

Implementing Farmworker Protections Under the Declaration

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Submission to the Working Group on the rights of peasants and other people working in rural areas on the dissemination and implementation of the United Nations Declaration on the rights of peasants and other people working in rural areas (“UNDROP”).

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I. Executive Summary

1. The authors of this submission thank the Working Group for the opportunity to provide this statement to support them in executing their mandate to disseminate and implement the United Nations’ Declaration on the Rights of Peasants and Other People Working in Rural Areas (hereafter, “the Declaration” or “UNDROP”). This submission focuses on responding to questions one and seven addressed to Civil Society. The authors draw on their experience in migrant farmworker advocacy in the United States to identify gaps in the implementation of the Declaration and suggest reforms.

II. Author Information

2. Crispin Hernández is a farmworker organizer and activist from Oaxaca, Mexico who has advocated for farmworkers in New York State for more than a decade. As a rural farmworker himself, he was the lead plaintiff in a lawsuit against the State of New York challenging the exclusion of agricultural workers from the right to unionize.¹ This lawsuit induced the state to ultimately enshrine protections for agricultural workers via state legislation.² He continues his advocacy by educating migrant farmworkers on their rights and connecting them with legal aid.
3. The Farmworker Legal Assistance Clinic at Cornell Law School is a legal education program in the United States focusing on serving rural migrant farmworkers. The Clinic collaborates with community partners to represent clients in immigration, employment, and certain family law matters to ultimately help them attain legal immigration statuses that provide a path to citizenship.
4. The Institute for Migrant Rights (IMR) is a think tank on international migration law and a legal clinic that serves rural Indonesian farmworkers seeking to emigrate and returning migrants vulnerable to human rights abuses by applying international law. As a graduate student at Cornell Law, IMR Director Pranoto Iskandar advocated for farmworkers in the United States, and he continues to collaborate with the Clinic.

¹ *Hernandez v. State of N.Y.*, 173 A.D.3d 105, 115 (App. Div. 3rd Dept.).

² *Farm Laborers Fair Labor Practices Act*, 2019 N.Y. Assembly Bill 8419.

III. Question One: Dissemination of the Declaration in the United States.

5. The United States was not part of the first vote on the Declaration in September 2018.³ When it was brought before the General Assembly's Third Committee, the United States voiced four primary objections to the Declaration.⁴ These included the Declaration's novel establishment of collective rights, use of novel definitions, use of compulsory language, and reference to technology transfer, which they thought might conflict with intellectual property law.⁵ Thus, the U.S. voted against it.⁶ Finally, when the Declaration was brought before the United Nations' General Assembly in December of 2018, the United States again voted against it.⁷
6. Despite the United States' initial stance toward the Declaration, they are still subject to its aspirations as members of the General Assembly.⁸ As the U.S. acknowledged in explaining their vote against it, the Declaration clearly and powerfully states the obligations of states with regard to peasants and their rights.⁹ This language indicates the future of international law, which seeks to create affirmative obligations to protect marginalized groups by ensuring "active" and "meaningful" participation.¹⁰
7. The United States has not codified the Declaration, established administrative rules based on it, or deemed it binding authority in the court. None of the states have implemented all or even most of its Articles. Furthermore, neither governments nor members of civil society within the United States have made a concerted effort to inform rights holders of their protections under the Declaration. This is a fundamental issue facing the implementation of the Declaration in this country.
8. Activists in the United States have succeeded in affirming some of the individual rights listed in the Declaration, but no effort has yet been made to advocate for the complete implementation of the Declaration. Compliance with the Declaration would significantly improve the standard of living of migrant farmworkers across the country. The national and state governments' failure to implement these necessary protections places migrant farmworkers at undue risk of harm and abuse.

³ H.R.C. Res. 39/12, p. 2 (Sept. 28, 2018).

⁴ U.S. Mission to the United Nations, *Explanation of Vote on a Third Committee Resolution on Rights of Peasants*, <https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-on-rights-of-peasants/> (November 19, 2018).

⁵ *Id.* ¶¶ 2-5.

⁶ United Nations Digital Library, *United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas*, <https://digitallibrary.un.org/record/1656160?ln=en> (accessed Oct. 16, 2024).

⁷ *United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas*.

⁸ United Nations, *Member States*, <https://www.un.org/en/about-us/member-states> (accessed Oct. 16, 2024).

⁹ *Explanation of Vote on a Third Committee Resolution on Rights of Peasants*, ¶ 4.

¹⁰ G.A. Res. 73/165, Art. 2(3) (Dec. 18, 2018).

IV. Question Seven: Priority issues that must be addressed in the implementation of the Declaration.

9. The Declaration expressly addresses the needs of landless farmworkers.¹¹ In the United States, this population is politically disadvantaged in ways which can be addressed by the Declaration. For example, migrant farmworkers frequently lack “adequate living conditions”.¹² Collective action and bargaining is often chilled by employers.¹³ Migrants’ social and political marginalization means they cannot participate in shaping government action affecting them.¹⁴ They also lack “non-discriminatory access to justice,” as evidenced by employers’ abuse of criminal and immigration enforcement officials as threats against workers.¹⁵
10. We emphasize that the rights of other rural workers, including construction and service workers, are also difficult to enforce owing to geographic isolation and lack of professional services. However, our experience is focused on agricultural workers who are excluded from legal protections *simply because they work in agriculture*.
11. The United States is a world leader in agricultural production thanks in part to governmental support, but farm labor is exploited and ignored, a shamefully chronic weak point in the agricultural industry. Farmworkers are essential workers, the mainstay of the agricultural sector, yet the United States has never modernized its farm labor policies to protect human dignity and ensure a resilient workforce to anticipate external shocks such as climate change and pandemics. Acute labor shortages on farms are widely acknowledged, and became a particular discussion point during the pandemic, but the need for farmworker protection and legal services is invisible in these debates.
12. The U.S. agricultural labor force is made up almost entirely of Latine immigrants driven from postcolonial economies, including large numbers of Indigenous people. According to official estimates, approximately 42% of U.S.-based crop workers do not have immigration status,¹⁶ but the true percentage is likely much higher. In the authors’ experience, rampant lack of status creates a chilling effect on migrants exercising even what few rights they are legislatively granted.

¹¹ *Id.* Art. 1(4) (defining rights holders as including “all migrant workers”), 13(6) (requiring “appropriate measures to protect” migrant workers from forced labor), 14(1) (right to “safe and healthy working conditions” explicitly including migrant workers), 21(3) (right to water for “all migrants”), and 22(2) (requiring states to “promote the right to social security” to migrant workers).

¹² *Id.* Art. 5; Centro de los Derechos del Migrante, Inc., *Ripe for Reform*, p. 29-30 (2020).

¹³ *Id.* Art. 9.

¹⁴ *Id.* Art. 10.

¹⁵ *Id.* Art. 12.

¹⁶ JBS Int’l, *Findings from the National Agricultural Workers Survey (NAWS) 2021-2022* (17th ed. 2023).

13. A smaller portion of the United States farmworker labor force is made of H-2A Visa beneficiaries, a visa for temporary agricultural workers that lasts typically a year and does not lead to permanent residence.¹⁷ The H-2A program provides some limited protections for beneficiaries, including free housing, workers' compensation benefits, and a set wage floor.¹⁸ Despite this, H-2A Visa beneficiaries are in many ways more vulnerable to exploitation than their undocumented counterparts, since their permission to reside in the U.S. is contingent on maintaining their employment to a valid H-2A employer.¹⁹ Due to seasonal hiring practices and the many requirements to become an H-2A employer, beneficiaries who are laid off are practically unable to find employment before they must return to their country of origin.²⁰
14. At the federal level, agricultural workers are still excluded from fundamental worker protections.²¹ Historians generally agree this exclusion can be attributed to a racist current underlying nearly all New Deal-era policies: the desire of a powerful political bloc to prevent Black people from claiming government benefits.²² Despite the exclusion mostly affecting indigenous Latine migrants today, the effect remains the same.²³
15. Thanks to farmworker advocacy organizations like the United Farmworkers Union (UFW) and Farmworker Justice, conditions have recently improved. On a federal scale, the U.S. Department of Labor recently published a new administrative rule prohibiting H-2A employers from using intimidation or similar tactics to dissuade employees from collectively organizing or inviting guests onto employer-provided housing.²⁴ Unfortunately, such an administrative rule is far more vulnerable to immediate revocation at the discretion of the President than legislation would be.

¹⁷ U.S. Citizenship and Immigr. Serv., *H-2A Temporary Agricultural Workers*, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers> (accessed Oct. 16, 2024).

¹⁸ *Ripe for Reform*, p. 11-12.

¹⁹ *Id.* at 4.

²⁰ *Id.*

²¹ 29 U.S.C. § 152(3).

²² Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 Ohio State L. Rev. 95, 104 (2011).

²³ *Id.* at 127.

²⁴ Improving Protections for Workers in Temporary Agricultural Employment in the United States, 89 Fed. Reg. 33898 (June 28, 2024).

16. Another recent example of reform comes from New York State. In 2016, Mr. Hernández commenced legal action against the State, arguing the exclusion of farmworkers from state labor protections was unconstitutional.²⁵ After winning an appeal against New York's motion to dismiss in 2019, the state resolved the dispute by legislatively granting farmworkers the right to organize, along with protections like workers' compensation, unemployment insurance, and paid family leave.²⁶ Among the many successes of this campaign was the amplification and direction of migrant farmworkers' voices directly to government officials who responded sympathetically. Campaigns like these highlight the value of farmworkers' active participation. Unfortunately, most state laws and federal law still exclude farmworkers from labor protections.²⁷
17. Another critical issue is that labor violations go unaddressed due to a lack of information regarding rights and the mechanisms to enforce them. Access to justice is a crucial component of rights protection. With a lawyer, some individual workers can obtain relief from deportation, unpaid wages, and workers' compensation benefits. These individual cases become weathervanes for trafficking and other abusive situations, and thus the value of this casework goes far beyond individual outcomes. Lawyers attending to individual cases are well placed to identify systemic issues and advocate for priority policy reforms through impact litigation and legislative advocacy. However, legal services in this sector are scarce. Not only is there a general shortage of lawyers (let alone language-accessible lawyers) in rural America, but national government legal services funding drastically limits grantee services to undocumented immigrants.
18. As a result of these policies, farmworkers experience the worst of racial capitalism: geographic, linguistic, and cultural isolation, separation from family, immigration insecurity reinforced by policing practices, degrading housing conditions, wage theft, dangerous work coupled with insufficient health care, sexual violence, workplace discrimination, and exposure to persistent public xenophobia. Without awareness of their rights and in fear of retaliation, farmworkers often go without claiming the rights and benefits to which they are entitled.
19. One of the clearest signs of policy neglect in the agricultural sector is the high incidence of undocumented child workers. Many farmworkers come to the United States as unaccompanied children. Further, child farmworkers are far more likely to experience fatal injuries than child workers in any other sector. Undocumented child farmworkers often also face harsh immigration enforcement.

²⁵ *Hernandez* at 108.

²⁶ *Farm Laborers Fair Labor Practices Act*.

²⁷ Farmworker Justice, *Farmworkers' Rights Under State Employment Laws: An Interactive Map*, <https://www.farmworkerjustice.org/general-map/> (accessed Oct. 16, 2024).

V. Recommendations

With regard to dissemination of the Declaration:

1. The United States and all countries that abstained or registered no votes during the promulgation of the Declaration should be encouraged to issue statements of support. This may be accomplished through the use of Universal Periodic Review (UPR), as has been done with states that abstained or voted against the Declaration in the past.²⁸
2. The Working Group should call upon both governments and advocacy organizations within the United States to organize a campaign to educate rights holders and government officials alike about UNDROP. Migrant advocacy organizations must likewise take on increased responsibility in this task, since they are best situated to reach certain rights holders. Further awareness of the Declaration will cause it to be referred to more often in various legal contexts, normalizing UNDROP as a key feature of international human rights law, like UNDRIP.
3. Treaty bodies should incorporate the Declaration into their enforcement work, to tie it directly to ratified norms.
4. As soon as is practicable, the United Nations should issue a Convention enshrining the protections of the Declaration in a binding treaty.

With regard to farmworker protection:

5. Governments should immediately revise their laws to ensure full inclusion of farmworkers, including undocumented farmworkers, in all worker protections, including the right to organize and collectively bargain, overtime, employment injuries protection, protection of child and other vulnerable workers, and protection from retaliation.
6. Governments should ensure that farmworkers rights are protected through effective enforcement of labor laws and funding for civil society providing outreach and professional services. Effective enforcement includes ensuring immigration protection for survivors of trafficking and other abuses on farms.
7. Governments should not only expand resources dedicated to monitoring farmworker protection, but should also fund civil society organizations that conduct in-person outreach and training for farmworkers, and helping professionals such as medical and legal clinics that provide assistance.

²⁸ European Coordination Via Campesina, *How to implement the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) at the European and national level to promote peasants' rights*, p. 15 (2024).

8. Governments should include farmworkers in law reform and implementation processes. This recommendation coincides with Article 10 of the Declaration, which grants peasants the right to participate in drafting government policies. Our experience, particularly that of Mr. Hernández, informs us that this is one of the most important values of the Declaration. Accordingly, we suggest resources be expended in ensuring governments and rural, marginalized communities are connected. Governments must take significant affirmative steps to ensure that farmworker voices carry weight over the historically strong political influence of agriculture.
9. Governments should give particular consideration and support to landless farmworkers who nonetheless rely on the land to survive. They should consider distributing government-owned agricultural land or unique rights to use the land to the workers.

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