference to labour standards (Leary, 1997). At the time, developing countries, particularly Malaysia and Egypt, argued that the move reflects ‘protectionist tendencies and was aimed at limiting the comparative advantages of developing countries’ (Leary, 1997: 120).

Among other arguments, opponents of the inclusion of labour provisions into FTAs contend that such provisions stymie trade flows. The narrative goes that labour provisions impose additional costs on firms due to compliance with labour standards (ILO, 2016). The contention is that stronger worker protections undermine the comparative advantage of developing economies, as higher wages and improved working conditions increase labour costs, potentially making goods and services from such economies less competitive in the global market (Carrère et al., 2017). In the context of global supply chains, the exports of supplier firms may decline as lead firms seek cheaper suppliers elsewhere (ILO, 2016).

In addition, the argument against labour provisions is reinforced by the potential for them to be used as “hidden protectionism” to restrict market access for producers in low-income countries (Carrère et al., 2017). Some developing countries have opposed the adoption of social clauses in trade agreements due to concerns that they could be used as a form of disguised protectionism (Perulli, 2018). The concern is that such provisions could be leveraged as tools to deny preferential market access to exporting countries for violations of labour rights and conditions (Carrère et al., 2017). This perspective suggests that, rather than enabling economic growth, labour provisions could inadvertently stymie trade, leading to job losses and reduced investment in developing economies.

In a way, opposing the incorporation of labour provisions into trade agreements on the grounds that they increase costs for firms and serve as disguised protectionism is problematic. This is because such arguments prioritise commercial and trade interests over the rights and interests of workers. Such an approach can potentially entrench poor working conditions, labour rights violations, and inequalities in developing economies.

Significantly, labour provisions have been linked to positive trade, labour market, and industrial relations outcomes (Kareem, 2023; Carrère et al., 2017; ILO, 2016). Inclusion of labour provisions in FTAs can generate the “California effect”, a term used to describe the tendency for economic integration to advance regulatory standards in other jurisdictions toward those of higher-regulating countries (Perkins & Neumayer, 2012). In other words, labour provisions in trade agreements enable labour rights in exporting (low-income) countries to be influenced by the stronger labour standards of their high-income trading partners (Carrère et al., 2017). A study of workers’ rights in 125 countries found that labour provisions in EU trade agreements reduce violations of workers’ rights (Kareem, 2023). It has been identified that when accompanied by strong enforcement mechanisms, labour provisions can help low-income countries with

limited institutional capacity to better enforce their employment protection laws (Carrère et al., 2017). In essence, adding labour provisions to FTAs can strengthen workers' rights.

Another positive labour market outcome of labour provisions is an increase in labour supply. On average, FTAs with labour provisions positively impact labour force participation rates by encouraging more men and women to enter the workforce (ILO, 2016). Notably, these provisions play a crucial role in improving labour market access, particularly for working-age women (ibid.). This effect is partly driven by the policy dialogue and awareness-raising efforts associated with labour provisions, which elevate expectations of better working conditions and, in turn, enhance willingness to participate in the labour market (ibid.).

Apart from benefiting workers and trade unions, the inclusion of labour provisions into FTAs also offers some advantages to businesses, particularly exporting firms. Decent work and productivity growth are closely interlinked. By promoting fair treatment of workers, competitive wages, safe working conditions, and skills development, labour provisions enhance labour productivity and overall firm performance (Carrère et al., 2017). In other words, labour provisions contribute to a more stable and motivated workforce, reduce turnover rates, and encourage long-term investment in human capital. In turn, firms benefit from increased efficiency, improved product or service quality, and greater adaptability to market changes, which can strengthen their competitiveness both domestically and internationally. It has been estimated that trade agreements that have labour provisions boost the value of trade by an average of 28 percent, slightly higher than the 26 percent increase observed in agreements without such provisions (ILO, 2016). Thus, labour provisions can improve firm output, strengthening competitiveness and sustainability in the global market.

Another way that the inclusion of labour provisions into trade agreements serves the interests of exporters is by increasing demand for their products. Notably, external enforcement of minimum labour standards through labour provisions in FTAs boosts consumer confidence and demand, particularly among ethically conscious consumers in the Global North (Carrère et al., 2017). In essence, labour provisions act as signals to buyers in developed economies, assuring them that labour protections are upheld by exporting firms from low-income countries (ibid.). This, in turn, enhances the attractiveness of their products in global markets and strengthens trade relationships.

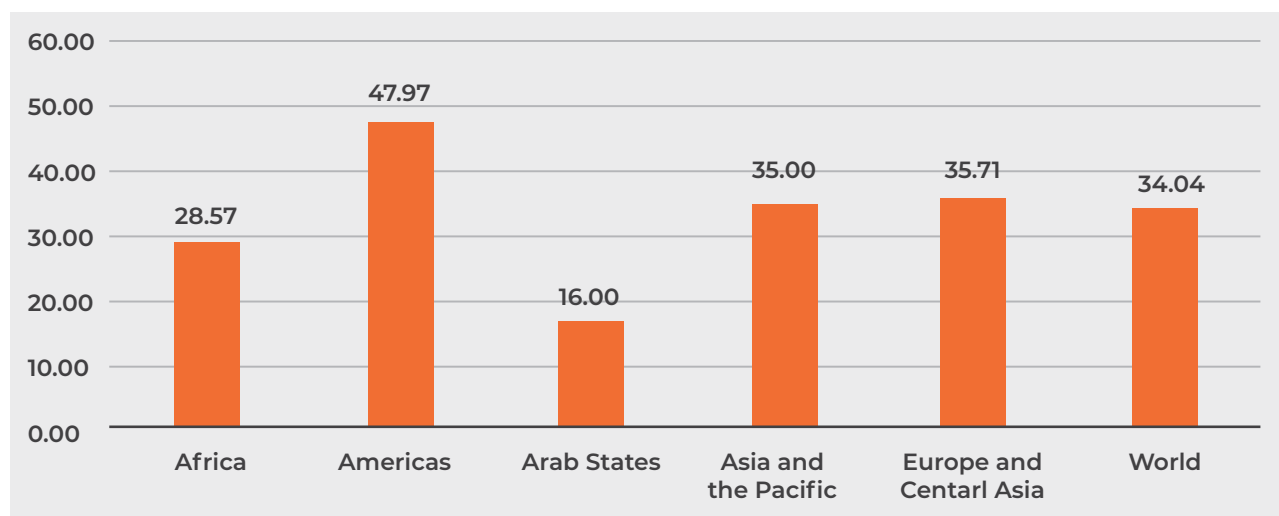


## GROWING PRESENCE OF LABOUR PROVISIONS IN FTAs

Labour provisions are increasingly becoming common features of FTAs (Baker et al., 2024). With over half of trade agreements concluded over the last decade, including labour provisions, the debate on trade and labour provisions has shifted from whether to include such provisions to how they should be incorporated into trade agreements (Corley-Coulibaly et al., 2021). Moreover, while the trade-labour linkage was largely discussed hypothetically for many years, it is now increasingly viewed as a mechanism for conducting global labour governance (Smith et al., 2020). We have seen the significance of labour provisions in promoting the interests of both workers and businesses. This, in part, accounts for the increasing traction towards their incorporation into contemporary trade agreements.

Figure 1 illustrates that by 2024, 34 percent of Regional Trade Agreements (RTAs) that had been signed globally had labour provisions. Among the regions, the Americas had the highest proportion, with 48 percent of RTAs containing labour provisions. In contrast, the Arab States had the lowest share, at only about 16 percent. In Africa, around 29 percent of all the RTAs that had been signed by 2024 included labour provisions.

**Figure 1 RTAs with Labour Provisions (percent) - 2024)**



Source: adapted from ILO (2024)

### The design

Commitments and legal enforceability of labour provisions vary along a continuum. At one end are what have been described as shallow commitments, such as those that simply mention 'improve working conditions' in the preamble of the trade agreement (Carrère et al., 2017). In other words, shallow labour commitments are typically confined to the preamble or objectives sections of trade agreements (Raess and Sari, 2018). Shallow commitments are also reflected in the language used in labour provisions, where non-binding terms such as may, should, promote, and encourage are used. At the other end of the spectrum are FTAs with comprehensive commitments, which go beyond the aspirational statements in



the preamble (*ibid.*) to incorporate legally binding obligations or deep cooperation provisions (Carrère et al., 2017). This range in commitments reflects the diversity of approaches to inclusion of labour provision taken by different trade agreements, showing the need for careful consideration of the depth and enforceability of labour provisions when negotiating trade agreements.

Another way labour provisions vary is in the manner in which they are incorporated into trade agreements. In some cases, labour provisions are included as a memorandum attached to the FTA, with or without reference in the main agreement (Daniel, 2021). In other instances, they are integrated directly into the main text of the agreement, often as a dedicated labour chapter or within chapters on sustainability, cooperation, or investment (*ibid.*). Arguably, both methods of incorporating labour provisions are design choices that do not necessarily influence outcomes, provided the provisions contain adequate safeguards to protect and promote the rights and interests of workers.

Labour provisions with adequate safeguards set employment standards and provide the necessary mechanisms to achieve them. Such provisions require signatory countries to 1) harmonise domestic labour standards with international standards, and 2) establish procedures for consultations and/or dispute settlement on labour-condition issues among signatory countries (Kamata, 2015). These standards and their implementation mechanisms, therefore, serve as tools for aligning national labour practices with international standards and promoting collaborative solutions to trade-related labour issues.

Arguably, labour provisions in FTAs of the US have some of the most robust standards and compliance mechanisms. These provisions prioritise effective enforcement of labour rights, requiring reforms in labour laws and practices before the agreement takes effect (known as pre-ratification requirements), alongside cooperative activities aimed at building capacity and monitoring progress (ILO, 2016). They typically encompass most ILO core labour standards, including freedom of association, the right to form unions and engage in collective bargaining, restrictions on child labour, the elimination of forced labour, and regulations on minimum wages, working hours, and occupational health and safety (Pham, 2017).

The EU incorporates significant labour provisions in some of its trade agreements. Anchored on sustainable development, these provisions reference important frameworks such as the Decent Work Agenda and ILO Fundamental Conventions (ILO, 2016). The EU's labour provisions are also influenced by the ILO 1998 Declaration, ILO Declaration on Social Justice in Globalisation, UN Declaration on Full Employment and Decent Work, and UN 2030 Agenda (Pham, 2017). These provisions reflect the shared goals of the EU and the US in advancing labour standards within global trade.

Nonetheless, noticeable differences exist in approaches to labour issues within trade agreements of the US and the EU, particularly the scope of labour commitments, institutional arrangements for implementation, and enforcement mechanisms. While the US treats labour as an issue that is at par with other commercial matters, the EU views labour as an element of social development (Pham, 2017). US trade agreements require the establishment of institutional arrangements for the implementation of labour provisions, while this is not a mandatory requirement in EU FTAs (*ibid.*). Another notable difference is in the enforcement of breaches of labour provisions. In US trade agreements, violations of labour provisions are typically enforced through monetary or trade sanctions. In contrast, EU FTAs do not generally include such punitive measures for breaches (*ibid.*). These differences highlight contrasting priorities and approaches between the two major economies when it comes to integrating labour standards within trade agreements.

In addition to the above, while EU trade agreements that have Trade and Sustainable Development (TSD) provisions may reference the Decent Work Agenda and ILO core labour standards (Smith et al., 2020), unlike the US approach, ratification of these standards is not a requirement (Ionel, 2022). Instead, TSD provisions include procedural commitments that encourage dialogue and cooperation between the

parties, promote transparency when introducing new labour standards, and ensure ongoing monitoring and assessment of the sustainability impacts of the agreement (Smith et al., 2020). Furthermore, these agreements feature institutional mechanisms with a tripartite format (ibid.), designed to ensure balanced representation and accountability in the implementation and monitoring of labour provisions.

Image 1: How we can advocate for labour provisions in the AfCFTA.

## WHAT ARE LABOUR PROVISIONS?

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**“...any standard which addresses labour relations or minimum working terms or conditions, mechanisms for monitoring or promoting compliance, and/or a framework for cooperation” (ILO, 2016:11, cited in Engen, 2017)**

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**AfCFTA DOES NOT INCLUDE ANY FORM OF LABOUR PROVISIONS**



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### What can we do?



**BUILD YOUR ARGUMENT**

Know the pros and cons of including labour provisions in AfCFTA. Without labour provisions, stakeholders can't be held accountable.



**MAKE CLEAR GENDER MAINSTREAMING DEMANDS**



**DEMAND FULL INCLUSION OF LABOUR**

Labour must be an integral part of AfCFTA, not just an additional section. Ongoing negotiations are an opportunity for union campaigning.



**ENCOURAGE PROMOTIONAL COMPLIANCE MECHANISMS**

- Support labour standards through knowledge sharing, dialogue, capacity building, and technical assistance.
- Strengthen domestic labour institutions.



**BE CAUTIOUS OF THE WORDING**

“shall strive to ensure that its laws provide for labour standards consistent with the internationally recognised labour rights”

**VS**

“shall not fail to effectively enforce its labour laws”



**TRADE UNIONS AND CIVIL SOCIETY MUST MONITOR**

Labour provisions alone won't guarantee decent work - they must be tools to demand accountability and track progress.

## BEYOND LABOUR PROVISIONS

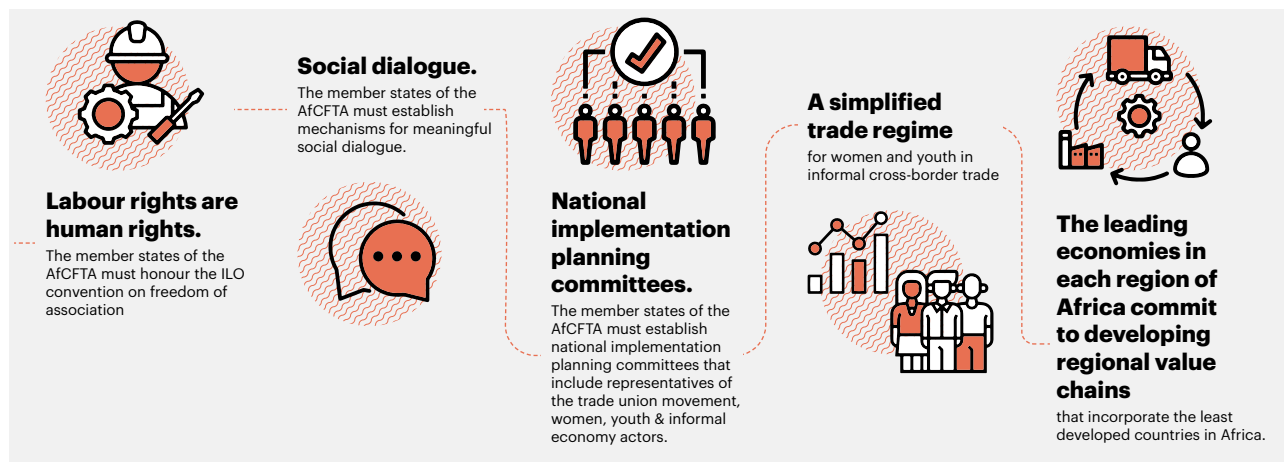
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Inclusion of labour provisions in FTAs does not always achieve the intended goal of promoting and protecting the rights and interests of workers. In 2019, of the 293 FTAs that were in force, 85 contained labour provisions, yet these provisions reportedly made ‘little or no difference to labour rights and working conditions’ (Myant, 2022: 2). Partly, such an outcome is a fall out of the underlying priorities and commitments that shape trade agreements. For instance, labour provisions in the EU’s trade agreements with the CARIFORUM Group (Caribbean Forum), South Korea, and Moldova had limited impact because they were not matched with the most urgent workplace concerns in key export industries such as sugar, automobiles, and clothing (Smith et al., 2020). In some cases, these workplace concerns were exacerbated by the agreements’ commercial provisions (ibid.). This suggests that for labour provisions to be effective, they must be aligned with the specific labour challenges and sectoral realities of the partner countries, otherwise, they risk being undermined or even counterproductive, particularly when trade liberalisation intensifies pressures in already vulnerable industries.

Labour provisions tend to have limited impact on employment and working conditions when trade agreements are primarily driven by business or commercial interests. In such cases, these provisions are largely included as a compromise to secure broader support across the political spectrum (Myant, 2022). This motive for incorporating labour provisions into trade agreements, in turn, weakens post-ratification commitments, as employment issues are neither prioritised during negotiations nor given the same weight as commercial interests once the agreements are in force (Smith et al., 2020). Ultimately, the objectives underlying the development of trade agreements, as well as the factors driving the inclusion of labour provisions, determine the effectiveness of such provisions in promoting and protecting workers’ rights and interests.

The mixed outcomes of labour provisions offer important lessons for trade unions in their efforts to include such provisions within the AfCFTA framework. First, the strength and effectiveness of such provisions are influenced by the relative bargaining positions of trading partners; countries with more to gain from a trade deal are more likely to accept stronger labour provisions (Myant, 2022). This highlights the tension between varying levels of economic development and labour standards, on the one hand, and the demand for labour provisions within trade agreements, on the other. In the African context, the disparity in economic development means that specific provisions would need to be developed to accommodate the least developed economies. Second, national political dynamics play a crucial role, as the inclusion of stringent labour conditions often requires collaboration between labour movements and sympathetic policymakers (ibid.). Third, labour provisions are most impactful when they address the actual concerns of workers and trade unions (ibid.). Finally, even minimal sanctions, such as public condemnation, can enhance the effectiveness of labour provisions by creating pressure for compliance (ibid.). These lessons highlight that the circumstances surrounding the inclusion of labour provisions are as important as the content of the provisions themselves and the mechanisms put in place for their implementation.

Image 2: Framework for promoting labour rights and interests in the AfCFTA



Source: Elsely, T (2023)

Image 1 suggests a framework for advancing the rights and interests of African workers, including youth and informal cross-border traders, within the AfCFTA. At the core of this framework is the truism that labour rights are human rights. In the case of informal cross border trade (ICBT), the need for such an approach is evident, given its significant contribution to socioeconomic development and the numerous non-tariff barriers it faces. Valued at approximately US\$17.6 billion annually (Machacha and Middleton, 2024), ICBT accounts for between 30 percent and 72 percent of formal trade among neighbouring countries in Africa (Economic Commission for Africa (ECA), 2023). Despite its scale and importance, informal cross-border traders encounter a range of challenges, including limited trade facilitation, inadequate border infrastructure, restricted access to finance and secure payment systems, as well as corruption, harassment, and insecurity (Afreximbank, 2020).

The above, as well as the potential negative implications of intra-African trade for workers and trade unions, underlines the imperative for the AfCFTA framework to include labour issues, at a minimum by incorporating core ILO Conventions, to hone its human rights credentials. Additionally, an effective social dialogue mechanism, including meaningful participation of social partners in National Implementation Committees (NICs) is essential to reflect the diverse needs and aspirations of stakeholders. The framework also calls for simplifying the trade regimes. This is crucial to enable youth and informal cross border traders, the majority of whom are women, to seize the opportunities presented by the AfCFTA. Finally, cooperation, rather than competition, must underpin the AfCFTA, meaning the continent's more advanced economies should actively support the creation of regional value chains that promote meaningful participation of least-developed economies in the AfCFTA.

## TRADE UNION POLICY OPTIONS

In light of the above, this paper proposes the following policy options for consideration by trade unions:

- **Active participation in trade-labour discourse and policy formulation**

We have seen that labour provisions that do not address urgent workplace issues do not achieve the desired outcomes. It is obvious that workers and their trade unions are best positioned to identify and propose solutions to workplace challenges. Therefore, their active participation in trade-labour discourse and policy formulation is essential to ensure that labour provisions for the AfCFTA are fit for purpose.

- **Development of a trade union position on trade and employment**

Effective participation in trade-labour discourse requires trade unions to develop clear and well-thought-out national and continental positions on trade and the AfCFTA. Such position papers should articulate trade unions' visions and expectations in ways that ensure consistency in advocacy on trade and the AfCFTA. This would enable harmonisation of trade union efforts in promoting fair trade policies and a more equitable AfCFTA framework.

- **Making labour provisions for the AfCFTA fit for purpose**

As highlighted earlier, effective labour provisions are those that address workplace concerns. It is equally important that these provisions align with the aspirations of trade unions. Labour provisions ought to establish the basic conditions for ethical trade in Africa. Therefore, labour provisions for the AfCFTA must reference international labour standards, including:

- ILO Core Conventions (e.g., freedom of association, the right to form unions and bargain collectively, limitations on child labour, and the elimination of forced labour)
- Decent Work Agenda,
- ILO Declaration on Fundamental Principles and Rights at Work,
- ILO Declaration on Social Justice for Fair Globalisation, and
- AU Agenda 2063.

- **Collaborative implementation and monitoring framework**

In addition, labour provisions for the AfCFTA should incorporate procedural commitments based on social dialogue, cooperation, and tripartite institutional mechanisms that enable all stakeholders to participate in monitoring and advancing the implementation of these provisions.





## CONCLUSION

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The central argument of this paper is that labour provisions for the AfCFTA framework must be grounded in international labour standards and protocols, such as the ILO core conventions, the Decent Work Agenda, ILO Declaration on Fundamental Principles and Rights at Work, ILO Declaration on Social Justice for Fair Globalisation, and Agenda 2063.

This paper seeks to contribute to the trade union campaign for the inclusion of labour provisions in the AfCFTA framework. It highlights the debate on whether, and how, to include labour provisions into trade agreements, arguing that such provisions are necessary to promote labour rights and mitigate the potential negative effects of the AfCFTA framework on employment and trade unions in Africa.

The central argument of this paper is that labour provisions for the AfCFTA framework must be grounded in international labour standards and protocols, such as the ILO core conventions, the Decent Work Agenda, ILO Declaration on Fundamental Principles and Rights at Work, ILO Declaration on Social Justice for Fair Globalisation, and Agenda 2063. The paper also argues that the implementation of these provisions should rely on tripartite institutional mechanisms and social dialogue. Such a collaborative framework is necessary, given trade liberalisation's negative effects on job numbers, employment quality, and trade union vitality in Africa. Ultimately, strong and effective labour provisions are indispensable for realising the full ambitions of the AfCFTA.

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