

**INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)**

## **INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN JAMAICA**

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE  
TRADE POLICIES OF JAMAICA**

**(Geneva, 18 and 20 January 2011)**

### **EXECUTIVE SUMMARY**

**Jamaica has ratified all eight core ILO labour Conventions. However in view of restrictions on the trade union rights of workers, discrimination, child labour and forced labour, determined measures are needed to comply with the commitments Jamaica accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO's 1998 Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.**

**The law requires unreasonably high levels of representation before trade unions can undertake collective bargaining, and the government has excessive powers of intervention in industrial relations. Anti-union discrimination and union-busting occur. One consequence of these violations of core labour standards is that there are no trade unions in the export processing zones (EPZs).**

**The law fails to provide adequate protection against discrimination for women, disabled persons and those who live with HIV/AIDS, and it prohibits homosexuality. Female workers and other vulnerable groups face discrimination in terms of remuneration as well as access to the labour market.**

**The government is making progress in aligning its law on child labour with the two ILO core Conventions in this area. However, many children still work on farms, construction sites, in the services sector and on the street undertaking forms of begging or vending.**

**Forced labour is not prohibited by law and it occurs in Jamaica, mostly in the form of forced prostitution. The government has not made significant progress in prosecuting traffickers.**

## **INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN JAMAICA**

### **Introduction**

This report on the respect of internationally recognised core labour standards in Jamaica is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth WTO Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998 and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

### **I. Freedom of Association and the Right to Collective Bargaining**

Jamaica has ratified ILO Convention No. 87, the Freedom of Association and Protection of the Right to Organise Convention and ILO Convention No. 98, the Right to Organise and Collective Bargaining, both in 1962.

The 2006 Labour Relations and Industrial Disputes Act (LRIDA) provides the right to freedom of association. The LRIDA permits unions to conduct their activities without interference and prohibits anti-union discrimination. According to its terms, employees cannot be dismissed because of trade union membership. Approximately 20 percent of the work force is unionised.

The law provides for collective bargaining for unions which represent at least 40 percent of the workers in a unit or when the union seeking recognition for collective bargaining purposes obtains 50 percent of the votes of the total number of workers. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly asked for this law to be made compatible with Convention No. 98.

The law does not provide for the right to strike, but does not prohibit strikes either. Striking employees have no criminal liability for striking but they are not protected against being fired.

The Industrial Disputes Tribunal (IDT) is responsible for resolving industrial disputes. The Ministry of Labour has the power to refer an industrial dispute to compulsory arbitration and to terminate any strike if it is "likely to be gravely injurious to the national interest". The law defines essential services broadly and the CEACR has

criticised the government asking them to make their definition compatible with the ILO's official definition: "*essential services*" means services, [...], the interruption of which would endanger the life, health or personal safety of the whole or part of the population".

In practice there are grave violations of labour rights in Jamaica. Anti-union discrimination occurs by way of dismissal of unionised workers and actions by managers to get the recognition of trade unions withdrawn. Many reports show that employers fire workers with permanent contracts before re-recruiting them with short-term contracts and lower benefits. In other cases the Ministry of Labour has intervened directly in labour disputes to prevent industrial disputes from escalating to strikes.

For example, the National Workers Union (NWU) has reported that the management at the Grand Palladium Resort and Spa has been engaged in intimidating their workers and employing anti-union tactics. According to the NWU, management tried to deceive the employees by offering them improved fringe benefits as well as attractive loans to discourage them from voting for union representation, and the union was forced to postpone the ballot.

The law applied equally to export processing zones (EPZs). However it is common practice in companies in EPZs to threaten workers and create pro-employer "workers' councils", which interfere in the handling of complaints but are not allowed to engage in collective bargaining on working conditions or minimum wages. As a result, so far there are no unions at all in these zones.

### *Summary*

*The law requires excessive representation rates from unions to collectively bargain and the government has excessive powers of intervention in industrial relations. Anti-union discrimination and union-busting occur. One consequence of these violations of core labour standards is that there are no trade unions in the export processing zones (EPZs).*

## **II. Discrimination and Equal Remuneration**

Jamaica has ratified Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination (Employment and Occupation), both in 1975.

The Constitution does not provide protection against discrimination on the grounds of sex. The Employment (Equal Pay for Equal Work) Act of 1975, which applies to all workers, contractors, and those under apprenticeship as well as to all employers employing more than one employee, stipulates the right to equal pay for equal work, where equal work is defined as work with "similar" or "substantially similar" job requirements. This is not in line with Convention No. 100, providing for equal pay

between men and women for work of equal value, even though the work may be of a different nature.

The Women (Employment of) Act, 1942, regulates the conditions of employment of women and stipulates protective provisions prohibiting women from performing certain work, such as night work. It applies to all businesses, with the exception of businesses in which only family members of the employer or owner are employed.

The law does not prohibit sexual harassment at the workplace and the Bureau of Women's Affairs (BWA) has reported that it has become a "disturbing problem." However, the BWA developed the National Gender Policy and the Sexual Harassment Policy to address sexual harassment and other gender related problems. The two Policies are awaiting endorsement by the Parliament.

In practice women face discrimination in various aspects of employment. Although women have higher rates of literacy than men they receive only 65 percent of men's remuneration for work of equal value and they experience an unemployment rate three times higher than that of men.

There is no law that forbids discrimination against disabled persons and discrimination in their employment occurs. There is no provision mandating accessibility of buildings. The competent authority is the Jamaica Council for Persons with disabilities and the National Policy for Persons with Disabilities (2002) provides the framework for equal treatment of persons with disabilities. The Policy established training for the disabled and the Steps-to-Work Programme under which a number of places are reserved for persons with disabilities, thereby increasing their opportunities for training and employment.

The law prohibits homosexuality. Homosexuals face grave discrimination and there are reports of many violent attacks against them. It is obvious that such persons also face discrimination in employment.

There are no laws that protect persons living with HIV/AIDS from discrimination and this group faces discrimination. The Ministry of Labour has cooperated with the ILO HIV/AIDS Workplace Education Project to reduce HIV/AIDS risk behaviour among targeted workers and to reduce the level of employment-related discrimination against workers living with HIV/AIDS. The programme has resulted, among other things, in an increase in the percentage of workplaces with HIV/AIDS policies or guidelines including provisions on non-discrimination.

### *Summary*

*The law is insufficient to provide adequate protection against discrimination for women, disabled persons and those who live with HIV/AIDS, while it prohibits homosexuality. Female workers and other vulnerable groups face discrimination in terms of remuneration as well as access to the labour market.*

### **III. Child Labour**

Jamaica has ratified Convention No. 138 on Minimum Age and Convention No. 182 on the Worst Forms of Child Labour, both in 2003.

The minimum age for admission to work is 15 years of age and the law prohibits all types of employment for children younger than 13 years of age. Children between 13 and 15 are allowed to perform light work which should not disrupt their education or be harmful to their health or morals, such as working at night or in any industrial undertaking.

The government has consulted with social partners and other parties on establishing a list of hazardous occupations to which admission to work for children should be prohibited. The list, which is an annex on the new Occupational Health and Safety Act, is yet to be enacted. The existing legislation has no provisions requiring the employer to keep registers and documents of persons employed or working under him/her.

The law prohibits procuring a child younger than 18 years for the purpose of prostitution and prescribes punishments of up to 3 years of imprisonment which is deemed not stringent enough. In July 2008 the Parliament approved the Child Pornography Bill which carries a maximum penalty of 20 years' imprisonment and a fine. The Offences against the Persons Act prohibits the sale and trafficking of girls under the age of 18; however, boys under 18 years are not protected from the same crime. Equally, boys are not protected by the standing legislation concerning the use, procuring or offering of a child for prostitution.

The Child Labour Unit which employs two persons, the Office of Health and Safety of the Labour Ministry and the Child Development Authority (CDA) are responsible for enforcing the law on child labour but they suffer from a severe lack of resources. However the Office of the Children's Registry has been receiving complaints of abuse against children. In 2008, the CDA trained 50 police officers on child labour issues. The new Occupational Health and Safety Act, which will replace the Factories Act, provides an improved framework for labour inspectors with the scope of monitoring and taking legal action in incidents of child labour, including those in informal economic activities.

Education is free, universal and compulsory; however, certain school expenses need to be covered by the family. The gross enrolment rate is 95 percent and more than 90 percent make it to the 5<sup>th</sup> grade.

In practice, there are about 50,000 working children, about 8 percent of the juvenile population. They are engaged in farms, construction sites, services and on the street undertaking forms of begging or vending. In tourist areas many girls are reported to be forced into prostitution and boys into becoming drug couriers and dealers.

The government has been implementing a campaign against child prostitution in tourist areas and has established a hotline for reporting child exploitation and labour. The Child Labour Unit is soon to collaborate with the Jamaica Teachers Association to stage workshops with a view to educating classroom teachers on child labour issues.

#### *Summary*

*The government is making progress in aligning its law on child labour with the two ILO core Conventions in this area. However, child labour occurs in farms, construction sites, in the services sector and on the street.*

#### **IV. Forced Labour**

Jamaica ratified Convention No. 29, the Forced Labour Convention, and Convention No. 105, the Abolition of Forced Labour Convention, in 1962.

Jamaica has no laws prohibiting forced labour. The Trafficking Act of Jamaica, in effect since 2007, prohibits all forms of trafficking, including the trafficking of children and penalises offenders with up to 10 years imprisonment.

Under Section 155(2) of the Correctional Institution Rules of 1991, inmates may be employed with the authority of the Commissioner or in pursuance of special rules. Furthermore, under Section 60(b) of the Corrections Act, the Minister may establish programmes under which persons serving a sentence in a correctional institution may be directed by the Superintendent to undertake work in any company or organisation approved by the Commissioner. The CEACR has pointed out that this is in breach of Convention No. 29, which stipulates that no prisoners should work for private individuals and companies except where they do so under the conditions of a freely accepted employment relationship, with their formal consent and subject to guarantees regarding the payment of normal wages and social security and other benefits.

Forced labour occurs in Jamaica mostly in the form of forced prostitution in urban and tourist areas. Reports show that forced labour of children in street vending is prevalent and that some children are forced into domestic servitude. NGOs believe that many of the 1,859 Jamaican children that went missing in 2009 became trafficking victims.

The government made six prosecutions of trafficking offenders in 2009 but there has been no conviction. Often, trafficking offenders are released on bail before they are prosecuted. The government provides limited protection to trafficking victims. In partnership with an NGO, the government has established three shelters for rescued women. The government has partly financed other NGOs which provide victim assistance services. The Ministry of National Security has trained more than 700 police officers and other law enforcers in anti-trafficking. The authorities of certain cities use

formal mechanisms to identify victims and keep good relations with NGOs for providing protection services. Usually the identified victims are not prosecuted for illegal acts committed by them during captivity and the authorities encourage victims to cooperate with them in identifying and prosecuting the traffickers. However, this is not the case everywhere in Jamaica.

The government implements anti-trafficking education campaigns in schools and other awareness in rural communities. Employees of the general crime victim hotline have now been trained to handle reports of human trafficking.

#### *Summary*

*Forced labour is not prohibited by law and it occurs in Jamaica, mostly in the form of forced prostitution. The government has not made significant progress in prosecuting traffickers.*

## **Recommendations**

1. The Labour Code provision which requires a representation rate of at least 40 percent of the workers in a unit or 50 percent of the total votes to be obtained in order to establish collective bargaining rights should be amended in line with Convention No. 98 to provide a lower percentage requirement for representation.
2. The Ministry of Labour should not have the power to refer an industrial dispute to compulsory arbitration or to terminate any strikes. The Ministry should proactively support the collective bargaining process as the main procedure for issues of industrial relations.
3. The government needs to limit its broad definition of “essential services” to the definition given by the ILO.
4. Law enforcers should start pursuing cases of discrimination against trade unions and should facilitate the complaints procedures especially in EPZs.
5. The Labour Code should be amended in order to establish equal remuneration for men and women for work of equal value.
6. The National Gender Policy and the Sexual Harassment Policy should be endorsed rapidly by the Parliament.
7. New laws on the prohibition of discrimination against disabled persons and provisions for accessible buildings should be established.
8. The law should not prohibit homosexuality and new legislation is required to prevent discrimination against homosexuals, including at the workplace.
9. The government should establish laws for the protection from discrimination of persons living with HIV/AIDS and should actively encourage companies to adopt workplace HIV/AIDS programmes.
10. The hazardous work list to protect children from employment in dangerous occupations should be enacted urgently.
11. The labour laws need to be amended in order to encompass provisions requiring the employer to keep registers and documents of persons employed, with a view to preventing illegal child labour.



12. The Offences against the Persons Act and the laws on the use, procuring or offering of a child for prostitution should be amended in order to protect boys and not only girls.
13. Jamaica should prohibit forced labour by law.
14. The Correctional Institution Rules and the Corrections Act should be amended in order not to allow prison work for individuals and companies except where prison labour is a freely accepted employment relationship with the prisoner's formal consent and subject to guarantees regarding the payment of normal wages and social security and other benefits.
15. The authorities need to start convicting labour traffickers. They should also reinforce their capacities to recognise and provide assistance to victims of trafficking.
16. The government should build up its law enforcement and judicial capacities in order to monitor and enforce labour laws, including legislation on violations of workers' rights, on child labour and on forced labour and trafficking and start punishing those who commit such crimes. The Labour Inspectorate should be adequately funded and the inspectors properly trained.
17. In line with the commitments accepted by Jamaica at the Singapore and Doha WTO Ministerial Conferences and their obligations as members of the ILO, the government Jamaica should provide regular reports to the WTO and the ILO on their legislative changes and implementation of all the core labour standards.
18. The WTO should draw to the attention of the authorities of Jamaica to the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. The WTO should request the ILO to intensify its work with the government of Jamaica in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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