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# Labor Rights as Human Rights: The Situation of Women Workers in Jamaica's Export Free Zones

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## I.

## INTRODUCTION

There is a puzzling reality in the Jamaican labor force. Though somewhere between fifteen and twenty-five percent of Jamaica's formal sector labor force is unionized<sup>1</sup> not one of the factories in Jamaica's export free zones is unionized.<sup>2</sup> These facts are puzzling because the lack of union presence in Jamaica's free zones is a *de facto*, not *de jure*, reality. There are no legal impediments to unions organizing in Jamaica's free zones. To the contrary, Jamaica is subject to a number of obligations, both domestic and international, to ensure that all workers, including those in its export free zones, have the right to form and join trade unions. Thus, the problem is not with a lack of laws. The problem is that the laws are not being enforced.

Several factors contribute to non-enforcement of Jamaica's otherwise strong labor laws. Sex discrimination may account for some of the non-enforcement. Close to 95% of Jamaica's free zone workers are women and Jamaica's trade unions are, for the most part, run by and made up of men. Another obstacle could be the historical privilege and connection that Jamaica's trade unions have enjoyed to Jamaica's political parties and political elite. However, the failures of Jamaica's trade unions are not the sole cause of the lack of unionization in the export free zones. Inertia or failure on many actors' part to enforce the applicable laws are also to blame.

The lack of union representation in Jamaica's free zones matters because without unions, women workers in the free zones do not have the same leverage to achieve better wages, benefits and working conditions as their formal sector unionized counterparts. Indeed, women workers in Jamaica's free zones suffer low wages and poor working conditions. A Jamaican free zone worker likens the situation to slavery.<sup>3</sup>

Part I of this Article discusses the concept of export free zones generally, in addition to their specific application in Jamaica. In Part II, this Article explores Jamaica's labor law obligations and concludes that Jamaica

1. See BUREAU OF ECON. AND BUS. AFFAIRS, U.S. DEPARTMENT OF STATE, 2001 COUNTRY REPORTS ON ECONOMIC POLICY AND TRADE PRACTICES: JAMAICA (2002) at ¶ 8(b) (estimating unionization at 15% of the workforce) [hereinafter, "COUNTRY REPORTS: JAMAICA"]; United Nations, Economic and Social Council, Second Periodic Report of Implementation of the International Covenant on Economic, Social and Cultural Rights: Jamaica (State Party Report), at ¶ 62, U.N. Doc. E/1990/6/Add.28 (May 10, 2001) (estimating unionization at 21% of the employed labor force) [hereinafter, "Jamaica's ICESCR Second Report"]; U.S. Dept. of Commerce, National Trade Data Bank, *Jamaica: Foreign Labor Trends* (May 6, 1999) (estimating unionization of the labor force at 20-25%), available at <http://www.tradeport.org/ts/countries/jamaica/flt.html> [hereinafter, "Jamaica: Foreign Labor Trends"].

2. See COUNTRY REPORTS: JAMAICA, *supra* note 1, at ¶ 8(b); see Jamaica: Foreign Labor Trends, *supra* note 1.

3. See *Free Zone Workers Grouse Discrimination!*, 9:7 THE NEWS at 5 (1999).

is under a number of obligations to afford its workers, including those in its free zones, the right to organize, to join and to form trade unions. In Part III, this Article addresses the possible impediments to organizing in Jamaica's free zones. Lastly, Part IV discusses the measures that can be taken to enforce workers' rights in Jamaica's free zones. Those seeking to unionize workers in Jamaica's free trade zones could employ the "complaint" mechanisms under various human rights, labor treaties, and United States trade laws; United States federal litigation strategies; and voluntary codes of conduct. The Article concludes that, although legal procedures for remedying the situation exist, the social conditions and the lack of involvement of Jamaica's trade unions in addressing the labor rights of the mostly female free zone workforce, suggest that enforcement measures may prove ineffective.

## II.

### JAMAICA AND ITS FREE ZONES

This section provides relevant background information on Jamaica. It discusses the concept of export free zones in general as well as their particular incarnation in Jamaica. This section concludes that, although it would be simplistic to classify free zone employment in Jamaica solely as negative or positive, the evidence demonstrates that the drawbacks outweigh the advantages for Jamaica's female export free zone workers.

#### *A. About Jamaica*

The island of Jamaica is the largest English-speaking island in the West Indies, with an area of over eleven thousand square kilometers.<sup>4</sup> Its population, growing at about 1% per year, is around 2.5 million, with half of the population living in urban areas.<sup>5</sup> Racially, Jamaica is 90.5% black, 7.3% mixed race, and 1.3% East Indian.<sup>6</sup> In 1994, the literacy rate was approximately 75.4%, 81.2% for females compared with 69.2% for males.<sup>7</sup> Illiteracy was estimated at 24.6%, comprising 18.8% for females and 30.8% for males.<sup>8</sup>

Jamaica's labor force is approximately 1.1 million,<sup>9</sup> with women

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4. See Fifteenth Periodic Reports of States Parties due in 2000: Addendum, Jamaica, Comm. on the Elimination of Racial Discrimination, at ¶ 1, U.N. Doc. CERD/C/383/Add.1 (September 24, 2001), [hereinafter, "Jamaica's CERD Report"].

5. *Id.* at ¶¶ 6-7.

6. *Id.* at ¶ 5.

7. *Id.* at ¶ 17.

8. *Id.*

9. See COUNTRY REPORTS: JAMAICA, *supra* note 1, at ¶ 1; see also Jamaica: Foreign Labor Trends, *supra* note 1.

comprising approximately 45% of the total.<sup>10</sup>

The World Bank has classified Jamaica as a “moderately indebted” country.<sup>11</sup> Jamaica’s external debt increased from January through May 2001 to \$3.97 billion U.S. dollars,<sup>12</sup> and debt servicing accounts for 62% of total expenditures.

## *B. Export Free Zones in General and Export-Oriented Industrialization in Jamaica*

### *1. Export Free Zones Generally*

Generally, export free zones (hereinafter, “EFZs”) are defined as “fenced-in industrial estates specializing in manufacturing for exports that offer firms free trade conditions and a liberal regulatory environment.”<sup>13</sup> EFZs share a few common features, such as:

- 1) unlimited, duty-free imports of raw, intermediate input and capital goods necessary for the production of exports; 2) less governmental red-tape, more flexibility with labor laws for the firms in the zone than in the domestic market; 3) generous and long-term tax holidays and concessions to the firms; and, lastly, 4) above average (compared to the rest of the host country) communications services and infrastructure (it is also common for countries to subsidize utilities and rental rates).<sup>14</sup>

The primary goals of an export free zone are:

- 1) to provide foreign exchange earnings by promoting non-traditional exports; 2) to provide jobs to alleviate unemployment or under-employment problems in the country and to assist in income creation; and 3) to attract foreign direct investment (FDI) and engender technological transfer, knowledge spill-over and demonstration effects that would act as catalysts

10. *Id.*

11. See WORD BANK GROUP, COUNTRY GROUPS, at <http://www.worldbank.org/data/countryclass/classgroups.htm> (last visited Jan. 25, 2003). The World Bank classifies all of its members as well as other economies with populations of more than 30,000. The classifications are by region, by income, and by indebtedness.

12. See COUNTRY REPORTS: JAMAICA, *supra* note 1, at ¶ 4.

13. See DORSATI MADANI, WORLD BANK, A REVIEW OF THE ROLE AND IMPACT OF EXPORT PROCESSING ZONES 5 (1999), at <http://econ.worldbank.org/docs/965.pdf> (last visited Jan. 25, 2003). Although Madani’s report uses the term “export processing zones,” the same scheme is referred to by many other names, including export free zones. See, e.g., BUREAU FOR MULTINATIONAL ENTERPRISE ACTIVITIES, INTERNATIONAL LABOR ORGANIZATION (ILO), EXPORT PROCESSING ZONES: ADDRESSING THE SOCIAL AND LABOUR ISSUES, at <http://www.transnationale.org/pays/epz.htm> (last visited Jan. 25, 2003); POVERTY REDUCTION AND ECONOMIC MANAGEMENT, PREM NOTES ON ECONOMIC POLICY, SERIES NO. 11, EXPORT PROCESSING ZONES (1998), available at <http://www1.worldbank.org/wbiep/trade/pubs/premnote11.pdf> (last visited Jan. 25, 2003); ILO, ECONOMIC AND SOCIAL EFFECTS OF MULTINATIONAL ENTERPRISES IN EXPORT PROCESSING ZONES, at 4 (1988).

14. See MADANI, *supra* note 13, at 5.

for domestic entrepreneurs to engage in production of non-traditional products.<sup>15</sup>

EFZs are established by governments to foster industries like textile manufacturing. Textile manufacturers located in EFZs import raw materials, like cotton, at a lower rate, pay workers lower wages due to relaxed labor laws and export the goods under a relaxed tariff structure.

## 2. Jamaica and EFZs

Since the 1950s, Caribbean countries have employed export-oriented industrialization, otherwise referred to as “industrialization by invitation,” to achieve economic development.<sup>16</sup> As described by Nobel Prize winning economist, Sir W. Arthur Lewis:

The islands cannot be industrialized . . . without a considerable inflow of foreign capital and capitalists and a period of wooing and fawning upon such people. Foreign capital is needed because industrialization is a frightfully expensive business quite beyond the resources of the islands.<sup>17</sup>

As part and parcel of its policy of export oriented industrialization, Jamaica employs EFZs to attract foreign capital. Under the Jamaica Export Free Zone Act, as amended in 1989, (hereinafter, the “Act”),<sup>18</sup> Jamaica established the Kingston Free Zone in 1976 and the Montego Bay Free Zone in 1988.<sup>19</sup> Together, these EFZs represent a significant share of Jamaica’s total factory space.<sup>20</sup>

In Jamaica, free zones are those areas designated as such by or pursuant to the Act.<sup>21</sup> Under the Act, any enterprise approved by the Port Authority to carry on an approved activity can import into a free zone certain defined items free of customs duty.<sup>22</sup> Also, approved enterprises are not subject to import or export licensing where goods are shipped to destinations other than customs territories.<sup>23</sup> Lastly, an approved free zone enterprise engaged in manufacturing, or activities involving international

15. *Id.*

16. Leith L. Dunn, *The Free Zone and Caribbean Women: Employment or Exploitation?*, paper presented at Symposium: Issues Concerning Women, sponsored by the Dept. of Economics, University of the West Indies, Mona (March 17, 1987) (unpublished, on file with author); *See also*, Thomas Klak, *Distributional Impacts of the Free Zone’ Component of Structural Adjustment: the Jamaican Experience*, 27 *GROWTH & CHANGE* 352, 357 (Summer 1996).

17. *See* Dunn, *supra* note 16, at 1.

18. *See* The Jamaica Export Free Zones Act (1989), *LAWS OF JAMAICA*, VOL. VIII, available at <http://natlex.ilo.org/txt/E89JAM01.htm> (last visited Jan. 25, 2003) [hereinafter, “The Act”].

19. *See* Klak, *supra* note 16, at 361.

20. *Id.*

21. The Act, *supra* note 18, at ¶ 2.

22. *Id.* at ¶ 23(1).

23. *Id.* at ¶ 33(1).

trading in products, is granted total relief from income tax on profits or gains earned from either activity.<sup>24</sup>

As in other parts of the world, young Jamaican women, usually below the age of twenty-five, make up most of the free zone workforce.<sup>25</sup> According to Klak, 95% of the jobs in Jamaica's EFZs are filled by women, a percentage significantly higher than in any Asian country or Mexico.<sup>26</sup> Women, especially young women, are an attractive EFZ workforce because they are said to be "docile, dexterous, less organized, cheaper, and more willing to tolerate monotonous and repetitive work."<sup>27</sup>

On the one hand, EFZs provide a significant number of women "formal" sector employment and a source of steady income, "most for the first time."<sup>28</sup> In 1997, employment in Jamaica's export free zones stood at about 13,900.<sup>29</sup> According to a State Department Country Report on Jamaica, however, the apparel industry contracted in the mid-1990s, with a decline in employment of 64%.<sup>30</sup> Due to the contraction of employment in the apparel industry in the 1990s, employment of women in the EFZs may not be that significant to women's overall employment in Jamaica. Thus, it is questionable whether employment in Jamaica's free zones will have a marked effect on the unemployment rate of women, which is higher than that of men.<sup>31</sup>

On the other hand, there are drawbacks to EFZ employment. Wages in Jamaica's free zones, though "comparable to those of many formal sector entry positions or low skill service work," are still low in an environment with a high cost of living.<sup>32</sup> In addition, EFZ jobs have reduced job security and poor working conditions.<sup>33</sup> In the data services sector, workers have complained of occupational health problems including "mesocarpal syndrome, stiffness in the hand, eye and back problems."<sup>34</sup>

Moreover, "women's new production responsibilities in [EFZ's] are added to traditional ones in the realm of reproduction."<sup>35</sup> In 1999, women

24. *Id.* at ¶¶ 38-39.

25. See COUNTRY REPORTS: JAMAICA, *supra* note 1, at ¶ 8(b); Klak, *supra* note 16, at 371; MADANI, *supra* note 13, at 37.

26. See Klak, *supra* note 16, at 371.

27. *Id.*; see also, MADANI, *supra* note 13, at 37.

28. See Klak, *supra* note 16, at 372.

29. See Jamaica: Foreign Labor Trends, *supra* note 1, at 179 (Key Labor Indicators).

30. See COUNTRY REPORTS: JAMAICA, *supra* note 1, ¶ 1.

31. See Jamaica: Foreign Labor Trends, *supra* note 1 (Summary).

32. See Klak, *supra* note 16, at 372-73.

33. See LEITH L. DUNN & HOPETON S. DUNN, EMPLOYMENT, WORKING CONDITIONS AND LABOUR RELATIONS IN OFFSHORE DATA SERVICE ENTERPRISES: CASE STUDIES OF BARBADOS AND JAMAICA, at 40-41, (ILO Working Paper No. 86, 1999).

34. *Id.* at 37.

35. See Klak, *supra* note 16, at 373.

headed around 42.5% of households in Jamaica, a proportion that has remained virtually unchanged since 1992.<sup>36</sup> As heads of households, women disproportionately bear the social burden of structural adjustment policies that “simultaneously reduce public spending on services, education, and shelter, raise consumer costs, and encourage investors to exploit low cost female labor.”<sup>37</sup> When such policies are instituted, women “have more production and reproduction responsibilities, requiring longer work hours, at the same time that costs are rising.”<sup>38</sup> For many women, “this situation translates into an increasing ‘double burden’ and a reduced living standard.”<sup>39</sup>

In sum, it would be simplistic to place a definitive normative value on free zone work. Given the lack of alternatives for the Jamaican EFZ workforce, comprised largely of female heads of household, there are positives to EFZs in that they provide a steady source of income. However, EFZ jobs are also low wage, low-skilled positions with poor working conditions and reduced job security. Thus, the drawbacks outweigh the advantages for Jamaica’s female export free zone workers.

### III.

#### JAMAICA’S LABOR LAW OBLIGATIONS

As explained below, under Jamaica’s labor laws, its constitution and the relevant labor and human rights treaties to which it is a party, Jamaica’s export free zone workers have the right to organize, to join and to form trade unions. This right to organize also exists under United States trade laws applicable to Jamaica.

##### *A. Jamaica’s Domestic Laws*

Jamaica’s constitution and labor law legislation protect all workers’ right to organize. Section 23(1) of Jamaica’s Constitution of 1962 guarantees the right to form and belong to trade unions.<sup>40</sup> Section 23(1) provides:

Except with his own consent, no persons shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the

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36. See Jamaica’s ICESCR Second Report, *supra* note 1, at ¶ 9.

37. See Klak, *supra* note 16, at 373.

38. *Id.*

39. *Id.*

40. See JAM. CONST. § 23(1) (1962), LAWS OF JAMAICA, VOL. XX, available at <http://www.georgetown.edu/pdba/Constitutions/Jamaica/jam62.html> (last visited Jan. 25, 2003).



protection of his interest.<sup>41</sup>

The constitution expressly grants this right, without limiting it in any way. Thus, from the constitution alone, all workers in Jamaica have a constitutional right to organize.

In addition to the constitutional guarantee of the right to organize, Jamaica's labor law legislation supplements and reinforces its constitutional mandate. Jamaica's Labour Relations and Industrial Disputes Act (hereinafter, the "LRIDA"), outlines regulations of all workers' rights, including free zone workers.<sup>42</sup> Section 4(1) of the LRIDA provides that, "[e]very worker shall, as between himself and his employer, have the right: a. to be a member of such trade union as he may choose; b. to take part, at any appropriate time, in the activities of any trade union of which he is a member."<sup>43</sup> Under section 4(1), no legal obligation is placed upon the employer to recognize the trade union.<sup>44</sup> Rather, the employer's obligation is to not interfere with the worker's right to be a member of any trade union she may choose.<sup>45</sup> The section 4(1) right is an individual right and can only be enforced by the employee against the employer.<sup>46</sup> In addition, "it is a qualified right obliging the employer to recognize the union that has a majority of the voters on the Voters' List at the place of employment for the purpose of collective bargaining."<sup>47</sup> Thus, an employee's choice of trade union will not be observed if a majority of his or her co-workers do not also vote for that trade union.

### *B. Jamaica's International Labor Obligations*

Beyond the domestic laws protecting workers' right to organize, international norms, to which Jamaica adheres, also protect this right. For example, Jamaica is a member of the International Labour Organization<sup>48</sup>

41. *Id.*

42. See "Labour Relations and Industrial Disputes Act" (1975), LAWS OF JAMAICA, VOL. X.

43. *Id.*

44. Dorothy Claire Gordon, *Jamaica*, in INTERNATIONAL ENCYCLOPEDIA FOR LABOR LAW AND INDUSTRIAL RELATIONS 158 (Roger Blainpain, ed. 1984).

45. *Id.*

46. *Id.* at 159. According to LRIDA § 4(2), any person who prevents or deters a worker from exercising his or her right or dismisses, penalizes, or otherwise discriminates against a worker by reason of her exercising her rights to be a member of a trade union, as she may choose, and to take part, at any appropriate time, in the activities of any trade union of which she is a member, shall be guilty of an offense and shall be liable on summary conviction before a residential magistrate. Presumably, it is up to the employee to bring the employers' breach to a resident magistrate.

47. *Id.*

48. See ILO, ALPHABETICAL LIST OF ILO MEMBER COUNTRIES, at <http://www.ilo.org/public/english/standards/relm/country.htm> (last modified Nov. 4, 2001). The ILO was founded in 1919 at the Paris Peace Conference to abolish the "injustice[,] hardship and privation" suffered by workers and to guarantee fair and "humane" conditions of labor. ILO CONST., Preamble & Annex, available at <http://www.ilo.org/public/english/about/iloconst.htm> (last visited Jan. 25, 2003).

(hereinafter, the "ILO") and has ratified ILO Conventions Nos. 87<sup>49</sup> and 98.<sup>50</sup>

According to the Preamble of the ILO's Constitution, its primary purposes are to enhance working conditions, living standards, and equitable treatment of workers.<sup>51</sup> It serves these purposes by: (1) recommending international minimum labor standards; (2) organizing international conferences to conclude conventions on wages, hours of work, workers compensation, industrial safety, freedom of association (trade union rights), and so forth; and (3) providing technical assistance to member states.<sup>52</sup> More than 180 conventions have been adopted under the auspices of the ILO.<sup>53</sup>

The Governing Body of the ILO has designated eight conventions as fundamental to the rights of human beings at work that should be implemented and ratified by all member states of the ILO.<sup>54</sup> These conventions are called "Fundamental ILO Conventions."<sup>55</sup> The first two of the Fundamental ILO Conventions, under the rubric of "Freedom of Association," are the two conventions relevant to this article. These conventions are: the Freedom of Association and Protection of the Right to Organize Convention, 1948 (ILO Convention No. 87)<sup>56</sup> and the Right to Organize and Collective Bargaining Convention, 1949 (ILO Convention

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The ILO is a unique intergovernmental organization in that its plenary body, the General Conference, is made up of not only government delegates but delegates representing, respectively, the employers and the workpeople of each of the member states of the ILO. See ILO CONST., Article 3(1) (1919). Industrial organizations, which are the most representative of employers or workpeople in their respective countries, assist member states in nominating these non-government delegates and advisers. *Id.* at Article 3(5). The ILO became the first specialized agency of the United Nations in 1946. See ILO, ABOUT THE ILO MANDATE, at <http://www.ilo.org/public/english/about/index.htm> (last modified April 20, 2002).

49. Freedom of Association and Protection of the Right to Organise Convention (No. 87), International Labour Organization, adopted Sep. 7, 1948, 68 U.N.T.S. 17, available at <http://www.ilo.org/ilolex/english/convdisp1.htm> (last visited Jan. 25, 2003). Convention No. 87 was ratified by Jamaica Dec. 26, 1962. See INTERNATIONAL LABOUR ORGANIZATION, CONVENTION NO. C087 WAS RATIFIED BY 141 COUNTRIES, available at <http://www.ilo.org/ilolex/english/convdisp1.htm> (last visited Jan. 25, 2003).

50. Right to Organise and Collective Bargaining Convention (No. 98), International Labour Organization, adopted Jan. 7, 1949, 96 U.N.T.S. 257, available at <http://www.ilo.org/ilolex/english/convdisp1.htm> (last visited Jan. 25, 2003). Convention No. 98 was ratified by Jamaica Dec. 26, 1962. See INTERNATIONAL LABOUR ORGANIZATION, CONVENTION NO. C098 WAS RATIFIED BY 152 COUNTRIES, available at <http://www.ilo.org/ilolex/english/convdisp1.htm> (last visited Jan. 25, 2003).

51. See ILO CONST., Preamble, *supra* note 48.

52. See ILO MANDATE, *supra* note 48.

53. See ILO, DATABASE OF INTERNATIONAL LABOUR STANDARDS, at <http://www.ilo.org/ilolex/english/convdisp1.htm> (last visited Jan. 25, 2003).

54. See ILO, FUNDAMENTAL ILO CONVENTIONS, at <http://www.ilo.org/public/english/standards/norm/whatare/fundam/index.htm> (last modified Oct. 20, 2000).

55. *Id.*

56. See Freedom of Association and Protection of the Right to Organise Convention (No. 87), *supra* note 49.

No. 98).<sup>57</sup>

Freedom of association for occupational organizations, particularly trade unions, is the linchpin of workers' rights and labor standards. Freedom of association is mentioned in the Preamble of the ILO Constitution, was reaffirmed in the 1944 Declaration of Philadelphia, which is annexed to the ILO Constitution, and has been translated into binding standards for ratifying states in the form of ILO Conventions Nos. 87 and 98.<sup>58</sup>

The Preamble of the ILO Constitution refers to the "recognition of the principle of freedom of association."<sup>59</sup> The Declaration of Philadelphia, an annex to the ILO Constitution, which declares the aims and purposes of the ILO and the principles which should inspire the policy of the ILO's members, reaffirms, as one of the fundamental principles upon which the ILO is based, freedom of expression and association.<sup>60</sup> The Declaration states that both are "essential to sustained progress."<sup>61</sup>

ILO Convention No. 87, as its title suggests, provides, in main part, that "[w]orkers and employers, without distinction whatsoever, shall have the right to establish and, subject only to rules of the organization concerned, to join organizations of their own choosing without previous authorisation."<sup>62</sup> Similarly, ILO Convention No. 98, Article 1, provides that:

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to— a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.<sup>63</sup>

Membership in the ILO implies a commitment to freedom of association, as defined by ILO organs, regardless of whether the relevant conventions on freedom of association have been ratified.<sup>64</sup> According to

57. See Right to Organise and Collective Bargaining Convention (No. 98), *supra* note 50.

58. See ILO CONST., Preamble, *supra* note 48; ILO CONST., Annex, *supra* note 49, at I(b); ILO Convention Nos. 87 and 98, *supra* notes 56 and 57; see also FUNDAMENTAL ILO CONVENTIONS, *supra*, note 54.

59. See ILO CONST., Preamble, *supra* note 48.

60. See, ILO CONST., Annex, *supra* note 48, at I(b).

61. *Id.*

62. See Freedom of Association and Protection of the Right to Organise Convention (No. 87), *supra* note 49, at Article 2.

63. See Right to Organise and Collective Bargaining Convention (No. 98), *supra* note 50, at Article 1.

64. Virginia A. Leary, *Labor*, in THE UNITED NATIONS AND INTERNATIONAL LAW, 214-15

Nicholas Valticos, former Assistant Director-General of the ILO, "the ILO Constitution, which the States Members of the Organization have accepted, lays down the principle of freedom of association; it has therefore been held that this principle should be observed by all States Members by virtue of their membership in the Organization alone."<sup>65</sup>

Freedom of association is enshrined as a right not only within ILO conventions but also in the Universal Declaration of Human Rights (hereinafter, the "UDHR")<sup>66</sup> and all the major human rights conventions.<sup>67</sup> The UDHR provides, in Article 20, that "[e]veryone has the right to freedom of peaceful assembly and association."<sup>68</sup> Article 23(4) of the UDHR also provides that "[e]veryone has the right to form and to join trade unions for the protection of his interests."<sup>69</sup> While the UDHR is a non-binding document, it has been suggested that some of its norms have become customary international law and that the UDHR is an authoritative interpretation of the U.N. Charter.<sup>70</sup> As such, Jamaica is bound by these customary norms. It declared its acceptance of U.N. Charter obligations on September 18, 1962.<sup>71</sup>

Similarly, Article 22 of the International Covenant on Civil and Political Rights (hereinafter the "ICCPR"),<sup>72</sup> provides that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."<sup>73</sup> Jamaica ratified the ICCPR on October 3, 1975 and is also bound by these provisions.<sup>74</sup>

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(Christopher C. Joyner ed., 1997).

65. *Id.*

66. G.A. Res. 217A(III), U.N. GAOR, 3rd. Sess., at Article 20, U.N. Doc. A/810 (1948), available at <http://www.un.org/Overview/rights.html> (last visited Jan. 25, 2003).

67. The principal international instruments addressing labor rights concerns are the UDHR and the two international covenants that flow from it (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), as well as the Fundamental ILO Conventions. Regional groupings like the Organization of American States and the European Union have analogous provisions in their basic charters and human rights treatises. See, e.g., Universal Declaration of Human Rights, *supra* note 66; International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), U.N. GAOR 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966).

68. Universal Declaration of Human Rights, *supra* note 66.

69. *Id.* at Article 23(4).

70. See *Filartiga v. Pena-Irala*, 630 F.2d 876, 883 (2d Cir. 1980).

71. See UNITED NATIONS, DECLARATIONS OF ACCEPTANCE OF THE OBLIGATIONS CONTAINED IN THE CHARTER OF THE UNITED NATIONS, at [http://www.un.org/Depts/Treaty/sample/i\\_2.htm](http://www.un.org/Depts/Treaty/sample/i_2.htm) (last visited Jan. 25, 2003).

72. International Covenant on Civil and Political Rights, *supra* note 67.

73. *Id.* at Art. 22.

74. See UNITED NATIONS, SIGNATORIES TO INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, at [http://www.un.org/Depts/Treaty/final/ts2/newfiles/part\\_booi/iv\\_booi/iv\\_4.html](http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_booi/iv_booi/iv_4.html) (last visited Jan. 25, 2003).

### *C. U.S. Trade Laws Applicable to Jamaica*

A third set of rules relevant to unionization in Jamaica's EFZs are U.S. trade laws. The Caribbean Basin Economic Recovery Act, (hereinafter, the "CBERA"), which implemented President Reagan's Caribbean Basin Initiative (hereinafter, the "CBI") "was the first U.S. statute to condition eligibility for trade preferences on foreign compliance with labor standards criteria."<sup>75</sup> While the centerpiece of CBERA is the "unilateral provision of duty-free treatment for a wide range of U.S. imports from beneficiary countries for a twelve-year period,"<sup>76</sup> the act also recognizes workers' rights to organize.

Jamaica is one of the countries listed as those that the President shall consider in designating countries as "beneficiary countries" under the terms of the CBERA.<sup>77</sup> According to section 2702(b)(7), the President shall not designate any country a beneficiary country, "if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 2467(4) of [the Customs Duties] title) to workers in the country (including any designated zone in that country)."<sup>78</sup> Similarly, in determining whether to designate any country a beneficiary country, the President shall take into account, *inter alia*, "whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights."<sup>79</sup> Significantly, the President of the United States can withdraw or suspend designation of any country as a beneficiary country if that country does not meet the criteria listed in section 2702(c), including whether or not such country has taken or is taking steps to afford its workers (including those in any designated zone in that country) internationally recognized workers rights.<sup>80</sup> The definition of "internationally recognized workers rights" can be found in the Generalized System of Preferences (hereinafter, the "GSP").<sup>81</sup> "Designated zones" generally refer to EFZs.<sup>82</sup>

Like CBERA, the GSP allows the U.S. government to grant trade preferences to developing countries conditioned on the extent to which the country affords their workers internationally recognized workers' rights.

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Nov. 4, 2002).

75. Jorge F. Perez-Lopez, *The Promotion of International Labor Standards and NAFTA: Retrospect and Prospects*, 10 CONN. J. INT'L L. 427, 432 (1995).

76. *Id.*

77. Caribbean Basin Economic Recovery Act (CBERA), 19 U.S.C. § 2702(b) (2002).

78. CBERA § 2702(b)(7).

79. CBERA § 2702(c)(8).

80. CBERA §§ 2702(c), 2702(e)(1)(A)(i).

81. 19 U.S.C. § 2467(4)(2002).

82. Karen F. Travis, *Women in Global Production and Worker Rights Provisions in U.S. Trade Laws*, 17 YALE J. INT'L L. 173, 173-74 (1992).

Under the GSP, the President can grant duty-free treatment to eligible merchandise imports from beneficiary developing countries.<sup>83</sup> Section 2462(b)(2)(G) provides, however, that the President shall not designate any country a beneficiary developing country if, *inter alia*, “[s]uch country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).”<sup>84</sup> Additionally, in determining whether to designate any country as a beneficiary developing country, the President is required to take this consideration into account.<sup>85</sup>

According to section 2467(4) of the GSP, “internationally recognized workers’ rights” include: (1) the right of association, (2) the right to organize and bargain collectively, (3) a prohibition on the use of any form of forced or compulsory labor, (4) a minimum age for the employment of children, and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.<sup>86</sup>

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Thus, it is clear that Jamaica is under domestic and international legal obligations to afford workers in its export free zones the right to organize, to join and to form trade unions. However, notwithstanding these legal rights Jamaica seems to have, in effect, “suspended” these rights to organize in EFZ jobs. By doing so, it is in violation of its domestic and international labor law obligations.

#### IV.

##### POSSIBLE IMPEDIMENTS TO ORGANIZING IN JAMAICA’S FREE ZONES

Some writers attribute the lack of unionization in Jamaica’s EFZs to the great resistance by EFZ management to allowing unions in the free zones and the inability of Jamaica’s trade unions to break through this opposition.<sup>87</sup> Others argue that women workers are to blame for the lack of union presence in Jamaica’s EFZs, since they have less time to form or join trade unions as compared to their male counterparts and fear reprisals from management for joining a trade union.<sup>88</sup> Although these reasons may be factors contributing to the lack of unionization in Jamaica’s EFZs, a more plausible explanation is that Jamaica’s trade unions, taking their cues from

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83. See Perez-Lopez, *supra* note 75, at 430.

84. Generalized System of Preferences (GSP), 19 U.S.C. § 2462(b)(2)(G) (2002).

85. 19 U.S.C. § 2462(c)(7).

86. 19 U.S.C. § 2467(4).

87. INTERNATIONAL LABOUR OFFICE, *WOMEN IN TRADE UNIONS: ORGANIZING THE UNORGANIZED* 188 (Margaret Hosmer Martens and Swasti Mitter eds., 1994).

88. Joan French, *Hitting Where It Hurts Most: Jamaican Women’s Livelihood in Crisis*, in *MORTGAGING WOMEN’S LIVES* 165, 173 (Pamela Sparr ed., 1994).

Jamaica's political leadership, are keeping concerns about conditions in the EFZs off their public agendas, in part because women workers predominate the EFZ labor force.<sup>89</sup>

In contrast to many other systems, including the United States and Great Britain, Jamaican politics do not divide along pro-labor and pro-business lines. Each party depends upon the unions, in almost a symbiotic way. Both of Jamaica's major political parties, the People's National Party (hereinafter, the "PNP") and Jamaica's Labour Party (hereinafter, the "JLP"), are connected to Jamaica's labor movement.<sup>90</sup> The PNP was established in 1938 by Norman Manley in response to the labor unrest that occurred from 1936 to 1938.<sup>91</sup> In 1943, Alexander Bustamante, who also formed Jamaica's first modern trade union, the Bustamante Industrial Trade Union (hereinafter, the "BITU"), formed the aptly named JLP.<sup>92</sup> The JLP won the 1944 elections and, in response, the PNP aligned itself with a trade union, the National Workers Union (hereinafter, the "NWU").<sup>93</sup> The alignments remain the same today.<sup>94</sup>

Historically, as a result of these alliances, Jamaica's trade unions have enjoyed a certain amount of privilege and connection to Jamaica's political leadership. Presumably, in order to maintain elements of this traditional privilege, Jamaica's trade unions are inclined to comply with any governmental directives respecting the EFZs.<sup>95</sup> Indeed, the Jamaica Labor Trends report states,

[D]uring the formative years of independent Jamaica, popular support focused on the two dominant and charismatic national leaders, Norman Manley and Alexander Bustamante, who institutionalized the political system into two fiercely rival party/union blocs. For the working class in particular, party union politics were integral to everyday existence. Party/union affiliations governed the availability and rationing of job and other economic opportunities and, therefore, survival. This preferential hiring and discrimination ("clientelism"), gave rise to the industrial and political violence that soon became an endemic feature of Jamaican life. Thus, the Government and the public administration system were transformed into vast dispensaries of patronage. Trade unions and political parties, often with the same leaders, established reciprocal relations between

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89. See Klak, *supra* note 16, at 372.

90. See Jamaica: Foreign Labor Trends, *supra* note 1.

91. *Id.*

92. *Id.* Historically, there has been a strong relationship between the Union and the Party and the JLP has introduced outstanding labor laws for the protection of workers and for economic development. The BITU cannot be classified as an affiliate of the JLP. Rather, the JLP and the BITU are twin organizations, directed towards the same goals of better standards of living and opportunities for the people.

93. *Id.*

94. *Id.*

95. See Klak, *supra* note 16, at 372.

the entities in an attempt to meet the sometimes conflicting expectations of wage and salary earners and of the domestic, private sector elite. In this system of clientelism, both groups traditionally looked to state resources and protectionism to survive.<sup>96</sup>

But it is not just a fear of driving away foreign investment and thereby possibly alienating political patronage that make Jamaica's trade unions reticent about organizing in Jamaica's free zones. There may also be an element of sex-discrimination. Indeed, Jamaica's trade unions are very active outside the free zones. The Jamaica Labor Trends report noted that there are frequent work stoppages and loss of man-days contributing, *inter alia*, to a less friendly investment climate outside the EFZ.<sup>97</sup> Thus, the argument that Jamaica's trade unions may not want to be active in the free zones or that they might be complying with "directives" from the Government of Jamaica to stay out of the free zone for fear of scaring away foreign investment is undermined by the fact that "fear" of dampening foreign investment activity does not seem to affect union activity in the formal sector. As a recent ILO report diplomatically explained, Jamaica has:

a vibrant trade union movement which upholds the provisions of all labour and industrial relations legislation . . . , has also ratified ILO Conventions Nos. 87 and 98 which guarantee freedom of association and the right to join a trade union . . . , [passed in 1975] [t]he Labour Relations and Disputes Act [which] makes provision for the establishment of a Labour Relations Code which formalizes workers' right to form a union . . . , has an industrial court, called the Industrial Disputes Tribunal (IDT) . . . , [and that] [c]ollective agreements are common among the unionized workforce and usually include a grievance procedure. *Despite these provisions, however, none of the companies in the sector is unionized.*<sup>98</sup>

The difference between the formal sector and the free zones is the gender component of their workforces.

Some may be reluctant to make the connections. However, in a country where trade unions have historically played such an important role in its socio-economic and political life, it is difficult to explain the absence of trade unions in Jamaica's free zones save for the gender make-up of the zones' workforce.

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96. See Jamaica: Foreign Labor Trends, *supra* note 1, at Country Specific Background [Trade Unions and Politics].

97. *Id.* at Summary (emphasis added).

98. See DUNN & DUNN, *supra* note 33, at 35-36.



## V.

## POSSIBLE MEASURES THAT CAN BE TAKEN TO ENFORCE WORKERS' RIGHTS IN JAMAICA'S EFZs

Certain procedures may provide means for remedying the situation of non-unionization in Jamaica's free zones. For example, utilizing the "complaint" mechanisms under human rights treaties, labor treaties and U.S. trade laws; using U.S. federal litigation strategies; and promoting voluntary codes of conduct are all available means for enforcing labor rights in the free export zones. The strengths and weaknesses of each of these approaches are discussed below.

*A. The ICCPR*

One possible avenue for ensuring that Jamaica's EFZ workers can unionize is the ICCPR's mandate that persons be free to organize. There are two possible procedures under the ICCPR to enforce workers' rights to organize. One is Article 41. Regrettably, this method of enforcement is not very effective.

If Jamaica were to make a declaration under ICCPR Article 41 recognizing the competence of the Human Rights Committee to receive and consider communications about its compliance with the rights enumerated under the ICCPR, another Article 41 declaring state could bring a communication to the Human Rights Committee, after exhausting certain preliminary requirements, that Jamaica is not meeting its obligations under Article 22 (right to freedom of association with others, including the right to form and join trade unions) of the ICCPR.<sup>99</sup> After this communications procedure, a report is generated either by the Human Rights Committee or by an *ad hoc* Conciliation Commission.<sup>100</sup> This is the extent of the enforcement measures under Article 41.

The other, more effective, method is using the ICCPR's Optional Protocol. This allows individuals to file complaints to the Human Rights Committee. Unfortunately, Jamaica withdrew as a party to the ICCPR's Optional Protocol.<sup>101</sup>

*B. The ILO*

Although the ILO is the principal international agency that sets standards for international labor law, it does not have firm enforcement powers. It cannot legally compel a member state, such as Jamaica, to act,

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99. See International Covenant on Civil and Political Rights, *supra* note 67, at Art. 41.

100. *Id.* at Arts. 41 & 42.

101. See FOR THE RECORD, THE UN HUMAN RIGHTS SYSTEM: JAMAICA, at <http://www.hri.ca/fortherecord2001/vol4/jamaicarr.htm> (last visited Jan. 27, 2003).

nor can it impose sanctions on violators of labor standards. However, the ILO can use social and psychological pressures—such as publicly embarrassing, privately cajoling, or otherwise—to sway a country to change labor practices that fail to comply with ILO standards.

In order to mobilize shame against Jamaica, Jamaica's trade unions could file a representation under Article 24 of the ILO Constitution against the Jamaican government for non-compliance with ILO Conventions Nos. 87 and 98.<sup>102</sup> At the end of an Article 24 representation procedure, the Governing Body of the ILO may initiate an Article 26 complaint.<sup>103</sup> In addition, under Article 26 of the ILO Constitution, a member state of the ILO could file a complaint with the ILO if it was not satisfied that Jamaica was observing any ILO's Conventions that both member states had ratified.<sup>104</sup>

Whether the Article 26 complaint is made by the ILO after an Article 24 complaint, or whether the Article 26 complaint is made directly by another member state, after the complaint is made, a Commission of Inquiry (hereinafter, the "Commission") may be appointed to prepare a report of findings and make recommendations.<sup>105</sup> The concerned governments may either accept the recommendations of the commission or submit the complaint to the International Court of Justice (hereinafter, the "ICJ").<sup>106</sup> Whatever decision the ICJ comes to is final.<sup>107</sup> If the governments involved fail to carry out the recommendations of either the Commission or the ICJ, the Governing Body "may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith."<sup>108</sup>

Although mobilizing shame against Jamaica for violating its domestic and international labor law obligations could be an effective way to put pressure on the Jamaican government to change its labor practices, these shaming techniques might be better utilized in tandem with other, more concrete, sanctions such as challenging Jamaica's status as a beneficiary country under the GSP or filing a *Filartiga*-type lawsuit in a United States

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102. See ILO CONST., Art. 24, available at <http://www.ilo.org/public/english/about/iloconst.htm> (last modified May 2, 2001).

103. See *Id.* at Art. 26(3).

104. See *Id.* at Art. 26. According to the ILO there have been a limited number of Article 26 complaints initiated by ILO member states, "because of the unfriendly character such a gesture might be considered to have and because of the risk that complaints might lead to reprisals in the form of counter-complaints." See ILO, INTERNATIONAL LABOR STANDARDS, USE OF COMPLAINTS PROCEDURE, IN PRACTICE, at [http://www.ilo.org/public/english/standards/norm/enforced/complnt/a26\\_use.htm](http://www.ilo.org/public/english/standards/norm/enforced/complnt/a26_use.htm) (last visited Jan. 27, 2003).

105. See *Id.* at Art. 28.

106. See *Id.* at Art. 29(2).

107. See *Id.* at Art. 31.

108. See *Id.* at Art. 33.

court.<sup>109</sup>

### C. U.S. Trade Laws

Unlike CBERA, which does not contain procedures by which unions or human rights groups may petition for a review of a country's beneficiary status, any person can file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria.<sup>110</sup> Thus, any person could file a request with the United States Trade Representative that Jamaica's labor practices be reviewed. However, the review program under the GSP has been widely criticized as ineffectual and subject to the discretionary whim and foreign policy predilections of the United States.<sup>111</sup>

Critics cite to the fact that "successive U.S. administrations have been lukewarm at best, when not openly hostile, in enforcing the workers rights provisions of the law."<sup>112</sup> Apparently, these administrations do not want to offend the U.S. multinational companies that benefit from ready access to cheap labor in developing countries.<sup>113</sup>

Another criticism of the GSP is that, although it expressly permits unilateral action on the part of the GSP Subcommittee that undertakes the review process, in practice, this has never been done.<sup>114</sup> The GSP Subcommittee has never acted unless a petition was filed by an outside party.<sup>115</sup>

Critics also cite the "new information" requirement in the GSP Subcommittee's regulations as being an impediment to the effective enforcement of labor rights under the GSP.<sup>116</sup> Section 2007.0(b) of the GSP Subcommittee's regulations require that a petition include "substantial new information."<sup>117</sup> Similarly, section 2007.1(a)(4) requires that a petition include "either new information which indicates changed circumstances or a rebuttal of the factors supporting the denial of the previous request," before a previously reviewed country will be reviewed again, regardless of whether the country is actually in violation of the statute.<sup>118</sup> "In practice,

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109. See *infra*, notes 111-130 and accompanying text.

110. Regulations of the USTR Pertaining to Eligibility of Articles and Countries for the Generalized System of Preference Program, 15 C.F.R. § 2007.0(b) (2002).

111. Terry Collingsworth, *International Worker Rights Enforcement: Proposals Following a Test Case*, in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE 227, 227 (Lance A. Compa and Stephen F. Diamond, eds., 1996).

112. *Id.*

113. *Id.*

114. *Id.* at 229.

115. *Id.*

116. *Id.* at 230-31.

117. Commerce and Foreign Trade Rule, 15 C.F.R. § 2007.0(b) (2003).

118. Commerce and Foreign Trade Rule, 15 C.F.R. § 2007.1(a)(4) (2003).

the GSP Subcommittee has refused to review serious, undisputed violations of the statute simply based on the fact that similar allegations were made in a previous petition that was denied.”<sup>119</sup> Thus, if a beneficiary country’s violation of the GSP remains the same and is not worse than that alleged in a previous request that was denied, the failure of that country to take further steps, according to the GSP Subcommittee’s regulations, does not violate the GSP under any circumstances.

Finally, the GSP review program has been criticized for the failure of the GSP Subcommittee to apply a consistent identifiable standard for “internationally recognized worker rights.”<sup>120</sup> In many crucial areas “the GSP Subcommittee has acted in conflict with well-established ILO conventions and rulings.”<sup>121</sup> For example, the official position has been that violence against trade unionists is beyond the scope of GSP since it involves violations of “human rights” not “workers rights.”<sup>122</sup> In addition, “[d]iscretionary acceptance of petitions has sent signals to certain countries that the United States will ignore workers’ rights violations for foreign policy reasons . . . .”<sup>123</sup>

In sum, the GSP review process, because of these procedural and substantive defects, does not seem to be the most effective way to change the predicament of Jamaica’s EFZ workers. For example, petitions were filed almost every year in the late 1980s and early 1990s to the U.S. Trade Representative calling for Guatemala’s removal as a GSP beneficiary country until it consistently respected labor rights.<sup>124</sup> “[T]he first four GSP petitions filed by United States labor rights advocates from 1988 to 1991 carefully detailed assassination, arrest, and torture of trade union activists, repressive provisions of the Guatemalan Labor Code, and non-enforcement of worker protection laws . . . .”<sup>125</sup> In spite of this information, the GSP Subcommittee refused to accept the petitions for review.<sup>126</sup> The situation in Jamaica is not nearly as bad. If assassination, arrest, and torture of trade union activists cannot get the attention of the U.S. Trade Representative, it may be difficult to get Jamaica’s labor practices reviewed on the theory that Jamaica’s trade unions seem unwilling to organize within Jamaica’s EFZs and the Jamaican government has turned a blind eye.

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119. Collingsworth, *supra* note 111, at 230.

120. *Id.* at 231-33.

121. *Id.* at 233.

122. *Id.*

123. *Id.* at 232.

124. Lance Compa, *International Labor Rights and the Sovereignty Question: NAFTA and Guatemala, Two Case Studies*, 9 AM. U. J. INT’L L. & POL’Y 117, 138 (1993).

125. *Id.* at 139.

126. *Id.*

### D. U.S. Federal Litigation Strategies

A *Filartiga*-type case (i.e., a case brought by non-U.S. citizens under the Alien Tort Claims Act alleging violations of the law of nations) could be brought in United States federal court alleging that Jamaica's labor rights abuses are a violation of international law. A possible difficulty with this strategy, however, is that, although the rights to associate, to bargain collectively, to join, and to form trade unions are the most essential and fundamental of labor rights, international labor rights norms are still evolving.<sup>127</sup> In *Filartiga*, the Second Circuit found that there was "international consensus," found in numerous international treaties that the renunciation and condemnation of the practice of torture was "universal."<sup>128</sup> At present, there is not "universal" consensus on international labor standards to the extent that there is on the practice of torture. Thus, it may be difficult to bring a *Filartiga* claim that certain of Jamaica's labor rights abuses violate international law.

However, the filing of a civil lawsuit in the United States is a way, albeit indirect, of supporting the movement for international labor standards.<sup>129</sup> Indeed, though a lawsuit in the United States to enforce employee rights in Jamaica may not be effective, U.S. courts have been used as a forum for asserting international labor claims in cases involving breach of a collective bargaining agreement, tortious interference with a labor contract, and toxic tort.<sup>130</sup>

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127. See Lance Compa, *Labor Rights and Labor Standards in International Trade*, 25 LAW & POL'Y INT'L BUS. 165, 188-189 (Fall 1993). "In the spectrum from unarguably universal human rights (the right of association, freedom from torture, freedom from slavery, etc.) to arguably 'mere' economic benefits (minimum wages, paid leaves, etc.), worker rights to form and join trade unions and to participate in union activity (bargaining, striking, engaging in political and legislative action, etc.) are often placed on the economic and social side of the ledger rather than on the universally-recognized rights side. Seen in this light, organizing, bargaining, striking and other union actions are simply methods of making economic demands that a country or an employer may not be in a position to meet. Their refusal to recognize these union-related rights, therefore, are not human rights violations." *Id.*

128. See *Filartiga*, 630 F.2d at 880, 883.

129. Frank Deale, *The Pico Case: Testing International Labor Rights in U.S. Courts*, in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE 251, 253 (Lance A. Compa and Stephen F. Diamond, eds., 1996).

130. See *Labor Union of Piko Korea v. Pico Prod., Inc.*, 968 F.2d 191 (2d Cir. 1992) (wherein South Korean workers, who were employed by a South Korean subsidiary of an American corporation, brought an action against the American corporation's parent corporation, alleging claims for breach of contract or, alternatively, for tortious interference with advantageous contractual relationships arising out of the parent corporation's decision to cease providing additional working capital to the South Korean corporation which in turn resulted in the South Korean corporation going out of business); *Dow Chem. Co. v. Domingo Castro Alfaro*, 786 S.W.2d 674 (Tex. 1990) (wherein foreign plaintiffs brought suit against Delaware corporations authorized to do business in Texas to recover damages for physical and mental injuries sustained after they were required to handle pesticide in a foreign country).

### *E. Voluntary Codes of Conduct*

Self-regulatory initiatives such as codes of conduct, promulgated either by non-governmental organizations or internally by the multinational corporations themselves, could be used to further the cause of Jamaica's EFZ workers. For example, the Maquiladora Standards of Conduct, proposed by the AFL-CIO and a coalition of religious and environmental groups for United States corporations operating within the Mexican maquiladora sector, seeks to promote the right to organize, among others.<sup>131</sup> Likewise, Levi-Strauss & Co. and the Reebok Corporation have fashioned their own self-initiated, self-supervised codes of conduct for their international subsidiaries and suppliers.<sup>132</sup> The Levi-Strauss "Global Sourcing & Operating Guidelines" provides,

*Freedom of Association:* We respect workers' rights to form and join organizations of their choice and to bargain collectively. We expect our suppliers to respect the right to free association and the right to organize and bargain collectively without unlawful interference. Business partners should ensure that workers who make such decisions or participate in such organizations are not the object of discrimination or punitive disciplinary actions and that the representatives of such organizations have access to their members under conditions established either by local laws or mutual agreement between the employer and the worker organizations.<sup>133</sup>

Reebok's workers rights code, the "Reebok Human Rights Production Standards", declares that the Reebok corporation "will seek business partners that share its commitment to the right of employees to establish and join organizations of their own choosing. Reebok recognizes and respects the right of all employees to organize and bargain collectively."<sup>134</sup>

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An underlying obstacle to utilizing any of the measures discussed above is the lack of activism on the part of Jamaica's trade unions, at least with respect to Jamaica's EFZs. In *Pico*, the union members flew to the United States to picket Pico Products in New York and to initiate a lawsuit against the company. In Guatemala, trade union activists were being assassinated, arrested, and tortured for trying to organize Guatemalan workers and, as a result, a petition to review Guatemala's beneficiary country status under the GSP was filed with the USTR. Joint movements have been created between Mexican unionists and U.S. trade unions to

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131. Compa, *supra* note 124, at 130-31.

132. See Lance Compa, *Enforcing International Labor Rights Through Corporate Codes of Conduct*, 33 COLUM. J. TRANSNAT'L L. 663, 675-684 (1995).

133. See LEVI STRAUSS & CO., GLOBAL SOURCING & OPERATING GUIDELINES, at <http://www.levistrauss.com/responsibility/conduct/guidelines.htm> (last modified 2001).

134. See REEBOK INTERN'L LTD., HUMAN RIGHTS PRODUCTION STANDARDS, APPLICATION OF STANDARDS, at [http://www.reebok.com/Reebok/US/human\\_rights/standards.html](http://www.reebok.com/Reebok/US/human_rights/standards.html) (last modified 1999).

support organizing in the maquiladora factories.

For any enforcement measures to work in Jamaica, it would seem crucial that Jamaica's trade unions are involved. However, this lack of involvement is precisely the problem. Unlike in Central America, where trade union activists have been a force for radicalism and change, in Jamaica, the cozy relationship between Jamaica's political elite and Jamaica's trade unions has a "conservatizing" effect on the activities of Jamaica's trade unions, at least with respect to the EFZs. In order to infuse Jamaica's trade unions with some activism, the Jamaican government needs to be sanctioned economically so that Jamaica's trade unions are made aware that its source of political privilege, prestige, and power (the Jamaican government), will be attacked and weakened unless the unions do in the EFZs what they do in Jamaica's traditional labor sectors. Unfortunately, as explained above, having Jamaica's beneficiary country status reviewed and possibly suspended depends upon the U.S. government taking action in an area where the bottom line of U.S. multinational companies is likely to be affected. Thus far, the United States has proven to be unwilling to harm such interests. In addition, although a *Filartiga* cause of action could be brought in United States federal court, international labor norms may not be able to meet the "universality" test adopted by the Second Circuit in *Filartiga*.

## VI.

### CONCLUSION

Not one of the factories in any of Jamaica's free zones is unionized. The reasons why this remains the case, despite the absence of legal impediments to organizing in Jamaica's free zones, is complex. It is clear, however, that enforcement of otherwise strong laws is weak.

Indeed, Jamaica has affirmative obligations, from its constitution, its labor legislation, and from international treaties, to ensure that *all* of its workers enjoy their rights to form and join trade unions. A possible explanation for the lack of union presence in Jamaica's free zones is the historical privilege and connection that Jamaica's trade unions have enjoyed *vis-a-vis* Jamaica's political parties and political elite. This has the effect of quieting Jamaica's otherwise vocal trade unions to blatant workers' rights violations. In addition, it could be an issue of sex discrimination, as close to ninety-five percent of the workers in Jamaica's free zones are women and Jamaica's trade unions are, for the most part, run by and made up of men.

By allowing the "suspension" of workers rights in its EFZs, Jamaica is in breach of its obligations under its own constitution, its own labor laws, its international agreements, as well as U.S. trade laws. There are procedures for remedying the situation or, at the very least, for bringing the

situation to the attention of parties who could affect some change. However, those procedures, to date, have not been utilized, and without the involvement of Jamaica's trade unions (or any other national or international party) any enforcement measures taken may prove ineffective. Nonetheless, if there are enough gnats biting the Jamaican government and Jamaica's trade unions, they may respond.



