

Modern Day Slavery in U.S. Agriculture: *Legal Failure and Corporate Complicity*

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

- Article 1 of the Universal Declaration of Human Rights

Slavery and forced labor are universally condemned as amongst the most profound violations of human rights and dignity. The International Labour Organization reflected this consensus when it included the *Elimination of All Forms of Forced or Compulsory Labor* as one of only four principles in its Declaration on Fundamental Principles and Rights at Work.

Yet, modern day slavery around the world is ongoing and systematic, including within the United States. In Florida, U.S., significant numbers of workers are in slavery and/or forced labor at any given moment within the agriculture industry. Indeed, in the last decade there have been six successful federal government criminal prosecutions in Florida for forced labor and slavery resulting in up to 15 year prison terms and the freeing over 1000 workers. The violations, as well as investigations by the Department of Justice, are ongoing.

Forced labor and slavery are driven by the economic and legal context in which farmworkers find themselves. These violations are enabled by 1) discriminatory and inadequate labor laws; 2) failure to ensure basic economic and social rights; and 3) economic structures enabling slavery through concentrated buying power which has driven down wages and fueled inhumane working conditions.

Discriminatory and Inadequate Labor Laws

In no other sectors, outside of agriculture and domestic work, in the U.S. do employers have as much power over their employees. Farmworkers have long been excluded from the country's most basic labor laws, including the National Labor Relations Act (NLRA) – which means farmworkers can be legally fired for collective bargaining efforts. Farmworkers are also excluded from portions of the Fair Labor Standards Act (FLSA), which regulates issues like minimum wage and over-time pay. There are also restrictions on immigration visas for farmworkers that enable abuse. In particular, the H2-A visa increasingly used by farmworkers to work legally in the U.S. has no employer portability – in other words it is valid only with regards to the existing employer regardless of any abuses suffered within that employment situation. This hampers workers from protecting themselves against abuses as the only other option is illegal work or returning home to where there may be no viable work. Together, this scheme clearly enables human rights violations.

“You only have the right to work, not to anything else.”

-Luisa Fernández, a tomato picker from Immokalee, Florida, with no work contract, no overtime pay, no maternity leave, and no paid vacation or sick leave (Oxfam America Interview, Immokalee, Florida, 22 July 2003)

Failure to Ensure Basic Economic and Social Rights

Farmworkers are among the poorest, if not *the* poorest, laborers in the United States economy.⁴ Formally, they earn roughly \$7,500 per year, which is far below the national poverty line.⁵ Undocumented workers earn less than half. Wages are kept low through illegal withholding of pay which is enabled by absolute failure to enforce federal and state wage protection regulations. Farmworkers also generally earn less than the legal minimum wage because they are not compensated for time spent traveling between fields and harvests, time waiting for fields to dry before picking, and time waiting for crops to ripen. In addition, farmworkers' wages have not changed significantly in over twenty-five years. Relative to inflation this is a 65% drop in income in the last quarter decade.⁶

Tomato pickers in Florida are almost universally paid a piece rate, which is 40-50 cents for every 32-lb bucket of produce they pick. At this rate, workers must pick almost two tons of tomatoes to earn \$50.

Another factor contributing to the poverty of farmworkers is their lack of overtime pay. Besides not being adequately compensated for their time, workers often do not have a choice as to whether they want to work overtime. As Luisa Fernandez, a worker in Immokalee, describes,

*"[Overtime work] is compulsory...because once in the field, you can't get to your house. The boss is the one who takes you to the field and brings you back home."*⁷

In addition to the fact that they often earn wages below minimum wage and are not paid overtime, farmworkers also do not have any benefits to supplement their low incomes. They generally lack, among other benefits, health insurance, sick leave, vacation pay, and a pension. In addition, the few farmworkers who have access to either benefits from their employers or contribution-based and needs-based services has been declining.⁸ Farmworkers' lack of access to health insurance means they lack information about medical services, confront long travel times to medical facilities from their isolated labor camps, face language barriers, and often encounter hostility from employers reluctant to report workplace injuries or illnesses.⁹

The failure to ensure farmworkers basic economic and social rights is also reflected in the sub-standard housing they inhabit. Workers have no telephones, no cars, and neither heat nor air conditioning in the shacks and trailers they inhabit. Overcrowding is both common and severe.¹⁰ Twelve to fifteen people, or roughly three families, may live in a single-wide trailer, hanging sheets as dividing walls. Far from being cheap, a trailer such as the one just described may be up to \$1,200 per month in rent. Shacks can rent for upward of \$200 a week, a square-footage rate approaching Manhattan's, one of the highest rent districts in the U.S.¹¹

While we commend the U.S. government for its vigorous prosecution of forced labor and slavery, it must also take preventive measures addressing these violations, as well violations in the economic and social sphere.

Statement in Joint Submission to the Inter-American Commission on Human Rights by Amnesty International U.S.A., Center for Constitutional Rights, Global Rights, Human Rights First, Human Rights Watch, National Economic and Social Rights Initiative, Robert F. Kennedy Memorial Center on Human Rights, and U.S. Human Rights Network.

Economic Structures Enabling Slavery

In addition to the legal context, the economic structure of the agricultural sector promulgates slavery and forced labor. Currently, the agricultural industry is firmly in the control of large, consolidated buyers and retailers.¹² Buyers use their vast market power to obtain volume discounts, exerting a strong downward pressure on their supplier's prices. This market power has vastly increased in recent years. In a March 2004 report on the conditions of migrant farmworkers in the U.S., Oxfam America identified a significant shift in an important economic indicator, known as the marketing spread (the disparity between the price a consumer pays for a product and the price received by the grower), as concrete evidence of the growing economic power of major corporate buyers like Yum! Brands Inc. over prices at the farm level.¹³ Whereas in 1990 growers received 41% of the retail price of tomatoes, by 2000 they were receiving barely 25%.¹⁴ Furthermore farm gate prices, the prices paid to producers, have continuously dropped over the past 20 years, amounting to a 21% decrease for tomatoes.¹⁵

In 2002, three Florida-based agricultural employers convicted in federal court on slavery, extortion, and weapons charges...The men, who employed over 700 farmworkers, threatened workers with death if they were to try to leave, and pistol-whipped and assaulted -- at gunpoint -- passenger van service drivers who gave rides to farmworkers leaving the area.
-www.ciw-online.org

Because they are squeezed by the buyers of their produce and want to continue to maintain a reasonable profit margin, Oxfam America reports that “growers pass on the costs and risks imposed on them to those on the lowest rung of the supply chain: the farmworkers they employ.”¹⁶ Many farmers view their labor expenses as the only area where they are able to make significant cuts. While growers cannot demand cheaper tractors from John Deere, cheaper chemicals from Monsanto, or a break on the interest rate from the bank, they can hold wages stagnant, or even cut them, and still obtain desperately poor workers to pick their crops. As a result, this reality has created an economic incentive for growers to, at best, exploit and, at worst, enslave workers. Growers normally contract out the dirty work to farm labor contractors who then have used forced labor and slavery as a way of cutting costs.¹⁷ Consequently, prosecutions alone will not prevent slavery.

United States Judge K. Michael Moore of the Southern District of Florida noted at the sentencing of one defendant found guilty of running a slavery operation in Florida:

It was an interesting trial in educating me to see how this industry works I think the government was correct and appropriate to bring this case and make sure that these workers are protected. . . . [However,] it seems that there are others at another level in this system of fruit-picking, at a higher level, that to some extent are complicit in one way or another in how these activities occur. . . . I think there is a broader interest out there that the government should look at as well, and it goes beyond a single incident.¹⁸

Judge Moore identified those in the “higher level” as large packing companies and “corporate individuals who are more sophisticated in the ways in which they can victimize [workers] coming to the United States.”¹⁹

The Role of Corporate Actors in Ensuring Human Rights in their Supply Chain

The U.N. Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights state that

“[w]ithin their respective *spheres of activity and influence* transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law”

While the Norms are not of a binding character at this point, they provide valuable guidance for civil society actors, particularly those with great influence on human rights conditions in their fields.

Large corporate purchasers’ sphere of influence easily encompasses the human rights conditions faced by farmworkers. They are in the best position to help eradicate slavery by a simple change of policy or priority. Indeed, even small increases in price, if passed on to the workers, would significantly improve their economic and social rights situation.²⁰ Moreover, they are also well positioned to impose human rights codes of conducts on suppliers.

Large purchasers are beginning to recognize their responsibility and influence within the agricultural sector. On March 8, 2005, Yum!Brands Inc. negotiated an agreement with the Coalition of Immokalee Workers whereby they agreed to pay an additional penny per pound for tomatoes and pass it on to the workers. Yum!Brands Inc. also agreed to refuse to contract with growers using forced labor or slavery. In public statements, the corporations stated they felt compelled to enter into the agreement because “human rights are universal.” The corporation also expressed “hope [that] others will follow our company’s lead.” Large and powerful corporations should follow that lead and meet their human rights responsibilities that flow from their economic position and power over the daily lives of farmworkers.

“As an industry leader, we are pleased to lend our support to and work with the CIW to improve working and pay conditions for farmworkers in the Florida tomato fields,” said Emil Brolick, Taco Bell president. “We recognize that Florida tomato workers do not enjoy the same rights and conditions as employees in other industries, and there is a need for reform. We have indicated that any solution must be industry-wide, as our company simply does not have the clout alone to solve the issues raised by the CIW, but we are willing to play a leadership role within our industry to be part of the solution,” Brolick added.

Statement made by Taco Bell upon entering into agreement with the Coalition of Immokalee Workers ending Taco Bell Boycott.

¹ For reference to number of slavery prosecutions see *Like Machines in the Fields: Workers Without Rights in American Agriculture*, at p. 10, [hereinafter Oxfam Report] Oxfam America, March 2004.

² 29 U.S.C. § 151

³ 29 U.S.C. § 201.

⁴ Oxfam Report at 2.

⁵ *Id.* at 2.

⁶ *Id.* at 12-13.

⁷ *Id.* at 13.

⁸ *Id.* at 15.

⁹ *Id.* at 17.

¹⁰ *Id.* at 22.

¹¹ John Bowe, *Nobodies: Does Slavery Exist in America*, The New Yorker, Apr. 21, 2003, p.106.

¹² Oxfam Report at 2.

¹³ *Id.* at 35.

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 36

¹⁷ *Id.*

¹⁸ *U.S. v. Ramos*, No. 01-14019-CR-Moore, Hearing, Tr. At 33 (S.D. Fla. Nov. 20, 2002)

¹⁹ *Id.* at 33.

²⁰ Oxfam Report at 53, 56.