

---

---

# BITTER HARVEST: SUPPLY CHAIN OPPRESSION AND THE LEGAL EXCLUSION OF AGRICULTURAL WORKERS

*Shikha Silliman Bhattacharjee\**

*Persistent exploitation of farmworkers is a defining problem of our time. An estimated 32% of the global population is employed in agriculture. At the base of global food systems, agricultural workers sustain the world's population while systematically excluded from labor rights protections. Through an analysis of restrictions on labor rights for agricultural workers in 110 countries, this Article distills a typology of legal exclusion that persists to date across the globe. These exclusions articulate labor exploitation at the base of agri-food supply chains and economic and social hierarchies constructed by race, caste, indigeneity, gender, and migration status. How can we upend this legal architecture of oppression, rooted in racialized and gendered capitalism? The global understanding advanced in this Article is critical to dismantling legal architectures of oppression. At the national level, it provides a framework for identifying and addressing layered mechanisms of legal exclusion in particular jurisdictions. Moreover, since agri-cultural supply chains operate globally, it provides important guidance for protecting workers' rights on agri-food supply chains, including through binding due diligence legislation in headquarter economies of lead firms, enforceable brand agreements, and inclusion of labor rights in food safety and environmental standards. Finally, due to the structure of monopsony*

---

\* Research Fellow, Copenhagen Business School. I am grateful for feedback and collaboration on the initial framing of this project from Svetlana Boincean, Jeffrey Boyd, Lance Compa, Jacob Horwitz, Sue Longley, and JJ Rosenbaum. Research for this project was supported by GLJ-ILRF and the New School for Social Research, Zolberg Institute for Migration and Mobility. By studying the exclusion of agricultural workers from labor rights through a freedom of association lens, this research seeks to address imbalances in information and power by producing research that strengthens advocacy to advance labor rights for agricultural workers. Initial stages of this research were conducted in my capacity as Research Director at GLJ-ILRF in close consultation with the IUF—an international trade union federation made up of 423 affiliated trade unions in 127 countries representing over 10 million workers—and published in an advocacy report to the ILO issued by IUF and GLJ-ILRF. See Shikha Silliman Bhattacharjee, *100 Years of Advancing Freedom of Association: ILO Convention 11's role in promoting rights for agricultural workers* (2021). This research has been used in advocacy at the Civil Society and Indigenous People Mechanism (CSM) counter-mobilization to the UN Food Systems Summit, and in ongoing IUF advocacy with the ILO Standards Review Mechanism Tripartite Working Group (SRMTWG).

*capitalism, in order to raise the floor for agricultural workers worldwide, legal exclusions must be ratcheted up across jurisdictions. Global analysis, then, provides a roadmap for strengthening international standards and global campaigns.*

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1339
II.	AGRICULTURAL WORKERS AT THE BASE OF ECONOMIC AND SOCIAL HIERARCHIES .....	1344
	A. <i>Labor Exploitation at the Base of Global Supply Chains</i> .....	1345
	B. <i>Conjugated Oppression</i> .....	1347
	C. <i>Legal Exclusion and Violence</i> .....	1352
III.	FREEDOM OF ASSOCIATION AS A CORNERSTONE RIGHT FOR AGRICULTURAL WORKERS .....	1353
IV.	GLOBAL LEGAL ARCHITECTURE OF EXCLUSION FROM LABOR LAW PROTECTIONS.....	1357
	A. <i>Specific Exclusion of Agricultural Workers from Labor Rights</i> ...	1361
	1. <i>Sector-wide Exclusion of Agricultural Workers</i> .....	1361
	a. Race and Sector-wide Exclusion of Agricultural Workers—United States .....	1362
	i. Race and Exclusion in the Framing of the FLSA and NLRA .....	1362
	ii. Race, Migration, and Exclusion in the Contemporary Agricultural Sector .....	1363
	iii. United States Sectoral Exclusion as a Global Aberration.....	1364
	b. Legacies of Institutionalized Racial Exclusion— South Africa.....	1364
	c. Reviving Exclusion by Dismantling Protective Institutions—United Kingdom.....	1366
	2. <i>Exclusion of Self-employed and Own-account Agricultural Workers</i> .....	1367
	a. Supply Chain Subcontracting and Exclusion of Independent Small Farmers .....	1368
	b. Out-grower Systems and Exclusion from Collective Wage Agreements—Sri Lanka .....	1369
	3. <i>Farm Size Exclusions</i> .....	1369
	B. <i>General Exclusions Impacting Agricultural Workers</i> .....	1371
	1. <i>Short-term Employment Exclusions</i> .....	1371
	2. <i>Migration Status-based Exclusions</i> .....	1373
	a. Residency Requirements.....	1374
	b. Migration Status, Industry Practices, and Exclusion from Labor Rights Protections—United States .....	1374
	3. <i>Exclusion of Self-employed Workers</i> .....	1375
	C. <i>Subnational Exclusions (and Inclusions)</i> .....	1375

1.	<i>Reduced Labor Protections at the Subnational Level—Canada</i> .....	1375
2.	<i>Distinct Protections in Different National Provinces and States—Pakistan</i> .....	1376
3.	<i>Increased Protections at the State Level—United States</i> .....	1376
V.	UPENDING ARCHITECTURES OF OPPRESSION.....	1377
A.	<i>Addressing Legal Exclusions at the National Level—United States</i> .....	1377
1.	<i>Protecting Freedom of Association</i> .....	1377
2.	<i>Justice for Agricultural Workers</i> .....	1379
B.	<i>Protecting Worker Rights on Global Agri-food Supply Chains</i> ...	1380
1.	<i>Binding Due Diligence</i> .....	1380
2.	<i>Enforceable Brand Agreements</i> .....	1381
3.	<i>Inclusion of Labor Rights in Food Safety Standards</i> .....	1384
C.	<i>Leveraging International Standards and Mechanisms</i> .....	1385
1.	<i>Ratify and Implement ILO Convention 11</i> .....	1385
2.	<i>Engage the ILO Committee on Freedom of Association</i> .....	1385
VI.	LAW-AND-GLOBAL-POLITICAL-ECONOMY .....	1386

## I. INTRODUCTION

An estimated 32% of the world’s population is employed in agriculture—and in rural areas, the vast majority of women find work in the agricultural sector.<sup>1</sup> In fact, according to the United Nations Food and Agriculture Organization (“FAO”), women make up approximately 43% of the agricultural labor force in developing countries.<sup>2</sup> Worldwide, migrant and indigenous workers also make up a significant part of the workforce in agriculture.<sup>3</sup> Typically employed on a temporary basis with no pathway to stable employment,<sup>4</sup> workers in the agricultural sector are routinely subjected to exploitation and labor rights violations, including low wages, extended hours without overtime, and occupational health and safety risks.<sup>5</sup> It is also common for workers to travel long distances in open vehicles to work, and live in subpar housing, posing significant risks to their

1. INT’L LAB. ORG., GLOBAL EMPLOYMENT TRENDS 2014: RISK OF A JOBLESS RECOVERY? 96 (2014); UN DIVISION FOR THE ADVANCEMENT OF WOMEN, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, RURAL WOMEN IN A CHANGING WORLD: OPPORTUNITIES AND CHALLENGES 9 (2008).

2. FOOD & AGRIC. ORG., STATISTICAL YEARBOOK 2013: WORLD FOOD AND AGRICULTURE 14 (2013).

3. *Id.*

4. GLOB. FOR. ON MIGRATION & DEV., GMG ISSUES BRIEF NO. 2: IMPROVING THE LABOUR MARKET OUTCOMES OF MIGRATION 6 (2013).

5. *Id.* at 8–9.

health and safety.<sup>6</sup> The FAO reports that more than 80% of agricultural workers are excluded from social protection,<sup>7</sup> including unemployment benefits.

How is nearly one-third of the world's population excluded from labor rights protections? This Article provides an answer grounded in an analysis of labor rights exclusions facing agricultural workers in the laws of 110 countries, distilling a typology of legal exclusion that persists to date across the globe.<sup>8</sup> The systematic exclusion of agricultural workers from labor rights reflects a global history of exploitation that extends into the present. Rooted in the legacy of colonial labor practices and plantation slavery,<sup>9</sup> templates of exclusion have not only been preserved in legislation but have also been systematically reinforced by the deregulation of national labor markets in the late twentieth century. In developing markets in the Global South, these trends have been driven by structural adjustment aimed at facilitating the inflow of foreign direct investment and agri-food multinationals.<sup>10</sup>

Part II, *Agricultural Workers at the Base of Economic and Social Hierarchies*, situates the mutually reinforcing economic and social subordination of agricultural workers in relationship to three forces: labor exploitation at the base of global supply chains, conjugated oppression,<sup>11</sup> and legal exclusion. This analysis

---

6. PETER HURST, PAOLA TERMINE & MARILEE KARL, *FOOD & AGRIC. ORG., INT'L LAB. ORG., INT'L UNION OF FOOD, AGRIC., HOTEL, REST., CATERING, TOBACCO & ALLIED WORKERS' ASS'NS, AGRICULTURAL WORKERS AND THEIR CONTRIBUTION TO SUSTAINABLE AGRICULTURE AND RURAL DEVELOPMENT* 49–53 (2007) [hereinafter *FAO, ILO & IUF Report*].

7. *FOOD & AGRIC. ORG.*, *supra* note 2, at 14.

8. This typology draws from the Report of the Committee of Experts on the Application of Conventions and Recommendations (“CEACR”) (articles 19, 22 and 35 of the Constitution) to the International Labour Conference on its 104th Session. CEACR, *INT'L LAB. CONF., GIVING A VOICE TO RURAL WORKERS: GENERAL SURVEY CONCERNING THE RIGHT OF ASSOCIATION AND RURAL WORKERS' ORGANIZATIONS INSTRUMENTS, REPORT III (PART 1B)* (2015) [hereinafter *CEACR, INT'L LAB. CONF. Report*]. 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 fifty-six workers' organizations and eight employers' organizations. Initial stages of this research were conducted in close consultation with IUF and GLJ-ILRF and published in an advocacy report to the ILO issued by IUF and GLJ-ILRF. See SHIKHA SILLIMAN BHATTACHARJEE, *100 YEARS OF ADVANCING FREEDOM OF ASSOCIATION: ILO CONVENTION 11'S ROLE IN PROMOTING RIGHTS FOR AGRICULTURAL WORKERS* 11 (2021).

9. SILLIMAN BHATTACHARJEE, *supra* note 8, at 13 (explaining that in the framing of the ILO Right of Association (Agriculture) Convention, 1921 (No. 11) delegates from countries that had been colonized linked the exploitation and systematic legal exclusion of agricultural workers from labor rights protections to “colonial labor practices and a widespread failure to distribute land in the aftermath of independence struggles”); see also SILLIMAN BHATTACHARJEE, *supra* note 8, at 59 (linking the exclusion of farmworkers from the United States National Labor Relations Act, 1935 to the history of plantation slavery: “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 labor laws was crucial to weakening their position as workers in order to increase the profits of white Southern landholders and employers”).

10. Joonkoo Lee, Gary Gereffi & Janet Beauvais, *Global Value Chains and Agrifood Standards: Challenges and Possibilities for Smallholders in Developing Countries*, 109 *PROC. NAT'L ACAD. SCIS.* 12326, 12326 (2012).

11. Conjugated oppression is the co-constitution of class-based relations and oppression along the lines of race, ethnicity, gender, caste, tribe, and migration status. See Philippe Bourgois, *Conjugated Oppression: Class and Ethnicity Among Guyami and Kuna Banana Workers*, 15 *AM. ETHNOLOGIST* 328, 331 (1988) (introducing this terminology in his ethnography of a Central American banana plantation). See also SETH HOLMES,

contributes to new law-and-political-economy scholarship<sup>12</sup> by exposing the inextricable entanglement of global monopsony capitalism<sup>13</sup> on the one hand, and race, caste, gender, indigenous, and migration politics on the other. These economic, political, and social forces are not only bound together as pillars of worker exploitation in the global economy, but also by their mutual reliance on frameworks of legal exclusion.

The first force, labor exploitation at the base of agri-food supply chains, is a product of how global supply chains are structured in contemporary capitalism.<sup>14</sup> Large transnational corporations—for the most part, retailers and supermarket chains—determine where our food comes from, how it is produced, and where and in what forms we can buy it.<sup>15</sup> Unilaterally setting prices and delivery schedules, and capturing an overwhelming share of the financial gains of agri-food value chains, lead firms maximize their profits by forcing downstream producers to cut costs. Producers, in turn, meet these demands by paying agricultural workers exceedingly low wages for extended hours of grueling physical labor without providing employment or social security. The systematic exploitation of agricultural workers at the base of supply chains is a form of structural violence<sup>16</sup> that takes a heavy toll on the health and well-being of agricultural workers and their families.

The second force, multifaceted discrimination or “conjugated oppression,”<sup>17</sup> organizes the agricultural workforce hierarchically, reflecting and

---

*Segregation on the Farm: Ethnic Hierarchies at Work*, in FRESH FRUIT, BROKEN BODIES: MIGRANT FARMWORKERS IN THE UNITED STATES 85 (2013) (applying this concept to Mexican migrant agricultural workers on a strawberry farm in the United States); Jens Lerche & Alpah Shah, *Conjugated Oppression Within Contemporary Capitalism: Class, Caste, Tribe and Agrarian Change in India*, 45 J. PEASANT STUD. 927, 928 (2018) (extending this analysis to encompass caste in the Indian context).

12. See generally Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabbeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784 (2020).

13. Monopsony capitalism: In the literature on global supply chains, the term monopsony capitalism has been used to refer to relationships where a few lead firms hold varying degrees of monopoly on the product market and can therefore choose between a myriad of downstream suppliers within and across borders. See DEV NATHAN ET AL., REVERSE SUBSIDIES IN GLOBAL MONOPSONY CAPITALISM 3 (Cambridge Univ. Press 2022); ASHOK KUMAR, MONOPSONY CAPITALISM: POWER AND PRODUCTION IN THE TWILIGHT OF THE SWEATSHOP AGE (Cambridge Univ. Press 2020).

14. See *infra* Section II.A.

15. Gary Gereffi, Joonkoo Lee & Michelle Christian, *US-Based Food and Agricultural Value Chains and Their Relevance to Healthy Diets*, 4 J. HUNGER ENV'T NUTRITION 357, 358 (2009).

16. Structural violence: Here, structural violence refers to the working conditions at the base of agri-food supply chains, configured by unequal bargaining power on supply chains, that causes physical and mental harm to agricultural workers and their families. See HOLMES, *supra* note 11, at 43–44. Grounding his use of the terminology in anthropological literature on violence, he explains: “[i]n order to avoid conflating different forms of violence, I use the phrase narrowly, staying close to Johan Galtung’s (1969) as well as Scheper-Hughes and Bourgois’s (2003) focus on political economic domination. The effects of structural domination are thus analyzed separately from, among other phenomenon, everyday physical violence, armed political violence, and symbolic violence enacted with the complicity of the dominated.” *Id.* at 205 n.33. See also Johan Galtung, *Violence, Peace, and Research*, 6 J. PEACE RSCH. 167, 172–185 (1969); Nancy Scheper Huges & Phillippe Bourgois, *Making Sense of Violence*, in VIOLENCE IN WAR AND PEACE: AN ANTHOLOGY. 1–31 (Nancy Scheper Hughes & Phillippe Bourgois eds., 2007).

17. See Bourgois, *supra* note 11, at 328.

reinforcing social discrimination on the basis of race, caste, gender, indigeneity, and migration status.<sup>18</sup> Since the structural exploitation of farm workers maps onto the broader social structure of inequality, their exploitation is naturalized and entrenched—an interaction between unequal social structures and perception that has been referred to as symbolic violence.<sup>19</sup> The exploitation of workers at the base of agri-food supply chains across the globe directs attention to how systems of social hierarchy are reproduced and maintained in relationship to supply chains and transnational circuits of labor migration. This is because in locally specific ways, global supply chains rely on hierarchical social relations to ensure access to a low-wage workforce, and to exert control over this workforce.

Building upon and linking the robust literatures documenting conjugated oppression in agricultural establishments and on global supply chains, this Article contributes an analysis of how nation states facilitate labor exploitation and conjugated oppression. The third force, legal exclusion of agricultural workers from labor rights, or the withdrawal of the protection of the state, not only leaves the structural violence of supply chain exploitation unchecked but also enacts symbolic violence by reinforcing the status of agricultural workers as unworthy of legal protection.<sup>20</sup>

Parts III and IV, then, turn to laying out these legal forms of exclusion. Part III, Freedom of Association as a Cornerstone Right for Agricultural Workers, explains my methodological decision to focus on exclusion from freedom of association as a key benchmark for labor rights exclusion. Given the critical role of freedom of association in upending both structural and symbolic violence at work, systematic legal exclusion of agricultural workers from freedom of association works to hold labor exploitation and conjugated oppression intact. Accordingly, denial of freedom of association functions as a bellwether of other forms of labor rights exclusion and workplace abuse.

Part IV, Global Legal Architecture of Exclusion from Labor Law Protection, lays out my findings on the varied types of national laws that exclude agricultural workers from protection across 110 International Labour Organization (“ILO”) member countries. It presents two broad categories of exclusion with corresponding subcategories: first, specific exclusion of agricultural workers from labor rights—including sector-wide exclusions, exclusion of self-employed and own-account farmworkers, and exclusions based on farm size<sup>21</sup>; and second, general exclusions from labor rights that have a significant impact upon agricultural workers—including short-term employment exclusions, exclusion of self-employed workers, and migration-status based exclusions.<sup>22</sup> I present this

---

18. *See infra* Section II.B.

19. Symbolic violence: The term “symbolic violence,” originating with Pierre Bourdieu, refers to the way in which social structures of inequality inform our perceptions, leading us to perceive hierarchical relationships of domination that reflect entrenched social hierarchies as natural. *See* PIERRE BOURDIEU, PASCALIAN MEDITATIONS 177–78 (Stan. Univ. Press 1997); PIERRE BOURDIEU, MASCULINE DOMINATION 1–2, 34–42 (Stan. Univ. Press 2001).

20. *See infra* Section II.C.

21. *See infra* Section IV.A.

22. *See infra* Section IV.B.

typology in a table<sup>23</sup>, and then discuss each type of exclusion in turn, grounding my analysis in specific national examples that illustrate how labor law exclusions reinforce the position of agricultural workers at the base of economic and social hierarchies.

Part V, *Upending Architectures of Oppression*, explains why understanding global patterns of exclusion is fundamental to dismantling legal exclusion and supply chain oppression. First, at the national level, understanding the varied ways in which exclusion of agricultural workers has and can be enacted in law provides a framework for identifying and addressing layered mechanisms of legal exclusion in a particular jurisdiction. I demonstrate the potential of this approach by identifying the layered exclusions from freedom of association facing agricultural workers in the United States and laying out a pathway forward to expand rights protection and address conjugated oppression in the agricultural sector.<sup>24</sup>

Second, global analysis of legal exclusion provides insight into addressing supply chain practices of extracting maximum profits on the backs of low-wage agricultural workers. Here, I distill key learnings from this research for advancing meaningful corporate accountability—including implications for emerging supply chain due diligence legislation in headquarter economies of lead firms, enforceable brand agreements, and inclusion of labor rights in food safety and quality standards.<sup>25</sup>

Finally, the ability of lead firms on agricultural supply chains to choose between engagement with a vast number of suppliers across the world provides incentives for states to pursue deregulation, including in the arena of labor standards; and downstream enterprises on agri-food supply chains to reduce costs by driving down working conditions.<sup>26</sup> Accordingly, in order to raise the floor for agricultural workers worldwide, legal exclusions must be addressed across jurisdictions. Here, analysis of the global legal architecture of exclusion facing agricultural workers is instructive in strengthening international standards and global campaigns, including campaigns by trade unions, consumers, and civil society organizations.

Part VI, *Law-and-Global-Political-Economy*, situates this Article at the important nexus of new law-and-political-economy scholarship, sociological engagement with global value chains (“GVCs”), and the anthropology and history of violence and conjugated oppression. I argue that situating the study of national legal exclusions in a global economic and social context is critical to forging new law and *global-political-economy* frameworks. As global interconnections intensify, legal scholarship that seeks to truly engage with structural inequality must understand national legal systems in the global economic context.

---

23. See *infra* Table 1.

24. See *infra* Section V.A.

25. See *infra* Section V.B.

26. See *infra* Section V.C; NATHAN ET AL., *supra* note 13, at 1–3 (explaining the organization of GVCs in monopsony capitalism, leading to “relations of dominance and value capture” between brands or lead firms from the Global North and suppliers in the Global South).

## II. AGRICULTURAL WORKERS AT THE BASE OF ECONOMIC AND SOCIAL HIERARCHIES

This Part situates the mutually reinforcing economic and social subordination of agricultural workers in the interaction of three forces: labor exploitation at the base of global supply chains, conjugated oppression,<sup>27</sup> and legal exclusion as a driver of both structural and symbolic violence. This analysis demonstrates the inextricable entanglement of global monopsony capitalism—the dominant form of contemporary capitalism<sup>28</sup>; and race, caste, gender, indigenous, and migration politics. These forces are not only bound together as pillars of worker exploitation in the global economy but also by their relationship to frameworks of legal exclusion.

Here, the concept of “articulation”<sup>29</sup> is helpful in understanding the relationship between labor exploitation, conjugated oppression, and legal exclusion. An articulation is a connection or link sustained by specific processes.<sup>30</sup> Accordingly, these connections can be renewed, overthrown, or re-articulated.<sup>31</sup> Therefore, to say that labor exploitation, conjugated oppression, and legal exclusion co-articulate in the social and economic subordination of agricultural workers is to say that we can observe how these forces co-occur, link, and combine in our investigation of exploitative working conditions in the agricultural sector. As a framework for analysis, articulation helps us to move beyond mere causal determinism, and to instead understand labor exploitation, conjugated oppression, and legal exclusion as mutually generative. Moreover, the specific manner in which these forces interrelate can vary over time and geographies—making articulation a particularly useful mode of understanding how global phenomena interact with

---

27. See Bourgois, *supra* note 11, at 328.

28. NATHAN ET AL., *supra* note 13, at 1 (explaining that GVCs are the characteristic form of twenty-first-century global capitalism, which is monopsony capitalism).

29. The concept of “articulation” was used in 1980 by Harold Wolpe in the context of his investigation of South African national subsidies in mining. As a mode of analysis, articulation provided Wolpe with a way of conceiving a “concrete object of investigation” as structured by a “combination of modes.” See HAROLD WOLPE, *THE ARTICULATION OF MODES OF PRODUCTION* 150–58 (1980). The term was explained more fully in Stuart Hall, *Signification, Representation, Ideology: Althusser and the Post-Structuralist Debate*, *CRITICAL STUD. MASS COMMUN* 91, 113–14 (1985). While the term has been used extensively across the social sciences in the last three decades, its application to understanding power relations on GVCs is of particular relevance to this study. See NATHAN ET AL., *supra* note 13, at 8–10 (considering the relationship between spheres of social reproduction and the environment with GVCs); Stephanie Barrientos, *Gender and Governance of Global Value Chains: Promoting the Rights of Women Workers*, 158 *INT’L LAB. REV.* 729, 729 (2019) (analyzing the interrelation of gender and GVCs); Gary Gereffi, John Humphrey, Raphael Kaplinsky & Timothy J. Sturgeon, *Introduction: Globalisation, Value Chains and Development*, 32 *INST. DEV. STUD.* 1, 4–5 (2001) (describing the relationships between lead firms and suppliers on GVCs).

30. NATHAN ET AL., *supra* note 13, at 8 (quoting Hall, *supra* note 29, at 113–14).

31. See Hall *supra* note 29, at 113–14 (“By the term, ‘articulation’, I mean a connection or link which is not necessarily given in all cases, as a law or fact of life, but which requires particular conditions of existence to appear at all, which has to be positively sustained by specific processes, which is not ‘eternal’ but has constantly to be renewed, which can under some circumstances, disappear or be overthrown, leading to the old linkages being dissolved and new connections—re-articulations—being forged. It is also important that an articulation between different practices does not mean that they become identical or that one is dissolved into the other. However, once an articulation is made, the two practices can function together as ‘distinctions within a unity’.”).

local practices and processes.<sup>32</sup> Perhaps most importantly, an articulation “is not . . . a law or fact of life.”<sup>33</sup> The articulation of labor exploitation, conjugated oppression, and legal exclusion is not fixed or given—once exposed and made visible, these forces and their relationships can be dismantled and overthrown.

A. *Labor Exploitation at the Base of Global Supply Chains*

In the mid-1960s, United States companies began slicing and segmenting their supply chains, and incorporating low-cost suppliers offshore.<sup>34</sup> For the most part, this remained limited to product component manufacturing and assembly, leading scholars in the field to describe these supply chains as “producer-driven” supply chains.<sup>35</sup> By the 1970s and 1980s, however, this model had been adopted more widely to include not only manufacturing but also energy, food production, and services.<sup>36</sup> Today, GVCs are a defining characteristic of global capitalism, with the World Trade Organization estimating that at least 70% of global trade is accounted for by GVC trade.<sup>37</sup>

In line with these global industrial processes, since the 1990s, agriculture and agri-food production have become increasingly industrialized and globalized.<sup>38</sup> Together, liberalized international trade, foreign direct investment, and advances in technology and transport facilitate the global movement of fresh, processed, and frozen agri-food products across borders.<sup>39</sup> Leading these vast production networks, agri-food multinationals direct and coordinate supply chains linking consumers in grocery stores to agricultural workers across the globe.<sup>40</sup>

Agri-food value chains operate through the interaction between global and local value chains.<sup>41</sup> Most value chain segments are orchestrated by a small number of powerful lead firms with well established brands, consolidated retail power, extensive processing capacity, and large buying power.<sup>42</sup> These lead firms include large supermarket chains and food processors, in line with the

---

32. See, for example, AIHWA ONG & STEPHEN J. COLLIER, *GLOBAL ASSEMBLAGES: TECHNOLOGY, POLITICS, AND ETHICS AS ANTHROPOLOGICAL PROBLEMS* 11 (2005), for a series of essays that draw attention to the interaction between local contexts and *global forms*, defined as technological, legal, or other patterns capable of “decontextualization and recontextualization, abstractability and movement, across diverse social and cultural situations.”

33. See Hall, *supra* note 29, at 113 n.2.

34. Gary Gereffi & Joonkoo Lee, *Why the World Suddenly Cares About Global Supply Chains*, 48 J. SUPPLY CHAIN MGMT. 24, 25 (2012).

35. *Id.*

36. *Id.*

37. NATHAN ET AL., *supra* note 13, at 1–2.

38. John Humphrey, *Policy Implications of Trends in Agribusiness Value Chains*, 18 EUROPEAN J. DEV. RES. 572, 574 (2006).

39. Lee et al., *supra* note 10, at 12326.

40. GARY GEREFFI & JOONKOO LEE, *A GLOB. VALUE CHAIN APPROACH TO FOOD SAFETY AND QUALITY STANDARDS* 2 (2009).

41. *Id.* at 5–6 (providing a description and diagram of the interaction between global and local food value chains).

42. *Id.* at 4.

global proliferation of packaged and prepared foods.<sup>43</sup> They run on tight schedules designed for maximum utilization of capital-intensive facilities.<sup>44</sup> In exporting countries, large local agri-food exporters capable of meeting the requirements of retailers and supermarkets dominate the market.<sup>45</sup> At the same time, since small farmers are largely unable to meet the terms and standards set by lead firms, transnational agri-food firms systematically integrate small growers into global sourcing networks.<sup>46</sup> As a result, producers on agri-food supply chains include both industrialized large-scale production units and small-holders integrated into global sourcing networks.<sup>47</sup> The agency of local suppliers in exporting countries varies in relationship to the capabilities of the supplier firm, their competition, and their regulatory environment.<sup>48</sup>

With dominant positions on agricultural supply chains, retailers and supermarkets pursue global sourcing strategies, using their buying power to set prices, schedules, and food safety and quality standards.<sup>49</sup> These relationships—where a few lead firms hold varying degrees of monopoly on the product market and therefore can choose between downstream suppliers within and across borders—are referred to in the literature on value chains as “global monopsony capitalism.”<sup>50</sup> Lead firms in monopsony capitalism exert a tremendous influence over how agri-foods are produced, distributed, and marketed.<sup>51</sup>

This value chain structure dictates working conditions for agricultural workers at the base of global supply chains. Due to the increasing power of retailers over producers and unequal distribution of economic gains, the last decade has seen growing concern across the globe that engagement with global supply chains does not translate into good jobs or stable employment.<sup>52</sup> As lead firms exert downward pressure on producers to rapidly produce low-cost goods, downstream suppliers must cut costs in order to survive.<sup>53</sup> As laid out by Seth Holmes in his analysis of the United States agricultural industry, “[i]n the multilayered gray zone of temporary U.S. agriculture, even ethical growers, in their fight for survival, are forced by an increasingly harsh market to participate in a system of labor that perpetuates [worker] suffering.”<sup>54</sup> Accordingly, global supply chains are often linked to a significant deterioration of labor conditions, referred to in

---

43. *Id.* at 3–4.

44. *Id.* at 4.

45. See, e.g., Catherine Dolan & John Humphry, *Changing Governance Patterns in the Trade in Fresh Vegetables Between Africa and the U.K.*, 36 ENV'T. & PLAN. 491–09 (2004); see also Miet Maertens & Johan F.M. Swinnen, *Trade, Standards, and Poverty: Evidence from Senegal*, 37 WORLD DEV. 161–78.

46. See Lee et al., *supra* note 10, at 12326.

47. *Id.* at 12327.

48. See GEREFFI & LEE, *supra* note 40, at 5.

49. See *id.*

50. See NATHAN ET AL., *supra* note 13, at 3; see generally ASHOK KUMAR, MONOPSONY CAPITALISM: POWER AND PRODUCTION IN THE TWILIGHT OF THE SWEATSHOP AGE (Stephanie Barrientos, Gary Gereffi, Dev Nathan & John Pickles eds., 2020).

51. See GEREFFI & LEE, *supra* note 40, at 5.

52. See Gereffi & Lee, *supra* note 34, at 29.

53. See, e.g., SILLIMAN BHATTACHARJEE, S., PURUSHOTTAM KUMAR & SHAHID ULLAH, WOMEN WORKERS IN THE ASIAN SEAFOOD PROCESSING INDUSTRY: CASE STUDIES FROM BANGLADESH AND INDIA (2022).

54. See HOLMES, *supra* note 11, at 86.

literature on GVCs as social downgrading,<sup>55</sup> and in the anthropology of labor as “structural violence”—“violence committed by configurations of social inequalities that, in the end, ha[ve] injurious effects on [the] bodies” of agricultural workers and their families.<sup>56</sup>

In much of the world, agricultural workers and their families form a significant part of the core rural poor, earning the lowest wages in the rural sector, and living below the poverty line.<sup>57</sup> In return, they work long hours completing physically demanding work in one of the three most hazardous industries in the world where they routinely work with dangerous machinery, unsafe electrical wiring, exposure to toxic pesticides, and the risk of falling from heights.<sup>58</sup> Earning wages below what they require to meet the needs of their families, the prevalence of child labor in the sector is exceedingly high: according to 2019 global estimates, 112 million children—70% of all children in child labor—are in agriculture, including children as young as five years old.<sup>59</sup> Agricultural workers living and working on isolated farms in rural areas are also more subject to forced labor than other categories of workers.<sup>60</sup>

### B. *Conjugated Oppression*

Within agricultural establishments, labor is structured hierarchically. For instance, in his analysis of an American strawberry farm in the Skagit Valley in northwestern Washington, Seth Holmes describes the “intricated structuring of labor on the farm into a complicated hierarchy” that is “both determined by the asymmetries in society at large—specifically around race, class, and citizenship—and reinforces those larger inequalities.”<sup>61</sup> In his account of ethnic-labor hierarchy on the strawberry farm, hourly and contract field workers—mostly mestizo Mexican and Triqui (indigenous) men, women, and teenagers—are at the bottom of the hierarchy, where the depth of structural vulnerability is highest.<sup>62</sup> At the base, Triqui workers hold relatively less status than mestizo Mexicans, a pecking order that Holmes understands in terms of perceived indigeneity.<sup>63</sup>

In Holmes’s ethnography, at the intersection of class, race, and citizenship, Mexican and Triqui workers experience “conjugated oppression,” the co-constitution of class-based relations and oppression along the lines of race, ethnicity,

---

55. See Gereffi & Lee, *supra* note 34, at 29 (citing Stephanie Barrientos, Gary Gereffi & Arianna Rossi, *Economic and Social Upgrading in Global Production Networks: A New Paradigm for a Changing World*, 150 INT’L LAB. REV. 319, 319–40 (2011)).

56. HOLMES, *supra* note 11, at 43. See also text accompanying *supra* note 16.

57. See, e.g., FAO, ILO & IUF Report, *supra* note 6, at 32.

58. *Id.*

59. INT’L LAB. ORG. [ILO] & UNITED NATIONS CHILD.’S FUND [UNICEF], CHILD LABOUR: GLOBAL ESTIMATES 2020, TRENDS AND THE ROAD FORWARD 9 (2021).

60. See, e.g., FAO, ILO & IUF Report, *supra* note 6, at 32.

61. HOLMES, *supra* note 11, at 50.

62. See *id.* at 85.

63. See *id.*

gender, caste, tribe, or migration status.<sup>64</sup> Conjugated oppression has been widely documented in the agricultural sector, from Philippe Bourgois's study of Central American banana plantations where the term originated, to Jens Lerche and Alpa Shah's more recent study of the agrarian sector in India, where the 18.5% of the rural population belonging to landless Dalit castes forms the core of the agricultural workforce.<sup>65</sup>

These studies of conjugated oppression in particular national contexts correspond with global trends. As producers on agri-food supply chains across the world respond to the pressure from lead firms to decrease costs, they rely increasingly on migrant labor since these low-paying and physically demanding jobs are not attractive to the local or even national workforce.<sup>66</sup> Indigenous agricultural workers who have been forced off their own lands also often end up finding work in the agricultural sector, both within their native countries and as migrants in destination countries.<sup>67</sup>

Notably, across the world, women make up an increasing share of the agricultural workforce, with women workers now accounting for an estimated 20-30% of agricultural wage workers.<sup>68</sup> The feminization of the workforce has been explained by the greater tendency among male workers to migrate for higher-paying employment in nonagricultural work, leaving women to replace them; and a preference for hiring women workers among employers since they can be paid less and are considered to be a more "docile and dependent" workforce.<sup>69</sup> At the intersection of class, gender, and racialized oppression, the average personal income of female crop workers in the United States is less than 70% of the income of male crop workers.<sup>70</sup> Women in the agricultural sector are also routinely subjected to sexual harassment and violence.<sup>71</sup> Notably, however, feminist perspective building within development organizations and trade unions can

---

64. See Philippe Bourgois, *Conjugated Oppression: Class and Ethnicity Among Guyami and Kuna Banana Workers*, 15 AM. ETHNOLOGIST 328, 328-48 (1988) (introducing this terminology in his ethnography of a Central American banana plantation). See also HOLMES, *supra* note 11, at 85 (applying this concept to Mexican migrant agricultural workers on a strawberry farm in the United States); Jens Lerche & Alpa Shah, *Conjugated Oppression Within Contemporary Capitalism: Class, Caste, Tribe and Agrarian Change in India*, 45 J. PEASANT STUDS. 927, 928 (2018) (extending this analysis to encompass caste in the Indian context). See generally CEDRIC J. ROBINSON, BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION 310 (2020); David Camfield, *Elements of a Historical-Materialist Theory of Racism*, 24.1 HIST. MATERIALISM 31, 31-70 (2016); W.E.B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA 1860-1880, 4 (1935); Stuart Hall, *Gramsci's Relevance for the Study of Race and Ethnicity*, 10 J. COMM. INQUIRY 5, 5-27 (1986); David McNally, *The Dialectics of Unity and Difference in the Constitution of Wage-Labour: On Internal Relations and Working-Class Formation*, 39 CAP. & CLASS 131, 131-46 (2015).

65. See generally Bourgois, *supra* note 64; Lerche & Shah, *supra* note 64. See also OLIVER CROMWELL COX, CASTE, CLASS, AND RACE: A STUDY IN SOCIAL DYNAMICS 3-20 (1959).

66. See, e.g., FAO, ILO & IUF Report, *supra* note 6, at 25.

67. *Id.*

68. *Id.* at 38.

69. *Id.*

70. *Injustice on Our Plates*, S. POVERTY L. CTR. (Nov. 8, 2010), <https://www.splcenter.org/20101107/injustice-our-plates> [<https://perma.cc/7L8N-YP58>] (comparing the average wages of female workers [USD 11,250] and male crop workers [USD 16,250] in 2010).

71. *Id.*

mobilize rural women to address their concerns in a holistic manner, going beyond changing the material status of the family to transforming the status of women.<sup>72</sup>

Conjugated oppression has also been well documented on global supply chains and in the construction and hospitality sectors more generally, including along the lines of class, gender, caste, and migration status.<sup>73</sup> On garment supply chains in Asia, for instance, conjugated oppression along the lines of gender and class includes the earlier expulsion of women than men from factory employment, gender-based violence and harassment as a form of supervision, wages for women workers that can be up to 25% less than their male counterparts, and concentration of women workers in the most insecure forms of employment.<sup>74</sup> The conjugation of caste, indigeneity, and migration status with gender and class further depresses wages and brings entrenched structures of social discrimination onto the shop floor—including in the forms of caste-denigration, concentration in hazardous jobs, and accentuation of wage depression.<sup>75</sup> It is important to note that the conjugation of class with gender, caste, indigeneity, migration status, and other categories of social discrimination described above manifest in similar structures of exploitation across garment production hubs, including in Bangladesh, Cambodia, India, Indonesia, Pakistan, and Sri Lanka.<sup>76</sup> The conjugation of

---

72. See generally SHIKHA SILLIMAN BHATTACHARJEE AND JUEL SILLIMAN, TRANSFORMING DEVELOPMENT PRACTICE: TAKING A GENDER EQUALITY APPROACH TO SUPPORT RURAL WOMEN IN ADVANCING THEIR SOCIAL, ECONOMIC, AND POLITICAL RIGHTS (2016), available at <https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAAsia/Docs/Publications/2016/03/Transforming-Development-Practice.pdf> [<https://perma.cc/KY35-94FL>].

73. See NATHAN ET AL., *supra* note 13, at 14.

74. *Id.*

75. *Id.* at 15. See generally SHIKHA SILLIMAN BHATTACHARJEE & ALYSHA KHAMBAY, UNBEARABLE HARASSMENT: THE FASHION INDUSTRY AND WIDESPREAD ABUSE OF FEMALE GARMENT WORKERS IN INDIAN FACTORIES (2022).

76. See BHATTACHARJEE & KHAMBAY, *supra* note 75. See also ALESSANDRA MEZZADRI, THE SWEATSHOP REGIME: LABOURING BODIES, EXPLOITATION, AND GARMENTS MADE IN INDIA (2017); DEV NATHAN, MEENU TEWARI, & SANDIP SARKAR, LABOUR IN GLOBAL VALUE CHAINS IN ASIA 1–26 (Dev Nathan, Meenu Tewari, & Sandip Sarkar eds., 2016); Shikha Silliman Bhattacharjee, *Fast Fashion, Production Targets, and Gender-Based Violence in Asian Garment Supply Chains*, in LABOR, GLOBAL SUPPLY CHAINS, AND THE GARMENT INDUSTRY IN SOUTH ASIA: BANGLADESH AFTER RANA PLAZA 207, 208 (Sanchita Banerjee Saxena ed., 2020); SHIKHA SILLIMAN BHATTACHARJEE, ADVANCING GENDER JUSTICE ON ASIAN FAST FASHION SUPPLY CHAINS POST COVID-19, 21–30 (Jennifer Rosenbaum ed., 2020); SHIKHA SILLIMAN BHATTACHARJEE, GENDER BASED VIOLENCE IN THE GAP GARMENT SUPPLY CHAIN 4 (2018); SHIKHA SILLIMAN BHATTACHARJEE, GENDER BASED VIOLENCE IN THE H&M GARMENT SUPPLY CHAIN 4 (2018); SHIKHA SILLIMAN BHATTACHARJEE, GENDER BASED VIOLENCE IN THE WALMART GARMENT SUPPLY CHAIN 4 (2018); SHIKHA SILLIMAN BHATTACHARJEE, PRECARIOUS WORK IN THE H&M GLOBAL VALUE CHAIN 16 (Anannya Bhattacharjee ed., 2016); SHIKHA SILLIMAN BHATTACHARJEE, PRECARIOUS WORK IN THE GAP GLOBAL VALUE CHAIN 16 (Anannya Bhattacharjee ed., 2016); SHIKHA SILLIMAN BHATTACHARJEE, PRECARIOUS WORK IN THE WALMART GLOBAL VALUE CHAIN 8 (Shikha Silliman Bhattacharjee ed., 2016); SHIKHA SILLIMAN BHATTACHARJEE AND VAIBHAV RAAJ, PRECARIOUS WORK IN THE ASIAN SEAFOOD GLOBAL VALUE CHAIN 4 (Anannya Bhattacharjee & Ashim Roy eds., 2016).

caste, nationality, migration status, and gender has also been well-documented in the construction<sup>77</sup> and hospitality sectors.<sup>78</sup>

Across these sectors, at the nexus of legal and sociopolitical restrictions on women's mobility, migrant women are particularly at risk of exploitation and violence at all stages of the migration process.<sup>79</sup> The intersection of restrictions on freedom of association, arbitrary detention, and gender-based violence facing migrant workers on global product and labor supply chains has been raised by workers organizations, including in submissions to the UN Special Rapporteur on the human rights of migrants.<sup>80</sup> Transforming the world of work to meet the challenges posed by global inequality and conjugated oppression requires the leadership of impacted workers, especially women workers, in trade unions and worker organizations.<sup>81</sup>

The iteration of structures of exploitation across global supply chains directs attention to how across the globe, systems of social hierarchy are reproduced and maintained in relationship to global supply chains and transnational circuits of labor migration. This is because in locally specific ways, global supply chains rely on hierarchical social relations to ensure access to a low-wage workforce, and to exert control over this workforce.<sup>82</sup> This practice of leveraging social hierarchy to access highly flexible, inexpensive, and easily disciplined workers is not new—these practices were refined through chattel slavery,<sup>83</sup> caste-

---

77. See, e.g., EQUIDEM, “IF WE COMPLAIN, WE ARE FIRED”: DISCRIMINATION AND EXPLOITATION OF MIGRANT CONSTRUCTION WORKERS ON FIFA WORLD CUP QATAR 2022 STADIUM SITES (2022), available at [https://www.equidem.org/assets/downloads/Equidem\\_Qatar\\_World\\_Cup\\_Stadiums\\_Report\\_Final.pdf](https://www.equidem.org/assets/downloads/Equidem_Qatar_World_Cup_Stadiums_Report_Final.pdf) [https://perma.cc/KLC4-TRWJ].

78. See, e.g., Equidem & GLJ-ILRF, “WE WORK LIKE ROBOTS”: DISCRIMINATION AND EXPLOITATION OF MIGRANT WORKERS IN FIFA WORLD CUP QATAR 2022 HOTELS (2022), available at <https://www.equidem.org/reports/we-work-like-robots> [https://perma.cc/X624-5YSH].

79. See, e.g., Shikha Silliman Bhattacharjee, *Gendered Technologies of Power*, 29 BERKELEY PLAN. J. 1 (2017); SHIKHA SILLIMAN BHATTACHARJEE, Jael Silliman, & Anisha Chugh, GENDER AND THE RIGHT TO MOBILITY IN SOUTH ASIA (2016), <https://archive.nyu.edu/jspui/bitstream/2451/42218/2/Gender%20and%20the%20Right%20to%20Mobility%20in%20South%20Asia.pdf> [https://perma.cc/7Y7N-BG9M].

80. SHIKHA SILLIMAN BHATTACHARJEE, SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS ON FREEDOM OF ASSOCIATION, ARBITRARY DETENTION, AND GENDER BASED VIOLENCE AND HARASSMENT (2020), [https://www.academia.edu/43376318/Submission\\_to\\_the\\_UN\\_Special\\_Rapporteur\\_on\\_the\\_human\\_rights\\_of\\_migrants\\_on\\_freedom\\_of\\_association\\_arbitrary\\_detention\\_and\\_gender\\_based\\_violence\\_and\\_harassment](https://www.academia.edu/43376318/Submission_to_the_UN_Special_Rapporteur_on_the_human_rights_of_migrants_on_freedom_of_association_arbitrary_detention_and_gender_based_violence_and_harassment) [https://perma.cc/75GM-FH6P].

81. SHIKHA SILLIMAN BHATTACHARJEE, END GENDER BASED VIOLENCE AND HARASSMENT—GENDER JUSTICE ON GARMENT GLOBAL SUPPLY CHAINS, AN AGENDA TO TRANSFORM FAST FASHION (2019), [https://www.academia.edu/39671597/End\\_Gender\\_Based\\_Violence\\_and\\_Harassment\\_Gender\\_Justice\\_on\\_Garment\\_Global\\_Supply\\_Chains\\_An\\_Agenda\\_to\\_Transform\\_Fast\\_Fashion](https://www.academia.edu/39671597/End_Gender_Based_Violence_and_Harassment_Gender_Justice_on_Garment_Global_Supply_Chains_An_Agenda_to_Transform_Fast_Fashion) [https://perma.cc/JU4Y-GZ36].

82. Cf. Mary Beth Mills, *Gender and Inequality in the Global Labor Force*, 32 ANN. REV. ANTHROPOLOGY 41, 42 (2003) (explaining how systems of labor mobilization and capital accumulation rely on gendered social hierarchy to access and discipline low-wage workers: “[a]round the globe, gender hierarchies are produced and maintained in relation to transnational circuits of labor mobilization and capital accumulation. In varied and often locally specific ways international capital relies on gendered ideologies and social relations to recruit and discipline workers, to reproduce and cheapen segmented labor forces within and across national borders”).

83. See generally CHRISTOPHER TOMLINS, FREEDOM BOUND: LAW, LABOR, AND CIVIC IDENTITY IN COLONIZING ENGLISH AMERICA, 1580-1865 (2010); ORLANDO PATTERSON, SLAVERY AND SOCIAL DEATH: A COMPARATIVE STUDY (1982); JACQUELINE JONES, LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK, AND THE FAMILY FROM SLAVERY TO PRESENT (2009); THAVOLIA GLYMPH, OUT OF THE HOUSE OF BONDAGE: THE TRANSFORMATION OF THE PLANTATION HOUSEHOLD (2008); IRA BERLIN, GENERATIONS OF CAPTIVITY: A

designated labor,<sup>84</sup> colonial extraction,<sup>85</sup> and workforce recruitment, segmentation, and discipline practices dating back to the industrial revolution.<sup>86</sup> What is new? More than ever before, the segmented labor pool upon which global monopoly capitalism depends encompasses the entire globe.

Conjugated oppression both relies upon and produces “symbolic violence,” a term originating with the French Sociologist Pierre Bourdieu explaining how social structures of inequality inform our perceptions, leading us to perceive hierarchical relationships of power that reflect our social reality as natural.<sup>87</sup> Drawing on Bourdieu, Seth Holmes explains: “[s]ymbolic violence works through the perceptions of the ‘dominating’ and the ‘dominated’ . . . Each group understands not only itself but also the other to belong naturally in their positions in the social hierarchy.”<sup>88</sup>

For example, on routine shopping trips to supermarkets, we may believe that we deserve access to food products from across the globe at low prices—perhaps exhibited in our frustration if a product we commonly purchase is out of stock, and we may even believe that the workers who produce these product are lucky to have jobs at the base of agri-food supply chains, regardless of their working conditions, because in the end, they need these jobs in order to address family financial needs that they have brought upon themselves. It may be a

HISTORY OF AFRO-AMERICAN SLAVES (2003); WALTER JOHNSON, RIVER OF DARK DREAMS: SLAVERY AND EMPIRE IN THE COTTON KINGDOM (2013); ALEX LICHTENSTEIN, TWICE THE WORK OF FREE LABOR: THE POLITICAL ECONOMY OF CONVICT LABOR IN THE NEW SOUTH (1996); PAUL E. LOVEJOY, TRANSFORMATIONS IN SLAVERY (1982); SETH ROCKMAN, SCRAPING BY: WAGE LABOR, SLAVERY, AND SURVIVAL IN EARLY BALTIMORE (2009); THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619–1860 (1996); *see also* DAVID M. OSHINSKY, WORSE THAN SLAVERY: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE 223–48 (1997); EUGENE D. GENOVESE, ROLL, JORDAN, ROLL 3 (1974); WALTER JOHNSON, SOUL BY SOUL: LIFE INSIDE THE ANTEBELLUM SLAVE MARKET 19–44 (1999).

84. *See e.g.*, SHIKHA SILLIMAN BHATTACHARJEE, CLEANING HUMAN WASTE: MANUAL SCAVENGING, CASTE, AND DISCRIMINATION 1 (2014) (laying out the architecture of caste-based discrimination impacting women at the base of the caste hierarchy in India); Shikha Silliman Bhattacharjee, PRACTICES OF CHANGE: ADDRESSING EQUITY AND INCLUSION FOR DALITS IN SOUTH ASIA 1 (2014) (providing a brief overview of the haliya practice—an agrarian system of bonded labor prevalent in western Nepal that was outlawed in 2008).

85. *See* GUNTHER PECK, REINVENTING FREE LABOR: PADRONES AND IMMIGRANT WORKERS IN THE NORTH AMERICAN WEST 1880–1930, 8 (2000); ANDRES RESENDEZ, THE OTHER SLAVERY: THE UNCOVERED STORY OF INDIAN ENSLAVEMENT IN AMERICA 266 (2017); AZIZ RANA, THE TWO FACES OF AMERICAN FREEDOM 8 (2014); NICHOLAS DIRKS, CASTES OF MIND 303 (2001).

86. *See* KAREN ORREN, BELATED FEUDALISM: LABOR, THE LAW, AND LIBERAL DEVELOPMENT IN THE UNITED STATES 27 (1991); AMY DRU STANLEY, FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE, AND THE MARKET IN THE AGE OF SLAVE EMANCIPATION 63 (1998); ROBERT J. STEINFELD, COERCION, CONTRACT, AND FREE LABOR IN NINETEENTH CENTURY AMERICA 2 (2001); KUNAL M. PARKER, MAKING FOREIGNERS: IMMIGRATION AND CITIZENSHIP LAW IN AMERICA, 1600–2000, 138 (2015); MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA 108 (2004); ERIKA LEE, AT AMERICA’S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA, 1882–1943, 34–35 (2003); LUCY E. SALYER, LAWS HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW 12 (1995).

87. Eric Klinenberg, *Denaturalizing Disaster: A Social Autopsy of the 1995 Chicago Heat Wave*, 28 THEORY & SOC. 239, 244 (1999).

88. *See* HOLMES, *supra* note 11, at 44; *see also* Philippe Bourgois, IN SEARCH OF RESPECT: SELLING CRACK IN EL BARRIO 177 (2003); Philippe Bourgois, *The Power of Violence in War and Peace: Post-Cold War Lessons from El Salvador*, 2 ETHNOGRAPHY 5, 34 (2001); Nancy Scheper-Hughes & Philippe Bourgois, *Making Sense of Violence, in VIOLENCE IN WAR AND PEACE: AN ANTHOLOGY* 21 (Nancy Scheper-Hughes & Phillippe Bourgois eds.); Klinenberg, *supra* note 87, at 244.

similar line of reasoning that leads national legislators in production countries to roll back labor rights, because in the end, low-wage unprotected work is better than no work at all. This type of reasoning justifies and perpetuates work that falls below decent work standards. It is a form of symbolic violence rooted in a resignation or naturalization of exploitative labor as a core feature of the global economy.

### C. *Legal Exclusion and Violence*

Building upon and linking the robust literature documenting conjugated oppression in agricultural establishments and on global supply chains, this Article contributes an analysis of how nation states facilitate the labor exploitation and conjugated oppression of agricultural workers by systematically excluding them from labor rights protections. On the one hand, the exclusion of agricultural workers from labor rights is rooted in the legacy of colonial labor practices and plantation slavery.<sup>89</sup> On the other, these exclusions have been systematically reinforced by deregulation of national labor markets in the late twentieth century—which in developing markets in the Global South has been driven by structural adjustment aimed at facilitating the inflow of foreign direct investment and agri-food multinationals.<sup>90</sup>

Systematic legal exclusion of agricultural workers from labor rights reinforces both the structural violence of supply chain exploitation and the conjugated oppression that reproduces social hierarchy on farms and fields across the globe. As explained by Seth Holmes, the exploitation of agricultural workers takes place at the nexus of structural and symbolic violence.<sup>91</sup> “Structural violence—with its pernicious effects on health—and symbolic violence—with its subtle naturalization of inequalities on the farm, in the clinic, and in the media—form the nexus of violence and suffering through which the phenomenon of migrant labor in North America is produced.”<sup>92</sup> In short, legal exclusion, or the withdrawal of the protection of the state, not only leaves the structural violence of supply chain exploitation unchecked but also enacts symbolic violence by reinforcing the status of agricultural workers as unworthy of legal protection.

---

89. SILLIMAN BHATTACHARJEE, *supra* note 8, at 13 (explaining that in the framing of the ILO Right Association (Agriculture) Convention, 1921 (No. 11) delegates from countries that had been colonized linked the exploitation and systematic legal exclusion of agricultural workers from labor rights protections to colonial labor practices and a widespread failure to distribute land in the aftermath of independence struggles); *see also* SILLIMAN BHATTACHARJEE, *supra* note 8, at 59 (linking the exclusion of farmworkers from the United States National Labor Relations Act, 1935 to the history of plantation slavery: “[r]eflecting 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 labor laws was crucial to weakening their position as workers in order to increase the profits of white Southern landholders and employers”).

90. Lee, Gereffi & Beauvais, *supra* note 10, at 123–26.

91. HOLMES, *supra* note 11, at 44.

92. *Id.*

As explained by Bourdieu, the “force of law” has a determining power in society,<sup>93</sup> functioning in close relation with the exercise of power in other social realms and through other mechanisms.<sup>94</sup> The social power of the law—its legitimacy and ability to gain consent—are linked to the legal processes of formalizing and codifying the juridical order.<sup>95</sup> Just as conjugated oppression enacts symbolic violence, Bourdieu identifies a symbolic violence that takes place when principles of division—in this case the exclusion of agricultural workers from labor rights—are imposed upon agricultural workers who have no choice but to accept their legally imposed status as unprotected workers.<sup>96</sup> The authority of the state disseminates and reproduces legal principles of exclusion, rendering relationships of exploitation legitimate, and reproducing conditions of social and economic subordination.<sup>97</sup>

### III. FREEDOM OF ASSOCIATION AS A CORNERSTONE RIGHT FOR AGRICULTURAL WORKERS

In conducting my legal analysis of labor rights exclusions, presented in Part IV, I used legal exclusion from freedom of association as both a signal for broader labor rights exclusions and a benchmark for exclusion. There are a few reasons for this methodological decision.

First, freedom of association is a cornerstone right because it creates the conditions for trade unions and workers’ movements to intervene in structural violence by advancing, defending, and enforcing all other labor rights. In the arena of legislation and policy, trade unions have the capacity to impact labor standards beyond the capacity of any individual worker. For instance, where social protection floors exist—nationally defined guarantees of essential health care and income security<sup>98</sup>—they were won through protracted struggles by trade unions and trade union engagement in social dialogue.<sup>99</sup>

---

93. Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS L.J. 814, 816 (1987).

94. *Id.* at 817–18.

95. *Id.* at 817.

96. *Id.* at 829.

97. *Id.* at 827.

98. See *Social Protection Floor*, INT’L LAB. ORG., <https://www.ilo.org/global/topics/dw4sd/themes/sp-floor/lang--en/index.htm> (last visited Feb. 24, 2023) [<https://perma.cc/46NP-ZL2E>]. See also SILLIMAN BHATTACHARJEE, *supra* note 8, at 37 (explaining the status of social protection in international law and its contemporary urgency, especially in light of COVID-19 impacts on working people: “[s]ocial 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.”).

99. See SILLIMAN BHATTACHARJEE, *supra* note 8, at 37, 37 n.122.

For instance, in August 2020, farmers in India embarked on what would become the longest and most sustained agrarian protest since the 1950s.<sup>100</sup> The farmer protests called for the repeal of three national laws governing the sale, pricing, and storage of farm produce that they argued would leave farmers vulnerable to exploitation by large companies.<sup>101</sup> While most farmers had previously sold their produce at government-controlled wholesale markets that guaranteed them minimum support prices, the new laws would allow farmers to sell directly to agri-businesses, supermarket chains, and online grocers—exposing them to market forces, including downward pressure on prices from lead firms on agri-food supply chains.<sup>102</sup> In late November 2020, farmers from Punjab, Haryana, and Uttar Pradesh marched to the capital in Delhi. Denied entry to the city, they set up large protest camps.<sup>103</sup> Thousands of farmers remained camped at the border of the capital—braving the heat, cold, and COVID-19 pandemic that took the lives of dozens.<sup>104</sup> On December 9, 2021, farmers ended their protest after the government agreed to repeal the agricultural reforms.<sup>105</sup> The protests were led by the *All India Kisan Sabha* (“All India Farmers Union”), the farmers’ wing of the Communist Party of India.<sup>106</sup> Critical to the success of the protests was the ability to bring together farmers from across caste, class, and religious divides—including Dalit and Adivasi (tribal) workers, Muslim farmers, small-scale producers, and commercial farmers in an alliance aimed at protecting their livelihoods in the face of market deregulation and facilitated, unmediated entry of global finance capital, agribusiness, and agri-food supply chains.<sup>107</sup>

Within hierarchical workplaces, trade unions are also instrumental in negotiating collective bargaining agreements that advance worker rights and supporting workers to seek relief in cases of rights violations. For instance, according to a January 2021 study of working conditions on banana plantations in Guatemala, the third largest banana exporting country in the world, workers on unionized plantations in the north of the country experience clear gains associated with union membership when compared to workers in the south where union repression is more widespread.<sup>108</sup> Unionized banana workers earn USD 586 per month

---

100. Iris Kim, *250 Million Farmers in India Are Taking a Stand Against the Government as Part of the Biggest Protest in History. Here's Why the US and the World Should Pay Attention*, BUS. INSIDER (Jan. 2, 2021, 7:03 AM), <https://www.businessinsider.com/indian-farmer-strike-largest-protest-history-us-world-pay-attention-2020-12> [https://perma.cc/3C6R-ASZM].

101. *Id.*

102. *Id.*

103. *Id.*

104. *Farm Laws: India Farmers End Protest After Government Accepts Demands*, BBC (Dec. 9, 2021), <https://www.bbc.com/news/world-asia-india-59566157> [https://perma.cc/4FWY-VXZZ].

105. *Id.*

106. *See CPIM's All India Kisan Sabha Plays Key Role in Building Solidarity for Farmer's Protest*, HINDUSTAN TIMES (Dec. 4, 2021, 9:43 PM), <https://www.hindustantimes.com/india-news/cpim-s-all-india-kisan-sabha-plays-key-role-in-building-solidarity-for-farmers-protest/story-tqJdSAzEvrILDpnm00veiGP.html> [https://perma.cc/8RD9-SEQP].

107. *See Jens Lerche, The Farm Laws Struggle 2020–2021: Class-Caste Alliances and Bypassed Agrarian Transition in Neoliberal India*, 48: J. PEASANT STUD. 1380, 1381 (2021) (providing an analysis of class-caste alliances in India’s farmer struggles).

108. SILLIMAN BHATTACHARJEE, *supra* note 8, at 15.

(USD 2.52 per hour) in the north compared to USD 308 (USD 1.05 per hour) in the south.<sup>109</sup> Workers in the north also work fifty-four hours per week, compared to sixty-eight hours in the south (a 25.9% difference), have a sixty-minute lunch break compared to a twenty-minute lunch break, and report safer work places, including reduced incidents of sexual harassment and verbal abuse.<sup>110</sup> Notably, these gains were achieved in Guatemala despite a long history of violent union oppression that extends to date, with 101 trade unionists murdered between 2004 and 2008.<sup>111</sup>

Moreover, the ability for workers to bargain at the enterprise and sectoral levels has the potential to facilitate widespread transformation of agri-food supply chains. Issues that can be collectively bargained at the workplace and sectoral level include “wages, contracts of employment, labor contracting, maternity rights, health benefits, hours of work, leave, occupational health, safety and environment, housing conditions, grievance procedures, transport of workers, elimination of child labor, measures to counter HIV/AIDS, and COVID-19 relief and recovery.”<sup>112</sup>

Second, freedom of association provides a powerful antidote to the symbolic violence of naturalized worker exploitation. In exercising the right to freedom of association, workers refute the symbolic violence of inadequate labor standards and labor rights exclusions, rendering relationships of exploitation illegitimate and challenging the reproduction of economic and social subordination. As such, the importance of freedom of association and collective bargaining is heightened for historically excluded workers. Given the importance of freedom of association in addressing both structural and symbolic violence, the denial of freedom of association represents a padlock on the hinge joining labor exploitation and conjugated oppression—reinforcing the economic and social subordination of agricultural workers.

The critical role of freedom of association and collective bargaining in advancing, defending, and enforcing labor rights is well established in national and international law.<sup>113</sup> The right to freedom of association is recognized in every international and regional human rights instrument, including the Universal Declaration of Human Rights, international covenants, regional human rights charters, and governing documents of international organizations. Freedom of association is also guaranteed in most national constitutions.<sup>114</sup> Despite global recognition of freedom of association as a fundamental right, however, agricultural workers remain systematically excluded from freedom of association,

---

109. *Id.*

110. Mark Anner, WHAT DIFFERENCE DOES A UNION MAKE? BANANA PLANTATIONS IN THE NORTH AND SOUTH OF GUATEMALA 12 (2021).

111. See SILLIMAN BHATTACHARJEE, *supra* note 8, at 15 (situating the findings of Anner, *supra* note 76, in the context of high levels of union repression).

112. See *id.* at 37.

113. INT'L LAB. ORG., DECLARATION ON SOCIAL JUSTICE FOR A FAIR GLOBALIZATION (June 10, 2008), [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms\\_099766.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_099766.pdf) [<https://perma.cc/ZZ58-TT69>].

114. CEACR, INT'L LAB. CONF. Report, *supra* note 8, at 87, ¶ 275.

making the structure and circumstances of these exclusions a particularly rich site of investigation.

In fact, the systematic exclusion of agricultural workers from freedom of association and other labor rights was identified by the international community as an important site of intervention more than 100 years ago. Accordingly, in 1921, ILO member states passed the Right of Association (Agriculture) Convention, 1921 (No. 11),<sup>115</sup> calling for member states to protect the same rights of association for agricultural workers as industrial workers, and eliminate laws and practices restricting the rights of agricultural workers.<sup>116</sup> Delegates at the third session of the International Labor Conference in 1921 saw Convention 11 as necessary to protect agricultural workers who were systematically excluded from the labor rights afforded industrial workers.<sup>117</sup> The Convention broke new ground in addressing the systematic exclusion of agricultural workers from labor rights across the world.<sup>118</sup> To date, 123 ILO member states have ratified Convention 11, committing to protect freedom of association for their agricultural workforces.<sup>119</sup>

Finally, in deciding to study the exclusion of agricultural workers from labor rights through a freedom of association lens, my research engages in network-based rights mobilization as a research practice.<sup>120</sup> This approach seeks to use positions of power in knowledge generation to address imbalances in information and power—in particular, by producing research that strengthens advocacy to advance labor rights for agricultural workers through networks of trade unions, workers organizations, and other civil society organizations and campaigns. This approach joins a line of scholarship committed to “pragmatic solidarity,” not only perceiving social inequalities but also seeking to challenge and transform inequalities of power.<sup>121</sup> Accordingly, my initial legal analysis<sup>122</sup> was designed in collaboration with the International Union of Food, Agricultural,

---

115. Right of Association (Agriculture) Convention, 1921 (No. 11), *opened for signature* Oct. 25, 1921, 38 U.N.T.S. 153 (entered into force May 11, 1923), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C011](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C011) (last visited Feb. 20, 2023) [<https://perma.cc/3FH4-BJ59>] (Convention 11 advances the principle that all those engaged in agriculture are entitled to the same freedom of association rights as other workers and calls for states to repeal any laws and policies curtailing agricultural workers’ rights. These protections are guaranteed to “all those engaged in agriculture”—including agricultural workers across the full spectrum of national circumstances and employment relationships. Convention 11 calls for states to repeal any statutory or other provisions restricting rights to freedom of association for any worker engaged in agriculture. Freedom of association protections under Convention 11 apply to any organization that facilitates a strong, independent, and effective collective voice for agricultural workers.).

116. *See generally* LEAGUE OF NATIONS, ILC THIRD SESSION, VOL. I—FIRST AND SECOND PARTS (1921).

117. SILLIMAN BHATTACHARJEE, *supra* note 8, at 12 n.17.

118. *See generally* SILLIMAN BHATTACHARJEE, *supra* note 8.

119. *Ratifications of C011—Right of Association (Agriculture) Convention, 1921 (No. 11)*, INT’L LAB. ORG., [https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312156](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312156) (last visited Feb. 24, 2023) [<https://perma.cc/K3AW-X54L>].

120. *See* NATHAN ET AL., *supra* note 13, at 22 (defining network-based rights mobilization and its application in studying the experiences of women garment workers on Asian fast-fashion supply chains).

121. *See e.g.*, PAUL FARMER, *PATHOLOGIES OF POWER: HEALTH, HUMAN RIGHTS, AND THE NEW WAR ON THE POOR* (2003); Seth Holmes, *supra* note 11, at 190–91. *See generally* ANGANA CHATTERJI, *CONFLICTED DEMOCRACIES AND GENDERED VIOLENCE: THE RIGHT TO HEAL* (2015).

122. *See generally* SILLIMAN BHATTACHARJEE, *supra* note 8.

Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations ("IUF")<sup>123</sup> and Global Labor Justice-International Labor Rights Forum ("GLJ-ILRF")<sup>124</sup> and been used in advocacy at the Civil Society and Indigenous People Mechanism counter-mobilization to the United Nations Food Systems Summit, and in ongoing IUF advocacy with the ILO Standards Review Mechanism Tripartite Working Group as Convention 11 comes under review.<sup>125</sup>

#### IV. GLOBAL LEGAL ARCHITECTURE OF EXCLUSION FROM LABOR LAW PROTECTIONS

Despite global commitments to protect freedom of association for agricultural workers, their exclusion from freedom of association and other labor rights takes place around the world, rooted in a global history of exploitation that extends into the present. This Part lays out a typology of legal exclusions from across national jurisdictions that deny labor rights to agricultural workers. As explained in Part III, in analyzing labor rights for agricultural workers in 110 ILO member countries, I focused on exclusion from freedom of association as a bellwether for other labor rights exclusions and workplace abuse.<sup>126</sup>

My research revealed two broad categories of exclusion: (1) specific exclusion of agricultural workers from labor rights—including sector-wide exclusions, exclusion of self-employed and own-account farmworkers, and exclusions based on farm size; and (2) general exclusions from labor rights that have a significant impact upon agricultural workers—including short-term employment

---

123. The 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. *Id.* at 2; *see also The Food, Farm, Hotels and More Global Union*, INT'L UNION OF FOOD, AGRIC., HOTEL, REST., CATERING, TOBACCO & ALLIED WORKERS' ASS'NS, <https://www.iuf.org> (last visited Feb. 24, 2023) [<http://https://perma.cc/LDS9-54D5>].

124. The GLJ-ILRF is a new merged organization bringing strategic capacity to cross-sectoral work on GVCs and labor migration corridors. GLJ-ILRF holds 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. *See also* SILLIMAN BHATTACHARJEE, *supra* note 8, at 2.

125. *Standards Reviews: Decisions on Status: C011 Right of Association (Agriculture) Convention, 1921 (No. 11)*, INT'L LAB. ORG., <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12040:0::NO::> (last visited Feb. 24, 2023) [<https://perma.cc/RR8L-DV4V>].

126. In conducting this analysis, I have drawn from the *General Survey Concerning the Right of Association and Rural Workers' Organizations and Instruments*, conducted in 2014 and released in 2015. *See* CEACR, INT'L LAB. CONF. Report, *supra* note 8, at 1–2, ¶¶ 4, 7 (explaining that in 2012, the International Labour Office expressed renewed concern that agricultural workers were still persistently excluded from the right to associate and bargain collectively, catalyzing a General Survey process wherein 110 governments reported on national law and practice related to Convention 11 and other instruments protecting the rights of agricultural workers and fifty-six workers' organizations and eight employers' organizations also provided information and observations). *See also* INT'L LAB. OFF., INT'L LAB. CONF., FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK: FROM COMMITMENT TO ACTION, REPORT VI, at 21, 41, 42, ¶¶ 43, 106, 110 (2012).

exclusions, exclusion of self-employed workers, and migration-status based exclusions (Table 1).<sup>127</sup>

---

127. This Table draws from and updates the typology of labor law exclusions presented in SILLIMAN BHATTACHARJEE, *supra* note 8. Notably, while the table in the cited resource lays out broad categories of exclusions for the purpose of ILO advocacy, Table 1 in this text subdivides these exclusions into the categories of specific and general exclusions and significantly redefines these categories of exclusion in order to facilitate more specific analysis for an audience of legal practitioners, policy makers, and scholars.

TABLE 1: TYPOLOGY OF LEGAL EXCLUSIONS FACING AGRICULTURAL WORKERS WITH GLOBAL EXAMPLES

Type of exclusion	Specific legal exclusion	Global examples
<b>Category 1: Specific exclusion of agricultural workers from protection</b>		
Sector-wide exclusions	Exclusion of all agricultural workers from labor rights protecting freedom of association and collective bargaining	Bolivia <sup>128</sup> , United States <sup>129</sup>
Exclusion of self-employed and own account farmworkers	Exclusion of independent agricultural workers, small farmers, and workers employed on estates as out-growers from freedom of association	Pakistan <sup>130</sup> , Sri Lanka <sup>131</sup>
Farm-size exclusions	Exclusion based upon the number of employees or size of farms	Bangladesh <sup>132</sup> , Honduras <sup>133</sup> , Italy <sup>134</sup> , Turkey <sup>135</sup> , Saudi Arabia <sup>136</sup>

128. General Ley General Del Trabajo [General Law on Labour] art. 1 (Bol.); Regulatory Decree No. 224 of the General Labour Law of 23 Aug. 1943 (Bol.). See also CEACR, *Observation (CEACR)—Adopted 2019, Published 109th ILC Session (2021), Right to Organise and Collective Bargaining Convention, 1949 (No. 98)—Bolivia (Plurinational State of) (Ratification: 1973)*, INT’L LAB. ORG., [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:4014184](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4014184) (last visited Feb. 24, 2023) [<https://perma.cc/5PBY-SGVX>] (“the need to guarantee the right to collective bargaining of . . . agricultural workers [the Constitution already does so, but the General Labour Act has not been amended accordingly]”).

129. National Labor Relations Act, 29 U.S.C. § 152(3) (exempting from the Act’s coverage “any individual employed as an agricultural laborer”).

130. CEACR, *Observation (CEACR)—Adopted 2012, Published 102nd ILC Session (2013), Right to Organise and Collective Bargaining Convention, 1949 (No. 98)—Pakistan (Ratification: 1952)*, INT’L LAB. ORG., [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3084188](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084188) (last visited Feb. 24, 2023) [<https://perma.cc/R68H-2XY6>] (noting that §1(3) of the Industrial Relations Act, Balochistan Industrial Relations Act, Khyber-Pakhtoonkhwa Industrial Relations Act, Punjab Industrial Relations Act, and Sindh Industrial Relations Act exclude independent agricultural workers from freedom of association.). As discussed in Section IV.C of this paper, however, in 2019, the Sindh Provincial Assembly amended the Industrial Relations Act of 2010, extending protection—including freedom of association—to workers in the agriculture and fisheries sectors. See discussion *infra* Section IV.C.

131. Workers without an employer-employee relationship such as small owner-occupiers and sharecroppers are not covered by the Trade Unions Ordinance. Trade Unions Ordinance, 1935 (No. 14), part I, ¶ 2 (Sri Lanka). These workers are permitted to form other organizations under the Agrarian Services (Amendment) Act, but they remain excluded from the right to bargain collectively. Agrarian Services (Amendment) Act, 1991 (No. 4) (Sri Lanka).

132. The Bangladesh Labour Act 2006 amended by section 2(c)(i) of the Bangladesh Labour (Amendment) Act, 2013. Section 1(4)(n) does not apply to agricultural farms where less than five workers are normally employed. See CEACR, *Observation (CEACR)—Adopted 2019, Published 109th ILC Session (2021), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)—Bangladesh (Ratification: 1972)*, INT’L LAB. ORG., [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:4021836](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4021836) (last visited Feb. 24, 2023) [<https://perma.cc/RQY3-ZAS4>] (noting that the BLA is only applicable to agricultural workers engaged in commercial agricultural farms where at least five workers are employed).

133. Código del Trabajo y Sus Reformas [Labor Code and its Reforms], art. 2, 1959, última modificación en 2015 (Hond.) (excluding workers from freedom of association in agricultural and stock-raising enterprises which do not permanently employ more than ten workers). See also CEACR, *Observation (CEACR)—Adopted 2020, Published 109th ILC Session (2021), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)—Honduras (Ratification 1956)*, INT’L LAB. ORG., [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:4060477](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4060477) (last visited Feb. 24, 2023) [<https://perma.cc/4MQR-JDPC>].

134. Legge 20 maggio 1970, n. 300, art. 18 (It.) (protecting freedom of association, collective bargaining, and other trade union activities only in industrial and commercial agricultural establishments that employ five or more workers).

135. Labour Act of Turkey, Law No. 4857 of 2003, art. 4 (Turk.).

Category 2: General exclusion from protection with significant impact for agricultural workers		
Short-term employment exclusions	Exclusion of temporary, seasonal, and casual workers	Brazil <sup>137</sup> , Chile <sup>138</sup> , China <sup>139</sup> , Nicaragua <sup>140</sup> , Qatar <sup>141</sup> , Syrian Arab Republic <sup>142</sup> , Turkey <sup>143</sup>
Exclusion of self-employed workers	Exclusion of self-employed workers from freedom of association and collective bargaining that impacts self-employed and own-account agricultural workers	Central African Republic <sup>144</sup> , Japan <sup>145</sup> , United States <sup>146</sup>
Migration status-based exclusions	Restrictions for migrant or foreign workers that impact agricultural workers	Algeria <sup>147</sup> Central African Republic <sup>148</sup>

In Sections IV.A and IV.B below, I discuss each of these categories and types of exclusion in turn, grounding my analysis in specific national examples. I also discuss the role of these exclusions in reinforcing the position of agricultural workers at the base of economic and social hierarchies.

While my analysis focused on exclusion at the national level, I found that national laws governing labor rights for agricultural workers interact with sub-national exclusions (and inclusions). Accordingly, in Section C, I discuss cases

136. Labor Law, Royal Decree No. M/51 of 2005, art. 5(4)–(6), art. 7(4) (Saudi Arabia).

137. CEACR, INT'L LAB. CONF. Report, *supra* note 8, at 40, ¶ 128 n.26 (citing Brazil—CEACR, Convention No. 141, observation, published in 2012).

138. *Id.* at 40, ¶ 128 n.25 (citing Chile—CEACR, Convention No. 87, observation, published in 2010).

139. *Id.* at 40, ¶ 128 n.26 (citing China—CEACR, Convention No. 11, observation, published in 1948).

140. *Id.* (citing Nicaragua—CEACR, Convention No. 11, observation, published in 1962).

141. *Id.* at 40, ¶ 128 n.25 (citing Qatar Law No. 14 of 2004, article 3(3) excluding casual workers from labor law protections).

142. *Id.* (citing Labour Code 2010, article 5(a)(6) excludes casual workers from labor law protections).

143. *Id.* at 41, ¶ 129 n.28 (citing CEACR, Convention No. 87, general observation, published in 2009 and explaining that the Government of Turkey indicated that as temporary, seasonal and casual workers were generally employed in the informal economy, they could not benefit from the right to organize).

144. CEACR, *Direct Request (CEACR)—adopted 2020, published 109th ILC session (2021), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)—Central African Republic (Ratification: 1960)*, INT'L LAB. ORG., [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO::P13100\\_COMMENT\\_ID,P13100\\_LANG\\_CODE:4057170,es:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:4057170,es:NO) (last visited Feb. 24, 2023) [<https://perma.cc/9BW8-JQU7>] (“In its previous comments, the Committee requested the Government to indicate the legislative provisions that protect the right of self-employed workers to freely establish and join organizations of their own choosing, given their exclusion from the scope of application of the current Labour Code (section 2).”).

145. Under Japan’s Labour Union Law, 1949, a worker is a person who maintains their livelihood by the income derived from wages, salaries, or other remuneration regardless of their occupation (Article 3). Self-employed workers do not have the same rights of association as industrial workers covered under the Labour Union Law. *See* Labor Union Act, Law No. 174 of 1949, art. 3 (NATLEX Database of National Labor, Social Security and Related Human Rights Legislation) (Japan), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/27190/62938/F-747206767/JPN27190%202005.pdf> (last visited Feb. 24, 2023) [<https://perma.cc/G6Y3-3HTD>]. The Agricultural Cooperatives Law, 1947, allows self-employed workers in agriculture to form farmers’ cooperative organizations. These organizations do not, however, have the rights to collective bargaining afforded to industrial workers. *See* Agricultural Cooperative Law, art. 3 (FAOLEX) (Japan), <https://faolex.fao.org/docs/pdf/jap163836.pdf> (last visited Jan. 9, 2023) [<https://perma.cc/6TDW-L6GA>].

146. National Labor Relations Act, 29 U.S.C. § 152(3).

147. CEACR, INT'L LAB. CONF. Report, *supra* note 8, at 41, ¶ 130 n.30 (citing Algeria—CEACR, Convention No. 87, observation, published in 2014 (section 6 of Act No. 90-14 of 2 June 1990)).

148. *Id.* at 41, ¶ 130 n.29 (citing Central African Republic—CEACR, Convention No. 87, observation, published in 2014 (article 17 of the Labour Code)).

of reduced protection at the subnational level, distinct protections between provinces and states, and increased protections at the state level.

A. *Specific Exclusion of Agricultural Workers from Labor Rights*

Specific exclusion refers to national legislation that restricts freedom of association and other labor rights for agricultural workers on the basis of their status as agricultural workers. This type of exclusion manifests as sector-wide exclusions, exclusion of self-employed and own account farm workers, and farm size exclusions.

1. *Sector-wide Exclusion of Agricultural Workers*

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. In the United States, the National Labor Relations Act of 1935 (“NLRA”) establishes rights and obligations regarding union representation and collective bargaining but denies protection to agricultural workers.<sup>149</sup> In Bolivia, agricultural workers are entirely excluded from the scope of the Bolivian General Labour Act of 1942.<sup>150</sup>

In the United States and South Africa, sector-wide exclusion is rooted in entrenched histories of racialized exploitation. In the United States, exclusion of agricultural workers from the NLRA and Fair Labor Standards Act, 1938 (“FLSA”) functioned to maintain a racialized low-wage workforce in agriculture and domestic work, reinforcing social hierarchies of plantation slavery.<sup>151</sup> Capitalizing on the 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, and small but growing numbers of convict workers that are not only excluded from freedom of association but are also subject to control by the state on the basis of their immigration or convict status.<sup>152</sup> As demonstrated by the South African experience, even in national contexts where legal exclusion of agricultural workers has been rolled back, the legacies of racist institutions continue to undermine freedom of association and decent work.

---

149. National Labor Relations Act, 29 U.S.C. § 152(3).

150. General Labour Law art. 1 (Bol.) and Regulatory Decree No. 224 of the General Labour Law of 23 Aug. 1943 (Bol.). See also CEACR, *Observation (CEACR): Right to Organise and Collective Bargaining Convention, 1949 (No. 98)—Bolivia*, INT’L LAB. ORG. [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0:NO:13100:P13100\\_COMMENT\\_ID:4014184](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0:NO:13100:P13100_COMMENT_ID:4014184) (last visited Feb. 24, 2023) [<https://perma.cc/3AWB-373M>] (referencing “the need to guarantee the right to collective bargaining of . . . agricultural workers (the Constitution already does so, but the General Labour Act has not been amended accordingly).”).

151. EXCLUDED WORKERS CONGRESS, UNITY FOR DIGNITY: EXPANDING THE RIGHT TO ORGANIZE TO WIN HUMAN RIGHTS AT WORK 11 (2010).

152. *Id.* at 24.

a. Race and Sector-wide Exclusion of Agricultural Workers—United States

In the United States, the blanket exclusion of all agricultural workers from freedom of association is rooted in the sordid national history of racialized oppression, dating back to plantation slavery. 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.<sup>153</sup> 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 thereby uphold a racialized social and economic order.<sup>154</sup> Democrats at the time passed separate legislation to promote racial equality, splitting issues of class and race into two sets of legal frameworks, neither of which had enough authority to integrate the labor movement.<sup>155</sup> Thus, implicitly racialized exclusions that reflected the social patterns of slavery were written into U.S. law, with many of these exclusions remaining on the books.<sup>156</sup> Today, agricultural workers—mostly migrant workers from the Southern US, Mexico, and Central America, and also Black workers—still live with this racist legacy as every labor reform since then has continued to omit them from protection.

i. Race and Exclusion in the Framing of the FLSA and NLRA

The foundation for the current framework for labor rights was developed in the 1930s in response to a wave of massive strikes among industrial workers, including calls for economic justice by Black agricultural workers in the American South and industrial workers across the nation.<sup>157</sup> The first of these laws included the NLRA, 1935, which intended to encourage collective bargaining; and the FLSA, 1938, which mandated minimum labor standards.<sup>158</sup>

At the time of its passage, although the NLRA covered workers in most industries, agricultural workers were entirely excluded from protection.<sup>159</sup> This exclusion reflected the compromise with Southern Democrats known as Dixiecrats who made the racialized exclusion of agricultural and domestic workers a

---

153. National Labor Relations Act, 29 U.S.C. §§ 157, 158(a), 159(a).

154. PAUL FRYMER, *BLACK AND BLUE: AFRICAN AMERICANS, THE LABOR MOVEMENT, AND THE DECLINE OF THE DEMOCRATIC PARTY 27–28* (2008).

155. *Id.* at 24, 28.

156. EXCLUDED WORKERS CONGRESS, *supra* note 151, at 11.

157. *Id.*; RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS 1, 2–3* (2007).

158. *National Labor Relations Act*, NAT'L LAB. RELS. BD., <https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act> (last visited Feb. 24, 2023) [<https://perma.cc/6WVZ-JAM3>]; *Wages and the Fair Labor Standards Act*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/flsa> (last visited Feb. 24, 2023) [<https://perma.cc/9H9U-VGRF>].

159. National Labor Relations Act, 29 U.S.C. § 152(3).

condition of their support.<sup>160</sup> Reflecting the legacy of plantation slavery, agricultural work remained at the core of the Southern economy.<sup>161</sup> Most of the era's agricultural workers and domestic workers were Black, and maintaining racialized exclusion from labor law protections was crucial to weakening their position as workers in order to increase the profits of white Southern landholders and employers.<sup>162</sup>

NLRA exclusions were re-institutionalized in the FLSA.<sup>163</sup> On the heels of the NLRA, the FLSA established federal standards for minimum wage and overtime pay but excluded millions of domestic and agriculture workers who were overwhelmingly people of color.<sup>164</sup> While the FLSA has been extended to apply minimum wage and recordkeeping provisions to most agricultural workers and employers, workers remain unprotected by the Act's overtime pay provisions.<sup>165</sup>

#### ii. Race, Migration, and Exclusion in the Contemporary Agricultural Sector

Over time, the United States agricultural industry required a new low-wage workforce excluded from labor rights protections. Capitalizing on exclusion of agricultural workers from the scope of 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 but are also subject to control by the state on the basis of their immigration status.<sup>166</sup> There are an estimated two to three million migratory and seasonal agricultural workers employed in the United States.<sup>167</sup> 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.

More recently, although federal and state laws prohibited convict leasing for most of the twentieth century, 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

---

160. Caroline Fredrickson, *How Labor Laws Disfavor People of Color*, BRENNAN CTR. FOR JUST. (June 29, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/how-labor-laws-disfavor-people-color> [<https://perma.cc/J4QH-CLLJ>].

161. See GOLUBOFF, *supra* note 157, at 6.

162. EXCLUDED WORKERS CONGRESS, *supra* note 151, at 11.

163. Harmony Goldberg, *The Long Journey Home: The Contested Exclusion and Inclusion of Domestic Workers from Federal Wage and Hour Protections in the United States*, INT'L LAB. OFFICE 4 (2015), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_396235.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_396235.pdf) [<https://perma.cc/QES2-R2BY>].

164. EXCLUDED WORKERS CONGRESS, *supra* note 151, at 13.

165. *US Labor Law for Farmworkers*, FARMWORKER JUST., <https://www.farmworkerjustice.org/advocacy-and-programs/us-labor-law-farmworkers> (last visited Feb. 24, 2023) [<https://perma.cc/ZH9Y-8555>].

166. EXCLUDED WORKERS CONGRESS, *supra* note 151, at 24.

167. *Facts About Agricultural Workers*, NAT'L CTR. FOR FARMWORKER HEALTH, <http://www.ncfh.org/facts-about-agricultural-workers-fact-sheet.html> (last visited Feb. 24, 2023) [<https://perma.cc/B4YV-X9HP>].

employing incarcerated workers from prisons.<sup>168</sup> Not only excluded from freedom of association on the basis of their status as agricultural workers, incarcerated people working in agricultural establishments are also particularly vulnerable to abuse on the basis of their incarceration, with some workers making as little as ten cents (USD .10) per hour.<sup>169</sup>

### iii. United States Sectoral Exclusion as a Global Aberration

It is important to note that blanket sectoral exclusion of workers employed in agriculture from labor rights is not the norm—with the United States coming in as a significant outlier, together with Bolivia.<sup>170</sup> In fact, freedom of association for agricultural workers is protected by law across ILO member states, with a majority of member states confirming that rights of rural and agricultural workers to bargain collectively are guaranteed by legislation in force in their countries.<sup>171</sup> Member states that confirmed specific legislation protecting the rights to freedom of association and collective bargaining for rural and agricultural workers include Antigua and Barbuda, Australia, Belarus, Bulgaria, Czech Republic, Finland, France, Iceland, Israel, Italy, Kyrgyzstan, Malta, Republic of Moldova, Namibia, Slovakia, Sweden, the former Yugoslav Republic of Macedonia, Ukraine, United Kingdom, and Uzbekistan.<sup>172</sup>

#### b. Legacies of Institutionalized Racial Exclusion—South Africa

Even in national contexts where sector-wide exclusion of agricultural workers has been rolled back, the legacy of institutionalized exclusion continues to undermine freedom of association and decent work. For instance, in South Africa, hierarchical relationships between commercial farmers and agricultural workers find their roots in seventeenth-century racialized “master-slave” relationships.<sup>173</sup> Apartheid era legal exclusions included the Natives Land Act of 1913 and the Native Trust and Land Act of 1936, promulgated to ensure that Blacks were prohibited from land ownership outside areas reserved for Africans; racialised employment laws such as the Industrial Conciliation Act of 1956 (re-named Labour Relations Act 28 of 1956); and classification of farm work in South Africa as a pre-industrial sector, excluding workers from coverage by the

---

168. Rebecca McCray, *A Disturbing Trend in Agriculture: Prisoner-Picked Vegetables*, TAKEPART (Apr. 14, 2014), <http://www.takepart.com.s3-website-us-east-1.amazonaws.com/article/2014/04/14/prison-ag-labor/> [https://perma.cc/6JC2-MNWN]; Dan Wheat, *Grower Turns to Prison for Apple Harvest Help*, CAP. PRESS (Dec. 13, 2018), [https://www.capitalpress.com/state/washington/grower-turns-to-prison-for-apple-harvest-help/article\\_f623bacc-1d7d-5787-b748-0123b5947ca9.html](https://www.capitalpress.com/state/washington/grower-turns-to-prison-for-apple-harvest-help/article_f623bacc-1d7d-5787-b748-0123b5947ca9.html) [https://perma.cc/CY67-333H]; Lauren Castle & Maria Polletta, *Some Prisoners in Arizona Make 10 Cents Per Hour—Should They Get a \$3 Minimum Wage?*, ARIZ. REPUBLIC (Feb. 8, 2020, 2:43 PM), <https://www.azcentral.com/story/news/local/arizona/2020/02/07/arizona-lawmaker-proposes-3-per-hour-minimum-wage-prisoners/4681453002/> [https://perma.cc/9EMQ-BY7K].

169. See Castle & Polletta, *supra* note 168.

170. See *supra* Part IV.

171. See *supra* Part III.

172. CEACR, INT’L LAB. CONF. Report, *supra* note 8, at 49, ¶ 155 n.80.

173. See *supra* Subsection IV.A.1.

national labor relations framework.<sup>174</sup> On geographically isolated farms, rights violations have long been unchecked. This regime excluded agricultural workers from freedom of association, collective bargaining, and labor rights enforcement until the fall of apartheid in 1994.<sup>175</sup>

With the fall of apartheid came a raft of progressive legislation conferring economic, social, cultural, civil, and political rights to all South Africans.<sup>176</sup> The laws and policies protecting farm workers in South Africa, however, are in stark contrast with the persistent exclusion of farmworkers from freedom of association and decent work. Decent work for South African agricultural workers, in line with this new legal architecture, has faced considerable opposition from farming bodies at the level of drawing up and implementing these laws.<sup>177</sup> Moreover, this raft of progressive legislation was passed in tandem with trade reforms and liberalisation in the 1990s that led to decreased protection and subsidies in the sector.<sup>178</sup> For instance, six of the fifteen control boards which regulated pricing and marketing were abolished.<sup>179</sup>

As a result, employers routinely violate freedom of association and other labor rights, directly and indirectly. Farms continue to represent zones of localised sovereign power and the legal frameworks and policy hold less sway than informal modes of operation defined by asymmetric power and social relations.<sup>180</sup> Consistent with global patterns of conjugated oppression, the relationship between farm workers and their employers continues to be characterized by the hierarchy coded in social relations, paternalism, repression, and exploitation. The government of South Africa has systematically failed to enforce protective measures, and trade unions struggle to hold farmers and the government

---

174. See SILLIMAN BHATTACHARJEE, *supra* note 8, at 52.

175. *Id.* at 52–56 (providing a case study of this history of legal exclusion and limited implementation of laws protecting farm workers).

176. *Id.* at 53 (for a listing and discussion of these laws, including the Agricultural Labour Act, 147 of 1993, applying the Labour Relations Act, 1956 and the Basic Conditions of Employment Act, 1983 to agricultural activities; Occupational Health and Safety Act, No. 85 of 1993, amended by the Occupational Health and Safety Amendment Act, No. 181 of 1993; 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; Labour Relations Act, No. 66, of 1995; Land Reform (Labour Tenants) Act, No. 3 of 1996; Extension of Security of Tenure Act (No. 62 of 1997); Basic Conditions of Employment Act, No. 75 of 1997 (the BCEA); Housing Act, No. 107 of 1997; Skills Development Act, No. 97 of 1998; Employment Equity Act, No. 55 of 1998; 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; Sectoral Determination 13 for Agriculture of 2002, an extension to the BCEA prescribing minimum wages for labor in the agricultural sector; 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).

177. *Id.* at 54.

178. Nicolas Pons-Vignon and Ward Anseeuw, *Great Expectations: Working Conditions in South Africa Since the End of Apartheid*, 35 J. S. AFR. STUD. 883–99 n.51 (2009).

179. See SILLIMAN BHATTACHARJEE, *supra* note 8, at 54 (providing a case study of this history of legal exclusion and limited implementation of laws protecting farm workers).

180. See generally Blair Rutherford, *An Unsettled Belonging: Zimbabwean Farm Workers in Limpopo Province, South Africa*, 26 J. CONTEMP. AFR. STUD. 401 (2008).

accountable.<sup>181</sup> As a result, farm workers remain among the poorest people in South Africa, earning far below other workers.<sup>182</sup>

In short, where the law has been extended to include labor rights for agricultural workers, entrenched power relationships, barriers to enforcement, new legal loopholes, and industrial adaptations maintain the subordination of agricultural workers. Not only are farms in South Africa practically exempt, for the most part, from labor rights enforcement due to the challenges in reaching these far-flung and isolated properties, but this isolation also presents challenges for trade union representatives in organizing and advocating for agricultural workers. Without access to trade unions to provide labor rights education and support, workers lack an understanding of workplace rights and are largely unable to access representation in labor disputes.<sup>183</sup> Legally, the subordination of agricultural workers is kept intact by minimum wage exemptions and exclusionary thresholds for worker protections—including thresholds for participation in workplace committees and land reform policies.<sup>184</sup> The agricultural industry has also adapted to maintain access to a low-wage workforce subject to employer control by hiring workers for piece rates and engaging a growing number of casual and migrant workers employed through labor brokers.<sup>185</sup>

### c. Reviving Exclusion by Dismantling Protective Institutions—United Kingdom

Sector-wide exclusion of agricultural workers from labor rights can also manifest in the repeal of laws and institutions designed to protect their rights. For instance, in 2013, the Conservative-led government in England and Wales abolished the Agricultural Wage Board (“AWB”)<sup>186</sup>—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).<sup>187</sup> In particular, the AWB focused on wages under the Agricultural Wages Act of 1948 and implementation of annual Agricultural Wages (England and Wales) Orders.<sup>188</sup>

The trade union Unite estimates that with the abolition of the AWB, over a period of 10 years, GBP 258.8 million will be lost by workers and translate into

---

181. See generally Stephen Devereux, *Violations of Farm Workers' Labour Rights in Post-Apartheid South Africa*, 37 DEV. S. AFR. 382 (2020).

182. SILLIMAN BHATTACHARJEE, *supra* note 8, at 54.

183. See Devereux, *supra* note 181, at 397–98.

184. SILLIMAN BHATTACHARJEE, *supra* note 8, at 55–56.

185. *Id.*

186. Department for Environment, Food, & Rural Affairs (Defra), *Defra Announces Changes to Arm's Length Bodies*, UK Government Web Archive, <https://webarchive.nationalarchives.gov.uk/ukgwa/20130123170255/http://www.defra.gov.uk/news/2010/07/22/arms-length-bodies/> (last visited Feb. 23, 2023) [<https://perma.cc/EAK5-FERE>].

187. See SILLIMAN BHATTACHARJEE, *supra* note 8, at 57–58 (providing a case study of Agricultural Wage Boards in England and Wales, including their establishment, role in protecting wages for agricultural workers, and the impact of their dissolution).

188. See *id.*

gains by employer farm owners.<sup>189</sup> The abolition of the AWB re-enacts the repeated exclusion of agricultural and horticultural workers in England and Wales, resulting in the loss of legal wage protection for around 150,000 low-paid agricultural and horticultural workers.<sup>190</sup>

## 2. *Exclusion of Self-employed and Own-account Agricultural Workers*

The ILO defines own-account workers as “those workers who, working on their own account or with one or more partners, hold the type of job defined as a self-employed job.”<sup>191</sup> In the context of agriculture, this category includes small farmers, independent agricultural workers outside stable employment relationships, out-growers, and sharecroppers—agricultural workers with the status of tenants who are allowed to use the land in exchange for providing the landholder a share of the crop.<sup>192</sup> Employers may also treat a worker who does in fact have an employment relationship as though they are a self-employed worker, including through practices of imposing false self-employment, false subcontracting, establishment of pseudo-cooperatives, and false company restructuring.<sup>193</sup>

The exclusion of self-employed and own-account workers from protection runs contrary to international labor standards. The agricultural sector has long been run by hiring practices that rely on flexible pools of workers. Therefore, to protect freedom of association regardless of employment status, the worker representatives that participated in framing Convention 11 emphasized inclusion of non-wage workers, including peasants, farm hands, and tenant farmers.<sup>194</sup> As a result of their advocacy, Convention 11 guarantees the right to association and protection from legal exclusion to “all those engaged in agriculture” (Art. 1).<sup>195</sup> In interpreting and applying Convention 11, the ILO Committee of Experts has clearly established that the Right of Association (Agriculture) Convention, 1921 (No.11) applies to self-employed farmers, small holders, and other non-wage-earning agricultural workers.<sup>196</sup> Nonetheless, self-employed and own-account agricultural workers are specifically denied freedom of association on par with industrial workers in countries that have ratified Convention 11, including in Pakistan and Sri Lanka.<sup>197</sup>

---

189. *See id.* at 58.

190. *See id.* (describing the negative impacts of abolishing the AWB).

191. Fifteenth International Conference of Labour Statisticians, Resolutions Concerning International Classification of Status in Employment, ¶ 10, (Jan. 1993).

192. *Id.* at ¶ 14(g).

193. *See* FAO, ILO & IUF Report, *supra* note 6, at 31 (explaining employment relationships in the agricultural sector).

194. LEAGUE OF NATIONS, *supra* note 116, at 140.

195. Right of Association (Agriculture) Convention, 1921 (No. 11), *supra* note 115, at Art. 1.

196. CEACR, INT’L LAB. CONF. Report, *supra* note 8, at 21–22, ¶¶ 62–66.

197. SILLIMAN BHATTACHARJEE, *supra* note 8, at 11.

a. Supply Chain Subcontracting and Exclusion of Independent Small Farmers

On agricultural supply chains, the distinction between own-account and wage workers is complicated by subcontracting practices where lead firms both hire wage workers on company plantations to grow raw materials and purchase raw materials from small farmers. In such cases, wage and own-account workers engage in the same work producing raw materials, but only wage workers are protected under labor law. Legal exclusions that deny the ability of self-employed workers to join unions and bargain collectively with wage workers on agri-food supply chains splinter the bargaining power of all agricultural workers on the supply chain, further consolidating the authority of lead firms and multinational enterprises (“MNEs”) to dictate and capitalize on subpar working conditions.

For example, in Kenya’s plantation sector, it is a common practice to employ both wage workers and self-employed workers within sugar and other supply chains.<sup>198</sup> An ILO case study documented the practices of one MNE that both managed a sugar plantation and processing facility and bought processed sugar from a network of out-growers.<sup>199</sup> On the plantation, the company employed 3,200 permanent workers, and it bought processed sugar from a network of 65,000 small farmers or out-growers grouped under their own independent company.<sup>200</sup> While the agricultural workers on the plantation and within the out-grower network performed similar labor at the base of an agri-food supply chain led by a common lead firm, less than 5% of these workers held permanent employment status.<sup>201</sup>

In most countries, national legislation protects the rights of workers to join cooperatives and organizations, including out-grower networks like the one described in Kenya.<sup>202</sup> Worker rights to form such agricultural organizations facilitate MNE practices of contracting and purchasing from networks of self-employed agricultural workers. These workers do not, however, have the right to bargain collectively or together with wage workers on the supply chain because trade unions and cooperatives are distinct types of organizations that serve complementary roles. A trade union is a democratic organization run by workers wherein members contribute fees and act through bargaining with employers to advance collective demands.<sup>203</sup> By contrast, cooperatives are jointly owned

---

198. *Id.* at 28.

199. *Id.*

200. *Id.*

201. ILO Multinational Enterprises and Social Policy Section, *Kenya: Facing the Challenge of Africa’s Integration in the Global Economy—The Role of Multinational Enterprises in the Plantation Sector* 9 (ILO, Working Paper No. 91, 2002).

202. CEACR, INT’L LAB. CONF. Report, *supra* note 8, at 30, ¶ 98.

203. See SILLIMAN BHATTACHARJEE, *supra* note 8, at 14 (describing key distinctions between trade unions and cooperatives).

enterprises wherein members hold shares and act through shared economic management of the enterprise.<sup>204</sup>

b. Out-grower Systems and Exclusion from Collective Wage Agreements—Sri Lanka

In Sri Lanka's tea industry, the exclusion of own-account workers from labor rights has been used to exclude workers from wage agreements negotiated by Sri Lankan trade unions. While the tea industry in Sri Lanka was long dominated by the plantation system, this system is now in decline at an annual rate of 10–20% per year and is instead being replaced by an out-grower system.<sup>205</sup> Under the out-grower system, a plot of land on the tea estate is allocated to a worker family.<sup>206</sup> The family is provided with fertilizer and technical assistance to manage the land, and the company pays the worker family for the green leaf supplied to the factory at a price set by the company.<sup>207</sup> This arrangement disrupts the direct employer-employee relationship between estate owners and tea workers, and tea workers instead become small owner-occupiers and sharecroppers.<sup>208</sup>

As small owner-occupiers and sharecroppers, however, tea estate workers are not covered by the Trade Union Ordinance of 1935 and therefore cannot join plantation trade unions.<sup>209</sup> They are not, therefore, protected by the collective agreements increasing wages that were negotiated by major Sri Lankan trade unions in 2006 and 2007, including the Ceylon Workers' Congress, Lanka Jathika Estate Workers' Union, and the Joint Plantation Trade Union Center.<sup>210</sup> The result: workers on small holder tea gardens are often paid less than those on large estates. The company also avoids paying into the Employee Provident Fund and providing maternity benefits.<sup>211</sup> While small hold farmers can form other organizations under the Agrarian Services (Amendment) Act No. 4, 1991, the 1991 Act excludes these organizations from the right to bargain collectively.<sup>212</sup>

3. *Farm Size Exclusions*

Due to seasonal workforce expansion and contraction, and the common use of contract labor during harvest and other peak periods,<sup>213</sup> the number of workers in agricultural enterprises fluctuates regularly—including in plantations,

---

204. See SILLIMAN BHATTACHARJEE, *supra* note 8, at 14.

205. SANNE VAN DER WAL, SUSTAINABILITY ISSUES IN THE TEA SECTOR: A COMPARATIVE ANALYSIS OF SIX LEADING PRODUCING COUNTRIES 8, 97 (2008).

206. *Id.*

207. *Id.*

208. *Id.* at 95–103.

209. *Id.*

210. *Id.* at 100.

211. See *id.* at 97.

212. See generally Agrarian Services (Amendment) Act No. 4 of 1991 (Sri Lanka), <https://citizens-lanka.org/wp-content/uploads/2015/12/Agrarian-Services-Amendment-Act-No-4-of-1991-E.pdf> (last visited Feb. 24, 2023) [<https://perma.cc/QY66-9JT2>].

213. See FAO, ILO & IUF Report, *supra* note 6, at 47–48.

commercial agricultural farms, small farms, and industrial agricultural establishments.<sup>214</sup> Nonetheless, in some countries, labor rights for agricultural workers are determined by the size of the farm.

Farm-size exclusions that deny freedom of association and other labor rights further undermine the ability of workers on agri-food supply chains to advance their rights. Across the world, small farms are integrated in agricultural supply chains, either through direct contracts with lead firms; or more commonly through subcontracts with larger farms or through growers' associations.<sup>215</sup> Where farm-size exclusions persist, workers on these farms are left both unprotected and unable to collectivize.

In some countries, labor rights depend on not only the number of workers on the farm but also the number of permanent workers. The Labor Code of Honduras, 1959, for instance, does not protect workers in agricultural or stock-raising enterprises unless the enterprise employs ten or more permanent workers.<sup>216</sup> In Italy, freedom of association, collective bargaining, and other trade union activities are only protected in industrial and commercial agricultural establishments that employ five or more workers.<sup>217</sup> Notably, Italian labor law protects trade union activities in establishments that employ more than five workers in the same municipality, permitting workers to organize across farms, processing, and production units owned by the same commercial companies.<sup>218</sup>

While farm size exclusions in Honduras and Italy date back to the late 1950s and early 1970s respectively<sup>219</sup>, this mode of legal exclusion persists in more contemporary labor codes. Farm size exclusions with particularly high thresholds for inclusion may exclude the vast majority of agricultural workers in a country from labor rights. The Labour Act of Turkey, 2003, for instance, only protects workers employed in agricultural and forestry establishments and enterprises that employ fifty or more workers.<sup>220</sup> Workers employed in establishments or enterprises with less than fifty workers are excluded from both labor law and social security protections, functionally excluding the vast majority of agricultural and forestry workers in Turkey from protection.<sup>221</sup> Accordingly, neither trade union organizers nor labor inspectors<sup>222</sup> have regular access to these establishments and enterprises—leaving even the most severe labor practices like child labor and forced labor practices almost entirely unchecked. Other twentieth-century farm size exclusions include exclusions in Bangladesh<sup>223</sup> and Saudi

---

214. *See id.* at 23–24.

215. *See* text accompanying *supra* notes 209–12.

216. *See* Código del Trabajo y Sus Reformas [Labor Code and its Reforms], art. 2, 1959, *supra* note 128.

217. Legge 20 maggio 1970, n. 300, G.U. May 27, 1970, n. 131.

218. *Id.*

219. *See* sources cited *supra* notes 216–18.

220. Labour Act of Turkey, Law No. 4857, art. 4 (Official Gazette 2003) (Turk.); *see also* CEACR, INT'L LAB. CONF. Report, *supra* note 8, at 41, ¶ 129 n.28.

221. Labour Act of Turkey, Law No. 4857, art. 4 (Official Gazette 2003) (Turk.); *see also* CEACR, INT'L LAB. CONF. Report, *supra* note 8, at 41, ¶ 129 n.28.

222. Labour Act of Turkey, Law No. 4857, art. 4 (Official Gazette 2003) (Turk.); *see also* CEACR, INT'L LAB. CONF. Report, *supra* note 8, at 41, ¶ 129 n.28.

223. Bangladesh Labour Act, ch. 1, §4(n) (2006).

Arabia<sup>224</sup>—albeit with lower thresholds for inclusion at five and ten workers respectively.

### B. *General Exclusions Impacting Agricultural Workers*

General exclusion of agricultural workers refers to national legislation that restricts freedom of association and other labor rights for a broad category of workers, with a significant impact on agricultural workers due to the demographics of this workforce. This type of exclusion includes short-term employment exclusions, general exclusion of self-employed workers from protection, and migration-status based exclusions.

#### 1. *Short-term Employment Exclusions*

Agriculture is seasonal. Accordingly, plantations, commercial agricultural farms, and small farms all hire workers in response to seasonal needs. In order to facilitate regular workforce expansion and contraction, hiring practices in the agricultural sector rely on nonstandard forms of employment—including hiring workers daily, seasonally, or for other fixed durations.<sup>225</sup> Exclusion of temporary workers from freedom of association and other labor rights is widespread across the global economy.<sup>226</sup> While not specific to the agricultural sector, exclusion of short-term workers from protection has a significant impact on agricultural workers—a workforce overwhelmingly employed on a temporary, seasonal, or casual basis.<sup>227</sup>

Hiring through contractors is a common practice, allowing employers to hire only a small number of workers directly, and easily access additional temporary workers through labor contractors according to their needs during peak periods, including harvests.<sup>228</sup> Large contractors create the paradox of regularized recruitment structures that function to channel workers into temporary employment gigs.<sup>229</sup> They facilitate consistent access to a flexible low-wage workforce for growers and producers, regular temporary gigs for workers, but short circuit access to employment benefits and wage increases that come with permanent positions.<sup>230</sup> Trade union representatives and union-affiliated workers have described the negative implications of large subcontractors on freedom of association: the ready availability of a pool of contract workers makes it easier for

---

224. See Royal Decree No. M/51 of 2005, art. 7 (Saudi Arabia) (excluding agricultural workers from protection in undertakings with ten or fewer workers and in firms that process their own products but extending protection to permanent workers who operate or repair agricultural machinery).

225. FAO, ILO & IUF Report, *supra* note 6, at 39.

226. *Id.* at 45.

227. Casual work refers to work paid at the end of each day worked or on a task basis. Temporary work refers to work for a specific but limited period of time. FAO, ILO & IUF Report, *supra* note 6, at 24.

228. *Id.* at 39.

229. *Id.* at 39, 48.

230. *Id.*

establishments to blacklist workers who attempt to unionize.<sup>231</sup> By undermining freedom of association and collective bargaining, contractors contribute to foreclosing opportunities for worker governance on global supply chains,<sup>232</sup> including agri-food supply chains.

This widespread use of flexible hiring practices allows lead firms and their downstream suppliers on agri-food supply chains to displace both environmental and industrial uncertainty onto low-wage workers. It is common for employers to hire agricultural workers on a daily or seasonal basis, and pay them piece rates—a system that provides workers with an incentive to engage in demanding labor for long hours, while requiring employers to pay only for completed work.<sup>233</sup> Under temporary, piece-rate working arrangements, employers are not responsible for providing social security, unemployment benefits, holidays, or medical or maternity leave.<sup>234</sup> Even in cases where workers are employed continuously, it is common practice in the agricultural sector to deny them benefits associated with permanent employment by rotating workers between positions and thereby classifying jobs as temporary.<sup>235</sup>

For the most part, agricultural workers are excluded from freedom of association due to their status as temporary workers under general legislation excluding all temporary workers from protection—including in Brazil<sup>236</sup>, Chile,<sup>237</sup> China,<sup>238</sup> Nicaragua,<sup>239</sup> Qatar,<sup>240</sup> the Syrian Arab Republic,<sup>241</sup> and Turkey.<sup>242</sup> This widespread practice of excluding temporary workers from freedom of association and other labor rights has been recognized as a violation of international legal standards by the ILO Committee of Experts since 1948—including in Belgium, the Belgian Congo and Ruanda-Urundi (1959), Brazil (2012), Chile (2010), China (1948), and Nicaragua (1962).<sup>243</sup>

Addressing the widespread practice of excluding seasonal workers from labor rights protections, in 2014 the European Union passed Directive 2014/36 on the conditions of entry and stay of third-country nationals for employment as seasonal workers.<sup>244</sup> The directive protects the right to equal treatment for seasonal workers, including minimum working ages, working conditions, hours,

---

231. *See id.* at 45; Shikha Silliman Bhattacharjee, *Migrant Labor Supply Chains: Architectures of Mobile Assemblages*, 31 SOC. & LEGAL STUD. 807, 822 (2022).

232. *See* Silliman Bhattacharjee, *supra* note 231, at 822.

233. FAO, ILO & IUF Report, *supra* note 6, at 47.

234. *See id.*, at 24, 47.

235. *See id.* at 24, 58–59.

236. *See* CEACR, INT'L LAB. CONF. Report, *supra* note 8, at 40, ¶ 128 n.26 (citing CEACR, Convention No. 141, observation, published in 2012 (Brazil)).

237. *See id.* (citing CEACR, Convention No. 11, observations, published in 1955 and 1956 (Chile)).

238. *See id.* (citing CEACR, Convention No. 11, observation, published in 1948 (China)).

239. *See id.* (citing CEACR, Convention No. 11, observation, published in 1962 (Nicaragua)).

240. *See id.* at 40, ¶ 128 n.25 (citing Law No. 14 of 2004, article 3(3) (Qatar)).

241. *See id.* (citing Labour Code 2010, article 5(a)(6) (Syria)).

242. *See id.* at 41, ¶ 129 n.28.

243. *See id.* at 40, ¶ 128 nn.25–26.

244. Council Directive 2014/36/EU, of the European Parliament of the Council of 26 February 2014 on the Conditions of Entry and Stay of Third-Country Nationals for the Purpose of Employment as Seasons Workers, 2014 O.J. (L 94) 375.

leave, holidays, and workplace safety (Art. 23).<sup>245</sup> The directive also explicitly protects freedom of association, collective bargaining, and the right to strike (Art. 23).<sup>246</sup>

Currently in force, Directive 2014/36 has had a significant impact in addressing the legal exclusion of seasonal workers from labor rights protections. For instance, since 1959, the ILO Committee of Experts on the Application of Conventions and Recommendations has called upon Belgium to address the exclusion of seasonal workers from freedom of association.<sup>247</sup> Due to EU compliance measures, in 2018, Belgium initiated implementation of Directive 2014/36, including taking steps to include equal treatment of seasonal workers.<sup>248</sup>

Laws excluding temporary workers from labor rights protections have also been struck down by national courts on the grounds that they violate the human rights of farm workers. For instance, in March 2013, the Superior Court of Quebec confirmed the right of seasonal agricultural workers to unionize.<sup>249</sup> The decision struck down provisions of the Labour Code that required not only that farm workers be hired on a permanent basis, but also that three or more farmworkers be hired on a permanent basis in order for them to be eligible for protection as employees.<sup>250</sup> The Superior Court found the law 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.<sup>251</sup>

## 2. *Migration Status-based Exclusions*

Agricultural workers include foreign and internal migrants who are prepared to accept low pay for strenuous work that is not attractive to the national or local workforce. In order to secure access to a low-wage workforce, labor migration systems seek to ensure that migrant workers are unable to challenge their subordination to the employer and other parts of the labor force.<sup>252</sup> As explained by Seth Holmes, “legal, political, and symbolic separations produce the maximal extraction of labor.”<sup>253</sup> Migration status-based exclusions are a legal mechanism of enforcing the subordinate status of migrant workers. Like short-term employment exclusions, migration-status based exclusions from labor rights protections are not specific to agricultural workers. Due to the concentration of migrants in agricultural work, however, large segments of the workforce experience exclusions on the basis of migration status.<sup>254</sup>

---

245. *Id.* at art. 23, 388–89.

246. *Id.*

247. *See* CEACR, INT’L LAB. CONF. Report, *supra* note 8, at 22, ¶ 65 n.15.

248. NATALI AFSAR & JO ANTOONS, ATTRACTING AND PROTECTING THE RIGHTS OF SEASONAL WORKERS IN BELGIUM 5 (2021).

249. *See* CEACR, INT’L LAB. CONF. Report, *supra* note 8, at 40, ¶ 128 n.27.

250. *See id.*

251. *See id.*

252. HOLMES, *supra* note 11, at 13.

253. *Id.*

254. CEACR, INT’L LAB. CONF. Report, *supra* note 8, at 76, ¶ 233–34.

Migrant workers excluded from freedom of association and other labor rights protections are extremely vulnerable to abuse. Employers are able to exert coercive control over migrant workers based on their migration status, and physical and social isolation on remote farms where many live in employer-controlled housing. Where migrant workers speak a different language than the populations where they are employed, it is difficult for them to access relief and even information.<sup>255</sup>

a. Residency Requirements

Restrictions on migrant workers establishing or joining trade unions may come in the form of residency requirements. In Algeria, for instance, workers must be Algerian by birth or have held Algerian nationality for ten years or more in order to establish a trade union.<sup>256</sup> In the Central African Republic (“CAR”), foreign migrants must establish legal residence for at least two years before they can join a trade union.<sup>257</sup> Freedom of association in the CAR is reserved, however, for migrants from countries of origin that also extend the right to freedom of association to CAR nationals.<sup>258</sup>

b. Migration Status, Industry Practices, and Exclusion from Labor Rights Protections—United States

There are between two and three million migratory and seasonal agricultural workers employed in the United States.<sup>259</sup> At least 60% of farm workers are undocumented migrants, and farms also employ migrant workers on H-2A and H-2B visas.<sup>260</sup> In short, the vast majority of farm workers in the United States are migrants.<sup>261</sup> While federal employment legislation directed at addressing the rights of migrant workers in agriculture partially addresses their exclusion from the NLRA and FLSA, in practice, employers, contractors, and recruiters have structured the industry in a way that makes these protections difficult to enforce.

The Migrant and Seasonal Agricultural Worker Protection Act, 1983 (“MSPA”)<sup>262</sup> addresses labor rights and working conditions for migrant workers under federal law.<sup>263</sup> Under the Act, employers must disclose terms of employment at the time of recruitment and comply with those terms, register and license farm labor contractors, and meet federal and local housing and transportation standards.<sup>264</sup> The law also adopts a broad definition of employment relationship

---

255. *Id.* at 41, ¶ 130.

256. *See id.*

257. *Id.*

258. *Id.*

259. *See* NAT’L CTR. FOR FARMWORKER HEALTH, *supra* note 161.

260. S. POVERTY L. CTR., *supra* note 70.

261. *Id.*

262. Migrant and Seasonal Agricultural Worker Protection Act (AWPA or MSPA), 29 U.S.C. §§ 1801–1872).

263. *Id.* § 2.

264. *Id.* §§ 101, 203.

so that most agricultural workers are considered “employees” under the law, enforced by the Department of Labor’s Wage and Hour Division.<sup>265</sup> The MSPA does not, however, protect freedom of association and collective bargaining, reinscribing the historical exclusion of agricultural workers from these cornerstone rights required to advance and implement all other labor rights.

In practice, however, employers, contractors and recruiters have structured the industry in a way that makes these protections difficult to enforce. For instance, it is difficult for workers to establish their employment relationship due to the many intermediaries involved in determining working conditions, transporting workers, recruiting and hiring workers, supervising workers in 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.<sup>266</sup> As such, protections under the MSPA are not sufficient to promote safe and dignified working conditions for farm workers.

### 3. *Exclusion of Self-employed Workers*

General exclusion of all self-employed workers from freedom of association and other labor rights functions in much the same way as specific exclusion of self-employed or own account agricultural workers—impacting small farmers, independent agricultural workers outside stable employment relationships, out-growers, and sharecroppers. These exclusions also stand to impact agricultural workers who are treated as self-employed workers through unscrupulous employment practices including practices of imposing false self-employment, false subcontracting, establishment of pseudo-cooperatives, and false company restructuring.<sup>267</sup> Like specific-exclusion of self-employed or own account agricultural workers, these exclusions run contrary to international labor standards guaranteeing the right to freedom of association to all workers engaged in agriculture.<sup>268</sup>

#### C. *Subnational Exclusions (and Inclusions)*

##### 1. *Reduced Labor Protections at the Subnational Level—Canada*

In countries where freedom of association is protected at the national level, protections may not apply or may apply differentially at the subnational level. In Canada, for instance, farm and ranch workers in Alberta are denied the right to freedom of association and collective bargaining; and agricultural and

---

265. *Id.* § 3.

266. SHIKHA SILLIMAN BHATTACHARJEE, RAISING THE FLOOR FOR SUPPLY CHAIN WORKERS: PERSPECTIVE FROM SEAFOOD SUPPLY CHAINS 4 (2016).

267. See FAO, ILO & IUF Report, *supra* note 6, at 31 (explaining employment relationships in the agricultural sector).

268. See Right of Association (Agriculture) Convention, 1921 (No. 11), *supra* note 115, Art. 1.

horticultural workers in Ontario also do not receive labor rights protections on par with other workers.<sup>269</sup>

## 2. *Distinct Protections in Different National Provinces and States—Pakistan*

In countries where labor standards are established at the provincial or state level, some provinces and states may protect freedom of association while others may not. In Pakistan, for instance, the Industrial Relations Act of 2012 and the Baluchistan, Khyber Pakhtunkhwa, and Punjab Industrial Relations Acts of 2010 all exclude independent agricultural workers from protection.<sup>270</sup>

In 2019, however, the Sindh Provincial Assembly amended the Industrial Relations Act of 2010, extending protection—including freedom of association—to workers in the agriculture and fisheries sectors.<sup>271</sup> At the same time, the Assembly also broke new ground by specifically addressing the rights of women workers in the Sindh Women Agricultural Workers Act No. 5 of 2020.<sup>272</sup> The 2020 Act explicitly aims to address not only the rights of women workers, but also their role in workplace decision-making, their health and nutrition, and the health and nutrition of their children.<sup>273</sup>

## 3. *Increased Protections at the State Level—United States*

In federal systems where the national law fails to protect labor rights for agricultural workers, states have made advances in extending their rights. In California, for instance, the California Agricultural Labor Relations Act of 1975 broke new ground by making California the first state to establish the rights to freedom of association and collective bargaining for agricultural workers.<sup>274</sup> Notably, these labor rights protections were won by the farm labor movement led by the United Farm Workers.<sup>275</sup>

More recently, in *Hernandez v. Flores*,<sup>276</sup> the New York Supreme Court held that farm workers have the same right to bargain collectively as all other employees under the state constitution, ruling their exclusion from freedom of association unconstitutional.<sup>277</sup> This judgment came on the heels of years of worker action and organizing.<sup>278</sup> This case, together with ongoing worker

269. CEACR, INT'L LAB. CONF. Report, *supra* note 8, at 38, ¶ 123.

270. See CEACR, *Observation (CEACR)- Adopted 2012, Published 102nd ILC Session (2013), Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*, *supra* note 130.

271. Sindh Industrial Relations Rules, 2021, Sindh Act No. XXIX of 2013, THE SINDH GOV'T GAZETTE EXTRAORDINARY, June 18, 2021.

272. Sindh Women Agricultural Workers' Act, 2019, Sindh Act No. V of 2020, THE SINDH GOV'T GAZETTE EXTRAORDINARY, Jan. 30, 2019.

273. *Id.*

274. See SUSAN FERRISS & RICARDO SANDOVAL, THE FIGHT IN THE FIELDS: CESAR CHAVEZ AND THE FARMWORKERS MOVEMENT 4 (Diana Hembree ed., 1997).

275. *Id.* at 200.

276. *Hernandez v. State*, 99 N.Y.S.3d 795, 809 (N.Y. App. Div. 2019).

277. *Id.*

278. Jenny Braun, *News & Commentary—May 21, 2018*, ON LABOR (May 21, 2018), <https://onlabor.org/today-news-commentary-may-21-2018/> [perma.cc/LBW8-P65R].

organizing, resulted in landmark New York legislation. In 2019, the New York State Legislature signed the Farm Laborers Fair Labor Practices Act into law.<sup>279</sup> The Act grants farm workers the right to collective bargaining, workers compensation, unemployment benefits, and overtime pay.<sup>280</sup> It also mandates rest times, and sanitary codes for all farm laborers in the state.<sup>281</sup>

## V. UPENDING ARCHITECTURES OF OPPRESSION

The legal exclusions laid out in the previous Part are not discrete. Instead, within national legal systems, they overlay and interact to maintain the economic and social subordination of agricultural workers. Accordingly, in acting to secure freedom of association and other labor rights for agricultural workers, it is not sufficient to address particular legal exclusions in isolation. Instead, legal advances and supply chain accountability measures need to address the full range of legal exclusions impacting agricultural workers. In this final Part, I apply insight from this global analysis to the project of addressing national legal exclusions in the United States and advancing labor rights on agri-food supply chains. This final Part in no way aims to be a full analysis of the political economy of transformation, but rather some initial forays into the types of actions that can be taken by actors at various levels to upend legal exclusion and supply chain oppression.

### A. *Addressing Legal Exclusions at the National Level—United States*

#### 1. *Protecting Freedom of Association*

The spectrum of legal exclusions that deny agricultural workers freedom of association around the world, as presented in this Article, provides an important framework for advancing labor rights at the national level. For instance, in the United States, repealing sector-wide exclusion of agricultural workers is necessary but not sufficient to secure freedom of association for all agricultural workers. Even if sector-wide exclusions were eliminated, general exclusions would continue to undermine freedom of association for some agricultural workers (Table 2). These include additional exclusions under the NLRA, and the limited rights protections afforded H-2A foreign seasonal agricultural workers.

---

279. Farm Laborers Fair Labor Practices Act, 2019 N.Y. Sess. Ch. 105 (A. 8419) (McKinney).

280. *Id.*

281. *Id.*

TABLE 2: TYPOLOGY OF LEGAL EXCLUSIONS FACING AGRICULTURAL WORKERS WITH EXAMPLES FROM U.S. LAW

Type of exclusion	Specific legal exclusion	U.S. legislation
<b>Category 1: Specific exclusion of agricultural workers from protection</b>		
Sector-wide exclusions	Exclusion of all agricultural workers from labor rights protecting freedom of association and collective bargaining	<ul style="list-style-type: none"> <li>Exclusion of all agricultural workers from freedom of association (NLRA, 1935, §152(3))</li> </ul>
Exclusion of self-employed and own account farmworkers	Exclusion of independent agricultural workers, small farmers, and workers employed on estates as out-growers from freedom of association protections	
Farm-size exclusions	Exclusion based upon the number of employees or size of farms	
<b>Category 2: General exclusion from protection with significant impact for agricultural workers</b>		
Short-term employment exclusions	Exclusion of temporary, seasonal, and casual workers	<ul style="list-style-type: none"> <li>Limited labor law protections for H-2A seasonal agricultural workers<sup>282</sup></li> </ul>
Exclusion of self-employed workers	Exclusion of self-employed workers from freedom of association and collective bargaining that impact self-employed and own-account agricultural workers	<ul style="list-style-type: none"> <li>Exclusion of independent contractors from freedom of association (NLRA, 1935, §152(3))</li> </ul>
Migration status-based exclusions	Restrictions for migrant or foreign workers that impact agricultural workers	<ul style="list-style-type: none"> <li>Limited labor law protections for H-2A seasonal agricultural workers<sup>283</sup></li> </ul>

First, the exclusion of independent contractors from freedom of association under §152(3) of the NLRA, 1935 undermines freedom of association for self-employed and own-account agricultural workers, including small farmers, independent agricultural workers outside stable employment relationships, out-growers, and sharecroppers. These exclusions also create a legal loophole that can be exploited by employers to exclude workers from protection—including by practices of imposing false self-employment, false subcontracting, establishment of pseudo-cooperatives, and false company restructuring.<sup>284</sup> Accordingly, this avenue for exclusion should be explicitly addressed by legislators seeking to secure the right to freedom of association for all agricultural workers.

Second, while H-2A foreign seasonal agricultural workers are not specifically excluded from freedom of association, they are provided with only a limited set of labor law protections. They have the right to written disclosure of their wages, hours, working conditions, and benefits of employment; wage protections, including regular pay, written statements of earnings, and guaranteed employment of 75% of contractually promised hours; access to no-cost

282. *Id.*

283. *Id.*

284. See FAO, ILO & IUF Report, *supra* note 6, at 31 (explaining employment relationships in the agricultural sector).

transportation and housing; workers compensation; freedom from discrimination and retaliation; and protection from recruitment fees.<sup>285</sup> This limited slate of protections does not include freedom of association. Accordingly, affirmative protection of freedom of association and collective bargaining for H-2A workers should be explicitly addressed by legislators seeking to secure the right to freedom of association for all agricultural workers.

## 2. *Justice for Agricultural Workers*

The preceding analysis demonstrated how national legislators may use the typology of legal exclusions presented in this Article to address multifaceted structures of labor rights exclusion. While my discussion of advancing labor rights in the United States focused on freedom of association, the typology of legal exclusions presented in this article can be used to identify layers of exclusion from other labor rights as well.

In fact, addressing conjugated oppression and advancing justice for agricultural workers requires a set of core labor rights protections. Building upon fundamental principles and rights at work identified by the ILO—and adding living wages, employment security, and incorporation of gendered domestic care work in the calculation of wages, in *Reverse Subsidies in Global Monopsony Capitalism: Gender, Labour, and Environmental Justice in Garment Global Value Chains*—we have argued for the following minimum labor standards as a benchmark for economic justice on global supply chains:

- Abolition of all forms of forced labor
- Abolition of child labor
- Non-discrimination in employment, including on the basis of race, caste, gender, indigeneity, migration status, and disability
- Freedom of association
- Living wages as minimum wages
- Incorporation of domestic care work in calculations of living wages
- Employment security
- Protection of bodily integrity, including protecting from occupational health and safety risks, and freedom from all forms of workplace violence, including gender-based violence and harassment (“GBVH”).<sup>286</sup>

The typology of labor rights exclusions laid out in Part IV of this Article could be used to systematically investigate legal exclusion from any of the rights in the forgoing set. While the typology was developed in relationship to exclusions from freedom of association facing agricultural workers, it could also be used as a springboard for analyzing the structure of legal exclusions in other sectors. In using this framework to analyze other labor rights exclusions facing agricultural workers, or exclusions in other sectors, I encourage researchers to treat the

---

285. *Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA)*, U.S. DEP’T OF LAB. WAGE & HOUR DIV. (Feb. 2010), <https://www.dol.gov/agencies/whd/fact-sheets/26-H2A> [<https://perma.cc/L2RZ-ASCR>].

286. See NATHAN ET AL., *supra* note 13 at 33–35.

typology presented here as a springboard, maintaining openness to identifying other forms of legal exclusion.

*B. Protecting Worker Rights on Global Agri-food Supply Chains*

The relationships between supermarkets and retailers that lead agri-food supply chains, their suppliers, and, in turn, agricultural workers across the globe are not fixed—instead, they are structures that can evolve based on a shift in the choices made by lead firms in relationship to how they interact with their suppliers.<sup>287</sup> This approach makes space for policy interventions to influence the choices made by lead firms and producers on agricultural supply chains.

*1. Binding Due Diligence*

Human Rights Due Diligence refers to the requirement that companies identify, prevent, mitigate, and communicate risks to human rights.<sup>288</sup> Binding due diligence, then, refers to legal regulation in the home country of lead firms that requires corporations to take these steps.<sup>289</sup> While to date, transparency focused laws have been limited in their impact, new legislation with more robust due diligence standards is emerging in Europe, including in France, Germany, and the European Union.<sup>290</sup> As argued by Rachel Chambers and Anil Yilmaz Vastardis, however, these mechanisms will only be effective if states take an active role in oversight and enforcement—including by establishing regulatory mechanisms to ensure that human rights disclosures and due diligence processes are undertaken in good faith, imposing sanctions for compliance failures,<sup>291</sup> and holding lead firms liable for downstream rights violations.<sup>292</sup>

The first step in using binding human rights due diligence frameworks to advance freedom of association and other labor rights for workers on global supply chains is, of course, to establish robust due diligence laws in the home countries of lead firms—and this is no small task. Once established, however, it will be important to set up robust protocols and standards for conducting human and labor rights due diligence—including identifying, preventing, mitigating, and communicating risks to human rights.

Here, the typology of legal exclusions presented in this Article is particularly instructive. First, any legal provisions denying freedom of association to agricultural workers in force in countries on agri-food supply chains should be identified as a risk factor that opens the door to a cascade of rights abuses. Second, in order to prevent the human and labor rights violations that attend the

---

287. *Cf. id.* at 9 (arguing that lead firms choose their relationships with suppliers in context of garment supply chains).

288. See Rachel Chambers and Anil Yilmaz Vastardis, *Human Rights Disclosure and Due Diligence Laws: The Role of Regulatory Oversight in Ensuring Corporate Accountability*, 21 *CHI. J. INT. L.* 323, 326 (2021).

289. *Id.* at 361.

290. *Id.* at 326.

291. *Id.*

292. *Id.* at 327.

exclusion of agricultural workers from freedom of association, lead firms should make it a contractually established condition of business engagement that their suppliers respect freedom of association and collective bargaining on their farms and establishments. In order to mitigate harms associated with legal exclusion of agriculture workers from freedom of association protections, agri-food lead firms should take proactive measures to advance freedom of association on their supply chains, including through proactive engagement with the IUF—an international trade union federation that represents workers in the agricultural sector, made up of 423 affiliated trade unions in 127 countries representing over ten million workers.<sup>293</sup> Mitigation by agri-food supply chains should also include giving special preferences to suppliers in countries and production zones that uphold freedom of association for agricultural workers. Linking labor rights protections to preferred business engagement status would provide a powerful corrective to current market incentives that drive deregulation in the arena of labor rights and industrial relations.

## 2. *Enforceable Brand Agreements*

An increasingly important mechanism through which trade unions, labor rights NGOs, and global corporations have sought to establish labor rights accountability on global supply chains has been the negotiation of legally binding, enforceable agreements between lead firms and trade unions that cover labor rights in the operations of downstream suppliers.<sup>294</sup> These “enforceable brand agreements” (“EBAs”) are an avenue to raise the bar for labor rights protection in agri-food and other supply chains.<sup>295</sup> EBAs are an important corrective to voluntary corporate social responsibility (“CSR”) programs, whose private audit systems have consistently failed to end abuses in supply chains,<sup>296</sup> replacing voluntary compliance and private audits with legally enforceable obligations and independent factory monitoring.<sup>297</sup>

Recent examples of EBAs addressing labor rights on supply chains have included initiatives in agri-food and garment sectors. In the agri-food sector, the Coalition of Immokalee Workers, Fair Food Program (“FFP”)—referred to as Worker-driven Social Responsibility—includes a combination of monitoring tools and enforcement strategies to address labor and human rights violations in Florida’s tomato industry.<sup>298</sup> The FFP has binding commitments from fourteen

---

293. *International Union of Food Workers*, GLOB. NETWORK FOR THE RIGHT TO FOOD & NUTRITION, <https://www.righttofoodandnutrition.org/international-union-food-workers> (last visited Feb. 24, 2023) [<https://perma.cc/W9F4-THZR>].

294. *Cf.* CLEAN CLOTHES CAMPAIGN, FIG LEAF FOR FASHION: HOW SOCIAL AUDITING PROTECTS BRANDS AND FAILS WORKERS 87 (2019) (explaining in context of garment supply chains how voluntary brand programs rely on private audit systems and for-profit social certifications that for the most part fail to prevent labor rights abuses).

295. *Id.*

296. *Id.* at 6.

297. *Id.* at 8.

298. Greg Asbed & Steve Hitov, *Preventing Forced Labor in Corporate Supply Chains: The Fair Food Program and Worker-Driven Social Responsibility*, 52 WAKE FOREST L. REV. 497, 498 (2017).

major food retailers to purchase produce exclusively from growers that implement a human rights-based code of conduct that covers labor rights conditions for 35,000 farmworkers in the United States.<sup>299</sup> The initiative has successfully combated widespread gender-based violence, sexual harassment, and forced labor on produce farms.<sup>300</sup>

EBA's have also made inroads in addressing labor rights abuses in the garment industry. In 2013, the binding Bangladesh Accord on Fire and Building Safety, for instance, was established between Global Union Federations, Bangladeshi unions, labor rights NGOs, and more than 200 brands.<sup>301</sup> Independent factory inspections under the Accord have identified over 144,000 fire, electrical, and structural hazards across 1,600 garment factories—and more than 90% of these hazards have been remediated.<sup>302</sup> Under the Accord, over 1.7 million garment workers were also trained on workplace safety, and 359 safety and rights complaints have been resolved.<sup>303</sup> More recently, in 2019, agreements addressing GBVH in Lesotho's garment sector—covering 10,000 workers across five factories—have been negotiated between brands, labor unions, labor rights NGOs, women's rights organizations, and apparel suppliers.<sup>304</sup> These agreements establish a training program and complaint mechanism to prevent and address GBVH.<sup>305</sup>

EBA's also provide a powerful mechanism for lead firms and supplier factories to show evidence of the absence of and remediation of forced labor and other labor rights violations. For instance, on July 29, 2022, U.S. Customs and Border Protection (“CBP”) issued a Withhold Release Order (“WRO”) against Natchi Apparels (P) Ltd., a garment factory in Tamil Nadu, India.<sup>306</sup> The WRO prevented merchandise produced in Natchi Apparels and other units of its parent company Eastman Exports, from being imported into the United States—with potentially devastating consequences for the industry as well as thousands of

---

299. *Id.* at 508, 519–20.

300. *See About—The Fair Food Program*, FAIR FOOD PROGRAM, <https://fairfoodprogram.org/about/> (last visited Jan. 14, 2023) [<https://perma.cc/T3QC-972X>]. *See also* Asbed & Hitov, *supra* note 298, at 498.

301. Alison Morse, *The Bangladesh Accord is Set to Expire on May 31: Here's Why That Would Be Catastrophic*, REMAKE (May 3, 2021), <https://remake.world/stories/news/the-bangladesh-accord-is-set-to-expire-on-may-31-heres-why-that-would-be-catastrophic/> [<https://perma.cc/9AQZ-NSEB>].

302. *Id.*

303. *Id.* *See also* KATERINA YIANNIBAS ET AL., MODEL ARBITRATION CLAUSES FOR THE RESOLUTION OF DISPUTES UNDER ENFORCEABLE BRAND AGREEMENTS (2020), available at <https://laborrights.org/sites/default/files/publications/%20Model%20Arbitration%20Clauses%20for%20the%20Resolution%20of%20Disputes%20under%20Enforceable%20Brand%20Agreements.pdf> [<https://perma.cc/QV9D-ZKGS>] (providing a model dispute resolution system, focused on model arbitration clauses, for disputes on labor standards in supply-chain operations).

304. *Landmark Agreements to Combat Gender-based Violence and Harassment in Lesotho's Garment Industry*, WORKER RTS. CONSORTIUM (Aug. 19, 2019), <https://www.workersrights.org/commentary/landmark-agreements-to-combat-gender-based-violence-and-harassment-in-lesothos-garment-industry/> [<https://perma.cc/9VPF-5DQQ>].

305. *Id.*

306. *Joint Statement: TTCU, AFWA, GLJ-ILRF and Eastman Exports*, ASIA FLOOR WAGE (October 2022), <https://asia.floorwage.org/ttcu-afwa-glj-ilrf-and-eastman-exports-make-joint-statement-after-natchi-apparels-us-import-ban-lifted/> [<https://perma.cc/A9WL-V972>].

workers employed in the facilities. This decision of the U.S. government, however, was successfully withdrawn in September 2022 due to strong evidence of the absence of and remediation of ILO indicators of forced labor.<sup>307</sup> While such swift overturning of a WRO is unprecedented, it was made possible due to the April 2022 Dindigul Agreement to Eliminate Gender-Based Violence and Harassment—an EBA between Eastman Exports, the local trade union Tamil Nadu Textile and Common Labour Union (TTCU), Asia Floor Wage Alliance (AFWA) and Global Labor Justice—International Labor Rights Forum (GLJ-ILRF), a US-based non-governmental organization.<sup>308</sup> The Dindigul Agreement had two distinct impacts in overturning the WRO: first, the Dindigul Agreement provided evidence that Eastman Exports was taking active steps to address risks of forced labor in their production units and supply chains; and second, the Dindigul Agreement provided a framework for engagement between Eastman Exports and the labor organizations, facilitating all parties working together to submit evidence to the U.S. government indicating meaningful change at Natchi Apparels.<sup>309</sup>

For EBAs to intervene in conjugated oppression, however, they must take conscious measures to disrupt hierarchical power relationships at the intersection of class, race, caste, gender, and indigeneity. Here, initiatives for racial justice in the United States provide an instructive model for addressing conjugated oppression. In California, AFSCME 3299—a union of 24,000 patient care and service worker on University of California campuses—took proactive measures to address attacks facing their members based on race and nationality.<sup>310</sup> Notably, half of AFSCME 3299’s members are Latinx.<sup>311</sup> The union formed a racial justice working group where workers shared their own experiences with racism and police violence.<sup>312</sup> The racial justice working group raised the visibility of racial injustice in the workplace and community, leading to demands for an end to labor outsourcing, improved job security, benefits, increased wages, and training programs to improve working conditions for people of color.<sup>313</sup> AFSCME 3299’s approach in addressing racial injustice head on lends insight into the importance of positioning particularly vulnerable workers through their trade unions at the center of negotiating EBAs.<sup>314</sup>

---

307. International Labour Organization (ILO), ILO INDICATORS OF FORCED LABOUR (2012).

308. Annie Kelly, *H&M Pledges to End Shopfloor Sexual Violence in India After Worker Killed*, GUARDIAN, (April 1, 2022), <https://www.theguardian.com/global-development/2022/apr/01/hm-pledges-to-end-shopfloor-sexual-violence-in-india-after-worker-killed-jeyasre-kathiravel> [https://perma.cc/3TGG-49DZ].

309. *Joint Statement*, *supra* note 306.

310. Silliman Bhattacharjee, *supra* note 76, at 222.

311. *Id.*

312. *Id.*

313. *Id.*

314. *See id.* (citing JOBS WITH JUSTICE, EXPANDING THE FRONTIERS OF BARGAINING: BUILDING POWER IN THE 21ST CENTURY (2018)); Luster Howard, Maricruz Manzanarez & Seth Newton Patel, *How We’re Setting Our Contract Bargaining Tables to Advance Racial Justice*, LABOR NOTES (Mar. 15, 2017), <https://www.labornotes.org/2017/03/setting-our-bargaining-tables-advance-racial-justice> [https://perma.cc/HDW7-YMPC].

### 3. *Inclusion of Labor Rights in Food Safety Standards*

The industrialization and globalization of agri-food supply chains has led to the proliferation of food safety and quality standards, designed to address the range of safety risks to consumers associated with elongated and fragmented supply chains where food products are exposed to possible contamination at multiple stages.<sup>315</sup> Consumer protection initiatives gain force through non-tariff trade regulations.<sup>316</sup> These include controls on product standards, sanitary measures and phytosanitary measures, import licensing, and origin and conformity assessments.<sup>317</sup> Lead firms also use quality standards as a key mechanism of supply chain governance, differentiating their products through quality standards in diverse and competitive markets.<sup>318</sup> Upholding quality standards on complex supply chains requires lead firms to coordinate closely with downstream suppliers and producers.<sup>319</sup>

The high level of contact between lead and downstream firms differentiates agri-food supply chains from other product supply chains less subject to national and firm-level quality standard control. In agri-food chains, large food manufacturers and supermarkets typically work with a small group of preferred, generally large-scale suppliers capable of meeting their requirements.<sup>320</sup> These comparatively stable supplier relationships can be leveraged by lead firms to include labor rights standards alongside food safety and quality standards.<sup>321</sup>

Moreover, the COVID-19 pandemic not only laid bare the vulnerability of production and logistics but also accelerated technological integration on agri-food value chains.<sup>322</sup> Leveraging technological integration to advance enforceable labor standards for agri-food workers is a promising site of engagement. In particular, additional research is required on strategies for infusing product traceability aimed at consumer safety and supply chain management with enforceable labor rights protections. Work in this area would prove particularly timely given the accelerated development and rollout of agri-tech to address COVID-19 supply chain and labor force disruptions—including technological advances in remotely monitoring crops, weather, and soil quality; connecting farmers and buyers across markets; streamlining supply chains; and advancing food traceability.

---

315. GEREFFI & LEE, *supra* note 40, at 6.

316. *See Non-Tariff Barriers and Regulatory Issues*, OFF. U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements/transatlantic-trade-and-investment-partnership-t-tip/t-tip-2> (last visited Feb. 24, 2023) [<https://perma.cc/4JGQ-J3GE>].

317. *Id.*

318. Gereffi & Lee, *supra* note 34, at 28.

319. *Id.*

320. *Id.*

321. SHIKHA SILLIMAN BHATTACHARJEE, PURUSHOTTAM KUMAR & SHAHID ULLAH, WOMAN WORKERS IN THE ASIAN SEAFOOD PROCESSING INDUSTRY: CASE STUDIES FROM BANGLADESH AND INDIA 72–73 (2022).

322. *See* SILLIMAN BHATTACHARJEE, *supra* note 8, at 9.

---

---

### C. *Leveraging International Standards and Mechanisms*

The ability of lead firms on agricultural supply chains to choose between engagement with a vast number of suppliers across the world provides incentives for states to diminish labor standards protections and downstream agricultural enterprises to reduce costs by driving down labor standards. Accordingly, in order to raise the floor for agricultural workers worldwide, legal exclusions must be addressed across jurisdictions—providing an important role for international labor standards and enforcement mechanisms in ratcheting up labor standards and supporting their enforcement.

#### 1. *Ratify and Implement ILO Convention 11*

Currently under review by the ILO Standards Review Mechanism Tripartite Working Group, Convention 11 is a simple and powerful call to action for governments to address legal exclusion of agricultural workers from freedom of association and other labor rights.<sup>323</sup> States that have not already ratified Convention 11 can act to raise national standards in line with global benchmarks by first ratifying and then implementing Convention 11.

In order to implement Convention 11, states should adopt an inclusive definition of agricultural work in national legislation, covering all types of agricultural work relevant in the national context. States should also ensure that national legislation defends freedom of association, including subcontracted, seasonal, temporary, migrant, and other relevant categories of workers. This should include removing minimum membership requirements establishing trade unions and workers organizations.<sup>324</sup>

#### 2. *Engage the ILO Committee on Freedom of Association*

In 1951, the ILO set up the Committee on Freedom of Association (“CFA”) to examine freedom of association violations.<sup>325</sup> The CFA is a ten-person ILO Governing Body committee—including a chairperson, and three representatives from government, employers, and workers—tasked with engaging in constructive tripartite dialogue (workers, employers, and states) to promote freedom of association.<sup>326</sup> Complaints to the CFA against an ILO member state for violations of freedom of association can be brought by either a workers’ or employers’ organization, or a non-governmental organization with consultative status at the ILO.<sup>327</sup> If the CFA decides to receive the case, it establishes if there has been a violation of freedom of association standards, makes recommendations on

---

323. *See id.* at 13.

324. *See id.* at 42 (providing detailed recommendations for implementing Convention 11).

325. *Id.* at 19.

326. *Id.*

327. *Id.*

remediation, and can work with government officials and social partners to ensure timely and appropriate action.<sup>328</sup>

The ILO CFA has safeguarded the right to freedom of association for agricultural workers in a slate of precedents, including by upholding the right of entry of trade union officials into plantations for the purpose of carrying out lawful trade union activities (Sri Lanka)<sup>329</sup>; confirming that the criterion for the right to freedom of association is not based on an employment relationship for agricultural workers and self-employed workers in general (National Trade Union Coordinating Body, Chile)<sup>330</sup>; determining that 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)<sup>331</sup>; concluding that literacy requirements for trade union recognition are inconsistent with the fundamental right to freedom of association (Confederation of Workers of Latin America, Guatemala)<sup>332</sup>; and determining that agricultural unions have the right to affiliate with workers engaged in different occupations and industries (Confederation of Workers of Latin America, Guatemala).<sup>333</sup>

## VI. LAW-AND-GLOBAL-POLITICAL-ECONOMY

In *Building a Law-and-Political-Economy-Framework: Beyond the Twentieth-Century Synthesis*, the co-founders of the Law & Political Economy Project call for legal scholarship that engages with the global crises of economic inequality, democracy, and climate change.<sup>334</sup> In building a new law and political economy framework, they call out the “Twentieth-Century-Synthesis” in the legal academy: the simultaneous reorientation of legal subfields around economic efficiency, and inadequate attention to structural inequality.<sup>335</sup> If left intact, they argue, the “Twentieth-Century-Synthesis” will continue to fundamentally inhibit a true reckoning with economic equality, precarity,<sup>336</sup> (and here I add conjugated oppression).

---

328. See *id.* at 63 (laying out the process for engaging the ILO Committee on Freedom of Association (CFA) in Appendix 3).

329. *Definitive Report—Report No 4, 1953*, INT’L LAB. ORG., [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002\\_COMPLAINT\\_TEXT\\_ID:2898078](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:2898078) (last visited Feb. 24, 2023) [<https://perma.cc/C34N-WXQ2>].

330. *Definitive Report- Report No 241, November 1985*, INT’L LAB. ORG., [https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:2901275](https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2901275) (last visited Feb. 24, 2023) [<https://perma.cc/W9R6-VFNT>].

331. *Report in Which the Committee Requests to be Kept Informed of Development- Report No 230, November 1983*, INT’L LAB. ORG., [https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:2900336](https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2900336) (last visited Feb. 24, 2023) [<https://perma.cc/G8CL-NYFU>].

332. *Interim Report- Report No 27, 1958*, INT’L LAB. ORG., [https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:2898229#](https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2898229#) (last visited Feb. 24, 2023) [<https://perma.cc/A5VE-BGGA>].

333. *Id.*

334. See Jedediah Britton-Purdy et al., *supra* note 12, at 1791–92.

335. See *id.* at 1790–91.

336. See *id.* at 1790–91.

---

---

As a methodological antidote to the Twentieth-Century-Synthesis, this Article draws together the study of national legal frameworks at a global scale, sociological literature on GVCs, anthropological studies of violence and conjugated oppression, and analysis of international legal frameworks. As with all studies of conjugated oppression, I could not ignore histories of chattel slavery, colonial extraction, and workforce segmentation practices. Perhaps most importantly, this project takes its pulse from workers movements for justice on agri-food supply chains. This interdisciplinary perspective, considering the global economic and social context of national exclusions, is critical to forging new law and *global*-political-economy frameworks. As the complex of global interconnections traversing the globe intensifies, accelerating the movement of people, commodities, capital, and concepts,<sup>337</sup> legal scholarship that seeks to truly engage with the crisis of structural inequality must understand national legal systems in a global economic context.

---

337. JONATHAN XAVIER INDA & RENATO ROSALDO, *THE ANTHROPOLOGY OF GLOBALIZATION* 7–8 (2002).

