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Mandates of the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the human rights of migrants.

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the human rights of migrants pursuant to Human Rights Council resolution 17/13, 16/5, and 17/12.

In this connection, we would like to bring to your Excellency's Government's attention information we have received regarding alleged limitations on access to justice for migrant farmworkers in fourteen states¹ of the United States of America. The information we have received refers in particular to alleged limitations in the legal framework governing the rights of migrant farmworkers. The information also refers to the allegedly detrimental nation-wide practice of denying or not allowing certain human rights defenders, in particular legal advocates and other community service providers, meaningful access to migrant farmworker labor camps, including by allegedly harassing and threatening these human rights advocates. This could have grave implications for the rights of the migrant farmworker population to access justice and other relevant community services as well as for the work of these rights advocates.

According to the information received:

Between 1 and 3 million year-round and seasonal migrant farmworkers are estimated to work every year in the American agriculture industry, with around 3 per cent of these being under eighteen years of age.

Reportedly, migrant farmworkers are among the poorest laborers in the United States of America and their average annual income falls short of the poverty threshold. The majority of farmworkers nationwide are foreign born, and therefore

¹ Maryland, Delaware, Texas, Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Ohio, New Jersey, Colorado, Illinois, North Carolina and Arkansas

language barriers, cultural isolation and low education levels exacerbate their vulnerability. A high percentage of farmworkers are not provided with employment related benefits, such as health care or access to medical treatment, disability insurance, vacation or pension benefits.

Many migrant farmworkers live in employer-owned or operated migrant labour camps, which are often located in rural areas, far from towns and community resources and therefore are dependent on their employers for transportation and access to community facilities and public services, which reduces their ability to independently access legal services and community resources in general.

Moreover, given their dependence on their employers, migrant farmworkers are deeply vulnerable to various forms of exploitation, including wage theft, employer abuse, pesticide exposure and human trafficking. This population's vulnerability is compounded because a significant number of migrant farmworkers are undocumented migrants, who may have low levels of education, and/or are not proficient in English. They are thus further vulnerable to exploitation under the threat of deportation or revocation of work permits.

Allegedly, federal and state laws governing agriculture and farm labour often exclude farmworkers from some of the most basic labour and safety protections that other workers in the United States of America receive. The Federal Labor Standards Act, which sets the federal minimum wage and generally provides an overtime premium does not apply to "small" farms and excludes farmworkers from overtime coverage and the guarantee of the federal minimum wage. We are also informed that migrant farmworkers face challenges in attempting to negotiate the improvement of their working conditions, since the federal National Labor Relations Act (which protects workers' rights to organize) excludes all agricultural employees from its protections. The Migrant and Seasonal Agricultural Worker Protection Act, the principal federal employment law for migrant farmworkers, does not apply to "small" agricultural employers, denying many farmworkers protection from retaliation against their employers, as well as the Act's minimal housing, transportation and disclosure protections.

According to information received, many migrant and seasonal farmworkers are not in a position to enforce their rights or improve their working conditions under the Migrant and Seasonal Agricultural Worker Protection Act and the Federal Labor Standards Act, and the federal government does not allocate enough resources to ensure the enforcement of these laws on the farmworkers' behalf.

Due to this vulnerable position, migrant farmworkers are in particular need of easy and secure access to legal and other community services. However, according to information received, migrant farmworkers face particular barriers which limit their access to legal assistance, legal services and the justice system as a whole, including: isolation in remote locations; short length of time in specific area; economic dependence upon employers; and cultural isolation. Furthermore,

migrant farmworkers may fear seeking legal assistance due to perceived repercussions relating to their irregular migration status, including deportation.

Migrant farmers therefore depend heavily on legal outreach and advocacy efforts. Given their position and vulnerabilities noted above, legal aid services are often the only recourse for farmworkers to have access to justice and have their rights enforced. Yet according to information received, the Migrant and Seasonal Agricultural Worker Protection Act does not mandate access to labor camps that house migrant workers. Furthermore, these rights of access vary from state to state. While some states² have an Attorney General's Opinion that argues for rights of access, this does not carry the weight or legitimacy of a legislative mandate and most states have no such opinion or related law. According to the information received, several Federal and state courts have consistently held that migrant workers who live in housing provided by the farm owner have constitutionally protected interests in receiving information and visitors while they reside there, and staff of migrant organizations has constitutionally protected interests in accessing workers and communicating with them regarding their rights. Despite this, farm owners allegedly continue to control the access of migrant farmworkers to outreach services. Allegedly, even in cases where the law supports unfettered access by outreach workers, law enforcement officials often step in to support employers' efforts to limit access.

According to information received, farm owners routinely try to stop lawyers and other migrant rights advocates from meeting with migrant farmworkers or from privately sharing information with them. While attempting to provide legal information, advice or services to farmworkers, farmworkers' employers allegedly commonly demand outreach workers to leave the property, accusing them of trespass on their property, or pressuring outreach workers to name prospective clients seeking assistance. Allegedly, legal and health outreach advocates regularly experience harassment and are threatened with arrest and even violence by owners of migrant labor camps. Sources report that such acts intimidate advocates, affects their capacity to deliver necessary services to migrant farmworkers and results in advocate organizations having to use their limited resources toward litigation as opposed to addressing the needs of farmworkers.

We received several specific and detailed allegations of such incidents taking place across a number of states. For example, according to information received, on 11 April 2011, two legal advocates visited a farm in Maryland to provide migrant farmworkers with legal information. As the advocates were sitting in their car at the end of the farm's driveway, the owner of the farm and another individual allegedly approached the vehicle at high speed and parked at the side of the car and behind the car. Reportedly, the owner of the farm proceeded to shout at the advocates, accused them of trespassing, insulted them and threatened them by stating that he could "shoot people" who were on his property without permission. The advocates reportedly informed the farm owner that they were legally entitled to be on the premises following the Maryland

² e.g. Maryland, North Carolina and Florida.

Attorney General's Opinion issued in 1982, and explained that the reason for not giving advance notice to farm owners of visits was to allow farmworkers to speak openly with the advocates. Sources report that as the farm owner's reportedly threatening behavior continued, the advocates were forced to leave the farm.

Concerns are expressed that the current existing limitations on legal advocates' and other migrant rights advocates access to migrant labor camps severely impedes farmworkers' access to justice, which is a human right in itself but also an essential prerequisite for the protection and promotion of all other human rights. The human rights consequences of not providing access to justice are particularly grave for migrant workers who are deeply vulnerable to various forms of exploitation. Furthermore, concern is expressed at allegations received indicating that these legal and migrant rights advocates have been harassed and threatened in connection to their human rights activities. Allegedly, inadequate legal protection against the common practices outlined above, perpetuates the exploitation and poverty of farmworkers, denies their right to seek and receive information, and their right to an effective remedy.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards, in particular, the following:

Under international human rights law, States have a legal obligation to ensure that all individuals are able to access competent and impartial judicial and adjudicatory mechanisms equally and without discrimination. The United States of America has assumed obligations in this regard.

The right to equal protection of the law and non-discrimination in this context are enshrined, *inter alia*, in articles 2 and 7 of the Universal Declaration of Human Rights (UDHR) and article 26 of the International Covenant on Civil and Political Rights (ICCPR), which the United States of America is party to since 8 June 1992. The latter states "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law." All persons must be guaranteed equal and effective protection against discrimination in this regard, on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In its General Comment No. 18, the Human Rights Committee stated that article 26 prohibits discrimination in law or in fact in any field regulated and protected by public authorities, and is not limited to those rights which are provided for in the Covenant (HRI/GEN/1/Rev.1 at 26, para. 12). The Human Rights Committee further noted in its General Comment No. 31 that the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party (CCPR/C/21/Rev.1/Add. 13, para. 10).

The right to seek and receive information is enshrined in article 19 of the ICCPR. According to the Human Rights Committee's General Comment No. 34, this implies an

obligation to “proactively put in the public domain Government information of public interest” and to ensure “easy, prompt, effective and practical access to such information”, including by enacting the necessary procedures whereby a person may gain access to information (CCPR/C/GC/34, para. 19).

Additionally, all persons have a right to non-discrimination, as enshrined, *inter alia*, in article 2 of the ICCPR and article 2 of the UDHR. Article 2 (3) of the ICCPR states that any person whose rights or freedoms under the Covenant have been violated shall have an effective remedy.

Regarding allegations received indicating that legal and migrant rights advocates have been harassed and threatened in connection to their human rights activities, we would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly resolution 53/144 of 9 December 1998, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, in order for migrants, who are among the most vulnerable persons in any society, to be able to know and claim their rights, they need to be in contact with institutions and civil society organizations dedicated to promoting their rights and supporting their claims. In this context, we would like to bring to the attention of your Excellency's Government the following provisions of the mentioned Declaration:

- article 5 point c) which provides that everyone has the right to communicate with non-governmental or inter-governmental organizations;

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

- article 9 para. 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms; and

- article 12 paras. 2 and 3 which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

In this context, we would also like to draw your Excellency's Government's attention to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which we encourage your Excellency's Government to ratify. The Convention recognizes the right of migrant workers and members of their families to seek the aid and assistance of associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests (article 26).

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Is the information alleged in the above summary accurate?
2. What measures have been taken to ensure that the United States of America complies with its treaty obligations, outlined above, to ensure the rights of migrant farmworkers, regardless of their immigration status, to equal protection of the law and to access legal and other services in full equality?
 - a. What legal and other measures have been taken to ensure that legal advocates and legal outreach personnel can visit migrant farmworkers in the camps and farms in which they reside without being harassed and or threatened?
 - b. How are these measures enforced? Have there been any protection measures adopted to ensure that these human rights defenders can do their work in a conducive environment?
 - c. What legal and institutional measures have been taken to ensure that farmworkers have access to legal information with regard to their rights, given their specific situation?
3. What enforcement measures are taken to ensure the current laws protecting farmworkers in the United States of America are effective in practice in protecting their rights?

4. Has the government considered extending the federal rights and protection for migrant farmworkers with regard to their access to legal assistance and information?

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of legal and migrant rights advocates are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

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