

Conditions of Workers in Jamaica: Who is responsible for the implementation of CEDAW and the Organisational Health and Safety Standards?

Hugh Lawson Shearer Trade Union Education Institute tuedinst.research@gmail.com



Globalisation and Precarious Work

Globalisation has a far-reaching impact on occupational health, safety conditions and basic human rights in the global labour environment. Though globalisation has been beneficial for a few, its negative consequences have been extensive and have notably disrupted the livelihoods of many. One such negative consequence of immediate concern is the changing format of labour arrangements from permanent jobs to contractual services in the labour environment. Contracted services, non-permanent work, casual labour and other similar arrangements are sometimes classified as precarious work. These are characterized by working conditions that tend to be: dangerous; sub-standard; poorly paid and without social benefits; and where a general sense of job insecurity prevails. The prevalence of such labour arrangements has, to a large extent eroded the ability of labour organizations to secure and maintain humane working conditions for workers, and has done so at a time when the vigilance and advocacy of labour groups are most needed.

Precarious work is growing at an alarming rate and is noted to be rife in developing countries. This is so as profit-seeking Multinational Corporations (MNCs) relocate their production plants to developing countries to take advantage of available, low and semi-skilled labour. The profit maximization objectives of MNCs are further facilitated by the fact that operating in such economies allows for freedom from the enforcement of international labour laws and standards, effective governments and labour groups; and powerful NGOs and consumer campaign groups may restrict their efforts

to openly exploit labour and earn supernormal profits.

It is also asserted that the rapid increase of precarious work is driven as much by government as private interests, as governments often fail to enact or enforce labour laws that protect the fundamental rights of marginalized workers (Metal Work 2007)¹. It was noted by (Brown 2003) that the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and other labour laws and standards are not enforced or policed effectively by the Ministry of Labour and Social Services. As a result several Jamaican workers are experiencing hardship caused by several types of precarious work. Workers are forced to work under intolerable and inhumane conditions and conditions that are hazardous. As a result they have aggravated illness for which there is no compensation or health benefit².

It is also noted that women are disproportionately affected by precarious types of employment. This is because their challenges are exacerbated by issues of gender discrimination such as: unequal pay and salary benefits; sexual harassment; and little or no maternity leave. A study on Jamaican female wholesale grocery shops recently highlighted the common practice of women being requested to perform domestic duties without additional compensation³. In a recent ILO study it was noted that even though more women have entered the labour market, the conditions under which some work create a situation for the “feminization

of poverty”. It is noted that ‘far too many women workers worldwide lack decent employment opportunities and remain worse off than their male counterparts’ (Raja 2007). The ILO’s Director-General, Juan Somavia noted that ‘despite progress, far too many women are still stuck in the lowest-paying jobs, often in the informal economy with insufficient legal protection, little or no social protection, and a high degree of insecurity⁴.’ It was estimated in the last ILO report [Global Trends for Women 2007:13] that 60% of the world’s working poor, that is, those who are unable to lift their families above US\$1 a day, were women.

International Standards and Local Legislations

Numerous International standards have been implemented to safeguard against such poor labour conditions. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) was adopted in 1979, to begin the process of global action. Discrimination in this context is defined as:

‘...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any field⁵.’

It is noted that countries that have ratified this Convention, including Jamaica, are legally bound to put

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in place measures to remove any form of discrimination or exploitation against women.

Another important International Labour Agreement implemented to protect the rights of workers is the ILO's 1998 Declaration on the Fundamental Principles and Rights at Work, which provides a framework of international rights for workers through internationally agreed core labour standards. It commits member states to respect, promote and realise the principles and rights covered by the ILO's core labour standards. These principles and rights include:

- *The right to freedom of association*
- *The effective recognition of the right to collective bargaining*
- *The elimination of child, forced or compulsory labour*
- *The elimination of discrimination in employment and occupation*⁶.

In addition to being a signatory to these and other international agreements the Jamaican Government has also enacted a body of legislation governing labour practices in the country. The relevant Acts, most of which have self explanatory nomenclature include:

- *The Holiday with Pay Order (1973);*
- *The Employment Termination and Redundancy Payment Act (1974);*
- *The Labour Relations and Industrial Disputes Act (1975);*
- *The Maternity Leave Act (1979),*
- *The Minimum Wage Act (1975)*

While there is a fairly large number of Acts and International Agreements addressing workers' rights, the extent to which these Acts can protect precarious or contract workers is, however, restricted by the legal definitions and legal procedures in unionizing workers. For example, prior to 2002 the legal definitions of the words "employer" and "workers" tended to exclude contract workers and thus made it difficult for labour practitioners to adequately advocate on their behalf. In Jamaica, the plight of security guards typified this problem, as prior to and during the 1990s it was challenging for contract workers to be unionized and seek recourse against

their employers' labour violations.

Although the definition for worker has now been amended to include both contract of service and in some instances contract for services, the problem of not being able to gain adequate representation for contract workers has, however, not been completely solved. Taylor (2001) notes that a remaining issue is that litigation is generally beyond the scope of the average worker, and the Ministry of Labour is ill-equipped to bring every labour infringement case to trial. This problem is compounded by the fact that many contract workers do not know their rights under the Jamaican labour laws⁷. Nelson (2007) thus argues emphasis should be placed on a mass public education programme to enlighten employers and workers of their rights and obligations as many are uninformed of the Jamaican Labour Laws⁸.

However, even if this is done union delegates also assert that in some instances their efforts to have certain categories of workers unionized is made difficult because employers wilfully try to delay the process. This claim often is done by employers refusing to accept bargaining rights claims on the grounds that the submitted documents are not in the legally prescribed format⁹. They note also that the process of finalizing bargaining rights for workers can be stalled for extended periods of time by the legal counsels for the private organizations. They argue that even though the law states that employers who intentionally delay the process are culpable, it is often difficult to prove that the delaying tactics by private organizations are intentional. These challenges therefore, emphasize the necessity for unions to be careful and precise in the execution of their functions, otherwise their negligence can have grave consequences for workers.

Incidents of violation in Jamaica

A review of recent studies and news reports highlight numerous incidents of violations to basic labour rights in Jamaica. An example is the assertion of conditions of modern day slavery in Chinese wholesale shops. It is alleged that the profits of these wholesale enterprises are earned through the exploitation of poor, powerless women. The recent outcry against the objectionable treatment meted

out to security guards has also led to numerous debates for the last three years with little resolution. Daily talk show programmes are rife with the cry for help from several groups of people in similar circumstances in the areas of janitorial services, domestic workers, maintenance companies and workers in the construction industry.

The question is therefore asked – where are the checks and balances to guard against such atrocities? What is the role of trade unions and the Government in the face of such harsh realities. In a recent Gleaner article, it is noted that 2000 workers from the hotel industry requested the representation of trade unions to advocate on their behalf for improved working conditions. Is this to be seen as a success for the trade union movement? Or, do trade unions need to be more self critical, recognizing the need to be less passive, and acknowledge that they are expected to be more aware, watchful, and proactive in researching existing labour conditions across the society and actively seeking ways in which to improve information gaps and increase pressure against the exploitation of workers? Does the Government also recognize their culpability in this area? Do they acknowledge that they are contributors to the growth of insecure labour contracts through various laws they pass to accommodate multinational corporations, and through their delinquency in fulfilling their roles to monitor local labour environments.

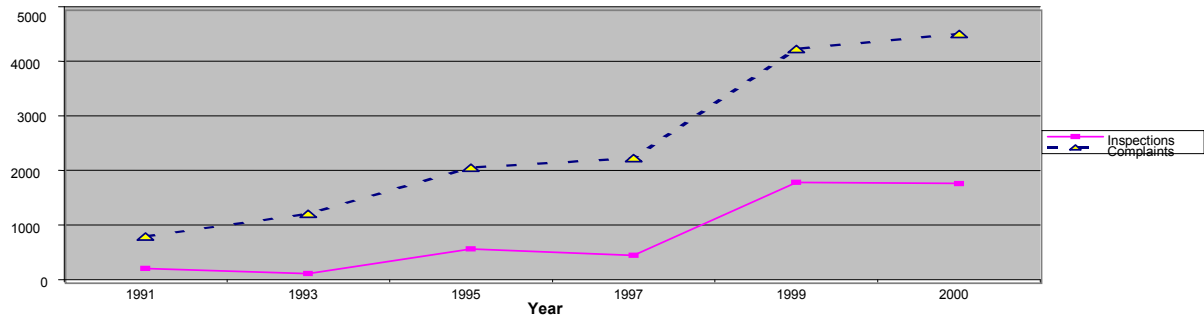
In Jamaica, the Ministry of Labour and Social Security is assigned the responsibility of monitoring the labour markets. It is argued that this role is increasingly important so as to keep abreast of the changes in the newly globalised labour environments, particularly because powerful MNC's have a proclivity to seek supernormal profits at all costs. However, despite this growing need, the Jamaican Ministry of Labour has employed few labour officers to fulfill this monitoring responsibility. In the recent study on the deplorable conditions in wholesales it is cited that the Ministry of Labour employs fewer than 10 labour officers to serve the entire Kingston area. Table 1 below shows the number of inspections conducted by the Ministry of Labour for the period 1996 to 2003. Surprisingly, in spite of growing numbers that are now being employed in precarious work the number of inspections for occupational health and safety standards seems to be on a

Table 1: Inspection Conducted for Occupational Health and Safety Standards

INSPECTIONS	1996	1997	1998	1999	2000	2001	2002	2003
FACTORIES	592	1394	2589	2117	1585	1676	1466	1134
BUILDINGS	61	48	154	168	149	149	129	82
SHIPS	18	26	257	202	133	186	202	193
DOCKS	10	19	19	20	12	13	20	6
SPECIAL	228	184	204	204	269	274	224	151
TOTAL	909	1671	3223	2711	2148	2298	2041	1566

Source: The Ministry of Labour and Social Security <http://www.mlss.gov.jm/pub/index.php?artid=15>

Figure 1: Complaints to and Inspection by the PCEB 1991 to 2000



Source: Taylor, Orville (2001). 'The Employment Relationship: National Study 2001'.

downward trend.

Figure 1, further elucidates the less than acceptable situation as regards labour inspections in Jamaica. As seen, there is a significant and growing gap between the number of complaints lodged to the Ministry of Labour, and the number of sites inspected. It must also be noted that this gap understates the problem, as these figures only relate to complaints that are lodged with the Ministry. Unreported infringements are not considered in these figures, and it is highly probable that there is a significant number of violations that go unreported daily, especially from those workers who are not aware of their rights and channels for recourse. The inspection division's inability to adequately monitor the labour environment may therefore be even more significant than that which is represented in figure 1.

Lessons to be learnt

As discussed, there is much work to be done to ensure that contract workers rights are protected as the labour environment changes. Trade Unions need to be more proactive in fulfilling their roles, and governments more mindful of laws that weaken basic rights and protections for all workers.

In light of the challenges high-

lighted, below are some actions taken in other countries that can be considered for adaptation to the Jamaican context:

1. Political parties, unions and contract workers should unite as a common force to advocate for workers' rights (Metal Work 2007).

- In Korea, unions and the Democratic Labour Party fought for basic rights and protections for all workers including those in irregular employment.
- In India, thousands of contract workers went on strike against Honda demanding a discontinuation of the practice of hiring labour on contract rather than offering permanent jobs.
- In Spain tripartite national negotiations produced complete social and labour benefits for temporary contract workers many of whom are immigrants.

2. More intuitive and clandestine approaches to unionizing contract workers should be taken.

- In the Dominican Republic, workers from the Export Processing Zones are organized outside of working hours. This is done by obtaining workers' contact details,

and visiting their homes to discuss having them unionized.

- In Brazil union presence was strengthened by first identifying and secretly training selected persons from Export Processing Zones who in turn acted as channels for disseminating labour related materials to help contract workers become more aware of their rights.

In the Jamaican context the adoption of the highlighted approach requires unions to play an active part in educating and mobilizing the workers to action, rather than passively awaiting requests for union representation. There is also the need to simultaneously to inform contract workers that under the law, once workers have indicated their interest to be unionized, employers are not able to fire or victimize workers in any manner, as this can be deemed union busting, which is a punishable offence. The Ministry of Labour, however, has to show that it has the capacity and the will to take such private organizations to court if complaints are lodged. It also has to take measures to resolve matters quickly so that workers do not remain victimized while the case takes years in the

legal system.

3. Organise consumer campaigns

Organise mass consumer campaigns to place pressure on the establishments that operate as sweat shops. Consumer power and anti-sweatshop campaigns have been used since the 1990s to pressure large corporations against exploitative labour practices. Universities have also been instrumental to this increased advocacy through consumer campaign.

- In the US, scores of local and national groups came together in 2002 for a 'stand up, speak up, sign up' campaign to demand that Wal-Mart begin to act as a more socially responsible corporate citizen.
- Recently, trade unions and other groups have been campaigning against Chinese factories that have been found to be using child labour, and have been violating other labour standards to produce paraphernalia for the 2008 Beijing Olympic games.

Similarly, should Jamaican consumers support these wholesales, janitorial service organisations, food establishments and other private interests who fail to act in a socially responsible manner? There should be greater collaboration between unions and consumer campaign groups to ensure that through the process of "naming and shaming" these establishments are forced to abide by international and local labor standards for the provision of decent work.

4. A Quality Inspector Division

Lastly is the increase role of a competent and active inspection division within the Ministry of Labour and Social Security. Such a division must be adequately staffed and have the necessary tools to execute their functions effectively. As noted by Albracht (2005):

'a major preventative approach for better health and the reduction of accidents and diseases in the workplace must be linked to labour inspection service. These services have a pivotal role in in giving advice, providing information and promoting compliance with labour standards in the workplace'

There is a role for all to play in this fight against the exploitation of contract labour.

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Endnotes

1. Metal World (2007), 'Precarious Work'. *Metal World*, No.1 pgs. 18-23
2. <http://www.icftu.org/displaydocument.asp?Index=991221148&Language=EN>
3. Brown, Ann-Murray (2006), 'Gender and Labour in Jamaica, Modern Day Slavery?: The Experiences of Women Working in the Wholesales in Downtown, Kingston'. Master's Thesis, S.A.L.I.S.E.S, University of the West Indies.
4. Raja, Kanaga (2007), 'ILO Report Looks at Feminization of Working Poverty'. *Third World Economics*, No.395; pgs 16-28.
5. <http://www.un.org/womenwatch/daw/cedaw/>
6. <http://www.csr.gov.uk/declarationrights.shtml>
7. Taylor, Orville W. (2001), 'The Employment Relationship: National Study 2001 (Jamaica)'. <http://www.ilo.org/public/english/dialogue/ifpdial/downloads/wpnr/jamaica.pdf>
8. Nelson, Dwight (2007), 'Better Working Conditions Needed'. *The Sunday Gleaner*, May 20, 2007.
9. Bargaining Rights Claims consist of two forms one of which is submitted to the Ministry of Labour, and another submitted to the Company or the private organization. It outlines the names for the category of workers who desire to have union representation.
10. Metal World (2006), 'Organising India'. *Metal World*, No. 2
11. ILO (2007). 'Global Employment Trends for Women 2007'. <http://www.ilo.org/public/english/region/ampro/cinterfor/temas/gender/news/getw07.pdf>

The Sir Frank Walcott Symposium



The Hugh Lawson Shearer Trade Union Education Institute and the Barbados Workers Union are jointly hosting a symposium on the life and work of Sir Frank Walcott: Celebrating a Trade Union Legend on September 16 – 18 2007!!! The call for papers has been issued. The deadline for the submission of abstracts is May 15, 2007. All interested

parties are asked to submit their abstracts to:

1. Ms. Marva Phillips email: marva.phillips@uwimona.edu.jm
2. Mr. Ian Austin email: ian.austin@cavehill.uwi.edu
3. Dr. Noel Cowell email: noel.cowell@uwimona.edu.jm
4. Dr. Steve Weaver email: steve.weaver@uwimona.edu.jm

Venue: Solidarity House, Bridgetown, Barbados, West Indies

Perspectives on the conference theme may include but not limited to:

- Labour and employment relations
- Trade union history and development
- Labour Education
- Leadership

- Politics and Governance

Acceptance decision on abstracts :

June 8, 2007

Paper Submission Deadline: July 30, 2007

Visit <http://www.uwi.edu/scs/Default.aspx> for further details

Visits:

The esteemed Mr. George Lamming and Professor Emeritus George Eaton visited the Institute during the month of June to discuss their participation in the upcoming Sir Frank Walcott Symposium.