



Precarious Work: Undermining Human Rights

Any meaningful investigation of the relationship between business and human rights must address the rights impact of the accelerating dissolution of what the ILO and others refer to as the "standard employment relationship" (i.e. direct, permanent employment) and the rise of precarious work. This note does not attempt to account for the role of institutions like the World Bank and the OECD in pushing for even more precarious work relations, rewarding and rating countries for their efforts to abolish direct employment. Agriculture, which still has the world's largest work force, is almost entirely built on precarious labour, and there is a vital connection between this and the fact that agricultural workers who help to feed the world are often among the most food insecure. The relationship between poverty and deepening inequality, and the growth of precarious work in rich and poor countries alike, has been well documented. The purpose here is to highlight a phenomenon which has *not* received the attention it requires, i.e. *the increasingly widespread use of indirect, precarious employment relations to weaken trade union organization and bargaining power*. It is in this context that precarious work emerges as a fundamental human rights issue demanding a strong response rooted in a comprehensive human rights framework.

The ILO defines the standard employment relationship in these terms: *The traditional pattern of the employment relationship, or standard employment relationship, has for many years been that of full time work, under a contract of employment for unlimited duration, with a single employer, and protected against unjustified dismissal.*

A partial list of the various types of precarious employment arrangements would include:

- outsourcing, contracting-out or subcontracting
- casualization, contractualization, contingent or fixed-term contracts, leading to the creation of a large pool of *permanently* 'temporary' employees
- use of labour agencies
- bogus "self-employment" and independent contractors
- abusive use of seasonal and probationary employment and traineeships

Precarious work in all its forms - when it is not being praised, encouraged and promoted for contributing to labour market 'flexibilization' - is usually discussed in relation to declining living standards, discrimination, the feminization or poverty etc. A typical example would be "Precarious employment is employment that is low quality and that encompasses a range of factors that put workers at risk of injury, illness and/or poverty. This includes factors such as low wages, low job security, limited control over workplace conditions, little protection from health and safety risks in the workplace and less opportunity for training and career progression." (Gerry Rodgers & Janine Rodgers, *Precarious Jobs in Labour Market Regulation; the Growth of Atypical Employment in Western Europe*, 1989).

This is an accurate but only partial description of what has become a primary vehicle for attacking living standards and violating the rights to livelihood, non-discrimination, to a safe working environment etc. There is another central rights dimension, namely *the deliberate application of precarious work relationships to restrict workers' ability to organize at the workplace and challenge poverty, insecurity, unsafe working conditions etc. through trade union organization and collective bargaining.*

By creating an intermediate network of indirect employment relationships, corporations evade employer responsibility for industrial relations and restrict the size of the collective bargaining unit or even completely eliminate the collective bargaining relationship. By generalizing insecurity through the undermining of direct employment, these practices also exercise a chilling effect on the general environment in which workers organize to exercise their collective rights. Here are some examples, drawn from corporations which are among the largest in their sectors, and which play a prominent role in CSR fora while actively undermining rights in practice.

Nestlé, the world's largest food corporation, has a 'Temporary Staff Best Practice Route Map' defining employment policy with respect to 'temporary' (i.e. precarious) work. The Route Map catalogs a series of ILO Conventions which it claims to respect, while classifying them in terms of their ability to exclude various categories of workers (temporary, outsourced etc.) from a collective bargaining relationship with Nestlé. The Route Map is explicit in defining the various types of employment contracts in relation to the collective bargaining unit: non-direct, non-permanent employees can exercise all the rights they wish, but they are excluded from collective bargaining relationship with Nestlé, whose products they manufacture, distribute etc. A good example of how this can work in practice is Nestlé in the Philippines.

At Nestlé Philippines labour hire agencies are used for almost all positions, both in production and sales force offices. Workers contracted through labour hiring agencies are assigned to all types of positions normally filled by regular workers, and a substantial proportion of the workforce is now recruited and employed in this way. *These workers are not allowed to work for more than five months* - otherwise they may become regulars because of the provisions of the labour law and they are never recalled even if they had performed exceptionally well simply because they would accumulate the number of months (6-month period) required by law to become permanent. These contract workers (whose pay is considerably less than that of permanent workers) are replaced with new workers who have never been hired in any Nestle worksite.

Early retirement programs, unilateral transfer of union members to "exempt" categories, and promotion of union members to so-called "supervisory" positions (without any real change in job content) have been used to dramatically reduce the number of permanent workers in sales and clerical work. Early retirees as well as regular retirees (and members who were unilaterally removed by management from "bargainable" positions) are replaced with casual and fixed-term contract workers as well as third-party contractors. As a result, overall union membership has declined dramatically

In Indonesia, where Nestlé has 4 factories and one warehouse, there are so many precarious employment practices in use that the combined number of workers employed under these arrangements is more than the total number of regular workers. Less than 50% of workers employed in manufacturing Nestlé products have permanent status - and the proportion of workers entitled to union membership and a collective bargaining relationship with Nestlé has been shrunk still further after a large number of these were arbitrarily classified as "supervisors".

These examples illustrate what has become a universal pattern for shrinking the size of an actual or potential bargaining unit through indirect employment even in so-called "core activities". It is by no means limited to Asia, but has become, to a greater or lesser extent, general practice. Without recourse to death squads or anti-union consultancies, unions can be shrunk in size and influence to die a slow death through outsourcing.

Corporations can of course completely evade employer responsibility by 100% outsourcing. In 2008, the World Food Programme announced "a joint venture with the employees of industrial giant Unilever... to help combat child hunger in Pakistan." Part of this scheme involved the promotion of Unilever's branded Blue Band margarine through the school system.

Unilever thus receives promotion from the UN for a product which it does not manufacture and for whose industrial relations it denies all responsibility. In 2004 Unilever Pakistan sold its Dalda brand plant in Karachi to a group of former company managers, who incorporated as Dalda Foods (Pvt.) Limited. Dalda makes Blue Band (and other trademark products) under license from Unilever.

At the Dalda Foods factory, which employs 500 workers, not a single worker is employed on a permanent contract. Those who make the "Blue Band" spread for which Unilever gets a marquee slot on a UN agency's website and collects the licensing fees are all on temporary contracts, recruited through labour hire agencies. When 430 workers decided to form the Dalda Food Employees Union and registered with the authorities on May 13, 2008, management at Dalda opposed the union's registration application and request for collective bargaining status on the grounds that its employees aren't employed by Dalda, but by the labour hire agencies. However that didn't stop Dalda from firing 266 of them. Unilever says the dispute doesn't concern them, because Dalda is a separate entity. When the IUF wrote the World Food Programme, we were told that it didn't concern them either. Nearly two years later, the workers are still waiting for reinstatement of the fired union members and negotiations for a collective agreement. Dalda workers are excluded by law from a collective bargaining relationship with Dalda, though they are of course perfectly free to form a union... for each of the many labour agencies. So 100% outsourcing gets the real employer off the hook, and the massive use of casual labour ensures there will be no unions.

There are numerous ways of packaging this system for denying rights, apart from the familiar 'flexibility'. In Pakistan it is enrolled in "fighting child hunger" through a "joint venture" with an "industrial giant" which deliberately obscures the fact that the industrial giant has a miniscule payroll of direct employees but dominates many of its product sectors. In South Africa it is called "black economic empowerment". The IUF-affiliated Food and Allied Workers' Union of South Africa (FAWU) recently concluded a 7-week strike against Coca-Cola's South African bottler ABI (owned by SAB Miller). A key issue in the strike was the practice of turning former ABI-employed delivery drivers into "independent owner-operators". Crew members with these "black empowered" drivers, who now carry out over 70% of company deliveries, earn as little as ZAR 1,200 (EUR 112). Prior to "empowerment", the prevailing wage was ZAR 6,600 (EUR 620). They now formally work, not for ABI, but for the labour brokers. Moreover, more than 25% of ABI's workforce are now employed by the company in production and distribution on a "temporary" basis. Some of these "casual" workers have been working on a daily basis for close to 19 years while being paid considerably less than permanent staff, with no job security. Up to one-half of their substandard wage is skimmed by the labour brokers.

The ILO's 2008 report on industrial relations at Coca-Cola's Colombia bottlers shows how by outsourcing many activities which are core to the operations of the bottlers the companies systematically deny and restrict the ability of those workers to exercise their rights to join a union of their choice. (The report is available at <http://www.ilo.org/public/english/dialogue/sector/papers/food/mission.pdf>)

These are but a very few recent examples which highlight abuses at some of the world's largest food corporations. The situation is even more abusive in companies with more extensive supply chains.

Redressing these human rights violations requires systematic action by governments and business to roll back and tightly restrict the use of precarious work in order to allow workers to fully exercise their rights. The IUF therefore requests 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.