

100 Years of Advancing Freedom of Association

ILO Convention 11's
role in promoting rights for
agricultural workers





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International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

Global Labor Justice – International Labor Rights Forum (GLJ-ILRF)

International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), founded in 1920, is an international trade union federation made up of 423 affiliated trade unions in 127 countries representing over 10 million workers. The IUF Rules stipulate that unions representing workers in agriculture, plantations and rural areas are eligible to be members of the IUF. The IUF Rules also provided for the setting up of an Agricultural Workers Trade Group (AWTG) to “safeguard to the greatest possible extend the particular interests of member organizations” in agriculture, plantations and rural areas. The AWTG has a conference every 5 years which elects the Group's leadership team and sets priority areas of work for the Secretariat and the Group.

Global Labor Justice-International Labor Rights Forum (GLJ-ILRF) is a new merged organization bringing strategic capacity to cross-sectoral work on global value chains and labor migration corridors. GLJ-ILRF holds global corporations accountable for labor rights violations in their supply chains; advances policies and laws that protect decent work and just migration; and strengthens freedom of association, new forms of bargaining, and worker organizations.



FOREWORD

The wording of ILO Convention 11 is short and to the point: International Labour Organisation (ILO) member states undertake “to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture.” When the Convention was adopted in 1921, ILO constituents recognized that workers in agriculture could not access and exercise their fundamental rights in the same way as other workers, and they sought to address this discrimination through its adoption.

While Convention 11 was subsequently ratified by 123 countries, IUF affiliates still report significant blocks to freedom of association with few rural workers covered by collective bargaining agreements.

The ILO’s Committee of Experts on the Application of Conventions and Recommendations further confirmed this in their 2015 report “Giving a voice to rural workers”: “A number of the same problems that existed previously have been reported to the Committee as current obstacles to the establishment, growth and functioning of rural workers’ organizations: the informality of the sector and heterogeneity of existing labour relations; severe socio-economic and cultural disadvantage; inequitable labour relationships and distribution of benefits; lack of education and awareness; prevalence of child labour, forced labour and discrimination; the particular disadvantage experienced by women; large numbers of particularly vulnerable or marginalized workers; and often insanitary, unstable and isolated living conditions.”



So in 2021, on the 100th anniversary of the Convention, is Convention 11 still needed? This study shows without a doubt that specific measures to ensure “the same rights of association and combination” for agricultural workers are as necessary and urgent today as they were in 1921.

Agriculture remains a sector with many decent work deficits: restricted access to freedom of association and collective bargaining; dangerous conditions of work on par with mining and construction; dependent on highly exploited and vulnerable migrant workers; and heavily reliant on child labour with 70% of child labour in agriculture alone.

We call on the ILO to join us in marking the 100th anniversary of Convention 11 with a concerted campaign to ensure its ratification and implementation. Governments must stop the discriminatory practice of excluding agricultural workers from the full protection of labour laws. Our experience has shown us that the most effective way to achieve equal protection is by ensuring that agricultural workers have the same rights to freedom of association as other workers; only then can they come together in trade unions to negotiate and win improved living and working conditions. We cannot wait another 100 years. The time is now.

Sue Longley
General Secretary
IUF

Jennifer (JJ) Rosenbaum
Executive Director
GLJ-ILRF

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100 years of advancing freedom of association:

ILO Convention 11's role in promoting rights for agricultural workers

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Terminology and Scope

The term **farmworker** is commonly used with reference to farming and industrial production of food from animal protein, including in national policy contexts.¹ However, in this report, we use the term agricultural workers since it better reflects the broad nature of plantations, horticulture, primary agricultural processing, and fish farming.²

The term **agricultural worker** has been interpreted by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) to include all workers employed in agriculture, including workers employed in the organized and unorganized sectors; seasonal workers; workers on small hold, medium, and industrial farms and plantations; self-employed farmers, producers, share croppers, small holders, and non-wage-earning agricultural workers.³

The terms and conditions under which workers are employed in agriculture are varied, and encompass permanent (full-time) agricultural workers; temporary or casual agricultural workers; seasonal agricultural workers; migrant agricultural workers, piece-rate workers; or workers receiving some form of 'in-kind' payment. Agricultural workers earn some kind of 'wage', whether cash payment, in-kind payment, or a combination of these. They work within an employment relationship, be it with a farmer, farming or plantation company, or labour contractor or sub-contractor.⁴

The term plantation worker refers to the subset of agricultural workers employed on a plantation. ILO Convention 110, Plantations Convention, 1958 (No. 110), defines the term plantation to include "any agricultural undertaking regularly employing hired workers which is situated in the tropical or subtropical regions and which is mainly concerned with the cultivation or production for commercial purposes of coffee, tea, sugarcane, rubber, bananas, cocoa, coconuts, groundnuts, cotton, tobacco, fibres (sisal, jute, and hemp), citrus, palm oil, cinchona or pineapple; it does not include family or small-scale holdings producing for local consumption and not regularly employing hired workers" (Art. 1(1)). Member states may also, however, extend this definition to encompass additional crops, including rice, chickory, cardamom, geranium and pyrethrum, or any other crop or any undertaking that is classified as a plantation under national law or practice (Art. 1(2a-b)).⁵

ILO Convention 11, Right of Association (Agriculture) Convention (No. 11) calls for states to repeal any statutory or other provisions restricting rights to freedom of association "**for any worker engaged in agriculture**". This expansive definition encompasses all agricultural workers, including the full spectrum of agricultural workers across a broad range of employment relationships, and including the subset of plantation and farm workers. Consistent with this definition, the analysis in this report encompasses an analysis of legal exclusions that impact any workers engaged in agriculture.

¹ See e.g. American Public Health Association, "Improving Working Conditions for U.S. Farmworkers and Food Production Workers," *Policy Statement*, November 7, 2017, <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/improving-working-conditions>

² ILO, FAO, and IUF: Peter Hurst (2007), *Agricultural Workers and Their Contribution to Sustainable Agriculture and Rural Development*, p. 23; ILO and IUF: *Promoting the Role of Agricultural Workers and Trade Unions in Sustainable Agriculture and Rural Development*, Geneva; Leaflet for the World Summit on Sustainable Development, Johannesburg, South Africa, 2002, p. 10, note III.

³ ILO: *Giving a voice to rural workers*, ILC, 104th Session, Geneva, 2015, p. 21 -22, paras. 62-66.

⁴ ILO, FAO, and IUF: Peter Hurst (2007), *Agricultural Workers and Their Contribution to Sustainable Agriculture and Rural Development*, p. 23; ILO and IUF: *Promoting the Role of Agricultural Workers and Trade Unions in Sustainable Agriculture and Rural Development*, Geneva; Leaflet for the World Summit on Sustainable Development, Johannesburg, South Africa, 2002.

⁵ C110 – Plantations Convention, 1958 (No. 110), accessed 8 June 2021, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312255



Abbreviations and Acronyms

ACTRAV	ILO Bureau for Workers' Activities
AWTG	IUF Agricultural Workers Trade Group
CBA	Collective Bargaining Agreements
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CFA	ILO Committee on Freedom of Association
DOL	United States Department of Labor
FAO	UN Food and Agriculture Organization
ILC	International Labour Conference
ILO	International Labour Organization
IPEC	ILO International Programme on the Elimination of Child Labour
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
IPEC	International Programme on the Elimination of Child Labour
MNE	Multinational Enterprise
NLRA	United States National Labor Relations Act
NLRB	United States National Labor Relations Board
SMAG	<i>Salaire Minimum Agricole Garanti</i> [minimum agricultural wage]
SMIG	<i>Salaire Minimum Interprofessionnel Garanti</i> [minimum interprofessional Wage]
SRM TWG	ILO Standards Review Mechanism Tripartite Working Group
TNC	Transnational Corporation
UDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
USMCA	United States-Mexico-Canada agreement
WTO	World Trade Organization



Introduction

In 1921, the International Labour Conference (ILC) adopted the Right of Association (Agriculture) Convention (No. 11). Convention 11 advanced the principle that all those engaged in agriculture are entitled to the same freedom of association rights as other workers and called for states to repeal any statutory or other provisions restricting agricultural workers' rights. The Convention broke new ground in acknowledging and addressing the systematic exclusion of workers engaged in agriculture from labour rights protections across the world.

Countries around the world have recognized workers engaged in agriculture as essential to supporting a safe and ample food supply as the global COVID-19 pandemic poses an ongoing threat to public health and economic security. On its 100-year anniversary, ILO Convention 11 is more important than ever in addressing the pervasive and ongoing exclusion of agricultural workers from exercising their fundamental right to freedom of association and collective bargaining. In our contemporary global economy, an estimated 32 percent of the world's population is employed in agriculture, and the majority of women workers are engaged in agricultural activities in rural areas.⁶ According to the UN Food and Agriculture Organization (FAO), women make up approximately 43 per cent of the agricultural labour force in developing countries.⁷ Worldwide, migrant and indigenous workers make up a significant part of the labour force in the agricultural sector. Often employed as casual and temporary workers,⁸ agricultural workers are all too often exploited and abused.⁹ According to the ILO Global Wage Report 2020-21, agricultural workers, together with domestic workers, are most frequently excluded from legal coverage of minimum wage systems.¹⁰

⁶ ILO: *Global employment trends 2014: Risk of a jobless recovery?* Geneva, 2014, p. 96; UN: *Women 2000 and beyond: Rural women in a changing world: Opportunities and challenges*, Division for the Advancement of Women, Department of Economic and Social Affairs, 2008, p. 9.

⁷ FAO: *FAO Statistical Yearbook 2013: World food and agriculture*, Rome, 2013, p. 14.

⁸ Global Migration Group, GMG issues brief No. 2: *Improving the labour market outcomes of migration*, 11 Sep. 2013, p. 3.

⁹ ILO: ILOSTAT database, Geneva, 2014; National Statistical Offices, 2014. See also *General Survey on the fundamental Conventions*, 2012, para. 778.

¹⁰ ILO: *Global Wage Report 2020-21: Wages and minimum wages in the time of COVID-19*, International Labour Office – Geneva, 2020.



Despite ratification of Convention 11 by 123 countries,¹¹ exclusion of agricultural workers from labour rights protections remains widespread and entrenched. Fifty years after the passage of Convention 11, delegates to the 1974 ILO Committee on Rural Workers' Organizations reported that agricultural and other rural workers remained largely unable to organize to influence their rights due to widespread legal exclusion and systematic discrimination.¹² In 2012, the International Labour Office expressed concern that agricultural workers were still persistently excluded from the right to associate and bargain collectively.¹³ As Convention 11 is reviewed by the ILO Standards Review Mechanism Tripartite Working Group (SRM TWG)¹⁴—a process designed to ensure that ILO standards are responsive to changing patterns in the world of work—this report argues that Convention 11 is clear, robust, up-to-date, and required to address persistent legal exclusion of workers engaged in agriculture from freedom of association and other labour rights protections.

Part 1: Where do we stand? What is the framework of Convention 11?

addresses these questions by setting out the role of Convention 11 in protecting freedom of association as a cornerstone right for agricultural workers. Freedom of association protections set the foundation for unions to work on all other issues. Convention 11 also calls for states to repeal any statutory or other provisions restricting agricultural workers' rights to freedom of association. These protections are guaranteed to “all those engaged in agriculture”—including agricultural workers across the full spectrum of national circumstances and employment relationships. Freedom of association protections under Convention 11 apply to any organization that facilitates a strong, independent, and effective collective voice for agricultural workers.

Part 2: Where are we now? What are the obstacles that systematically exclude farmworkers from labour rights protections?

details how, despite Convention 11's expansive and inclusive mandate, agricultural workers continue to be systematically excluded from labour rights protections. Part 2 analyzes the structure of legal exclusions that strip agricultural workers of labour rights protections based on analysis of national laws in 110 ILO member states.¹⁵ Notably, laws that exclude agricultural workers from labour rights protections share common structures across national jurisdictions (Table 1). In light of this global legal architecture of exclusion, Convention 11 protections for agricultural workers remain urgent and exceedingly relevant.

¹¹ ILO: Ratifications of C011 - Right of Association (Agriculture) Convention, 1921 (No. 11)(Date of entry into force: 11 May 1923), accessed 6 June 2021, https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312156.

¹² ILO: *Record of Proceedings*, Report of the Committee on Rural Workers' Organizations, ILC, 59th Session, Geneva, 1974, para. 14.

¹³ ILO: *Fundamental principles and rights at work: From commitment to action*, Report VI, ILC, 101st Session, Geneva, 2012, paras 43, 106 and 110.

¹⁴ ILO: Standards Reviews—Decisions on Status, C011 Right of Association (Agriculture) Convention, 1921 (No. 11), Instrument with interim status [As determined by the Governing Body upon recommendation of the Cartier Working Party], To be examined by SRM TWG at a later date yet to be determined.

¹⁵ In conducting this analysis, we have drawn from the ILO *General Survey concerning the right of association and rural workers' organizations and instruments*, conducted in 2014 and released 2015.

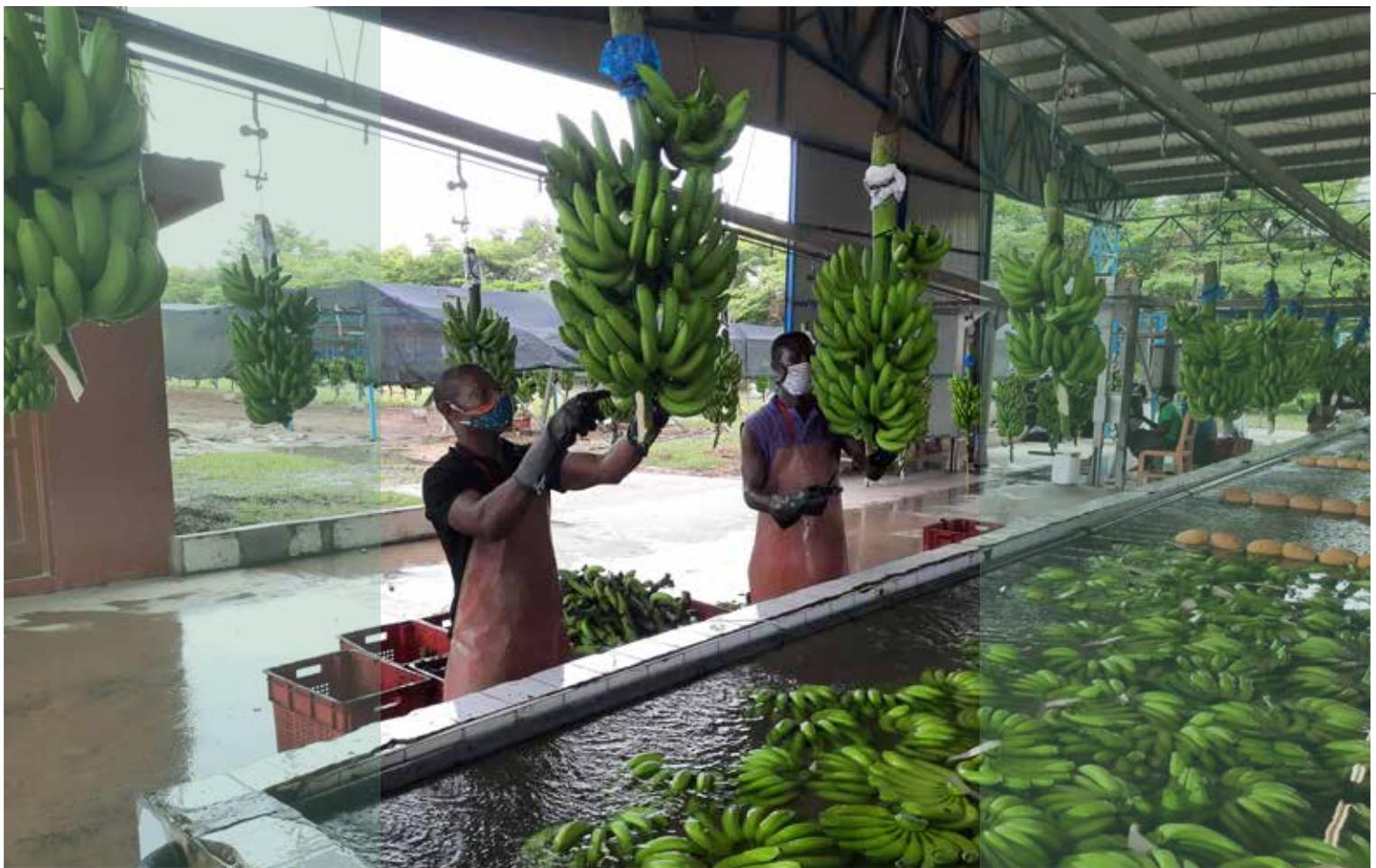
TABLE 1 | TYPOLOGY OF LABOUR LAW EXCLUSIONS

Types of exclusion from labour law protections	Examples of specific legal exclusions
Sectoral exclusion of agricultural workers	Exclusion of agricultural workers from national labour standards protecting freedom of association and collective bargaining (e.g. Bolivia, United States)
Exclusion of particular categories of agricultural workers	Exclusion based upon the number of employees or size of farms (e.g. Bangladesh, Honduras, Saudi Arabia, Turkey)
	Exclusion of self-employed and own-account workers (e.g. Central African Republic, Malaysia, Pakistan, Sri Lanka)
Employment status-based exclusions	Exclusion of temporary, seasonal, and casual workers from labour law protections (e.g. Belgium, Brazil, Chile, China, Nicaragua, Qatar, Syrian Arab Republic)
Migration status-based exclusions	Restrictions on freedom of association for migrant or foreign workers that impact agricultural workers (e.g. Algeria, Central African Republic)
Subnational exclusions	General recognition of the right to organize at the national level that does not apply or applies differentially at the sub-national level (e.g. Canada)

Source: This typology draws from the *General Survey concerning the right of association and rural workers' organizations and instruments*, conducted in 2014 and released 2015. It includes the findings of 110 governments reports on national law and practice related to Convention 11 and other instruments protecting the rights of agricultural workers; and reports from 56 workers' organizations and eight employers' organizations.

Part 3: Where do we go from here? On its 100th anniversary, what direction and momentum can we take from Convention 11 to improve the conditions of agricultural workers?

explains that Convention 11 is required to end the long-standing exclusion of agricultural workers from labour rights protections and advance a slate of urgent global priorities. Convention 11 protections are foundational to achieving decent work and advancing social protection for agricultural workers. These protections are also integral to the global fights to end child labour and advance food security and food safety. Finally, as we witness a global rise in authoritarianism, freedom of association for agricultural workers is a cornerstone of democracy.



PART 1

Where do we stand? What is the framework of Convention 11?

The rights of agricultural workers have been included in the ILO mandate for more than 100 years. When the ILO was established in 1919, agricultural representatives were not represented among the delegates in initial discussions—and, as such, the first raft of ILO conventions did not apply to agricultural workers.¹⁶ This initial exclusion did not go unmarked. By 1921, agriculture Conventions were included in the agenda for the International Labour Conference (ILC) and member states were called upon to include representatives from agriculture in their delegations.¹⁷

¹⁶ League of Nations: *Report of the commission on employment of children, upon the age of admission of children to employment*, ILC, First Session, Washington, 1919, pp. 247–248.

¹⁷ League of Nations: Vol. I – First and Second Parts, ILC, Third Session, Geneva, 1921, pp. XXIII and XXV.

What does Convention 11 protect?

Right of Association (Agriculture) Convention, 1921 (No. 11) requires member states to secure the same rights of association to agricultural workers that are afforded to industrial workers, and to repeal any statutory or other provisions restricting agricultural workers' rights.¹⁸ At the time, Convention 11 was seen as a response to the systematic exclusion of agricultural workers from labour rights protections afforded industrial workers.¹⁹ Delegates from countries that had been colonized linked the conditions of agricultural workers to the legacy of colonial labour practices and a widespread failure to redistribute land in the aftermath of independence struggles.²⁰

Convention 11 represents the protection of freedom of association as a cornerstone right for agricultural workers that allows unions to work on all other issues. The status of freedom of association and collective bargaining as fundamental principles and rights at work has been well established among ILO member states.²¹ Freedom of association is recognized as a fundamental right in every international and regional human rights instrument, from the Universal Declaration of Human Rights (UDHR) and related international covenants to regional human rights charters and governing documents of international organizations. Freedom of association is also guaranteed in almost all national constitutions.²² Reflecting a widespread commitment to protecting freedom of association and collective bargaining for agricultural workers, 123 ILO member-states have ratified Convention 11 to date.²³

Convention 11 also calls for states to repeal any statutory or other provisions restricting rights to freedom of association for any worker engaged in agriculture. During the framing of Convention 11, this language was added to address national contexts in which laws were in place to establish the right of association, but suspended for some or all categories of workers.²⁴

Hiring practices that rely on flexible pools of workers engaged through nonstandard forms of employment have long been a feature of employment in the agricultural sector—paving the way for the extension and application of these practices to other sectors and workers. Accordingly, in order to protect freedom of association for all agricultural workers, regardless of employment status, worker delegates engaged in framing Convention 11 emphasized the need to include non-wage workers, including peasants, farm hands, and small tenant farmers.²⁵ Responding to this concern, Article 1 of Convention 11 guarantees the right to association and protection from legal exclusion afforded to agricultural workers to “all those engaged in agriculture.” This language was intentionally drafted to accommodate the great diversity in national circumstances.²⁶ It has been interpreted by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) to include agricultural workers employed in the organized and unorganized sectors, seasonal workers, workers on medium and small hold farms, self-employed farmers, producers, share croppers, small holders, and non-wage-earning agricultural workers.²⁷

¹⁸ Ibid., pp. XXIII and XXV, pp. 22-37, 140.

¹⁹ Ibid., pp. 28-29.

²⁰ Ibid., pp. 59-60.

²¹ See 2008 ILO Declaration on Social Justice for a Fair Globalization.

²² ILO: *Giving a voice to rural workers*, ILC, 104th Session, Geneva, 2015, p. 87-88, para 275.

²³ ILO: Normlex - Ratifications of C011 - Right of Association (Agriculture) Convention, 1921 (No. 11), accessed April 3, 2021.

²⁴ League of Nations: Vol. I – *First and Second Parts*, ILC, Third Session, Geneva, 1921, p. 140.

²⁵ Ibid., p. 145.

²⁶ ILO: *Giving a voice to rural workers*, ILC, 104th Session, Geneva, 2015, p. 21.

²⁷ Ibid., p. 21 -22, paras. 62-66.



Convention 11 and its subsequent interpretation by the CEACR emphasizes that this instrument applies to trade unions, cooperatives, farmers organizations, peasants, and self-employed workers irrespective of legal status. In short, C11 protections for agricultural workers extend to any and all types of organizations that facilitate a strong, independent, and effective collective voice.²⁸

TRADE UNIONS

Trade unions and agricultural cooperatives are distinct types of organizations that are designed to serve different but potentially complementary roles in the lives of agricultural workers.

- A **trade union** is “a continuing, permanent, and democratic organization created and run by the workers to: protect themselves at work; improve the conditions of their work through collective bargaining; seek to better the conditions of their lives; and provide a means of expression for the workers’ views on problems of society.”²⁹
- A **cooperative** is “an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.”³⁰
Cooperatives encompass a wide range of organizations, which may include agricultural producers’ and farmers’ associations, agricultural marketing and supply, consumer transport and rural workers cooperatives. Cooperatives can range from very large entrepreneurial and marketing cooperatives that rank along with big private corporations as some of the most profitable agricultural businesses, to small grassroots village associations that assist small farmers to obtain credit and inputs, market their goods and develop small village-based agricultural processing industries.

TABLE 2 | KEY DISTINCTIONS BETWEEN TRADE UNIONS AND COOPERATIVES

TRADE UNIONS	COOPERATIVES
Democratic organization run by workers	Jointly owned enterprise
Members contribute fees	Members hold shares
Action based upon workers bargaining with employers to advance collective demands	Action through shared economic management and responsibility of enterprise

Adapted from ILO: Trade unions – cooperatives: similarities and differences (PPP), January 2015, available online: https://www.ilo.org/beirut/events/WCMS_337114/lang--en/index.htm

²⁸ Ibid., p. 21 -22, para. 97.

²⁹ International Union of Food and Allied Workers’ Associations, *Trade Union Handbook*, Geneva, May 1989, p. 2.

³⁰ International Cooperative Alliance (ICA), Statement on the Co-operative Identity, available online at <https://www.ica.coop/en/cooperatives/cooperative-identity#:~:text=The%20Statement%20on%20the%20Cooperative,and%20democratically%2Dcontrolled%20enterprise.%E2%80%9D>



GUATEMALA – unionized banana workers earn more and have safer workplaces

Guatemala is the third largest banana exporter and has a long history of union repression with 101 trade unionists murdered between 2004 and 2018. César Guerra of IUF affiliate SITRABI, explained: “Freedom of association is guaranteed in the Constitution, but in practice, workers in the south still face barriers to access their rights including the long history of violence against trade unions and the fear of losing their jobs.”

According to a January 2021 study comparing working conditions on unionized plantations in the north of the country with those in the south where union repression is widespread, workers experience clear gains of union membership despite these extreme barriers to freedom of association.

Unionized banana workers in the north of Guatemala:

- **Earn more:** USD 586 per month/USD 2.52 per hour in the north compared to USD 308/USD 1.05 per hour in the south
- **Work fewer hours:**
 - 54 hours per week in the north compared to 68 hours in the south, a 25.9% difference
 - Have a 60-minute lunch break compared to a 20-minute lunch break
- **Have safer workplaces and experience less sexual harassment and verbal abuse:**
 - According to the study, 58% of women face sexual harassment and other forms of gender-based violence at work and workers are 81% more likely to face verbal abuse on non-union plantations.³¹

³¹ Anner, Mark. What Difference Does a Union Make? Banana Plantations in the North and South of Guatemala, Center for Global Workers’ Rights (CGWR), January 2021, https://www.solidaritycenter.org/wp-content/uploads/2021/01/What-Difference-Does-a-Union-Make_January-2021-1.pdf



How can we implement legal protections under Convention 11?

● **Ratify Convention 11**

Ratification of Convention 11 refers to the formal commitment by a state to be bound to uphold the terms of the Convention. When a state ratifies Convention 11, it agrees to apply the Convention in law and practice, and be accountable to this commitment through regular reporting and engagement with ILO supervisory bodies to address gaps in implementation.

See Appendix 5 for a list of countries that have ratified Convention 11.

● **Apply Convention 11 through harmonization of national laws and protection of freedom of association**

Full application of Convention 11 refers to making sure that laws, policies, and practices within the state align with the Convention. Convention 11 requires the state to uphold the following obligations in applying the standard:

- “secure to all those engaged in agriculture the same rights of association and combination as to industrial workers” (Article 1); and
- “repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture” (Article 1).

In applying Convention 11, States agree to “take such action as may be necessary to make these provisions effective” (Article 5).

● **Report regularly to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the measures taken to implement Convention 11**

Once a country has ratified Convention 11, it is required to report regularly on the measures it has taken for implementation to the Committee of Experts—20 eminent jurists from an array of regions, legal systems, and cultural contexts that are appointed by the ILO Governing Body for a period of three years. Governments are required to submit copies of their reports to employers’ and workers’ organizations. These organizations may comment on the government reports, or send comments directly to the ILO on the application of Convention 11.³²

The Committee of Experts makes two kinds of comments: *observations* and *direct requests*. Observations contain comments on fundamental questions raised by the application of a Convention by a state. These observations are published in the annual report of the Committee of Experts. Direct requests relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the governments concerned.

³² ILO: Committee of Experts on the Application of Conventions and Recommendations, retrieved online on April 5, 2021, <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm>



Since 1989 alone, the CEACR has made 160 comments, including observations and direct requests on the national level application of Convention 11. This mechanism has provided critical oversight of national implementation of Convention 11 protections, including by identifying laws that should be repealed on the grounds that they restrict the rights of freedom of association for agricultural workers. For instance, in 2020 the Committee followed up on observations submitted by the Trade Union Confederation of Burundi (COSYBU) and called upon the Government of Burundi to repeal Legislative Decree No. 1/90 of 1967, allowing the Minister of Agriculture to establish rural associations and require compulsory membership by agricultural workers under penalty of losing property—a clear violation of freedom of association for agricultural workers.³³

ILO Role in Advancing Social Justice

The ILO was founded in 1919, 25 years before the United Nations. As the global community reckoned with the aftermath of the First World War and rising fascism, the birth of the ILO testified to a shared understanding that labour peace was integral to broader peace and security, economic interdependence between countries would continue to grow, and workers, employers, and government had a shared interest in advancing social justice. This commitment to social justice principles, jointly negotiated by workers, employers, and states, addresses the power imbalance in labour relationships beyond the restitution of rights.

The ILO brings together tripartite constituencies—governments, employers and workers of the now 187 member states—to set labour standards, develop policies, and devise programs promoting decent work for all. This bold vision for a shared forum to advance social justice is more relevant than ever during the COVID-19 pandemic and its aftermath, which has led to a public health crisis, skyrocketing unemployment, food insecurity, deepened global economic inequality, an increase in the number of working poor, and the rise of authoritarianism.

³³ ILO NORMLEX: Observation (CEACR) – adopted 2020, published 109th ILC session (2021), retrieved online on April 5, 2021, https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4057113,103466,Burundi,2020



100 YEARS OF ILO COMMITMENT TO ADVANCING THE RIGHTS OF AGRICULTURAL WORKERS:

Timeline of ILO instruments and programs protecting the rights of agricultural workers

1921	Right of Association (Agriculture) Convention, 1921 (No. 11) [interim status] Minimum Age (Agriculture) Convention, 1921 (No. 10) Workmen's Compensation (Agriculture) Convention, 1921 (No. 12) Social Insurance (Agriculture) Recommendation, 1921 (No. 17) [interim status]
1938	Tripartite Permanent Agriculture Committee established to discuss the ILO work on rural matters
1951	Minimum Wage-Fixing Machinery (Agriculture) Convention, 1951 (No. 99) [interim status] Minimum Wage-Fixing Machinery (Agriculture) Recommendation, 1951 (No. 89) [interim status]
1955	Memorandum of understanding between ILO and the UN Food and Agriculture Organization (FAO)
1958	Plantations Convention, 1958 (No. 110) Protocol of 1982 to the Plantations Convention, 1958 (No. 110) Plantations Recommendation, 1958 (No. 110)
1966	Co-operatives (Developing Countries) Recommendation, 1966 (No. 127)
1968	Tenants and Share-croppers Recommendation, 1968 (No. 132)
1969	Labour Inspection (Agriculture) Convention, 1969 (No. 129) Labour Inspection (Agriculture) Recommendation 1969 (No. 133)
1975	Rural Workers' Organizations Convention, 1975 (No. 141) Rural Workers' Organizations Recommendation, 1975 (No. 149) Resolution on Rural Development
1976	Conclusions concerning collective bargaining problems and practices on plantations and the exercise of trade union rights (1976, No. 69)
1977	ILO Programme on Participatory Organizations of the Rural Poor
1979	ILO Programme on Rural Women
1989	Resolution concerning freedom of association in the plantation sector (1989, No. 86)
1994	Resolution concerning freedom of association and international labour standards for plantation workers (1994, No. 94)
2001	Safety and Health in Agriculture Convention, 2001 (No. 184) Safety and Health in Agriculture Recommendation, 2001 (No. 192)
2002	Promotion of Cooperatives Recommendation, 2002 (No. 193)
2004	Memorandum of understanding between the ILO and FAO
2008	ILC discussion on the promotion of rural employment for poverty reduction
2011	ILO Governing Body adopts a strategy paper on promoting decent work for rural development ILO Governing Body endorses a strategic approach to promote food security through decent work in critical economic sectors across the global food supply chain
2014-2015	Decent work in the rural economy established as an ILO area of critical importance for priority action
2016	Importance of agriculture acknowledged in discussion on decent work in global supply chains

ILO Committee on Freedom of Association

In 1951, the ILO set up the Committee on Freedom of Association (CFA) to examine complaints of violations of freedom of association, whether or not the country had ratified the relevant conventions. The CFA is an ILO Governing Body committee with ten members: a chairperson, and three representatives each from government, employers, and workers. The objective of the CFA complaint procedure is to engage in a constructive tripartite dialogue to promote freedom of association. Adjudication of complaints by the CFA results in key precedents that inform the future application of international labour standards.

Key precedents by the CFA pertaining to agricultural workers include the following:

- Agricultural workers should enjoy the rights to organize (Sole Confederation of Workers, Dominican Republic)³⁴
- Entry of trade union officials into plantations for the purpose of carrying out lawful trade union activities should be readily permitted (Sri Lanka)³⁵
- The criterion for the right to freedom of association is not based on an employment relationship, for example in the case of agricultural workers and self-employed workers in general (National Trade Union Coordinating Body, Chile)³⁶
- Literacy requirements for trade union recognition are inconsistent with Convention 11 (Confederation of Workers of Latin America, Guatemala)³⁷
- Agricultural activities do not constitute essential services in the strict sense of the term that precludes the right to strike (Ceylon Federation of Labour, Sri Lanka)³⁸
- Agricultural unions have the right to affiliate with workers engaged in different occupations and industries (Confederation of Workers of Latin America, Guatemala)³⁹

³⁴ ILO: FREEDOM OF ASSOCIATION: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fourth Edition, Geneva, 1996, para 225; ILO: Definitive Report – Report No 211, November 1981, Case No 1053 (Dominican Republic) – Complaint date: 12-JUN-81 – Closed, available online

https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO::P50002_COMPLAINT_TEXT_ID,P50002_LANG_CODE:2900589,en:NO

³⁵ ILO: FREEDOM OF ASSOCIATION: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Third Edition, Geneva, 1986, para. 220; ILO: Definitive Report – Report No. 4 1953, Case No 34 (Sri Lanka) – Complaint date: 28 -AUG -51 – Closed, available online

https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2898078

³⁶ ILO: FREEDOM OF ASSOCIATION: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fourth Edition, Geneva, 1996, para 235; ILO: Definitive Report – Report No 241, November 1985, Case No 1285 (Chile) – Complaint date: 07-May- 84- Closed, available online

https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2901275

³⁷ ILO: FREEDOM OF ASSOCIATION: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Third Edition, Geneva, 1986, paras 512, 517; ILO: Interim Report – Report No 27, 1958, Case No. 144 (Guatemala) -Complaint date: 02-May-56-Closed, available online

https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2898229#

³⁸ ILO: FREEDOM OF ASSOCIATION: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fourth Edition, Geneva, 1996, para 545; ILO: Report in which the committee requests to be kept informed of development – Report No 230, November 1983, Case No 988 (Sri Lanka) – Complaint date: 29- JUL – 80 – Closed, available online

https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2900336

³⁹ ILO: FREEDOM OF ASSOCIATION: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Third Edition, Geneva, 195, para 219; ILO: Interim Report – Report NO 27, 1958, Case No 144 (Guatemala) – Complaint date: 02 – May – 56 – Closed, available online

https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2898229



ILO Committee on Freedom of Association precedents upholding the rights of agricultural workers to meet with trade union representatives at the worksite⁴⁰

According to the CFA, rights of agricultural workers to meet with trade union representatives at the worksite to discuss union matters are integral to freedom of association. The international standards related to freedom of association on farms are highly attentive to the particular vulnerability of agricultural workers, and the need for special measures to enable them to organize and exercise a voice at work. Agricultural workers often reside on employer property or in housing effectively controlled by the employer. They are also more likely to be internal or cross-border migrants, and living in poverty.

The CFA has recognized the special characteristics of the agricultural workplace but insists on the continued application of principles regarding trade union access:

The Committee has recognized that plantations are private property on which the workers not only work but also live. It is therefore only by having access to plantations that trade union officials can carry out normal trade union activities among the workers. For this reason, it is of special importance that the entry of trade union officials into plantations for the purpose of carrying out lawful trade union activities should be readily permitted, provided that there is no interference with the carrying on of the work during working hours and subject to any appropriate precautions being taken for the protection of the property.⁴¹

The CFA applied these standards in a Costa Rica case involving United Fruit Company (UFC) management forbidding trade union representatives to use public roads in large plantation areas to reach workers at their homes. The CFA said:

[E]mployers of plantation workers should provide for the freedom of entry of the unions of such workers for the conduct of their normal activities...[T]he Committee, while recognising fully that the estates are private property, considers that, as the workers not only work but also live on the estates, so that it is only by entering the estates that trade union officials can normally carry on any trade union activities among the workers, it is of special importance that the entry into the estates of trade union officials for the purpose of lawful trade union activities should be readily permitted, provided that there is no interference with the carrying on of the work during working hours and subject to any appropriate precautions for the protection of the estate.⁴²

⁴⁰ This analysis of CFA precedents on trade union access to agricultural worksites is drawn from the Brief of International Lawyers Assisting Workers Network (ILAW), International Commission for Labor Rights (ICLR) Global Labor Justice – International Labor Rights Forum (GLJ-ILRF) as Amicus Curiae, p. 11-12, In the Supreme Court of the United States, *Cedar Point Nursery v. Victoria Hassid, et. al.* (2021).

⁴¹ See ILO *Compilation of Decisions of the Committee on Freedom of Association* (6th Edition 2018), para. 1609 https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf

⁴² See International Labour Office Governing Body, Report No. 66, (1963) Case No. 239 (Costa Rica), paras. 154, 168 https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2898464



PART 2

Where are we now? How are farmworkers systematically excluded from labour rights protections?

In 2012, the International Labour Office expressed renewed concern that agricultural workers were still persistently excluded from the right to associate and bargain collectively.⁴³ This realization catalyzed a General Survey concerning the right of association and rural workers' organizations and instruments, conducted in 2014 and released in 2015.⁴⁴ As part of the General Survey process, 110 governments reported on national law and practice related to Convention 11 and other instruments protecting the rights of agricultural workers. 56 workers' organizations and eight employers' organizations also provided information and observations.⁴⁵

⁴³ ILO: *Fundamental principles and rights at work: From commitment to action*, Report VI, ILC, 101st Session, Geneva, 2012, paras 43, 106 and 110.

⁴⁴ ILO: *General Survey concerning the right of association and rural workers' organizations and instruments*, Report III (Part 1B), 104th Session, Geneva, 2015, paras 4,7.

⁴⁵ Ibid.





Analysis of national laws related to Convention 11 reveals persistent and global legal exclusion of agricultural workers from the rights to freedom of association and collective bargaining.⁴⁶ Notably, types of legal exclusion that deny the fundamental rights to freedom of association for agricultural workers share common structures across national jurisdictions.⁴⁷ As laid out in Table 2, these types of exclusion from labour law protections include:

- sectoral exclusions of agricultural workers
- exclusion of particular categories of agricultural workers
- employment status-based exclusions that impact agricultural workers
- migration status-based exclusions that impact agricultural workers, and
- subnational exclusions of agricultural workers.

This typology of exclusions reflects a global history of discrimination and exploitation of agricultural workers, predating the 1921 framing of Convention 11 and extending to date. Exclusion from freedom of association and labour rights protections functions to splinter the bargaining power of agricultural workers in the global economy and undermine collective bargaining on global agricultural supply chains led by the supermarket chains, large retailers, food service operators, traders, and intermediaries that drive consumption patterns, set production requirements, and determine working conditions. As consolidation within the retail sector results in increasing concentration of power in the hands of a decreasing number of major retail chains, Convention 11 protections for agricultural workers are critical to safeguarding the rights of agricultural workers. Absent these protections, lead firms and employers capitalize on labour law exclusions and entrenched systems of social discrimination to extract maximum profits at the expense of low wage agricultural workers.

⁴⁶ In conducting this analysis, we have drawn from the *General Survey concerning the right of association and rural workers' organizations and instruments*, conducted in 2014 and released 2015.

⁴⁷ This typology draws from the *General Survey concerning the right of association and rural workers' organizations and instruments*, conducted in 2014 and released 2015. It includes the findings of 110 governments reports on national law and practice related to Convention 11 and other instruments protecting the rights of agricultural workers; and reports from 56 workers' organizations and eight employers' organizations.

TABLE 3 | TYPES OF LABOUR LAW EXCLUSIONS AND SELECT EXAMPLES IN NATIONAL LEGISLATION

Types of exclusion	Specific legal exclusion	National examples
Sectoral exclusion of agricultural workers	Exclusion of agricultural workers from national labour standards protecting freedom of association and collective bargaining	Bolivia, ⁴⁸ United States ⁴⁹
Exclusion of particular categories of agricultural workers	Exclusion based upon the number of employees or size of farms	Bangladesh, ⁵⁰ Honduras, ⁵¹ Saudi Arabia, ⁵² Turkey ⁵³
	Exclusion of self-employed and own-account workers	Central African Republic, ⁵⁴ Pakistan, ⁵⁵ Sri Lanka ⁵⁶
Employment status-based exclusions	Exclusion of temporary, seasonal, and casual workers from labour law protections that impact agricultural workers	Belgium, ⁵⁷ Brazil, ⁵⁸ Chile, ⁵⁹ China ⁶⁰ Nicaragua, ⁶¹ Qatar, ⁶² Syrian Arab Republic ⁶³
Migration status-based exclusions	Restrictions on freedom of association for migrant or foreign workers that impact agricultural workers	Algeria ⁶⁴ Central African Republic ⁶⁵
Subnational exclusions	General recognition of the right to organize at the national level that does not apply or applies differentially at the sub-national level	Canada, ⁶⁶ Pakistan

⁴⁸ Section 1 of the General Labour Act of 1942 and its regulatory Decree No. 224 of 23 August 1943. See also *Plurinational State of Bolivia* – CEACR, Convention No. 87, observation, published in 2014, in which the Committee noted the Government’s indication that “a new General Labour Act is being prepared which, among other matters, provides for the inclusion of rural and agricultural workers so that they can benefit from all social rights.”

⁴⁹ 29 USC Section 152(3), excepting from the Act’s coverage “any individual employed as an agricultural labourer.”

⁵⁰ *Bangladesh* – CEACR, Convention No. 87, observation, published in 2014. Section 1(4)(n) of the Bangladesh Labour Act 2006 amended by section 2(c)(i) of the Bangladesh Labour (Amendment) Act, 2013.

⁵¹ *Honduras* – CEACR, Convention No. 87, observation, published in 2013 (section 2(1) of the Labour Code 1959).

⁵² Article 5(4), (5) and (6), and article 7(4) of Royal Decree No. M/51 of 2005.

⁵³ *Turkey*— Labour Act No. 4857 of 22 May 2003,

⁵⁴ *Central African Republic* – CEACR, Convention No. 87, direct request, published in 2014 (article 2 of the Labour Code of 2009).

⁵⁵ *Pakistan* – CEACR, Convention No. 98, observation, published in 2013 (section 1(3)).

⁵⁶ Workers without an employer-employee relationship such as small owner-occupiers and share croppers are not covered by the Trade Union Ordinances of 1935, but could form other organizations under the Agrarian Services (Amendment) Act No. 4, 1991 which excludes the right to bargain collectively.

⁵⁷ *Belgium* (Belgian Congo and Ruanda-Urundi – CEACR, Convention No. 11, observation, published in 1959.

⁵⁸ *Brazil* – CEACR, Convention No. 141, observation, published in 2012.

⁵⁹ *Chile* – CEACR, Convention No. 87, observation, published in 2010.

⁶⁰ *China* – CEACR, Convention No. 11, observation, published in 1948.

⁶¹ *Nicaragua* – CEACR, Convention No. 11, observation, published in 1962.

⁶² Law No. 14 of 2004, article 3(3) excludes casual workers from labour law protections.

⁶³ Labour Code 2010, article 5(a)(6) excludes casual workers from labour law protections.

⁶⁴ *Algeria* – CEACR, Convention No. 87, observation, published in 2014 (section 6 of Act No. 90-14 of 2 June 1990).

⁶⁵ *Central African Republic* – CEACR, Convention No. 87, observation, published in 2014 (article 17 of the Labour Code).

⁶⁶ *Canada* – CEACR, Convention No. 87, observations, published in 2001 to 2014. See also, Committee on Freedom of Association, Case No. 2704 (Canada), Reports Nos 358 and 363.

Sectoral exclusion of agricultural workers from national labour law protections

Despite widespread global acceptance of the right to freedom of association for agricultural workers, national laws excluding all agricultural workers from the right to freedom of association persist to date. In Bolivia, agricultural workers are entirely excluded from the scope of the Bolivian General Labour Act, 1942.⁶⁷ In the United States, the National Labor Relations Act (NLRA), which establishes rights and obligations regarding union representation and collective bargaining, denies protection to agricultural workers.⁶⁸

These blanket sectoral exclusions of agricultural workers from freedom of association protections are rooted in histories of racialized exclusion. For instance, when the United States NLRA was signed into law in 1935, it gave employees the right, under Section 7, to form and join unions and obligated employers to bargain collectively with unions selected by a majority of employees in a bargaining unit. The NLRA was framed in response to calls for economic justice by Black agricultural workers in the American South and industrial workers across the nation.⁶⁹ At the time of its passage, however, although the NLRA covered workers in most industries, agricultural workers—an overwhelmingly Black labour force—were entirely excluded from protection. This exclusion reflected the compromise with Southern Democrats known as Dixiecrats who agreed to pass the NLRA on the condition that agricultural and domestic workers were excluded from protection. Democrats at the time passed separate legislation to promote labour rights and racial equality, splitting issues of class and race into two sets of legal frameworks, neither of which had enough authority to integrate the labour movement.⁷⁰

Over time, the industry required a new low wage work force excluded from labour rights protections. Capitalizing on exclusion of agricultural workers from protection under the NLRA, the composition of the United States workforce has shifted to include significant numbers of migrant workers from Mexico and Central America that are not only excluded from freedom of association protections but are also subject to control by the state on the basis of their immigration status. According to reports from the U.S. Department of Agriculture and the U.S. Department of Labor, there are an estimated 2 to 3 million migratory and seasonal agricultural workers employed in the United States. Migrant status—whether temporary guest worker or undocumented status—adds an additional category of contingency for many workers that creates obstacles for enforcing workplace rights.

■ *For detailed discussion of these exclusions and their impact, see Case Study— United States: Race and Exclusion of Agricultural Workers from Labour Rights Protections, Appendix 2, page 55.*

Even in national contexts where legal sectoral exclusion of agricultural workers has been rolled back, the legacy of institutionalized exclusion continues to undermine freedom of association and decent work for agricultural workers. For instance, in South Africa, the

⁶⁷ Section 1 of the General Labour Act of 1942 and its regulatory Decree No. 224 of 23 August 1943. See also *Plurinational State of Bolivia* – CEACR, Convention No. 87, observation, published in 2014, in which the Committee noted the Government's indication that “a new General Labour Act is being prepared which, among other matters, provides for the inclusion of rural and agricultural workers so that they can benefit from all social rights.”

⁶⁸ 29 USC Section 152(3), excepting from the Act's coverage “any individual employed as an agricultural labourer.”

⁶⁹ Lisa R. Goluboff, *The Lost Promise of Civil Rights*, Cambridge: Harvard University Press, 2010.

⁷⁰ Paul Frymer, *Black and Blue: African Americans, the Labor Movement, and the Decline of the Democratic Party*, Princeton: Princeton University Press, 2007.

relationship between commercial farmers and farm workers originated in racialized ‘master-slave’ relationships dating back to the seventeenth century. The geographically dispersed isolation of farms and the reality of commercial farming being a closed space created a context for rights violations that went unregulated, unreported, and unpunished. Within this regime, agricultural workers were excluded from the right to organize or join trade unions until the fall of apartheid in 1994. With the fall of apartheid came a raft of progressive legislation conferring economic, social, cultural, civil, and political rights to all South Africans. These reforms included not only the extension of the right to join trade unions to agricultural workers, but also contract requirements, minimum wage protections, occupational health and safety standards, and access to farms for labour inspectors. Despite this recent extension of labour rights protections to agricultural workers, labour rights violations remain rampant across South Africa. Farmers routinely violate labour rights protections, the government of South Africa has systematically failed to enforce protective measures, and trade unions struggle to hold farmers and the government accountable.⁷¹ Factors inhibiting labour rights protection for farm workers include: barriers to freedom of association; limited labour standards enforcement; minimum wage exemptions and piece rate work; and land reform policy.

■ *For detailed discussion of these factors, see Case Study—South Africa: Exclusion and limited implementation of laws protecting agricultural workers, Appendix 2, page 52.*

Persistent sectoral exclusion of agricultural workers from the right to freedom of association, and the entrenched legacies of exploitation that persist even when these exclusions have been repealed testify to the enduring significance of Convention 11. Notably, neither Bolivia, South Africa, nor the United States has ratified Convention 11. For Bolivia, South Africa, and the United States, immediate ratification of Convention 11 and application of its protections—securing freedom of association to agricultural workers, including by repealing sectoral exclusions—is a long overdue step toward addressing shameful legacies of racialized discrimination and exploitation perpetrated against agricultural workers. Repealing these sectoral exclusions is not sufficient to rectify the systematic exploitation of agricultural workers, but is a critical first step toward advancing other labour rights protections. Ongoing engagement with the ILO Committee of Experts through regular reporting and diligent engagement with observations and requests could provide the critical oversight required to advance freedom of association for agricultural workers.

Extension of freedom of association to agricultural workers across ILO member states

As reported in the ILO General Survey concerning the right of association and rural workers’ organizations and instruments, conducted in 2014 and released in 2015,⁷² the majority of member states confirmed that the right of rural or agricultural workers to bargain collectively was guaranteed by general legislation in force. States that confirmed legislation protecting the rights to freedom of association and collective bargaining for agricultural workers include Antigua and Barbuda, Australia, Belarus, Bulgaria, Czech Republic, Finland, France, Iceland, Israel, Italy, Kyrgyzstan, the former Yugoslav Republic of Macedonia, Malta, Republic of Moldova, Namibia, Slovakia, Sweden, Ukraine, United Kingdom, and Uzbekistan.

⁷¹ Stephen Devereux (2020), “Violations of farm workers’ labour rights in post-apartheid South Africa,” *Development Southern Africa*, 37:3, 382-404.

⁷² ILO: *General Survey concerning the right of association and rural workers’ organizations and instruments*, Report III (Part 1B), 104th Session, Geneva, 2015, paras 4,7.

Exclusion of agricultural workers from wage protection

United Kingdom and Wales: Abolition of the Agricultural Wage Board

Sectoral exclusion from labour rights protections for agricultural workers can also manifest in repeal of laws and institutions designed to protect the rights of all workers engaged in agriculture. For instance, in 2013, the Conservative-led government in England and Wales abolished the Agricultural Wage Board (AWB)⁷³—an organization with policy operation and implementation authority, empowered and funded but not run by the government, and tasked with regulating relations between farm owners (employers) and farm workers (employees). In particular, the AWB focused on wages under the Agricultural Wages Act, 1948 and implementation of annual Agricultural Wages (England and Wales) Orders.

In March 2013, IUF affiliate UNITE gave a Briefing to House of Commons members on the negative impacts of AWB abolition. UNITE's Briefing used figures from the UK's Department for Environment, Food and Rural Affairs (Defra) impact assessment (2012), which estimated that over a period of 10 years, pay in GBP would be lost by workers and translate into gains in GBP by employers/ farm owners if the AWB was abolished.⁷⁴

The abolition of the AWB re-enacts the repeated exclusion of agricultural and horticultural workers from legal protection, equity, and social justice. The AWB's abolition resulted in the loss of legal protection for around 150,000 low paid agricultural and horticultural workers.

TABLE 4 | COST OF ABOLISHING AWBS OVER 10 YEARS IN £ MILLIONS

AWB provision lost post-abolition	Cost to workers in GBP
AWB pay premium	Up to 149.9 million
For new contracts, loss of AWB annual leave entitlement	Up to 100.1 million
Loss of AWB sick pay	Up to 8.8 million
Total	£258.8 million

Source: Defra impact assessment, Dec 2012

Different minimum wage rates for agricultural workers

Distinctions between agricultural (SMAG) and other professionally guaranteed minimum wages (SMIG) originated in France in the 1950s. At the time, SMAG rates for agricultural workers were set below SMIG minimum wage rates. While France reconciled SMAG and SMIG rates in 1968, distinctions between SMIG and SMAG persist. In Africa, 14 countries—or 31% of the countries with statutory minimum wages—establish minimum wages by sector. In Burkina Faso, Chad, Côte d'Ivoire, Madagascar, Mali, Morocco, Senegal and Togo, minimum wages are still determined by two rates: one rate for agriculture (SMAG) and one rate for all other sectors (SMIG).⁷⁵

⁷³ Department for Environment, Food, & Rural Affairs (Defra), *Defra announces changes to arm's length bodies*, <https://webarchive.nationalarchives.gov.uk/20130123170255/http://www.defra.gov.uk/news/2010/07/22/arms-length-bodies/>

⁷⁴ UNITE's November 2012 response to the government consultation on the abolition of the AWB in England and Wales.

⁷⁵ ILO: *Global Wage Report 2020-21: Wages and minimum wages in the time of COVID-19*, International Labour Office – Geneva: ILO, 2020, p. 76.

ILO Convention 26, Minimum Wage-Fixing Machinery Convention 1928 (No. 26)

ILO Convention 26, Minimum Wage-Fixing Machinery Convention 1928 (No. 26) calls for member states of the ILO to create or maintain machinery to fix minimum wage rates for workers employed in trades where no arrangement exists for the effective regulation of wages by collective agreement, or where wages are exceptionally low (Art. 1).⁷⁶ While Convention 26 excluded agricultural workers from its ambit, in 1951 the ILO adopted Convention 99, Minimum Wage Fixing Machinery (Agriculture) Convention, calling on ratifying states to create or maintain adequate machinery whereby minimum wage rates can be fixed for workers employed in agricultural undertakings and related occupations (Art. 1).⁷⁷ Convention 99, and the supplementary Minimum Wage-Fixing Machinery (Agriculture) Recommendation, 1951 (No. 89) are both currently under review by the ILO Standards Review Mechanism Tripartite Working Group (SRM TWG).⁷⁸ As the SRM TWG determines whether these standards remain responsive to changing patterns in the world of work, these example of minimum wage deregulation in agriculture attests to the ongoing importance of Convention 99 and Recommendation 89 in addressing the exclusion of workers engaged in agriculture from robust, tripartite wage fixing mechanisms.

Exclusion of particular categories of agricultural workers from labour law protections

Exclusion of particular categories of agricultural workers from labour law protections includes exclusions of self-employed or own-account workers and exclusions based upon the number of employees on a farm.

- **Exclusion of self-employed and own-account workers**

In the contemporary global economy, self-employed and own-account agricultural workers include small farmers who face many of the same challenges that waged agricultural workers do. The category of self-employed and own-account workers may, in fact, overlap significantly with wage workers since small farmers regularly supplement their incomes by working on farms or plantations for part of the year. For instance, a study of the Mexican agricultural labour market estimated that as many as 4.8 million self-employed farmers, accounting for 78.3% of the rural labour force, also found employment as waged workers.⁷⁹ As is clear from the Mexican context, workers may simultaneously or sequentially hold roles as self-employed and wage workers. In Costa Rica, small farmers similarly take up wage labour for supplemental income. This shifting employment status underscores the importance of extending freedom of association protections across these categories of work to ensure that workers are protected during all phases of their employment cycles.

⁷⁶ ILO: C026 - Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C026

⁷⁷ ILO: C099 - Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C099

⁷⁸ ILO: Standards Reviews—Decisions on Status, C011 Right of Association (Agriculture) Convention, 1921 (No. 11), Instrument with interim status [As determined by the Governing Body upon recommendation of the Cartier Working Party], To be examined by SRM TWG at a later date yet to be determined.

⁷⁹ FAO, ILO, and IUF: *Agricultural Workers and Their Contribution to Sustainable Agriculture and Rural Development*, Geneva, 2007, p. 26 (citing Plant, R. *The role of rural workers' organizations in economic and social development: A case study of the ILO Convention No 141 in Mexico and the Philippines*. ILO Geneva, World Employment Programme Working Paper, Policies and Programmes for Development, 1993, p. 7.)

Widespread subcontracting practices on global agricultural supply chains further blur the lines between self-employed or own-account workers and wage workers. An ILO study of the role of multinational enterprises (MNEs) in Kenya's plantation sector illustrates the practice of employing both wage workers and self-employed workers on the same global supply chain. In this case, an MNE managed a sugar plantation and processing facility in Kenya. The sugar company employed 3,200 permanent workers on its nucleus plantation. It also, however, contracted, bought, and processed sugar from a network of 65,000 small farmers or outgrowers grouped under their own company. The sugar company and the outgrower company were entirely independent.⁸⁰

The structure of these exclusions facilitates the splintering of agricultural workers on global supply chains, diminishing their bargaining power in relationship to MNE lead firms. Agricultural organizations and networks, as described in Kenya, allow MNEs to contract and purchase from a network of self-employed agricultural workers. These workers may not, however, have the right to bargain collectively or together with wage workers on the supply chain. Legal exclusions that deny the ability of self-employed workers to join unions and bargain collectively with wage workers on global supply chains splinters the bargaining power of all agricultural workers on the supply chain, further consolidating the authority of lead firms and multinational enterprises to dictate and capitalize on subpar working conditions.

The ILO Committee of Experts has clearly established that Convention 11 applies to self-employed farmers, small holders, and other non-wage-earning agricultural workers. Nonetheless, self-employed and own-account workers are denied freedom of association protections on par with industrial workers in countries that have ratified Convention 11—including the Central African Republic, Pakistan, and Sri Lanka.

● **Exclusion based upon the number of employees or size of farms**

Demand for agricultural labour fluctuates seasonally and in relationship to supply and demand set by lead firms on agricultural supply chains. As such, the employment of workers through labour contractors is a well-established practice on plantations and is increasingly common in commercial agriculture. Subcontracting practices allow agricultural undertakings to employ a small core workforce while sourcing additional workers during harvest and other peak periods.⁸¹ Subcontracting and direct engagement of agricultural workers on a temporary, seasonal, or casual basis are widespread and cause the number of employees on a farm to fluctuate regularly. Despite this routine fluctuation in work force numbers on many farms, plantations, and other agricultural enterprises, national standards in some countries continue to exclude agricultural workers from labour rights protections based on the number of workers employed on a farm.

⁸⁰ Ibid., p. 27 (citing *Kenya: Facing the challenge of Africa's integration in the global economy: The role of multinational enterprises in the plantations sector*. ILO Multinational Enterprises and Social Policy Section, Geneva, Working Paper 91, 2002, p. 14.)

⁸¹ FAO, ILO, and IUF: *Agricultural Workers and Their Contribution to Sustainable Agriculture and Rural Development*, Geneva, 2007, p. 27 (citing *Kenya: Facing the challenge of Africa's integration in the global economy: The role of multinational enterprises in the plantations sector*. ILO Multinational Enterprises and Social Policy Section, Geneva, Working Paper 91, 2002, p. 48).



Exclusions based on the number of employees on a farm may specify not only a threshold number of workers, but also that they be permanently employed. In Honduras, for instance, workers in agricultural and stock-raising enterprises that do not permanently employ more than 10 workers are excluded from protection under the Labour Code of 1959.⁸² In Italy, protection of trade union activities in industrial and commercial enterprises applies only to agricultural establishments with more than five employees. However, in Italy, trade union activities are protected if a commercial company employs more than five agricultural workers in the same municipality, even if they are employed across different production units—allowing agricultural workers to organize across production units owned by the same commercial companies.⁸³

While legal exclusions based upon the number of employees on a farm in Honduras date back to the late 1950s, this form of legal exclusion continues to be promulgated in twenty-first century labour codes. Under the Labour Act of Turkey, 2003, workers in an agricultural or forestry enterprise that employs less than 50 workers are excluded from labour law and national social security protections. As a result of this exceedingly high threshold, the vast majority of agricultural workers in Turkey are outside the bounds of labour standards protections. Trade unions are unable to access workers on these agricultural and forestry establishments, and due to the exemption of these establishments from Labour Law Protections, the Labour Inspectorate does not have routine oversight—or in some cases any oversight at all.⁸⁴ As a result, workers are unable to collectively bargain for better wages, and child and forced labour practices go entirely unchecked. In Bangladesh, the Labour Act of 2006, amended in 2013, does not apply to agricultural farms where less than five workers are normally employed.⁸⁵ In Saudi Arabia, the Labour Law of 2005 excludes agricultural workers from protection, unless they are employed in undertakings including more than 10 workers or in firms that process their own products. The Saudi Labour Law does, however, extend protection to permanent workers who operate or repair agricultural machinery.⁸⁶

Exclusion from labour rights protections for workers on small farms employing a limited number of core workers further undermines the ability of workers on global supply chains to bargain collectively and advance their rights. While small farms are commonly integrated in MNE led global supply chains through subcontracts to individual farmers or networks of outgrowers—as in the Kenyan sugar plantation example given above⁸⁷—workers on these small farms are denied freedom of association and the ability to bargain collectively to improve wages and working conditions.

⁸² Honduras – CEACR, Convention No. 87, observation, published in 2013 (section 2(1) of the Labour Code 1959).

⁸³ Rules on the protection of workers' freedom and dignity trade union freedom, trade union activity in the workplace and employment regulations, Law 20, May 1970, No. 300 (Statute of workers).

⁸⁴ Labour Act of Turkey, Law No. 4857 of 2003, enacted 22.05.2003 and published in the Official Gazette on 10 June 2003, Art. 4, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64083/77276/%20F75317864/TUR64083%20English.pdf>

⁸⁵ Bangladesh – CEACR, Convention No. 87, observation, published in 2014. Section 1(4)(n) of the Bangladesh Labour Act 2006 amended by section 2(c)(i) of the Bangladesh Labour (Amendment) Act, 2013.

⁸⁶ Article 5(4), (5) and (6), and article 7(4) of Royal Decree No. M/51 of 2005.

⁸⁷ FAO, ILO, and IUF: *Agricultural Workers and Their Contribution to Sustainable Agriculture and Rural Development*, Geneva, 2007, p. 27 (citing Kenya: *Facing the challenge of Africa's integration in the global economy: The role of multinational enterprises in the plantations sector*. ILO Multinational Enterprises and Social Policy Section, Geneva, Working Paper 91, 2002, p. 14.)

Employment status-based exclusions from labour law protections that impact agricultural workers

● Exclusion of temporary, seasonal, and casual workers from labour law protections

Denial of freedom of association and other labour law protections to temporary, seasonal, and casual workers is widespread. Although not specific to agricultural workers, this type of labour law exclusion has significant impact on agricultural workers since a majority of waged agricultural workers in most developing countries and some developed countries are employed on a temporary, seasonal, or casual basis⁸⁸ — including an increasing number of women workers.⁸⁹ This trend towards casual and temporary labour is encouraged by supply chain purchasing practices that displace risks associated with unstable market demand onto workers at the base of global food supply chains. Costs associated with industrial uncertainty are displaced upon workers by lead firms and their suppliers through strategic use of flexible hiring practices and periods of unemployment, whether due to seasonal employment requirement or fluctuations in production.

Many employers pay casual, temporary, and seasonal workers on a piece rate basis, providing workers with financial incentives to engage in physically demanding work for the maximum number of hours. Most employers do not pay seasonal, casual or temporary workers any form of social security or unemployment benefit, holidays with pay, or sickness or maternity leave. In fact, it is common practice for employers to deny workers benefits of permanent employment by classifying jobs as casual or temporary even if workers are continuously employed, or by rotating individual workers.

This systematic exclusion of wide swaths of the agricultural workforce from freedom of association and other labour rights protections has drawn the attention and monitoring of the ILO Committee of Experts since 1948—including in Belgium, the Belgian Congo and Ruanda-Urundi (1959),⁹¹ Brazil (2012),⁹² Chile (2010),⁹³ China (1948),⁹⁴ and Nicaragua (1962).⁹⁵

Notably, and of particular concern, this pattern of excluding agricultural workers from freedom of association and other labour rights protections also continues to appear in labour standards developed within the last twenty years. Qatar's Law No. 14 of 2004 excludes casual workers from labour law protections. Even more recently, the Syrian Arab Republic's Labour Code 2010 also excludes casual workers from labour law protections.

On September 28, 2016, Moldova adopted a Law on Unskilled Work Performed by Day Labourers that excludes agricultural workers who work 90 days per year or less for one employer from national labour law protections.⁹⁶

⁸⁸ Casual work refers to those employed and paid at the end of each day worked or on a task basis. Temporary work refers to those employed for a specific but limited period of time. FAO, ILO, and IUF: *Agricultural Workers and Their Contribution to Sustainable Agriculture and Rural Development*, Geneva, 2007, p. 24.

⁸⁹ FAO, ILO, and IUF: *Agricultural Workers and Their Contribution to Sustainable Agriculture and Rural Development*, Geneva, 2007, p. 24.

⁹¹ *Belgium* (Belgian Congo and Ruanda-Urundi –CEACR, Convention No. 11, observation, published in 1959.

⁹² *Brazil* – CEACR, Convention No. 141, observation, published in 2012

⁹³ *Chile* – CEACR, Convention No. 87, observation, published in 2010.

⁹⁴ *China* – CEACR, Convention No. 11, observation, published in 1948.

⁹⁵ *Nicaragua* – CEACR, Convention No. 11, observation, published in 1962.

⁹⁶ Moldova law on occasional unskilled work performed by day labourers translated into English; link to Law in Romanian language, http://www.gov.md/sites/default/files/document/attachments/intr02_96.pdf



With this legal shift, workers who work for less than 90 days with an employer are held outside the parameters of an employer-employee relationship. Instead, the employer is referred to as a beneficiary. At the time, the law effectively excluded agricultural workers in this category from existing social protection schemes for waged workers under which employers and waged workers contribute monthly towards the worker's health insurance and social fund. Instead, under the new law, employers (beneficiaries) no longer had to pay for workers' social protection. The law also limited workers' access to justice by suspending employment contract requirements which are often the only proof of employment a worker can use to access relief.⁹⁷

Superior Court of Quebec upholds the right of seasonal agricultural workers to unionize

In March 2013, the Superior Court of Quebec confirmed the right of seasonal agricultural workers to unionize. Upholding a ruling by the Quebec Labour Relations Board, the Superior Court declared article 21, clause 5, of the Labour Code—providing that “persons employed in the operation of a farm shall not be deemed to be employees for the purposes of this division unless at least three of such persons are ordinarily and continuously so employed”—unconstitutional on the grounds that it violated the right to freedom of association, which is protected by the Quebec Charter of Human Rights and Freedoms.

⁹⁷ International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations, CONCERNS: ILO advice on the proposed change in Moldovan law to class agricultural workers as daily labourers, February 17, 2017, Letter to Mr. Colin Fenwick, Labour Law and Reform Unit, International Labour Organization.



Migration status-based exclusions that impact agricultural workers



Migrant workers, including foreign workers and migrants from a different part of the country, are employed as casual, temporary, seasonal, and even full-time workers across the agricultural sector. Global supply chains in agriculture are dominated by large supermarket chains that maximize their profits by forcing farmers to produce at very low cost. This downward pressure on prices by lead firms drives downstream employers to cut costs in order to survive. Accordingly, supply chain purchasing practices create incentives for hiring migrant workers who are prepared to accept low pay for strenuous work that is not attractive to the national workforce. Seasonal migrant workers employed on a “piece rate” basis may enlist their children to work alongside them in order to meet targets and maximize wages, contributing to rampant child labour.⁹⁸

Due to the high concentration of migrant workers across the agricultural sector, restrictions on freedom of association for migrant or foreign

workers agricultural workers are widespread. Practices of employing migrant and undocumented workers in the agricultural sector who are excluded from labour law protections undermines freedom of association and union representation.⁹⁹ Coercive control based on migration status, physical and social isolation, employer control over housing, debt, language difficulties, and lack of information and awareness of employment rights create aggravated obstacles to freedom of association for migrant workers.¹⁰⁰

Such restrictions on establishing and joining trade unions for migrant workers may take the form of residency requirements. For instance, in Algeria, only workers who are Algerian by birth or who have had Algerian nationality for at least ten years may establish a trade union.¹⁰¹ In the Central African Republic, foreign workers can only join trade unions after a minimum legal residence of two years and provided that their own country has granted the same right to nationals of the Central African Republic.¹⁰²

⁹⁸ FAO, ILO, and IUF: *Agricultural Workers and Their Contribution to Sustainable Agriculture and Rural Development*, Geneva, 2007, p. 25.

⁹⁹ ILO: *General Survey concerning the right of association and rural workers' organizations and instruments*, Report III (Part 1B), 104th Session, Geneva, 2015, para 233.

¹⁰⁰ *Ibid.*, para 246.

¹⁰¹ *Algeria* – CEACR, Convention No. 87, observation, published in 2014 (section 6 of Act No. 90-14 of 2 June 1990).

¹⁰² *Central African Republic* – CEACR, Convention No. 87, observation, published in 2014 (article 17 of the Labour Code).

¹⁰³ “Injustice on Our Plates: Immigrant Women in the U.S. Food Industry,” *Southern Poverty Law Center*. 2010, https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Injustice_on_Our_Plates.pdf; <https://www.splcenter.org/20101107/injustice-our-plates>

¹⁰⁴ “Immigration Reform & Farmworkers,” *Farmworker Justice*, <https://www.farmworkerjustice.org/advocacy-and-programs/agjobs>

¹⁰⁵ “Sub-Contracted Workers,” *Farmworker Justice*, <https://www.farmworkerjustice.org/advocacy-programs/immigration-labor/sub-contracted-workers>. See also Bruce Goldstein, Marc Linder, Laurence E. Norton II, and Catherine Ruckelshaus, “Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment,” *UCLA Law Review*. April 1999, https://www.farmworkerjustice.org/sites/default/files/documents/7.6.a.%20Enforcing%20Fair%20Labor%20Standards%20in%20the%20Modern%20American%20Sweatshop_1.pdf; Catherine Ruckelshaus & Bruce Goldstein, “From Orchards to the Internet:

UNITED STATES — Race, citizenship status, and exclusion in the contemporary agricultural sector

According to reports from the U.S. Department of Agriculture and the U.S. Department of Labor (DOL), there are an estimated 2 to 3 million migratory and seasonal agricultural workers employed in the United States. At least six of ten farm workers are undocumented immigrants, which combined with immigrants with H-2A and H-2B visas, makes immigrant workers the vast majority of farm workers in the United States.¹⁰³ Over one-half of the approximately 2.5 million seasonal workers on U.S. farms and ranches lack authorized immigration status.¹⁰⁴

The Migrant and Seasonal Agricultural Worker Protection Act (AWPA/MSPA) is the principal federal employment law specifically directed at farm workers. Under the current law, employers must disclose terms of employment at the time of recruitment and comply with those terms; work with registered and licensed farm labour contractors; and meet federal and local housing and transportation standards. These protections, however, become difficult to establish due to the many intermediaries involved in transporting workers, recruiting and hiring workers, supervising workers on the fields, and contracting. Migrant status—whether temporary guest worker or undocumented status—adds an additional category of contingency for many workers that creates obstacles for enforcing workplace rights.

Despite these barriers, farm workers in the United States and elsewhere are organizing to gain power in their workplace and win rights to unionize across the country. Farm worker organizations have successfully advocated to begin addressing these issues in the past by getting the Department of Labor to revise its regulations regarding the concept of “joint employer” liability, to make it clear that most farming operations that use labour contractors are joint employers of farmworkers, and are thus jointly responsible for minimum wages and other employer obligations.¹⁰⁵ These wins have come under assault by the United States Department of Labor (DOL) and National Labor Relations Board (NLRB), with the NLRB announcing new rules in 2018 for determining joint-employer status.¹⁰⁶ In specific, the newest rule re-clarifies that “an employer may be considered a joint employer... only if the two employers share or codetermine the employees’ essential terms and conditions of employment” and “must possess and actually exercise substantial and direct immediate control.”¹⁰⁷

Drawing attention to these gaps in protection for Mexican migrant workers in the United States, on May 13, 2021, Mexico’s ambassador to the United States, Esteban Moctezuma, wrote a letter to U.S. Labor Secretary Marty Walsh, addressing failures to enforce labour laws in the U.S. agriculture and meat packing industries. In particular, Ambassador Moctezuma, backed by Mexican President López Obrador, raised concerns about wage related rights violations, restrictions on union organizing, excessive work without breaks, and failure to follow COVID-19 health protocols. Mexico also proposed initiating a “space for cooperation” under the United States–Mexico–Canada agreement (USMCA).¹⁰⁸

Confronting Contingent Work Abuse,” *National Employment Law Project & Farmworker Justice Fund*. 2002, <https://www.farmworkerjustice.org/sites/default/files/documents/7.6.b%20OrchardstoInternet.pdf>

¹⁰⁶ “The Standard for Determining Joint-Employer Status: A Proposed Rule by the National Labor Relations Board on 09/14/2018,” <https://www.federalregister.gov/documents/2018/09/14/2018-19930/the-standard-for-determining-joint-employer-status>

¹⁰⁷ “The Standard for Determining Joint-Employer Status: A Proposed Rule by the National Labor Relations Board on 09/14/2018,” <https://www.federalregister.gov/documents/2018/09/14/2018-19930/the-standard-for-determining-joint-employer-status>

¹⁰⁸ Mexico News Daily, “Mexico responds to GM union complaint by accusing US of violating migrants’ rights,” May 13, 2021, <https://mexiconewsdaily.com/news/mexico-accuses-us-of-violating-mx-migrants-rights/>; Reuters, “Mexican voices “disquiet” of U.S. farm and meat packing labor practices,” May 13, 2021, <https://www.reuters.com/article/usa-trade-mexico-complaint/mexican-voices-disquiet-over-us-farm-and-meat-packing-labor-practices-idUSW1N2KJ00M>

Subnational exclusions from labour standards protections

Even in situations where freedom of association is protected at the national level, these protections may not apply or apply differentially at the sub-national level. For instance in Canada, not all provinces apply labour relations legislation to agricultural workers. Workers on farms and ranches in Alberta are denied the right to freedom of association and collective bargaining. Agricultural and horticultural workers in Ontario also do not receive the same level of protection as general labour relations legislation.¹⁰⁹

In other national contexts, where labour standards are established at the provincial or state level, some provinces may protect freedom of association and other labour rights for all agricultural workers while others may not. For instance, although Pakistan ratified Convention 11 in 1923, the Industrial Relations Act, 2012 and the Balochistan, Khyber Pakhtunkhwa, and Punjab Industrial Relations Acts of 2010 exclude independent agricultural workers from their application.¹¹⁰

PAKISTAN — Women Workers Unionize and Secure Freedom of Association in Sindh Province

In 2019, Sindh Province amended the Sindh Industrial Relations Act of 2010 to extend labour rights protections to agricultural and fishery workers, including the right to organize and form unions. In 2019, the Provincial Assembly of Sindh also broke new ground in recognizing women's work in agriculture with the passage of the Sindh Women Agricultural Workers Act No. 5 of 2020. The Act seeks to protect and promote the rights of women workers, ensure their rights in workplace decision-making, and improve the health of nutrition of women agricultural workers and their children.¹¹¹ The Act also secures the right of women workers in agriculture to organize collectively and represent members vis-à-vis government authorities. Where there is an employment relationship, unions can also engage directly with the employers to represent the member interests.

The passage of the landmark Sindh Women Agricultural Workers Act No. 5 of 2020 was catalyzed by union advocacy. In 2016, the IUF affiliated Sindh Nari Porhiat Council (SNPC) formed the first union of women workers engaged in agriculture in Pakistan. SNPC's membership includes women working as self-employed farmers, agricultural workers, sharecroppers, livestock rearers, and home-based workers paid in cash, in-kind, and in a combination of both. Since 2016, SNPC has actively engaged in campaigning for the rights of women workers, including the right to freedom of association and collective bargaining, and passage of the 2020 Sindh Women Agricultural Workers Act.¹¹²

¹⁰⁹ *Canada* – CEACR, Convention No. 87, observations, published in 2001 to 2014. See also, Committee on Freedom of Association, Case No. 2704 (*Canada*), Reports Nos 358 and 363.

¹¹⁰ *Pakistan* – CEACR, Convention No. 98, observation, published in 2013 (section 1(3)).

¹¹¹ The Sindh Women Agricultural Workers' Act, 2019, Sindh Act No. V of 2020.

¹¹² IUF: First union of agricultural women workers launched in Pakistan, 2 April 2016, <https://iuf.org/news/first-union-of-agricultural-women-workers-launched-in-pakistan/>



UNITED STATES — New York State Extends Labour Rights Protections to Farmworkers

States have also, however, made advances in extending labour standards protections to agricultural workers in national contexts where sectoral exclusions persist. In New York, for instance, after years of worker actions and attempts to win the Farmworkers Fair Labor Practices Act,¹¹³ there was a 2018 court case that challenged the constitutionality of denying farm workers basic organizing rights, such as protection against retaliation for union activity. In *Hernandez v. Flores*, the Supreme Court declared the exclusion unconstitutional, finding farm workers to have the same rights as all employees under the state constitution, to bargain collectively.¹¹⁴

The case, combined with worker organizing, resulted in landmark New York legislation. In 2019, the Farm Laborers Fair Labor Practices Act was passed and signed into law.¹¹⁵ The Act grants collective bargaining rights, workers' compensation, unemployment benefits, overtime provisions, mandatory rest times, and sanitary codes for all farm labourers in the state.¹¹⁶

Partially mapped off of this state-level initiative, in May 2021, 54 Members of Congress Reintroduced the Fairness for Farm Workers Act.¹¹⁷ The bill requires employers to compensate agricultural workers for overtime hours in line with the Fair Labor Standards Act (FLSA). Notably, this bill is limited in that it does not grant collective bargaining rights to farm workers nationally.

¹¹³ Jenny Braun, "Today's News & Commentary – May 21, 2018," On Labor. 21 May 2018, <https://onlabor.org/todays-news-commentary-may-21-2018/>

¹¹⁴ *Hernandez v Flores* 2019 NY Slip Op 04065 (U) Decided on May 23, 2019 Supreme Court. See also "Labor Law Left Farm Workers Behind. This State Constitutional Case May Change That," *Harvard Civil Rights – Civil Liberties Law Review*. 30 November 2018, <https://harvardcrcl.org/labor-law-left-farm-workers-behind-this-state-constitutional-case-may-change-that/>; and "Lawsuit Challenges Shameful Exclusion of Farmworkers from Right to Organize," American Civil Liberties Union. 10 May 2016, <https://www.aclu.org/press-releases/lawsuit-challenges-shameful-exclusion-farmworkers-right-organize>

¹¹⁵ Farm Laborers Fair Labor Practices Act, S.6578/A8419, Sponsored by Senator Jessica Ramos. 19 June 2019, <https://legislation.nysenate.gov/pdf/bills/2019/S6578> See also <https://www.nysenate.gov/legislation/bills/2019/s6578>

¹¹⁶ See <https://www.nysenate.gov/newsroom/press-releases/senate-passes-farm-laborers-fair-labor-practices-act> and <https://www.governor.ny.gov/news/governor-cuomo-signs-farm-workers-bill>

¹¹⁷ Congressman Raúl Grijalva, Press Release: *Rep. Grijalva, 54 Members of Congress Reintroduce Fairness for Farm Workers Act*, May 13, 2021, <https://grijalva.house.gov/press-releases/rep-grijalva-54-members-congress-reintroduce-fairness-farm-workers-act>



Part 3

Where do we go from here? On its 100th anniversary, what direction and momentum can we take from Convention 11 to improve the conditions of agricultural workers?

Freedom of association protections under Convention 11 are foundational to raising the floor for farmworkers rights. As laid out in the ILO Declaration on Social Justice for a Fair Globalization, unanimously adopted by the International Labour Conference in 2008, freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable decent work, social protection, and social dialogue. This final section lays out the critical role of Convention 11 in advancing decent work and social protection for agricultural workers. It also considers the role of Convention 11 in addressing widespread child labour in agriculture and advancing food security and food safety.

Leverage Convention 11 protections to advance decent work for agricultural workers

Systematic and widespread rights violations in the agricultural sector have been well documented and include payments below minimum wages—and far-below living wages—extended working hours without overtime pay, and significant occupational health and safety risks. Routine practices of transporting workers over long distances in open trucks and vehicles and inadequate access to decent housing for workers and their families also pose significant health and safety risks to agricultural workers.¹¹⁸

Freedom of association protections under Convention 11, if ratified and applied, can make significant inroads in addressing these rights violations. The ability for workers to bargain collectively at the enterprise and sectoral levels rather than on an individual basis is a major factor in transforming employment conditions. Issues that can be collectively bargained in the agricultural sector include wages, contracts of employment, labour contracting, maternity rights, health benefits, hours of work, leave, occupational health, safety and environment, housing conditions, grievance procedures, transport of workers, elimination of child labour, measures to counter HIV/AIDS, and COVID-19 relief and recovery.¹¹⁹

Leverage Convention 11 protections to advance social protection floors for agricultural workers

According to the UN Food and Agricultural Organization (FAO), fewer than 20% of agricultural workers have access to basic social protection, including unemployment protection for agricultural workers who have lost their livelihoods, paid sickness benefits, and access to health care.¹²⁰ Freedom of association protections under Convention 11 are critical to addressing this extreme deficit in social protection for agricultural workers.¹²¹ Where social protection floors exist today, they were won through long lasting struggles by trade unions and social dialogue where trade unions played a pivotal role. Trade unions can also play a critical role in monitoring and managing social protection systems through ongoing engagement in advisory boards and working groups.¹²²

Social protection and the right to social security have been integral elements of the ILO mandate since its creation in 1919. The right to social security has been articulated in the Social Security (Minimum Standards) Convention, 1952 (No. 102) and the more recent Social Floors Recommendation, 2012 (No. 202). These longstanding commitments are particularly urgent in our contemporary context of rising global inequality and in the aftermath of COVID-19. They have also gained increasing traction in global initiatives including the Sustainable Development Goals (SDGs) and the ILO Future of Work, which emphasizes the importance of investing in people's capabilities, including by strengthening social protection.¹²³

¹¹⁸ FAO, ILO, and IUF: *Agricultural Workers and Their Contribution to Sustainable Agriculture and Rural Development*, Geneva, 2007, p. 49-53.

¹¹⁹ *Ibid.*, p. 46.

¹²⁰ FAO: *FAO Statistical Yearbook 2013: World food and agriculture*, Rome, 2013, p. 14.

¹²¹ ILO: 2008 ILO Declaration on Social Justice for a Fair Globalization.

¹²² ILO: Social protection: *What workers and trade unions should know*, ed. Manuel Simón Velasco, Director ILO Bureau for Workers' Activities, Labour Education 2000/4 No. 121, p. I-IV, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_111470.pdf

¹²³ ILO: World Social Protection Report 2017-2019: Universal social protection to achieve the Sustainable Development Goals, 29. November 2017, Geneva, https://www.ilo.org/global/publications/books/WCMS_604882/lang-en/index.htm

Leverage Convention 11 in the fight to end child labour

In 2019, the United Nations General Assembly (UNGA) unanimously adopted a resolution declaring 2021 as the International Year for the Elimination of Child Labour.¹²⁴ For the first time in two decades, global progress against child labour has stagnated since 2016, with the global COVID-19 pandemic likely to drive even more children into child labour.¹²⁵

According to the ILO and UNICEF, global estimates indicate that 160 million children were in child labour at the beginning of 2020. 70% of all children in child labour—112 million in total—are in agriculture. The agricultural sector has also been underscored as an entry point to child labour, with 75% of all children aged 5 to 11 in child work in agriculture.¹²⁶

Agriculture is also among the three most dangerous sectors to work in any age, and even more dangerous for children.¹²⁷ Children work in family enterprises, large-scale commercial plantations, and as migrant farm workers. They usually work alongside their parents in situations where only the head of the household is actually employed but paid according to the amount of work that is completed by the family unit.¹²⁸

Child labour occurs when parents are in debt bondage; earn poverty wages; are dependent on piece-rate wages and quotas that compel the use of family labour; suffer illness and are unable to work due to occupational hazards, including exposure to pesticides; and when work is seasonal and insecure, with unstable pay. Child labour proliferates when employers choose child labour as more pliable, forcing children to undertake hazardous

and dangerous work that they cannot compel adult workers to do. Ending child labour requires removing the extensive restrictions that prevent agricultural workers from forming and joining unions and from engaging in collective bargaining to secure safe work and stable living wages that lift workers and their families out of poverty and debt.¹²⁹

Recognizing the role of freedom of association and collective bargaining in addressing root causes of child labour, the ILO Bureau for Workers' Activities (ACTRAV) has invested in supporting trade unions to make a difference in the global effort to end child labour.¹³⁰ Further ratification and widespread application of Convention 11 stands to strengthen freedom of association in agriculture and position trade unions as leaders in the fight to end child labour.



¹²⁴ ILO: "2021 declared International Year for the Elimination of Child Labour," Press release, 26 July 2019, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_713925/lang-en/index.htm

¹²⁵ ILO and UNICEF: *Child Labour—Global Estimates 2020, Trends and the Road Forward*, Geneva, 2021, p.8, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_797515.pdf

¹²⁶ *Ibid.*, p.9.

¹²⁷ ILO: *Rural policy brief: Eliminating child labour in rural areas through decent work*, Geneva, 2011; and ILO: *Marking progress against child labour: Global estimates and trends 2000–12*, Geneva, 2013.

¹²⁸ FAO, ILO, and IUF: *Agricultural Workers and Their Contribution to Sustainable Agriculture and Rural Development*, Geneva, 2007, p. 27.

¹²⁹ IUF: International Year for the Elimination of Child Labour 2021, <https://iuf.org/wp-content/uploads/2021/05/2021-IUF-child-labour-demands-e.pdf>

¹³⁰ ILO: *Trade Unions and Child Labour—A Tool for Action*, Geneva, 2016.

IUF Resolutions to eliminate child labour

“To end child labour requires the removal of the extensive restrictions that prevent agricultural workers from forming and joining unions and from engaging in collective bargaining to secure safe work and stable living wages that lift workers and their families out of poverty and debt.”¹³¹

In 2012, the IUF 26th World Congress resolved:

- To call on the IUF and affiliates to increase activities to ensure that transnational corporations (TNCs) in IUF sectors commit to and work on elimination of child labour in their supply chains;
- To call on the IUF to lobby the ILO and other relevant UN agencies to increase commitment to and action on elimination of child labour in agriculture.

Advance Convention 11 protections as core principles for responsible agriculture and food systems

Global food supply chains are governed by a complex system of regulations and international and national standards, including World Trade Organization (WTO) tariff and non-tariff regulations, UN Food and Agriculture Organization (FAO) standards, domestic regulations, and a growing number of private third-party certification agencies. In order to uphold global food and safety standards, almost every country in the world has a government connected authority to monitor food safety issues from production to sale. In turn, national governments in developing countries take significant steps to adhere with food safety regulations in order to meet export standards. Consumer safety and environmental groups have had significant influence over international technical and environmental standards. However, freedom of association and other labour rights protections in these forums lag significantly behind. As a result, labour standards and working conditions remain, for the most part, set by the market and fall far below decent work standards.

More recently, principles for responsible investment in agriculture and food systems have recognized the importance of protecting labour rights for agricultural workers. As laid out in this report, freedom of association protections under Convention 11 are foundational to achieving the commitments to decent work for all agricultural workers set out by the UN Committee on World Food Security.

UN Committee on World Food Security—Commitments to Decent Work for Agricultural Workers

“Responsible investment in agriculture and food systems is essential for enhancing food security and nutrition and supporting the progressive realization of the right to adequate food in the context of national food security. Responsible investment makes a significant contribution to enhancing sustainable livelihoods, in particular for smallholders, and members of marginalized and vulnerable groups, creating decent work for all agricultural and food workers, eradicating poverty, fostering social and gender equality, eliminating the worst forms of child labour, promoting social participation and inclusiveness, increasing economic growth, and therefore achieving sustainable development.”¹³²

¹³¹ IUF: “Ending child labour requires specific focus on agriculture,” <https://www.iuf.org/news/ending-child-labour-requires-specific-focus-on-agriculture/>

¹³² UN Committee on World Food Security: *Principle for Responsible Investment in Agriculture and Food Systems*, p. 3, <http://www.fao.org/3/au866e/au866e.pdf>

Principle 22 on Responsible Investment in Agriculture and Food Systems

highlights protecting the rights of agricultural workers to advance sustainable and inclusive economic development and poverty eradication by:

- i. Respecting the fundamental principles and rights at work, especially those of agricultural and food workers, as defined in the ILO core conventions;
- ii. Supporting the effective implementation of other international labour standards, where applicable, giving particular attention to standards relevant to the agri-food sector and the elimination of the worst forms of child labour;
- iii. Creating new jobs and fostering decent work through improved working conditions, occupational safety and health, adequate living wages, and/or training for career advancement;
- iv. Improving income, generating shared value through enforceable and fair contracts, fostering entrepreneurship and equal access to market opportunities both on-farm and for upstream and downstream stakeholders;
- v. Contributing to rural development, improving social protection coverage and the provision of public goods and services such as research, health, education, capacity development, finance, infrastructure, market functioning, and fostering rural institutions;
- vi. Supporting the implementation of policies and actions aimed at empowering and improving human resource capacity for stakeholders, particularly for small holders, including those that are family farmers - women and men - and their organizations, and promoting their access to resources and inputs, as appropriate;
- vii. Promoting greater coordination, cooperation, and partnerships to maximize synergies to improve livelihoods;
- viii. Promoting sustainable patterns of consumption and production to achieve sustainable development.¹³³

Policy recommendations for sustainable agricultural development for food security and nutrition for agricultural workers, including those engaged in livestock, call upon governments and other stakeholders to take the following actions:

- Ensure that the working and living conditions of all workers at all stages of production, transformation, and distribution comply with ILO conventions, and are protected by domestic laws, and provide adequate living wages;
- Ensure that working and living conditions meet national and internationally agreed labour standards and reduce occupational hazards and other harmful effects on workers across the value chain.¹³⁴

Policy recommendations on water for food security and nutrition call upon governments and other relevant stakeholders to take the following actions:

- Develop and promote investments to: improve household availability of and access to safe water for drinking and sanitation; reduce the drudgery and burden of water collection and disposal for all, in particular women and girls; reduce the incidence of water-related health risks; improve conditions for hygiene and food safety; enhance nutritional status; and provide access to safe drinking water to all workers at the workplace.¹³⁵

¹³³ Ibid., p. 12,

¹³⁴ UN Committee on World Food Security: *Sustainable Agricultural Development for Food Security and Nutrition: What Roles for Livestock?* <http://www.fao.org/3/bq854e/bq854e.pdf>

¹³⁵ UN Committee on World Food Security: *Water for Food Security and Nutrition*, <http://www.fao.org/3/av046e/av046e.pdf>

RECOMMENDATIONS

Recommendations to the ILO

- Restore the status of Convention 11 as an up-to-date instrument when it is reviewed by the ILO Standards Review Mechanism Tripartite Working Group (SRM TWG),¹³⁶ confirming its continued relevance in addressing legal exclusion of workers engaged in agriculture from freedom of association and other labour rights protections.
- Ensure all agricultural workers in all forms of employment have unrestricted access to the right to freedom of association as guaranteed in ILO Convention 11 adopted in 1921.
 - ▲ The implementation of ILO Convention 11 on the Right of Association in Agriculture is key to achieving decent work for adults in agriculture and eliminating child labour.
- Build upon the robust data set generated by the General Survey concerning the right of association and rural workers' organizations and instruments, 2015.¹³⁷
 - ▲ Consistent with the recommendations from workers' organizations in the General Survey 2015,¹³⁸ conduct further research on barriers to freedom of association in law and practice.
 - ▲ Direct attention to the situation of particularly vulnerable agricultural workers, including but not limited to:
 - Women workers,
 - Indigenous workers,
 - Migrant workers,
 - Racial and ethnic minority workers,
 - Linguistic minorities, and
 - Part-time and seasonal workers.
 - ▲ Engage states in systematic reporting on the barriers to accessing social protection systems for agricultural workers.
- Build understanding among member States on the potential of Convention 11, with a focus on the unique potential and challenges for promoting freedom of association for agricultural workers vis a vis industrial workers.
 - ▲ Educate member states on the unique protections extended to agricultural workers under Convention 11 that are distinct from freedom of association protections under Conventions 87 and 98 that apply to all workers.

¹³⁶ ILO: Standards Reviews—Decisions on Status, C011 Right of Association (Agriculture) Convention, 1921 (No. 11), Instrument with interim status [As determined by the Governing Body upon recommendation of the Cartier Working Party], To be examined by SRM TWG at a later date yet to be determined.

¹³⁷ ILO: *General Survey concerning the right of association and rural workers' organizations and instruments*, Report III (Part 1B), 104th Session, Geneva, 2015.

¹³⁸ *Ibid.*, para 313.

Recommendations to States

■ Ratify Convention 11

- ▲ For States that have not already ratified Convention 11, engage in tripartite dialogue toward immediate ratification of Convention 11.

■ Implement Convention 11

- ▲ Eliminate all legal obstacles to freedom of association for agricultural workers. As laid out in the Resolutions adopted by the International Labour Conference at its 97th Session, “Freedom of association and collective bargaining are enabling rights. They are a means to achieve decent work for all. Freedom of association and the right to collective bargaining can contribute to stable economic development and sound industrial relations. Therefore governments should facilitate a conducive environment to the creation of independent rural workers’ and employers’ organizations and eliminate obstacles to their establishment and growth.”¹³⁹
 - Consistent with Convention 11 Article 1, adopt a broad and inclusive definition of agricultural work in national labour legislation concerning freedom of association and collective bargaining that is sufficient to encompass all categories of agricultural workers relevant to national circumstances.
 - Ensure that national legislation guarantees and defends the freedom of all workers and employers, irrespective of where and how they work, to form and join organizations of their own choosing without fear of reprisal or intimidation.¹⁴⁰
 - Extend freedom of association protections to outsourced, seasonal, temporary, migrant and informal sector workers.
 - Remove minimum membership requirements for the establishments of agricultural trade unions and workers organizations.
- ▲ Take proactive steps to address practical barriers to freedom of association for agricultural workers.
 - Advance legislation that safeguards the rights of trade union leaders and representatives to access farms and plantations to meet with workers.¹⁴¹
 - Address challenges facing union organizers in accessing farms and plantations to meet with workers based upon employer assertions that their premises are private property.
 - Undertake campaigns to raise awareness on freedom of association and other labour rights of agricultural workers, with particular attention to the needs of more vulnerable agricultural workers.
 - Enact laws that provide strong retaliation protections and remedies, as well as meaningful penalties and the ability to stop production until violations of labour standards laws are resolved.
- ▲ Strengthen national labour standards inspection and enforcement regimes. As laid out in the Resolutions adopted by the International Labour Conference at its 97th Session, “Labour inspection is often absent or inadequate in rural areas. This contributes to poor compliance with labour law. An effective system of labour

¹³⁹ ILO: Resolutions adopted by the International Labour Conference at its 97th Session, 2008, para. 44, https://www.ilo.org/ilc/ILCSessions/previous-sessions/97thSession/texts/WCMS_098017/lang--en/index.htm

¹⁴⁰ ILO: Resolutions adopted by the International Labour Conference at its 97th Session, 2008, para. 71, https://www.ilo.org/ilc/ILCSessions/previous-sessions/97thSession/texts/WCMS_098017/lang--en/index.htm

¹⁴¹ See, for example, Costa Rica – CEACR, Convention No. 141, observations, published in 2001 and 2003.



inspection at the national level, carried out by professionally trained and adequately resourced inspectors, who are suitably qualified and knowledgeable about rural labour market issues and independent of improper external influence, benefits governments, employers and workers. Labour legislation based on transparent and predictable laws and regulations can assist in this regard. It provides better protection of rights, encourages safe and healthy work practices and productivity improvements at work including through the provision of information and advice, and contributes to the creation of a workplace health and safety culture. The Labour Inspection (Agriculture) Convention, 1969 (No. 129), provides guidance on improving labour inspection in agriculture.¹⁴² In particular:

- Increase funding and staffing for enforcement agencies such that there are sufficient number of qualified inspectors to effectively discharge their duties to protect freedom of association and other rights of agricultural workers.
 - Establish inspection offices in agricultural areas as required and increase staff allocations for agricultural inspections.
 - Train labour inspectors and other relevant officials on principles of freedom of association. Instruct labour inspectors to identify and address risk factors for freedom of association violations, including:
 - Risks to workers living in employer accommodations.
 - Risks to women, seasonal, temporary, migrant, and indigenous workers.
 - Build and foster relationships between trade unions/worker organizations and enforcement agencies.
 - Familiarize workers and unions with enforcement agencies' processes and procedures, as well as deficiencies and challenges.
- Introduce mandatory due diligence legislation which requires companies sourcing from agriculture to respect agricultural workers' right to organize and collectively bargain through the supply chain.
 - Develop and enhance social protection for all which is sustainable and adapted to national circumstances.¹⁴³

¹⁴² ILO: Resolutions adopted by the International Labour Conference at its 97th Session, 2008, para. 48, https://www.ilo.org/ilc/ILCSessions/previous-sessions/97thSession/texts/WCMS_098017/lang-en/index.htm

¹⁴³ Ibid., para. 71.

Recommendations to the UN and ILO forums in context of the UNGA resolution declaring 2021 as the International Year for the Elimination of Child Labour

- Advance freedom of association in the agricultural sector as a policy approach to address child labour in agriculture.
 - ▲ Call on states to ratify and apply Convention 11 in 2021.
- Actively engage agricultural trade unions in the global fight to end child labour.
 - ▲ Support trade union and other worker organizing in agricultural sectors where child labour occurs, including to enforce minimum wages, advance social protection, and engage in social dialogue with employers on child labour.
 - ▲ Support trade unions, worker organizations, and their allies to launch campaigns to end child labour on agricultural supply chains.

Recommendations to the UN Food Systems Summit

- Expand criteria to inform private sector investment in agriculture to include a worker protection framework.
 - ▲ Include ratification and progress in applying ILO Convention 11 as a key indicator when assessing national context-based risk factors for agricultural workers.

APPENDIX 1

Typology of Labour Law Exclusions and Details of Examples in National Legislation

Labour law exclusion	Select examples in national legislation ¹⁴⁴
Sectoral exclusion of agricultural workers	
Exclusion of agricultural workers from national labour standards protecting freedom of association and collective bargaining	<ul style="list-style-type: none"> • Bolivia: Agricultural workers are excluded from the scope of the Bolivian General Labour Act, 1942.¹⁴⁵ • United States: National Labor Relations Act (NLRA) establishing particular rights and obligations regarding union representation and collective bargaining excludes agricultural workers from protection.¹⁴⁶
Exclusion of particular categories of agricultural workers	
Exclusion based upon the number of employees or size of farms	<ul style="list-style-type: none"> • Bangladesh: Labour Act does not apply to agricultural farms where less than five workers are normally employed.¹⁴⁷ • Honduras: Workers in agricultural and stock-raising enterprises that do not permanently employ more than 10 workers are excluded from protection under the Labour Code of 1959.¹⁴⁸ • Saudi Arabia: Labour Law of 2005 excludes agricultural workers from protection, except workers in undertakings including more than 10 workers, firms that process their own products, and workers who operate or repair agricultural machinery on a permanent basis.¹⁴⁹ • Turkey: Labour Act, 2003 excludes workers in an agricultural or forestry enterprise that employs less than 50 workers from labour law and national social security protections.¹⁵⁰

¹⁴⁴ This typology draws from the *General Survey concerning the right of association and rural workers' organizations and instruments*, conducted in 2014 and released 2015

¹⁴⁵ Section 1 of the General Labour Act of 1942 and its regulatory Decree No. 224 of 23 August 1943. See also *Plurinational State of Bolivia* – CEACR, Convention No. 87, observation, published in 2014, in which the Committee noted the Government's indication that "a new General Labour Act is being prepared which, among other matters, provides for the inclusion of rural and agricultural workers so that they can benefit from all social rights."

¹⁴⁶ 29 USC Section 152(3), excepting from the Act's coverage "any individual employed as an agricultural labourer."

¹⁴⁷ *Bangladesh* – CEACR, Convention No. 87, observation, published in 2014. Section 1(4)(n) of the Bangladesh Labour Act 2006 amended by section 2(c)(i) of the Bangladesh Labour (Amendment) Act, 2013.

¹⁴⁸ *Honduras* – CEACR, Convention No. 87, observation, published in 2013 (section 2(1) of the Labour Code 1959).

¹⁴⁹ Article 5(4), (5) and (6), and article 7(4) of Royal Decree No. M/51 of 2005.

¹⁵⁰ Labour Act of Turkey, Law No. 4857 of 2003, enacted 22.05.2003 and published in the Official Gazette on 10 June 2003, Art. 4, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64083/77276/%20F75317864/TUR64083%20English.pdf>



<p>Exclusion of self-employed and own-account workers</p>	<ul style="list-style-type: none"> • Central African Republic: Self-employed workers are excluded from protection under the Labour Code of 2009.¹⁵¹ • Pakistan: The Industrial Relations Act, 2012, the Balochistan Industrial Relations Act 2010, Khyber Pakhtunkhwa Industrial Relations Act 2010, Punjab Industrial Relations Act 2010 and Sindh Industrial Relations Act 2010, exclude independent agricultural workers, workers in charitable organizations and others from their application.¹⁵² • Sri Lanka: Workers without an employer-employee relationship such as small owner-occupiers and share croppers are not covered by the Trade Union Ordinances of 1935, but could form other organizations under the Agrarian Services (Amendment) Act No, 4, 1991 which excludes the right to bargain collectively.
<p>Employment status-based exclusions impacting agricultural workers</p>	
<p>Exclusion of temporary, seasonal, and casual workers from labour law protections</p>	<ul style="list-style-type: none"> • Chile: Seasonal and short duration workers excluded from collective bargaining rights.¹⁵³ • Qatar: Law No. 14 of 2004, article 3(3) excludes casual workers from labour law protections. • Syrian Arab Republic: Labour Code 2010, article 5(a)(6) excludes casual workers from labour law protections.
<p>Migration status-based exclusions impacting agricultural workers</p>	
<p>Restrictions on freedom of association for migrant or foreign workers that impact agricultural workers</p>	<ul style="list-style-type: none"> • Algeria: Only persons who are Algerian by birth or who have had Algerian nationality for at least ten years may establish a trade union¹⁵⁴ • Central African Republic: Foreign workers can only join trade unions after a minimum legal residence of two years and provided that their own country granted the same right to nationals of the Central African Republic¹⁵⁵
<p>Subnational exclusions of agricultural workers</p>	
<p>General recognition of the right to organize at the national level that does not apply or applies differentially at the sub-national level</p>	<ul style="list-style-type: none"> • Canada: Not all provinces apply labour relations legislation to agricultural workers. Workers on farms and ranches in Alberta are excluded from protection of freedom of association and collective bargaining. Agricultural and horticultural workers in Ontario does not offer the same level of protection as general labour relations legislation.¹⁵⁶

¹⁵¹ *Central African Republic* – CEACR, Convention No. 87, direct request, published in 2014 (article 2 of the Labour Code of 2009).

¹⁵² *Pakistan* – CEACR, Convention No. 98, observation, published in 2013 (section 1(3)).

¹⁵³ *Chile* – CEACR, Convention No. 87, observation, published in 2010.

¹⁵⁴ *Algeria* – CEACR, Convention No. 87, observation, published in 2014 (section 6 of Act No. 90-14 of 2 June 1990).

¹⁵⁵ *Central African Republic* – CEACR, Convention No. 87, observation, published in 2014 (article 17 of the Labour Code).

¹⁵⁶ *Canada* – CEACR, Convention No. 87, observations, published in 2001 to 2014. See also, Committee on Freedom of Association, Case No. 2704 (*Canada*), Reports Nos 358 and 363.

APPENDIX 2

Case Studies on Exclusion of Agricultural Workers from Legal Protection

COSTA RICA

Solidarismo and repression of free and independent trade unions¹⁵⁷

Costa Rica has a vibrant history of trade union organizing in the agricultural sector. Trade unions on banana, sugarcane, and other monoculture plantations fought for and won social protection frameworks for agricultural workers in response to the rise of agribusiness, spread of agricultural plantations, and exploitation of wage workers that shaped the economic landscape of the country during the 19th and 20th centuries. As trade unions grew in strength and number, however, they faced widespread repression in the 1980s at the hands of agribusiness interests.

Today, Costa Rica's Constitution and Labor Code guarantee freedom of association by allowing workers to organize freely and to form unions without previous authorization, and by law, workers may not be forced to either form a union or refrain from organizing one. However, these protections are not enforced. Instead, agricultural workers have been deemed essential workers and thereby prohibited from striking. Agricultural trade unions face repression and violence. They are also systematically undermined by a growing number of Solidarismos (Solidarity Associations)—non-dues collecting business and government-sponsored alternative workplace organizations that undermine the formation of free and independent trade unions.

The rise of agribusiness in Costa Rica, 1870-1940

While agricultural work in Costa Rica was initially linked to personal consumption, by the beginning of the 19th century, the sector saw a progressive shift to agricultural plantations—including tobacco, cocoa, sugar cane, and later bananas. During the Liberal Era (1870-1940), export-oriented banana cultivation boomed due to railroad construction, and the opening of a transoceanic route from the Pacific to the Caribbean Sea. The banana plantations required a larger labor force, drawing in immigrant workers from the Afro-Caribbean, Italy, and China. In Costa Rica, like on other banana plantations across the Atlantic, the United Fruit Company (UFC) paid worker meagre wages; required them to buy food, medicine, and other goods from company stores and provided cramped and unsanitary housing. Workers on banana plantations faced malaria, dysentery, intestinal parasites, snake bites, and occupational risks including cuts and agrochemical poisoning.

Alongside banana plantations, coffee and sugar cane production began to follow the plantation model. Coffee cultivation on smaller properties co-existed with coffee plantations, distributing some wealth to small and medium agricultural producers, and employing a low wage workforce on larger plantations. Coffee and sugarcane plantation owners paid lower wages than the UFC, required goods to be purchased from company stores, and provided cramped and unsanitary living quarters. The local political elite engaged in coffee growing had significant influence over public policies related to agricultural workers, limiting the economic and social rights of waged agricultural workers into the 21st century.

¹⁵⁷ This case study was adapted from Gerardo Castillo Hernandez-Frank Ulloa Royo, *Convenio sobre el derecho de asociación (agricultura), 1921 (Núm. 11): 100 años de lucha por la libertad sindical Costa Rica*. Advance copy on file with author.



Trade union mobilization in the agricultural sector

Throughout this period, the Costa Rican labor movement was active in organizing workers to secure their rights to decent housing, working conditions, and wages. The labor movement also created night schools, social centers, and libraries. By the 1930s, the Communist Party emphasized the importance of organizing the agro-industrial working class, due in part to the lack of an industrial working class in the country. The Civil War of 1948 did not abolish the advances in social protection hard won by the labor movement—in fact, these gains were consolidated and expanded in the Political Constitution of 1949.

Article 62 of the Political Constitution establishes that collective labour agreements shall have the force of law, if entered into by and between employers or employers' unions and legally organised trade unions. The Labor Code of 1943 regulates employment contracts; and establishes minimum wages, the eight-hour working day, holidays, vacations, and overtime and severance pay. Agricultural workers were, however, systematically exempt from some of these protections.

Costa Rica ratified Convention 11 in 1963, spurred forward by unions on multinational banana plantations who sought to secure the right to freedom of association in a context dominated by powerful agribusiness. That same year, the ILO Committee on Freedom of Association (CFA) addressed a Costa Rica case involving United Fruit Company (UFC) management prohibiting trade union representatives from using public roads in large plantation areas to reach workers at their homes. The CFA said:

[E]mployers of plantation workers should provide for the freedom of entry of the unions of such workers for the conduct of their normal activities...[T]he Committee, while recognising fully that the estates are private property, considers that, as the workers not only work but also live on the estates, so that it is only by entering the estates that trade union officials can normally carry on any trade union activities among the workers, it is of special importance that the entry into the estates of trade union officials for the purpose of lawful trade union activities should be readily permitted, provided that there is no interference with the carrying on of the work during working hours and subject to any appropriate precautions for the protection of the estate.¹⁵⁸

In 1952, striking workers on banana plantations won the right to insurance coverage for accidents at work. In 1959, unions struck to secure bonuses for workers. In 1971, they won the first Collective Labor Agreement. By the 1970s, Costa Rica was reckoning with deforestation of primary forests, displacement of indigenous communities, less productive agricultural land, rising rural poverty, and unemployment. At the same time, formation of trade unions in the agricultural sector continued to rise, advancing the collective bargaining capacity of banana workers across plantations in the southern part of the country, as well as sugarcane workers. The southern banana producing region of Costa Rica emerged as a main bastion of the trade union movement in Costa Rica—including powerful organizations such as FETRABA, FOBA, FUTRA, and the UTG. In 1977, workers from the Taboga Sugar Mill struck over working conditions, winning the first collective agreement in sugar cane and consolidating the SINTRAICA union.

¹⁵⁸ See International Labour Office Governing Body, Report No. 66, (1963) Case No. 239 (Costa Rica), paras. 154, 168 https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2898464

Business and state repression of trade unions and the introduction of Solidarismo

This advance in unionization was met with repression in the 1980s. In 1984, banana plantation workers held a 72-day strike. In response, through direct arrangements endorsed by the Ministry of Labor and Social Security in Costa Rica, plantations relocated to the South Pacific part of the country, and other areas of the Caribbean where freedom of association and collective bargaining were prohibited. The UFC also began to diversify, cultivating less labor-intensive crops such as palm oil. At the same time, Costa Rica adopted a more diversified development model, oriented towards industry, tourism, software production, and the service sector. By the last decades of the 20th century, the Costa Rican agricultural sector diversified to include flowers, ornamental plants, strawberries, melons, pineapples, and palm oil. In fact, by 2011, Costa Rica emerged as the world's leading pineapple producer and exporter.

In this period of transition, agribusiness interests and the government of Costa Rica initiated and advanced Solidarismos (Solidarity Associations)—non-dues collecting business and government-sponsored alternative workplace organizations that undermine the formation of free and independent trade unions. Solidarismos initiated direct agreements between workers and employers to avoid negotiation with unions. Union leaders faced retaliation from employers, including violence and even murder.

Current context: worker and environmental exploitation, barriers to freedom of association, and persistent trade union organizing

Costa Rica's Constitution and Labor Code guarantee freedom of association by allowing workers to organize freely and to form unions without previous authorization, and by law, workers may not be forced to either form a union or refrain from organizing one. However, these protections are not enforced. Instead, agricultural workers have been deemed essential workers and thereby prohibited from striking. Agricultural trade unions face repression and violence. They are also systematically undermined by a growing number of Solidarismos.

Despite the diversification of Costa Rican economy and increasing concentration of employment in urban areas, the absolute number of people employed in agriculture in Costa Rica has increased—including on plantations and produce packing plants. Today, agricultural wage workers earn the lowest wages in Costa Rica and remain excluded from freedom of association protections. While in coffee production, workers have organized themselves into cooperatives where they are building toward living wages and decent working conditions, agricultural wage workers remain excluded from these advances.

Agricultural wage workers employed on large monoculture estates and by transnational agribusiness companies fare the worst among agricultural workers. At work, they face forced labour, mass layoffs, long hours, low wages, and workplace violence. Employed through contractors, they are outside the scope of occupational health and social security protections. Costa Rican agribusiness also continues to hire migrant workers—for instance, more than 15,000 Nicaraguan workers are employed on the 40,000 hectares cultivated with pineapple.

Concentrated in temporary work, women agricultural workers face gender-based violence and harassment at the intersection of labour and patriarchal exploitation. Women earn lower wages for equal work, rarely receive promotions, and are denied maternal health benefits. As temporary workers, women are also excluded from social security benefits. Women of Afro-descent may face further discrimination.

Agribusiness also continues to have a devastating environmental footprint, with both environmental and social costs. Companies including Chiquita, Dole, and Del Monte, among others, maintain political lobbying teams to exert influence over state policy and implementation in the agricultural sector. The expansion of pineapple plantations—like banana plantations before them—has displaced traditional grains and vegetables, threatening Costa Rica’s independent food security. The use of agrochemicals for fumigation has polluted aqueducts in surrounding communities, leaving both people and livestock in these areas without potable drinking water. Chemical pollution has also been traced into the rivers and seas.

Initiatives to organize democratic trade unions are routinely met with employer repression, and even death threats and violence. Despite the longstanding 1963 clarification by the CFA that trade union officials should be readily permitted to enter agricultural estates,¹⁵⁹ union leaders and organizers are prevented from entering farms to speak with workers and collect dues. Solidarismos have also grown in number while membership in trade unions has declined. While these associations are prohibited by law from assuming trade union functions, inhibiting the formation of a union, or representing workers in collective bargaining, Solidarismos have been manipulated by employers to displace trade unions and to dissuade collective bargaining. Workplace dialogue is also channelled through Permanent Committees—another forum designed to displace trade unions. These anti-union strategies are implemented by agricultural employers through teams of lawyers and human resources professionals.

Despite systematic repression of trade unions, trade union organizing persists. Although there is a low representation of women workers in agricultural trade unions, due to their concentration in contract and other forms of temporary work, women hold high level leadership positions in Costa Rica’s agricultural unions. Indigenous workers have won union representation through unions including SITRACHIRI on Chiquita farms; women of Altos de Conte formed their own union; and indigenous Tcrun Churin workers employed on African palm plantations and in pine forests are also forming unions. These unions address labour exploitation by transnational companies, and work to recover their ancestral lands. In 2018, the SINTRAICA trade union led a strike at the Taboga Sugar Mill—the only remaining trade union in Costa Rica’s sugar mills—to address hiring discrimination. In 2021, the union denounced working conditions that fall far below decent work standards. Small farmers have also organized into trade unions, including UPA Nacional and UPAGARA. These small farmer unions represent workers as both small farmers and wage earners; for instance, UPAGARA members include small corn producers from across the Caribbean, and the union also advocates for these workers in wage positions on banana and pineapple plantations.

¹⁵⁹ Ibid.

PAKISTAN:**Subnational exclusions and winning the right to organize in Sindh Province**

In Pakistan, as in other national contexts where labour standards are established at the provincial or state level, some provinces protect freedom of association and other labour rights for all agricultural workers while others do not. Although Pakistan ratified Convention 11 in 1923, the Industrial Relations Act, 2012 and the Balochistan, Khyber Pakhtunkhwa, and Punjab Industrial Relations Acts of 2010 exclude independent agricultural workers from their application.¹⁶⁰ However, due to trade union organizing, in 2019, Sindh Province amended the Sindh Industrial Relations Act of 2010 to extend labour rights protections to agricultural and fishery workers, including the right to organize and form unions; and recognized women's work in agriculture with the passage of the Sindh Women Agricultural Workers Act No. 5 of 2020.

Women Workers Unionize and Secure Freedom of Association in Sindh Province

In 2019, Sindh Province amended the Sindh Industrial Relations Act of 2010 to extend labour rights protections to agricultural and fishery workers, including the right to organize and form unions. In 2019, the Provincial Assembly of Sindh also broke new ground in recognizing women's work in agriculture with the passage of the Sindh Women Agricultural Workers Act No. 5 of 2020. The Act seeks to protect and promote the rights of women workers, ensure their rights in workplace decision-making, and improve the health of nutrition of women agricultural workers and their children.¹⁶¹ The Act also secures the right of women workers in agriculture to organize collectively and represent members vis-à-vis government authorities. Where there is an employment relationship, unions can also engage directly with employers to represent member interests.

The passage of the landmark Sindh Women Agricultural Workers Act No. 5 of 2020 was catalyzed by union advocacy. In 2016, the IUF affiliated Sindh Nari Porhiat Council (SNPC) formed the first union of women workers engaged in agriculture in Pakistan. SNPC's membership includes women working as self-employed farmers, agricultural workers, sharecroppers, livestock rearers, and home-based workers paid in cash, in-kind, and in a combination of both. Since 2016, SNPC has actively engaged in campaigning for the rights of women workers, including the right to freedom of association and collective bargaining, and passage of the 2020 Sindh Women Agricultural Workers Act.¹⁶² These victories demonstrate the role of trade unions in representing worker interests at the national level.

¹⁶⁰ *Pakistan* – CEACR, Convention No. 98, observation, published in 2013 (section 1(3)).

¹⁶¹ The Sindh Women Agricultural Workers' Act, 2019, Sindh Act No. V of 2020.

¹⁶² IUF: First union of agricultural women workers launched in Pakistan, 2 April 2016, <https://iuf.org/news/first-union-of-agricultural-women-workers-launched-in-pakistan/>

SOUTH AFRICA: Exclusion and limited implementation of laws protecting farm workers

In South Africa, the relationship between commercial farmers and farm workers originated in racialized 'master-slave' relationships dating back to the seventeenth century. The geographically dispersed isolation of farms and the reality of commercial farming being a closed space, combined to create a context for rights violations that went unregulated, unreported, and unpunished. Within this regime, agricultural workers were excluded from the right to organize or join trade unions until months before the fall of apartheid in 1994. With the fall of apartheid came a raft of progressive legislation conferring economic, social, cultural, civil, and political rights to all South Africans. The laws and policies applicable to farm workers in South Africa provide protections that are in stark contrast with actual practices that persist today, resulting in persistent exclusion of farmworkers from freedom of association and decent work.

What legal protections have been extended to farm workers in post-apartheid South Africa?

Prior to the democratic dispensation, legislation was used to decrease the rights of Africans, including farm workers. The Natives Land Act, 1913 and the Native Trust and Land Act, 1936 were promulgated to ensure that Blacks were prohibited from land ownership outside areas reserved for Africans. The restriction of blacks from land ownership ensured that large commercial farms and mines had access to cheap black labour. This was supported by racialised employment laws such as the Industrial Conciliation Act, 1956 (renamed Labour Relations Act 28 of 1956).

Prior to 1993, farm work in South Africa was classified as a pre-industrial sector, excluding workers from coverage by the national labour relations framework. As a result, farm workers had no right to freedom of association and collective bargaining and trade unions had no rights to access and organise farm workers. Their relationship with their employers was covered by common law which inherently protected the power of the employer— including unfettered rights to dismiss and evict workers from their property.

¹⁶³ According to the Occupational Health and Safety Act, it is the employer's and the workers' joint responsibility to ensure health and safety at the workplace. A Health and Safety Representative has to be appointed and a Health and Safety Committee summoned. The employer must ensure a safe work environment by avoiding hazardous substances or having safety measurements for their use in place, by maintaining equipment regularly and by providing personal protective equipment.

¹⁶⁴ The Compensation for Occupational Injuries and Diseases Act makes provisions for payments to the worker or his dependants in case of disablement suffered by an occupational injury, disease contracted in course of the employment and/or death as a result of such an injury or disease. The contributions are paid by the employer only.

¹⁶⁵ This principle labour legislation covers all sectors of the economy. Initially it had no special provision for farm workers but they have since been included in the Act. It provides for the introduction of elected work councils to internally participate in labour decisions; the right to strike for all employees, if they follow correct procedures; collective bargaining; protection against dismissals, including valid reasons and procedures for dismissal such as prior notification; and more explicit rights for trade unions. However, trade unions are still only required to be allowed on farms if they are already "sufficiently represented" there and if the farmer is informed. It also provides for dispute resolution through the Commission for Conciliation Mediation and Arbitration (CCMA).

¹⁶⁶ The Extension of Security of Tenure Act (ESTA) was implemented in 1997 aimed at giving security to people residing on farms and preventing their evictions from the farms where they live by the farm owners.

¹⁶⁷ The BCEA regulates working times, leave and prohibits child labour and forced labour. It lays out procedures for ending employment contracts, prescribes how records have to be kept and how wages have to be paid out. To enforce the law employees can appeal to the Director General of Labour and to the Labour Court, if their first appeal is not successful. Variations to the BCEA are only allowed through collective bargaining, ministerial exemptions and – to a very limited extent – by individual employment contracts. Farm workers were included into the BCEA of 1983 in 1992. Sectoral determinations replace the BCEA in many sectors of employment, however, the most recent instances being for domestic workers and farm workers. In 1996 a new BCEA was passed, which covered farm workers until the Sectoral Determination for the Agricultural Sector was passed in 2002.

The move towards the South African transition in the 1990s brought legislative advances for farm workers. In 1994, the Agricultural Labour Act, No. 147 of 1993 came into effect, applying the Labour Relations Act, 1956 and the Basic Conditions of Employment Act, 1983 to agricultural activities. Additional protections were also laid out in a post-apartheid raft of labour protections, including the right to join trade unions, contract requirements, minimum wage protections, occupational health and safety standards, and access to farms for labour inspectors. These laws included:

- Occupational Health and Safety Act, No. 85 of 1993, amended by the Occupational Health and Safety Amendment Act, No. 181 of 1993;¹⁶³
- Compensation for Occupational Injury and Disease Act, 130 of 1993, amended by the Compensation of Occupational Injuries and Diseases Amendment Act, No 61 of 1997;¹⁶⁴
- Labour Relations Act, No. 66, of 1995;¹⁶⁵
- Land Reform (Labour Tenants) Act, No. 3 of 1996;
- Extension of Security of Tenure Act Act, No. 62 of 1997;¹⁶⁶
- Basic Conditions of Employment Act, No. 75 of 1997 (the BCEA);¹⁶⁷
- Housing Act, No. 107 of 1997;
- Skills Development Act, No. 97 of 1998;¹⁶⁸
- Employment Equity Act, No. 55 of 1998;¹⁶⁹
- Unemployment Insurance Act, No 63 of 2001, amended by the Unemployment Insurance Amendment Act, No 32 of 2003; and Unemployment Insurance Contribution Act, No 4 of 2002;¹⁷⁰
- Sectoral Determination 13 for Agriculture of 2002, an extension to the BCEA prescribing minimum wages for labour in the agricultural sector;¹⁷¹
- Agricultural Broad Economic Empowerment (AgriBEE) Sector Code, finalised on 28 December 2012, in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, (Act No. 53 of 2003); and
- National Minimum Wage Act, No. 9 of 2018.

¹⁶⁸ The Skills Development Act, which was implemented in April 2000, establishes Sectoral Education and Training Associations (Setas) for 27 economic sectors. The Seta responsible for commercial large-scale agriculture is the Primary Agricultural Education and Training Association (PAETA). Secondary agriculture has its own Seta. Contributions for the Setas have to be made by the employers who employ more than 50 workers and have to equal one percent of their wage bill. 80 per cent of this amount can be reclaimed and used for training initiatives for employees.

¹⁶⁹ The Employment Equity Act is intended to promote equal opportunity and fair treatment in employment through elimination of unfair discrimination; and to implement affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure equitable representation in all occupational categories and levels in the workforce.

¹⁷⁰ Unemployment Insurance in South Africa exists since 1946 and its coverage was significantly extended during the reforms of the 1990s and subsequently. These laws regulate the kind of benefits allowed (unemployment benefits, maternity benefits, illness benefits, dependants' benefits and adoption benefits) and the collection of the contributions. The UI is supposed to be a short-term relief and is largely paid for by a one per cent contribution of the employee's wage by the employer and the employee to the South African Revenue Services. Farm workers are included since 2003. A worker is entitled to benefits according to his average remuneration over the last six months (for lowest paid workers 58 per cent thereof), for a maximum of 238 days. The period of benefits is calculated as one day of benefits for every six days worked. The worker has to have worked for at least six months previous to the application for UIF benefits and the claims have to be made within six months after termination of the working relationship.

¹⁷¹ Sectoral Determination 13 for Agriculture of 2002 sets a minimum wage for farm in more urban areas where wages are higher, and the rural areas where they are comparatively lower. It caps deductions for payments in kind, e.g. for housing which has to be of a certain standard, and for food to not more than 10 per cent of the farm worker's wage. Exemption from the new legislation can be issued by the Department of Labour. The legislation is aimed at eradicating poverty and protecting the rights of vulnerable people and to prevent the exploitation of farm workers.

Unions and the ruling party, the African National Congress (ANC) government, see these labour law protections as milestones to help farm workers break out of cycles of poverty and begin redressing problems of inequality and the legacy of apartheid. However, advances in line with this new legal architecture have faced considerable opposition from farming bodies at the level of drawing up and implementing these laws. Moreover, this raft of progressive legislation was passed in tandem with trade reforms and liberalisation in the 1990s that led to the decrease of protection and subsidies in the sector.¹⁷² For instance, six of the fifteen control boards which regulated pricing and marketing were abolished.

Since Constitutional democracy, no worker is excluded from the protection of the law. The challenge in the agricultural sector is the practical enjoyment of these protection since employers routinely violate freedom of association and other labour rights, directly and indirectly. The relationship between farm workers and their employers continues to be characterized by asymmetry of power encoded in social relations, paternalism, repression, exploitation and denial and practical exclusion from basic labour and human rights.

Why have these legal protections failed to significantly advance decent work for agricultural workers?

Despite the recent extension of labour rights protections to agricultural workers, labour rights violations remain rampant across South Africa. Farmers routinely violate labour rights for agricultural workers, the government of South Africa has systematically failed to enforce protective measures, and trade unions struggle to hold farmers and the government accountable.¹⁷³

Farm workers remain among the poorest people in South Africa, earning far below other workers. Factors inhibiting labour rights protection for farm workers include:

- Barriers to freedom of association,
- Limited labour standards enforcement,
- Minimum wage exemptions and piece rate work, and
- Land reform policy.

This contemporary framework of exclusion indicates that even in national contexts where de jure legal exclusion of agricultural workers has been rolled back, the legacies of institutionalized exclusion continue to undermine freedom of association and decent work for agricultural workers.

1. Barriers to freedom of association

Farm work in South Africa is characterised by paternalistic relationship and an asymmetry of power between workers and farmers that are encoded in social relations. Many farm workers depend on the farmer for access to housing, water, land, etc. Farmers deny trade unions access to their farms, contributing to a low level of trade union density.

Moreover, after the slate of labour reforms adopted in 1994, illegal eviction of farm workers from farms has increased. Widespread evictions have left workers who have lived and worked on farms for generations without a home or workplace. They have also underscored the precarity of housing, water, and land access for farm workers, reinforcing the authority of employers in this domain. These paternalistic relationships of dependency hinder worker agency to form or to be part of trade unions.

¹⁷² Anseeuw, Ward, Nicolas Pons-Vignon (2012), Working conditions in South Africa since the end of apartheid a comparison between the agricultural, forestry and mining sectors, https://agritrop.cirad.fr/566099/1/document_566099.pdf

¹⁷³ Stephen Devereux (2020), "Violations of farm workers' labour rights in post-apartheid South Africa," *Development Southern Africa*, 37:3, 382-404.

2. Limited labour standards enforcement

The Department of Labour (DOL) Inspection and Enforcement Services Unit is tasked with conducting inspections with an overarching aim to promote sound labour practices and improve working conditions, including the implementation of the new minimum wages for farmworkers. However, South African farms are enclaves which are not easily accessible even to state labour inspectors. They represent zones of localised sovereign power and the legal frameworks and policy hold less sway than informal modes of operation that are defined by asymmetric power and social relations.¹⁷⁴ Despite labour law protections that provide inspectors the authority to enter workplaces,¹⁷⁵ it is nationally accepted practice for DOL inspectors to make prior arrangements with farmers to access farms.

Monitoring and enforcement is further undermined by a context where most farms are in remote areas, isolated, and far apart. This combined with a shortage of inspectors and limited resources for inspection means that many farms are never visited by inspectors. For example, in 2012 the DOL only inspected 1,118 farms out of 45,000 workplaces. Moreover, while labour inspectors can legally engage with farm workers by law, labour inspectors typically have no interaction with agricultural workers during site inspections. As such, working conditions remain at the discretion of the employer. For instance, according to a 2012 survey, 28 percent of farm workers were paid below the minimum wage and 30 percent of the workers had no written contract.¹⁷⁶

3. Minimum wage exemptions and piece rate work

Minimum wages are generally seen as a way to secure a minimum acceptable social wage and as a way to alleviate poverty and decrease income inequality. They principally guarantee a set wage for low-skilled workers, enough to cover their basic needs. The Basic Conditions of Employment Act (BCEA) Sectoral Determination for Agriculture prescribes the minimum wage for farm workers. In 2003, the DOL established and implemented a minimum wage for farm workers, and also specified what and how much could be deducted as in-kind payment. However, Section 50 of the BCEA makes provision for exemptions from Ministerial determinations, including minimum wage determination. This provision allows employers to bypass paying minimum wages through exemptions. As a result, the status of farm workers under the new sectoral determination is precarious and they continue to earn low wages that do not protect them from starvation.

Further undermining minimum wage protections, many farm workers in South Africa are still paid on a piece-work basis—for instance per kilo of crop picked, row weeded or hectare sprayed. Piece rate work persists despite the prohibition of this practice in the minimum wage policy. This wage structure provides a strong financial incentive to farm workers to extend their working time to the maximum, lowering wages per hour farm below the minimum wage threshold.

¹⁷⁴ Rutherford, B. (2008). An unsettled belonging: Zimbabwean farm workers in Limpopo Province, South Africa. *Journal of Contemporary African Studies*, 26(4), 401-415.

¹⁷⁵ See Basic Condition of Employment Act, 75 of 1997, Section 65(1), which confers the labour inspector authority to enter relevant workplaces, which includes farms, without warrant or prior notice, at any reasonable time, for the purpose of monitoring and enforcing compliance with the Act.

¹⁷⁶ Bhorat, H., Kanbur, R. and Stanwix, B. (2012) 'Estimating the Impact of Minimum Wages on Employment, Wages and Non-Wage Benefits: The Case of Agriculture in South Africa', DPRU Working Paper No. 12/149, Cape Town: UCT.

4. Land reform policy

The Extension of Security of Tenure Act (ESTA) was implemented in 1997. Although the law aimed at giving security of tenure to people living on farms, it has had some adverse effects on the lives of farm workers. For instance, the right to security of tenure has discouraged some farmers from keeping labour tenants and results in even stronger opposition from farmers to take in families, especially extended families, onto their land. ESTA has also been one of the drivers of mechanisation, and employment of casual labour through labour brokers in the sector.

Together, these exclusionary practices function to exclude farm workers in South Africa from freedom of association and other labour rights protections. Persistent sectoral exclusion of agricultural workers from the right to freedom of association, and the entrenched legacies of exploitation that persist even when these exclusions have been repealed testify to the enduring significance of Convention 11. Addressing the exclusionary structures and practices described in this brief is not sufficient to rectify the systematic exploitation of agricultural workers, but is a critical first step toward advancing other labour rights protections. Ongoing engagement with the ILO Committee of Experts through regular reporting and diligent engagement with observations and requests could provide the critical oversight required to advance freedom of association for agricultural workers in South Africa.

UNITED KINGDOM AND WALES: Abolition of the Agricultural Wage Board

The Agricultural Wage Board (AWB) was a quasi-autonomous non-governmental organization (QUANGO)—an organization tasked with policy operation and implementation that is empowered and funded but not run by the government. The AWB was tasked with regulating relations between farm owners (employers) and farm workers (employees), with a particular focus on wages under the Agricultural Wages Act, 1948 and implementation of annual Agricultural Wages (England and Wales) Orders.

In 2013, the Conservative led government abolished the AWB for England and Wales.¹⁷⁷ The abolition of the AWB was part of the abolition of a large number of QUANGOs—an initiative styled in the UK national press as a “bonfire of the quangos.” The abolition of the AWB followed the Enterprise and Regulatory Reform Act, 2013 (ERRA), aimed at reforming the regulatory environment for small and medium-sized businesses.

What did the AWB protect?

Under the Agricultural Wage Act, 1948, the AWB was tasked with making and implementing the annual Agricultural Wages (England and Wales) Orders (“Orders”)—annually issued orders, the most recent of which was passed in 2012. Orders set minimum wage rates and other minimum terms and conditions of employment which apply to workers in agriculture in England and Wales. The AWB was also tasked with applying the Orders to all employers and all workers, irrespective of if a farmer was a member of a farmer’s organization.¹⁷⁸

Under the Agricultural Wage Act, 1948, it was illegal to pay below the conditions set down in the Orders. Farmer could be prosecuted by the government inspector for non-compliance. In its last year, the 2012 annual AWB Order contained statutory provisions on the following:¹⁷⁹

- Minimum rates of pay for ten grades of agricultural workers¹⁸⁰ that reflected skills, certification and experience (Parts 2-4);
 - ▲ The minimum wage agreed by the AWB was above the national minimum wage. It could start e.g. 0.01- 0.02 GBP above the national minimum wage for unskilled workers (Grade 1) and go up for skilled workers (Grade 2-6) according to their skills and experience. Workers attended vocational qualification training to get certificates recognizing their skills.
- Overtime, in an industry characterised by long and unpredictable hours (Part 3, Articles 22-24);

¹⁷⁷ Department for Environment, Food, & Rural Affairs (Defra), *Defra announces changes to arm's length bodies*, <https://webarchive.nationalarchives.gov.uk/20130123170255/http://www.defra.gov.uk/news/2010/07/22/arms-length-bodies/>

¹⁷⁸ Government of UK, *Agricultural Wages Board—The Agricultural Wages (England and Wales) Order, 2012: A Guide for Workers and Employers, What you need to know about the Agricultural Wages Order, 2012*, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69594/awo2012-guidance.pdf

¹⁷⁹ The following list reflects statutory provisions from the Government of UK, *The Agricultural Wages (England and Wales) Order, 2012*, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69593/awo12.pdf

¹⁸⁰ This includes Grade 1 – Initial Grade; Grade 2 – Standard Grade; Grade 3 – Lead Worker; Grade 4 – Craft Trade; Grade 5 –Supervisory Grade; Grade 6—Farm Management Grade; Full Time Flexible Worker; Part Time Flexible Worker; Apprentice; and Trainee. See Government of UK, *Agricultural Wages Board—The Agricultural Wages (England and Wales) Order, 2012: A Guide for Workers and Employers, What you need to know about the Agricultural Wages Order, 2012*, para. 4.1 available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69594/awo2012-guidance.pdf

- Maximum deductions for employer provided accommodation (Part 5, Article 30);
 - o a definition of “accommodation,” including that it is fit for human habitation, safe and secure; a bed for the sole use of each individual worker; provision of wholesome accessible drinking water, and suitable sanitary facilities (Part 1, Article 2).
- Allowance for keeping a working dog (Part 6, Article 32);
- Wage supplements for on-call and employment for night work (Part 6, Articles 33-34);
- Terms and conditions for trainees and apprentices, including entitlement to the agricultural minimum wage for agricultural students on a work placement of less than one year (Part 7);
- Entitlement to rest breaks (Part 9);
- Holiday entitlements, bereavement leave, and unpaid leave, recognising the need for proper breaks from arduous manual work (Part 10);
- Sick pay that underpinned proper recovery from illness and injury in the most dangerous occupation in the UK (Part 11);
- Rates of pay for young workers, recognising the full contribution made by workers under age 21 (Schedule 7).

How did the AWB engage with trade unions?

For 65 years, the National Farmers Union (NFU) and the Rural Agricultural and Allied Workers (RAAW) section of UNITE—the union for employees—met annually, along with five government-appointed ‘independents’ from a range of professional backgrounds. Within this forum it was widely recognised that the power relation between farm owner and farm worker was unequal, and that the Orders and AWB were instrumental in protecting farmworker rights.

What are the negative impacts of abolishing the AWB?

In March 2013, UNITE gave a Briefing to House of Commons members on the negative impacts of AWB abolition. UNITE’s Briefing used figures from the UK’s Department for Environment, Food and Rural Affairs (Defra) impact assessment (October 2012), which estimated that over a period of 10 years, 258.8 million pay in GBP would be lost by workers and translate into gains in GBP by employers/ farm owners if the AWB was abolished.¹⁸¹

These figures were subsequently revised upwards in a December 2012 Impact Assessment conducted by Defra,¹⁸² making the cost to workers over a ten-year period even greater.

TABLE 4: COSTS OF ABOLISHING AWBS OVER 10 YEARS IN £MILLIONS

AWB provision lost post-abolition	Cost to workers in GBP
AWB pay premium	Up to 149.9 million
For new contracts, loss of AWB annual leave entitlement	Up to 100.1 million
Loss of AWB sick pay	Up to 8.8 million
Total	258.8 million

Source: Defra impact assessment, Dec 2012

The abolition of the AWB re-enacts the repeated exclusion of agricultural and horticultural workers from legal protection, equity, and social justice, resulting in the loss of legal protection for around 150,000 low paid agricultural and horticultural workers.

¹⁸¹ UNITE’s November 2012 response to the government consultation on the abolition of the AWB in England and Wales.

¹⁸² Defra, Abolition of the Agricultural Wages Board, December 19, 2012, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/82649/awb-consult-final-ia-20121219.pdf

UNITED STATES:**Race and Exclusion of Agricultural Workers from Labour Rights Protections**

In 1935, the United States passed the National Labor Relations Act (NLRA). At the time, agricultural and domestic workers who were mostly black were excluded from protection under the NLRA in order to meet conditions of Southern politicians whose votes were required to pass the law and who sought to maintain a racialized low wage workforce in agriculture and domestic work and uphold a racialized social and economic order. Thus, implicitly racialized exclusions that reflected the social patterns of slavery were written into US law and many remain on the books. Today, agricultural workers—mostly migrant workers from the Southern US, Mexico, and Central America and Black workers—still live with this racist legacy as every labour reform since then has continued to omit them from labour rights protections.

Race and exclusion in the framing of the FLSA and NLRA

The foundation for the current framework for labour rights and protections was developed in the 1930s in response to a wave of massive strikes among industrial workers. The first of these laws included the NLRA, intended to encourage collective bargaining; and the Fair Labor Standards Act (FLSA), which mandated minimum labour standards. FLSA and NLRA advocates traded the rights of agricultural and domestic workers to conservative Southern Democrats in order to pass this landmark legislation, while Southern Democrats made the racialized exclusion of agricultural and domestic workers a condition of their support. Reflecting the legacy of plantation slavery, agricultural work remained at the core of the Southern economy. Most of the era's agricultural workers and domestic workers were African American, and maintaining racialized exclusion from labour laws was crucial to weakening their position as workers in order to increase the profits of white Southern landholders and employers.¹⁸³

When the NLRA was signed into law in 1935 it gave employees the right, under Section 7, to form and join unions and obligated employers to bargain collectively with unions selected by a majority of employees in a bargaining unit. The NLRA was framed in response to calls for economic justice by Black agricultural workers in the American South and industrial workers across the nation.¹⁸⁴ At the time of its passage, however, although the NLRA covered workers in most industries, agricultural workers—an overwhelmingly Black labour force—were entirely excluded from protection. Democrats at the time passed separate legislation to promote labour rights and racial equality, splitting issues of class and race into two sets of legal frameworks, neither of which had enough authority to integrate the labour movement.¹⁸⁵

NLRA exclusions, moreover, were re-institutionalized in the Fair Labor Standards Act (FLSA). On the heels of the NLRA, 1935, The FLSA 1938 established federal standards for minimum wage and overtime pay, but the law excluded millions of domestic and agriculture workers who were overwhelmingly people of color. Although farm workers gained some minimum wage protections in 1966, exclusions on overtime have persisted. For instance, while the FLSA was extended to apply minimum wage and recordkeeping provisions to most agricultural workers and employers, workers remain unprotected by the Act's overtime pay provisions.¹⁸⁶

¹⁸³ Excluded Workers Congress, *Expanding the Right to Organize to Win Human Rights at Work*, December 2010, <https://www.reimaginerpe.org/files/Excluded%20workers%282%29.pdf>

¹⁸⁴ Lisa R. Goluboff, *The Lost Promise of Civil Rights*, Cambridge: Harvard University Press, 2010.

¹⁸⁵ Paul Frymer, *Black and Blue: African Americans, the Labor Movement, and the Decline of the Democratic Party*, Princeton: Princeton University Press, 2007.

¹⁸⁶ "US Labor Law for Farmworkers," *Farmworker Justice*, <https://www.farmworkerjustice.org/advocacy-and-programs/us-labor-law-farmworkers>

Race, citizenship status and exclusion in the contemporary agricultural sector

Over time, the industry required a new low wage work force excluded from labour rights protections. Capitalizing on exclusion of agricultural workers from protection under the NLRA, the composition of the United States workforce has shifted to include significant numbers of migrant workers from Mexico and Central America that are not only excluded from freedom of association protections but are also subject to control by the state on the basis of their immigration status. More recently, although Federal and State laws prohibited convict leasing for most of the 20th Century, in recent years, due to a spike in border enforcement and anti-immigration policies leading to a diminishing supply of agricultural workers, growers in states including Arizona, Idaho, and Washington have begun leasing incarcerated workers from prisons.¹⁸⁷

According to reports from the U.S. Department of Agriculture and the U.S. Department of Labor, there are an estimated 2 to 3 million migratory and seasonal agricultural workers employed in the United States. At least six of ten farm workers are undocumented immigrants, which combined with immigrants with H-2A and H-2B visas, makes immigrant workers the vast majority of farm workers in the United States¹⁸⁸ Over one-half of the approximately 2.5 million seasonal workers on U.S. farms and ranches lack authorized immigration status.¹⁸⁹ Data has long show that workers in the U.S. on H-2A visas are disproportionately represented amongst victims of trafficking due to fraudulent recruitment tactics that include false promises and exploitative employment, and this situation has been exacerbated significantly during the pandemic. In a six-month period in 2020, the proportion of reported labor trafficking victims went up from around 11% to 25%.¹⁹⁰

The Migrant and Seasonal Agricultural Worker Protection Act (AWPA/MSPA) is the principal federal employment law specifically directed at farm workers. Under the current law, employers must disclose terms of employment at the time of recruitment and comply with those terms, must have registered and licensed farm labour contractors, and must meet federal and local housing and transportation standards. The law also adopts a broad definition of the employment relationship so that most agricultural workers are considered “employees” under the law, enforced by the Department of Labor’s Wage and Hour Division.¹⁹¹ However, employers, contractors and recruiters have structured the industry in a way that makes these protections difficult to establish due to the many intermediaries involved in determining their working conditions, transporting workers, recruiting and hiring workers, supervising workers on the fields, and contracting. Migrant status—whether temporary guest worker or undocumented status—adds an additional category of contingency for many workers that creates obstacles for enforcing workplace rights.¹⁹² As such, protections under the AWPA/MSPA are not sufficient, to promote safe and dignified working conditions for farm workers.

¹⁸⁷ Rebecca McCray, “A Disturbing Trend in Agriculture: Prisoner-Picked Vegetables – Some states are turning to their prisons to make up for farmworker shortages,” April 14, 2014, Takepart, <http://www.takepart.com/article/2014/04/14/prison-ag-labor>; Dan Wheat, “Grower turns to prison for apple harvest help,” Capital Press, December 13, 2018, https://www.capitalpress.com/state/washington/grower-turns-to-prison-for-apple-harvest-help/article_f623bacc-1d7d-5787-b748-0123b5947ca9.html; Lauren Castle and Maria Polletta, “Some prisoners in Arizona make 10 cents per hour –should they get a \$3 minimum wage,” Arizona Republic, February 7, 2020, <https://www.azcentral.com/story/news/local/arizona/2020/02/07/arizona-lawmaker-proposes-3-per-hour-minimum-wage-prisoners/4681453002/>

¹⁸⁸ “Injustice on Our Plates: Immigrant Women in the U.S. Food Industry,” *Southern Poverty Law Center*. 2010, https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Injustice_on_Our_Plates.pdf. See also <https://www.splcenter.org/20101107/injustice-our-plates>

¹⁸⁹ “Immigration Reform & Farmworkers,” *Farmworker Justice*, <https://www.farmworkerjustice.org/advocacy-and-programs/agjobs>

¹⁹⁰ Polaris, *Labor Exploitation and Trafficking of Agricultural Workers During the Pandemic—A Snapshot: June 2021*, https://polarisproject.org/wp-content/uploads/2021/06/Polaris_Labor_Exploitation_and_Trafficking_of_Agricultural_Workers_During_the_Pandemic.pdf

¹⁹¹ “US Labor Law for Farmworkers,” *Farmworker Justice*, <https://www.farmworkerjustice.org/advocacy-and-programs/us-labor-law-farmworkers>

¹⁹² National Guest Worker Alliance, *Raising the Floor for Supply Chain Workers: Perspective from Seafood Supply Chains*, June 2016.

Addressing these gaps in protection for Mexican migrant workers in the United States, on May 13, 2021, Mexico's ambassador to the United States, Esteban Moctezuma, wrote a letter to U.S. Labor Secretary Marty Walsh, addressing failures to enforce labour laws in the U.S. agriculture and meat packing industries. In particular, Ambassador Moctezuma, backed by Mexican President López Obrador, raised concerns about wage related rights violations, restrictions on union organizing, excessive work without breaks, and failure to follow COVID-19 health protocols. Mexico also proposed initiating a "space for cooperation" under the United States-Mexico-Canada agreement (USMCA).¹⁹³

Farmworker initiatives to win freedom of association and other labour rights

Despite these barriers, farm workers are organizing to gain power in their workplace and win rights to unionize across the country. Farm worker organizations have successfully advocated to begin addressing these issues in the past by getting the Department of Labor to revise its regulations regarding the concept of joint employer liability, so that it became clear that most farming operations that use labour contractors are the joint employers of the farmworkers, and are thus jointly responsible for minimum wages and other employer obligations.¹⁹⁴ These wins have come under assault by the new DOL and NLRB, with the NLRB announcing new rules in 2018 for determining joint-employer status.¹⁹⁵ In specific, the newest rule re-clarifies that "an employer may be considered a joint employer... only if the two employers share or codetermine the employees' essential terms and conditions of employment" and "must possess and actually exercise substantial and direct immediate control."¹⁹⁶

In New York, after years of worker actions and attempts to win the Farmworkers Fair Labor Practices Act,¹⁹⁷ a 2018 court case challenged the constitutionality of denying farm workers basic organizing rights,¹⁹⁸ paving the way for big changes. In *Hernandez v. Flores*, the New York Civil Liberties Union contended on Hernandez' behalf that the exclusion of farmworkers from constitutional protections violated their fundamental rights to organize as employees and from equal protection and due process under the New York Constitution.

¹⁹³ Mexico News Daily, "Mexico responds to GM union complaint by accusing US of violating migrants' rights," May 13, 2021, <https://mexiconewsdaily.com/news/mexico-accuses-us-of-violating-mx-migrants-rights/>; Reuters, "Mexican voices "disquiet" of U.S. farm and meat packing labor practices," May 13, 2021, <https://www.reuters.com/article/usa-trade-mexico-complaint/mexican-voices-disquiet-over-us-farm-and-meat-packing-labor-practices-idUSW1N2KJ00M>

¹⁹⁴ "Sub-Contracted Workers," *Farmworker Justice*, <https://www.farmworkerjustice.org/advocacy-programs/immigration-labor/sub-contracted-workers>. See also Bruce Goldstein, Marc Linder, Laurence E. Norton II, and Catherine Ruckelshaus, "Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment," *UCLA Law Review*. April 1999, https://www.farmworkerjustice.org/sites/default/files/documents/7.6.a.%20Enforcing%20Fair%20Labor%20Standards%20in%20the%20Modern%20American%20Sweatshop_1.pdf and Catherine Ruckelshaus & Bruce Goldstein, "From Orchards to the Internet: Confronting Contingent Work Abuse," *National Employment Law Project & Farmworker Justice Fund*. 2002, <https://www.farmworkerjustice.org/sites/default/files/documents/7.6.b%20OrchardstoInternet.pdf>

¹⁹⁵ "The Standard for Determining Joint-Employer Status: A Proposed Rule by the National Labor Relations Board on 09/14/2018," <https://www.federalregister.gov/documents/2018/09/14/2018-19930/the-standard-for-determining-joint-employer-status>

¹⁹⁶ "The Standard for Determining Joint-Employer Status: A Proposed Rule by the National Labor Relations Board on 09/14/2018," <https://www.federalregister.gov/documents/2018/09/14/2018-19930/the-standard-for-determining-joint-employer-status>

¹⁹⁷ Jenny Braun, "Today's News & Commentary – May 21, 2018," *On Labor*. 21 May 2018, <https://onlabor.org/todays-news-commentary-may-21-2018/>

¹⁹⁸ *Harvard Civil Rights – Civil Liberties Law Review*. 30 November 2018, <https://harvardcrcl.org/labor-law-left-farm-workers-behind-this-state-constitutional-case-may-change-that/>; "Lawsuit Challenges Shameful Exclusion of Farmworkers from Right to Organize," *American Civil Liberties Union*. 10 May 2016, <https://www.aclu.org/press-releases/lawsuit-challenges-shameful-exclusion-farmworkers-right-organize>

The Supreme Court declared the exclusion unconstitutional, finding farm workers to have the same rights as all employees to bargain collectively under the state constitution.¹⁹⁹ The case, combined with worker organizing, resulted in landmark New York legislation: the Farm Laborers Fair Labor Practices Act was passed and signed into law in 2019.²⁰⁰ The Act grants collective bargaining rights, workers' compensation, unemployment benefits, overtime provisions, mandatory rest times, and sanitary codes for all farm workers in the state.²⁰¹

Partially mapped off of this state-level initiative, in May 2021, 54 Members of Congress Reintroduced the Fairness for Farm Workers Act.²⁰² The bill requires employers to compensate agricultural workers for overtime hours in line with the FLSA. Notably, this bill is limited in that it does not grant collective bargaining rights to farm workers nationally.

¹⁹⁹ *Harvard Civil Rights – Civil Liberties Law Review*. 30 November 2018, <https://harvardcrcl.org/labor-law-left-farm-workers-behind-this-state-constitutional-case-may-change-that/>; “Lawsuit Challenges Shameful Exclusion of Farmworkers from Right to Organize,” American Civil Liberties Union. 10 May 2016, <https://www.aclu.org/press-releases/lawsuit-challenges-shameful-exclusion-farmworkers-right-organize>

²⁰⁰ Farm Laborers Fair Labor Practices Act, S.6578/A8419, Sponsored by Senator Jessica Ramos. 19 June 2019 <https://legislation.nysenate.gov/pdf/bills/2019/S6578>; <https://www.nysenate.gov/legislation/bills/2019/s6578>

²⁰¹ See <https://www.nysenate.gov/newsroom/press-releases/senate-passes-farm-laborers-fair-labor-practices-act>; <https://www.governor.ny.gov/news/governor-cuomo-signs-farm-workers-bill>

²⁰² Congressman Raúl Grijalva, Press Release: Rep. Grijalva, 54 Members of Congress Reintroduce Fairness for Farm Workers Act, May 13, 2021, <https://grijalva.house.gov/press-releases/rep-grijalva-54-members-congress-reintroduce-fairness-farm-workers-act>

APPENDIX 3

Engaging the ILO Committee on Freedom of Association (CFA)

In 1951, the ILO set up the Committee on Freedom of Association (CFA) to examine complaints of violations of freedom of association, whether or not the country had ratified the relevant conventions. The CFA is an ILO Governing Body committee with ten members: a chairperson, and three representatives from government, employers, and workers. The objective of the CFA complaint procedure is to engage in a constructive tripartite dialogue to promote freedom of association. In most cases, it follows the following process:

- A complaint is brought to the CFA against a member State by workers' or employers' organizations
- The CFA decides whether or not to receive the case
- If the CFA receives the case
 - ▲ CFA establishes facts of the case in dialogue with the involved government
- If there has been a violation of freedom of association standards
 - ▲ CFA issues a report through the Governing Body and makes recommendations on how the situation could be remedied
 - Governments are requested to report on the implementation of CFA recommendations
 - ▲ In cases where the country has ratified relevant instruments, legislative aspects of the case may be referred to the Committee of Experts
 - ▲ CFA can also propose a "direct contacts" mission to the government concerned to address the problem with government officials and social partners through social dialogue

Source: Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association – Annex 1

Engaging the Committee on Freedom of Association:

- The complaint must be made by a workers' or employers' organization, or a non-governmental organization with consultative status at the ILO
 - ▲ it must be made in writing and signed by a representative of the workers,' employers,' or eligible non-governmental organization
- Address the complaint to the Committee on Freedom of Association
- Allegations must be set out clearly and supported with evidence
- A complaint can be made whether or not the organization has exhausted all the national procedures, but the CFA may consider the fact that a case is under examination by a national jurisdiction
- The CFA meets three times a year in the week preceding the sessions of the Governing Body.

Source: Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association – Annex 1



APPENDIX 4

AWTG—Regulations of the Agricultural Workers' Trade Group 2011

The Agricultural Workers' Trade Group (hereafter referred to as "the Trade Group") constitutes a special group within the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), on the basis of Article 14 (69-74) of the IUF Rules.

Article 1

The object of the Trade Group shall be to unite, within the IUF, all agricultural, rural and plantation workers' (hereafter referred to as agricultural workers') organizations which engage in trade union activities, and which subscribe to the IUF Rules and those of its Regional Organizations, in order to further their common interests and to strengthen international solidarity by:

- (a) giving support in the struggle against economic exploitation, political oppression, and denial or restriction of trade union and human rights;
- (b) assisting trade unions to increase their membership and therefore build their collective bargaining strength and representativity;
- (c) co-ordinating the activities of affiliated organizations for the purpose of the furtherance of common aims;
- (d) devoting particular attention and efforts to the creation of democratic, representative and independent trade unions of plantation, agricultural and allied workers in countries where they do not exist and to strengthening them wherever they are weak;
- (e) organizing international action to promote the economic and social well-being of plantation, agricultural and allied workers; providing - through meetings and congresses - for the mutual exchange of information among affiliated organizations; helping these organizations to achieve their objectives.

Article 2

The Trade Group will seek to achieve this aim by the following means:

- (a) exchange of reports and of information on the situation and the activities of the affiliated organizations in the agricultural sector;
- (b) support and promotion of all endeavours to improve wages, working conditions and social security provisions in the agricultural sector;
- (c) activities on the basis of Articles 2 and 3 of the IUF Rules.

Article 3

The duties of the affiliated organizations are laid down in Article 16 (76-78) of the IUF Rules.

Article 4 The governing bodies of the Trade Group are:

- (1) the Trade Group Conference (hereafter referred to as "the Conference")
- (2) the Trade Group Board (hereafter referred to as "the Board") Article 5

The statutory Trade Group Conference shall fix the number of the members of the Trade Group Board, shall elect them and, from amongst them, the President of the Group and a first and second Vice-President. At the election appropriate consideration shall be given to the various regions. If a member of the Board retires during the period between two statutory Conferences, his/her union shall appoint a substitute. The Board meetings shall be convened by the secretariat as often as circumstances demand, on request of

the President of the Trade Group. Delegation expenses incurred in connection with Board meetings shall be assumed by the delegating unions. Article 5 (bis)

The Trade Group Board is composed of one titular member and two alternate members per region. Additional titular seats will be allocated to the regions within the Agricultural Workers' Trade Group with the highest effective membership, on the understanding that the titular membership of the Trade Group Board will not exceed a total of 9 members. Final composition of the Trade Group Board will be determined at the Trade Group Conference.

The gender of the members of the Board shall reflect the respective membership of men and women in the agricultural sector, therefore, as an objective, not less than 40% of the members of the Board shall be of either gender. Article 5 (bis-2) The tasks of the Trade Group Board shall include:

- to monitor the IUF's activities for agricultural workers in line with the decisions and programme guidelines established by the Trade Group Conference;
- to take the decisions necessary for the effective implementation of these activities as required between two sessions of the Trade Group Conference;
- to consult with the IUF General Secretary, as required, on financial matters related to the agricultural activities and membership of the organization;
- to recommend to the IUF General Secretary on the appointment of the IUF Agricultural Trade Group coordinator by the General Secretary. Article 6

Trade Group Conferences shall be convened when the Board or the Governing Bodies of the IUF consider it necessary. The Conference shall be convened at least six months in advance in consultation with the IUF Secretariat.

- (a) An IUF Governing Body, normally the Executive Committee, can call an extraordinary Conference on its own initiative or in consideration of the express wish of the Agricultural Workers Trade Group. The agenda of the extraordinary conference will be limited to the problems that caused it to be convened.
- (b) All proposals concerning the agenda shall be communicated to the IUF Secretariat at least four months before the date of the Conference, in order to allow sufficient time for translation and timely transmission to the affiliates.
- (c) Organizations affiliated to the Agricultural Trade Group shall be entitled to representation rights at Conference as follows;

Affiliated membership in the AWTG	Voting delegates
Up to 1,000 members	one voting delegate
Between 1,001 and 5,000 members	two voting delegates, of which at least one shall be a woman
Between 5,001 and 20,000 members	three voting delegates, of which at least one shall be a woman
each additional 20,000 members or fraction thereof	one further voting delegate taking into account gender balance

The total number of voting delegates from one organization shall, however, not exceed ten. Representation rights shall be based on the number of members affiliated to the Trade Group in the year prior to the Conference.

Affiliated unions in deciding the composition of their delegation may ignore IUF guidance on ensuring equal participation. However, the AWTG Conference Credentials Committee, shall, when allocating voting rights in the Conference, do so bearing in mind the degree to which gender balance has been respected. The Credentials Committee shall have the right



to reduce voting rights when gender balance has not been respected.

Organizations which, for financial or other reasons, cannot send to the Conference the number of representatives to which they are entitled, are nonetheless entitled to the full exercise of their voting rights by the representatives present. In case of the doubt, the Conference will make the appropriate decision.

Members of the Board are also entitled to voting rights.

- (d) Only such organizations which have completely fulfilled their obligations under the IUF Rules are entitled to voting rights at Conference.
- (e) Expenses of delegates incurred in connection with a Conference shall be assumed by the affiliate concerned.
- (f) The work of the Conference shall be guided by a Resolutions Committee and a Credentials Committee elected from amongst the Conference delegates, taking into account regional and gender balance.

The tasks of the statutory Conference shall include:

- (1) review of activities since the last Conference;
- (2) discussion and decision on proposals submitted;
- (3) election of the Board and of its President and of a first and second Vice- Presidents;
- (4) examination of questions connected with the aims stated in the Trade Group Regulations and the IUF Rules;
- (5) to elaborate and propose to the IUF executive bodies amendments to the rules of the trade group that may be required.

(Adopted by the 1st AWTG World Conference, Denmark, November 30-December 2, 1994, amended by the 3rd World Conference, Geneva, May 10-11, 2002 and the 4th World Conference, Seville, Spain, December 11-13, 2006, 5th World Conference, Accra, Ghana, December 8& 9, 2011 (English-version only)

APPENDIX 5

123 countries have Ratified C11

Country	Date
Albania	03 Jun 1957
Algeria	19 Oct 1962
Antigua and Barbuda	02 Feb 1983
Argentina	26 May 1936
Australia	24 Dec 1957
Austria	12 Jun 1924
Azerbaijan	19 May 1992
Bahamas	25 May 1976
Bangladesh	22 Jun 1972
Barbados	08 May 1967
Belarus	06 Nov 1956
Belgium	19 Jul 1926
Belize	15 Dec 1983
Benin	12 Dec 1960
Bosnia and Herzegovina	02 Jun 1993
Brazil	25 Apr 1957
Bulgaria	06 Mar 1925
Burkina Faso	21 Nov 1960
Burundi	11 Mar 1963
Cameroon	07 Jun 1960
Central African Republic	27 Oct 1960
Chad	10 Nov 1960
Chile	15 Sep 1925
China	27 Apr 1934
Colombia	20 Jun 1933
Comoros	23 Oct 1978
Congo	10 Nov 1960
Cook Islands	12 Jun 2015
Costa Rica	16 Sep 1963
Croatia	08 Oct 1991
Cuba	22 Aug 1935
Cyprus	08 Oct 1965
Czechia	01 Jan 1993
Côte d'Ivoire	21 Nov 1960
Democratic Republic of the Congo	20 Sep 1960
Denmark	20 Jun 1930
Djibouti	03 Aug 1978
Dominica	28 Feb 1983
Ecuador	10 Mar 1969
Egypt	03 Jul 1954
Estonia	08 Sep 1922
Eswatini	26 Apr 1978
Ethiopia	04 Jun 1963
Fiji	19 Apr 1974
Finland	19 Jun 1923
France	23 Mar 1929
Gabon	14 Oct 1960
Germany	06 Jun 1925
Ghana	14 Mar 1968
Greece	13 Jun 1952
Grenada	09 Jul 1979
Guatemala	14 Jun 1988
Guinea	21 Jan 1959
Guyana	08 Jun 1966
Iceland	21 Aug 1956
India	11 May 1923
Iraq	01 Apr 1985
Ireland	17 Jun 1924
Italy	08 Sep 1924





Jamaica	08 Jul 1963
Kenya	13 Jan 1964
Kyrgyzstan	31 Mar 1992
Latvia	09 Sep 1924
Lesotho	31 Oct 1966
Lithuania	26 Sep 1994
Luxembourg	16 Apr 1928
Madagascar	01 Nov 1960
Malawi	22 Mar 1965
Malaysia - Peninsular	11 Jan 1960
Malaysia - Sarawak	03 Mar 1964
Mali	22 Sep 1960
Malta	04 Jan 1965
Mauritania	20 Jun 1961
Mauritius	02 Dec 1969
Mexico	20 May 1937
Montenegro	03 Jun 2006
Morocco	20 May 1957
Mozambique	06 Jun 1977
Myanmar	11 May 1923
Netherlands	20 Aug 1926
New Zealand	29 Mar 1938
Nicaragua	12 Apr 1934
Niger	27 Feb 1961
Nigeria	16 Jun 1961
North Macedonia	17 Nov 1991
Norway	11 Jun 1929
Pakistan	11 May 1923
Panama	19 Jun 1970
Papua New Guinea	01 May 1976
Paraguay	16 May 1968
Peru	08 Nov 1945
Poland	21 Jun 1924
Portugal	27 Sep 1977
Republic of Moldova	04 Apr 2003
Romania	10 Nov 1930
Russian Federation	10 Aug 1956
Rwanda	18 Sep 1962
Saint Lucia	14 May 1980
Saint Vincent and the Grenadines	21 Oct 1998
Senegal	04 Nov 1960
Serbia	24 Nov 2000
Seychelles	06 Feb 1978
Singapore	25 Oct 1965
Slovakia	01 Jan 1993
Slovenia	29 May 1992
Solomon Islands	06 Aug 1985
Spain	29 Aug 1932
Sri Lanka	25 Aug 1952
Suriname	15 Jun 1976
Sweden	27 Nov 1923
Switzerland	23 May 1940
Syrian Arab Republic	26 Jul 1960
Tajikistan	26 Nov 1993
Togo	07 Jun 1960
Tunisia	15 May 1957
Turkey	29 Mar 1961
Uganda	04 Jun 1963
Ukraine	14 Sep 1956
United Kingdom of Great Britain and Northern Ireland	06 Aug 1923
United Republic of Tanzania	19 Nov 1962
Uruguay	06 Jun 1933
Venezuela (Bolivarian Republic of)	20 Nov 1944
Zambia	02 Dec 1964



100 Years of Advancing Freedom of Association

ILO Convention 11's role in promoting rights for agricultural workers

Countries around the world have recognized workers engaged in agriculture as essential to supporting a safe and ample food supply as the global COVID-19 pandemic poses an ongoing threat to public health and economic security.

On its 100-year anniversary, **ILO Convention 11** is more important than ever in addressing the pervasive and ongoing exclusion of agricultural workers from exercising their fundamental right to freedom of association and collective bargaining.

