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Precarious Work: Undermining Human Rights

International Metalworkers' Federation (IMF) submission to the UN Special Representative of the Secretary General for Business and Human Rights

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The aim of our submission is to bring to your attention how companies worldwide are using creative forms of employment contracts that prevent workers from exercising their fundamental rights. It can be read in conjunction with the previous submission made by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) which addresses the same issues.

Precarious work is rapidly becoming the biggest obstacle to the respect of workers rights. Every day, more and more workers find themselves in precarious jobs where they have no right even to join a union, let alone to bargain collectively with their employer. Some are formally excluded because basic rights are denied in law. Others have rights on paper, but no rights in fact because laws are not enforced. And others are too afraid to exercise their rights because they could lose their jobs at any minute.

As a result, millions of workers throughout the world and whole categories of employment are effectively being excluded from the reach of ILO Conventions 87 and 98, as well as a whole host of other employment rights. According to our affiliates, employers also use precarious work to evade their obligations to provide social security and pensions, maternity and family leave, overtime payments, vacation and holidays, and occupational health and safety. Wages of precarious workers are much less than for permanent workers – our affiliates report that in many cases wages of precarious workers are more than 50% less than those of the permanent workforce.

In short, employers are currently able to establish employment relationships that systematically deny workers their human rights.

A case that is currently before the ILO's Committee on Freedom of Association is a useful illustration. The IMF took the case against the Korean government for neglecting to protect and facilitating violations by companies of subcontracted workers' rights to freedom of association and collective bargaining. Workers at a number of metal plants were not regularised as required by the law. When they tried to form a union to assert their rights, they were dismissed by their employer who either did not renew the workers' contracts or did not renew its own contract with the subcontracting company. This is an example of subcontracting being used to disguise employment relationships and deny workers their rights. Anti-union discrimination is disguised as termination of contracts with the result that employee freedom of association and bargaining rights are not protected. Workers are effectively put in a catch 22: the principal employer refuses to negotiate, claiming there is no employment relationship; the subcontractor refuses to negotiate claiming it has no control of the terms and conditions of employment.

The IMF is seeing more temporary, more casual, more part-time and more contract jobs than we have ever seen before. Stable employment and good jobs are being eroded at a frightening rate. In fact, what we used to call atypical work is fast becoming typical. In an increasing number of workplaces in the metal sector, precarious workers make up more than half the total workforce. The electrical and electronics industry and the automotive industry are currently the most affected, but in fact precarious work is rampant across all metal industries, including steel and aerospace.

Precarious work disproportionately impacts young workers, women workers and migrant workers, groups of workers that already face disadvantage in employment. Women are especially affected by precarious work. Their jobs tend to be more precarious in general, with less security, lower pay, fewer benefits and weaker social protection than men. The chance to find regular employment further decreases for young or migrant workers.

Precarious work makes a large contribution to the gender pay gap. In Japan, women part-time workers earn only 54 per cent of the hourly wage of regular women workers, a gap which has widened in the last decade. In Korea, 70 per cent of women workers are precariously employed, earning only 43 per cent of the salaries of regular male workers. In one of the factories cited in the case against the Korean government, only 5 per cent of the workers are permanent employees and they are all male. Nearly all the precarious workers are women, earning 47 per cent less than their male colleagues.

There is nothing new about low pay for women and for other groups of workers. But, in the past low-paying, bad jobs at least had the chance of leading to better jobs and better futures. Now, precarious work has cut off that route, ensuring that far too many workers remain on the margins of society no matter how hard or how many years they work. Workers and their families are denied both justice and opportunity.

The only way that precarious workers can take action to improve their situation is to unionise. Yet precarious workers the world over are systematically being denied freedom of association. These are some of the comments made by unions affiliated to the IMF:

“In the precarious jobs the workers do not have the right to be part of a trade union - they will be dismissed on the spot.” - FGME-UGTT, Tunisia

“When irregular workers organize a union, the employer fires the unionised workers by ending the contract with the intermediary contractor, and keeps contractors that are non-union.” - KMWU, South Korea

It is our submission that precarious work threatens the very survival of stable employment and collective bargaining. Globalisation of investment and trade has brought jobs to countries that badly need them. But instead of spreading regular employment more fairly throughout the world, the impact has been to undermine full-time permanent work where it does exist. Transnational companies are increasingly favouring insecure employment, driving down wages and conditions for all workers, and contributing to the growing gap between rich and poor. But insecure employment and reduced wages will not lead us to stable development.

Labour law traditionally recognises that employers are relatively powerful compared with their employees. It seeks, to some degree, to offset that imbalance through protection of rights and their exercise. However, when the relationship becomes a commercial one, for example, when it is a subcontractor or a supplier or a self-employed worker (who may be, in fact, a

dependent worker), or a temporary work agency employee doing the work, that relationship is fundamentally changed, with the subsequent loss of the protections that come with a direct employment relationship. Correcting this situation is part of the government duty to “protect”, but few governments have recognised the contribution of these practices to the significant erosion of the effective exercise of rights.

Collective bargaining has long been recognised as the only mechanism through which workers can obtain a genuine voice in their working conditions by redressing to some extent the power imbalance that is inherent between workers and their employer. Yet companies ensure that the vast majority of precarious workers are excluded from collective agreements.

Collective bargaining also holds the key to both determining the circumstances under which non-permanent or outsourced employment is justified, and ensuring that wages and conditions of precarious workers are equal to those of regular workers. Collective agreements can ensure equal treatment for all workers, whatever their legal status. This is both to protect the precarious workers and to prevent employers from using worse pay and conditions to undermine regular employment. Precariously employed workers, including agency staff, must receive the same pay and benefits as regular employees, so that employers have no incentive to use them as cheap, disposable labour. The best prospect for achieving this is through reaching collective agreements at industry level.

Some employers are beginning to learn the price that they are paying for precarious work. Some would welcome a more stable environment, rather than see precarious work make their enterprises precarious too. The IMF has signed a number of International Framework Agreements (IFAs) with multinational companies which commit the company to ensuring respect of freedom of association and the right to bargain collectively throughout their operations and those of their suppliers. IFAs are an important tool for establishing a relationship between global companies and workers internationally that can lead to a better understanding of workers needs and how to address them. Some agreements are also beginning to address the question of the employment relationship precisely because of its impact on rights. Companies that are addressing these issues through industrial relations practices, at national level and through pioneering work at international level, are demonstrating “respect” rather than just talking about it.

On the other hand, putting obstacles in the way of workers exercising their fundamental human rights to join a trade union and bargain collectively, while at the same time trying to establish ‘alternative’ means of addressing employee grievances which give all control to the company is not an answer. By adopting a culture that genuinely respects workers rights, companies will be able to overcome their hostility to workers that chose to join a trade union and start to work with them to jointly resolve grievances as and when they arise.

The increasing spread of precarious work that is being driven by companies throughout the world to prevent workers from freely associating is a clear human rights issue. That is why the IMF joins the IUF in requesting the UN Special Representative on Business and Human Rights to fully integrate the relationship between precarious work and the effective realization of human rights into his investigations and recommendations as a matter of priority.

The IMF, in co-operation with other global unions, is trying to address issues of protection of rights of precarious workers through better laws and enforcement, as well as through seeking industrial relations solutions to the problems of those in precarious work. We are also trying to develop remedies through IFAs and other agreements.

The crisis has without a doubt increased the tendency of employers to put workers on precarious contracts as these enable them to cast aside workers more easily, cheaply and rapidly. Nevertheless we are making some scattered, limited progress and resisting some negative developments. Legislation has been improved in several Latin American countries, further expansion of precarious work has been blocked in Turkey, discussions on rights are taking place with governments and employers in Thailand, where there is a huge problem, and global unions are beginning to be heard in such international policy bodies as the OECD and the World Bank on issues of labour market “flexibility”.

At national level, unions have been able to use collective bargaining to limit abuses or to provide remedies for the victims of such abuses. Many of our affiliates have given priority to improving the conditions of precarious workers in collective bargaining at national and company level. Even when precarious workers are prevented by law, or at least discouraged by risks from joining unions, unions themselves are taking on the job of defending precarious workers and using collective bargaining to transform their contracts from temporary to permanent, underlining the important role of collective bargaining in providing remedies.

As with other human rights, exercise of the fundamental enabling rights of freedom of association and collective bargaining is severely constrained by fear. That fear comes from the vulnerability that employers are imposing on workers every day, in developed and developing countries alike, with the explosion of precarious work practices.