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COMMISSION ON HUMAN RIGHTS  
Sub-Commission on the Promotion  
and Protection of Human Rights  
Fifty-seventh session  
Item 6 (b) of the provisional agenda

**SPECIFIC HUMAN RIGHTS ISSUES:  
CONTEMPORARY FORMS OF SLAVERY**

**Written statement\* submitted by the Robert F. Kennedy Memorial Center for Human Rights, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[2 July 2005]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The Robert F. Kennedy Memorial Center for Human Rights, on behalf of the National Economic and Social Rights Initiative and the Coalition of Immokalee Workers (CIW), submit this statement regarding the human rights obligations of government and corporate actors for forced labor and slavery of agricultural workers in Florida, U.S.A.

The CIW is a community-based farmworkers rights group made up of roughly 3,000 members of largely Mexican, Guatemalan, and Haitian descent, whose work includes facilitating slavery prosecutions with the U.S. Department of Justice and U.S. Federal Bureau of Investigations (FBI), conducting workshops for law enforcement agencies on how to identify human trafficking victims, and testifying before the U.S. Congress on human rights violations in American fields. In addition, the CIW launched a four-year boycott of Taco Bell, subsidiary of Yum! Brands (the world's largest restaurant conglomerate) which ended on March 8, 2005 when Taco Bell agreed to take responsibility for human rights abuses in its supply chain.

While this statement is submitted under Agenda Item #6 – Specific Human Rights Issues: (b) Contemporary forms of slavery, we urge the Sub-Commission to consider these points not only within that context, but also within the evolving debate around the human rights obligations of non-state actors and transnational corporations.<sup>1</sup> Indeed, the violations suffered by farmworkers in the U.S. could be addressed by five of the Working Groups of this Sub-Commission, given there is a pattern of gross human rights violations including slavery, enabled by transnational corporations, against mainly indigenous peoples from Central America who constitute minorities in the United States. Due to its intersection with so many interests of the Sub-Commission, this issue should be of particular concern.

## **SYSTEMIC SLAVERY AND FORCED LABOR IN U.S. AGRICULTURE**

Farmworkers in the United States endure systematic violations of the human rights outlined in Articles 1, 2, 3, 4, 6, 7, 8, 10, 20, 22, 23, 24, 25, 26 and 28 of the Universal Declaration of Human Rights.

Since 1997 in the state of Florida alone, more than 1,000 agricultural workers have been freed from forced labor and slavery due to governmental intervention. The United States has criminally prosecuted these crimes under federal laws in six successful cases, resulting in the sentencing of individuals to prison terms as lengthy as fifteen years. Despite these efforts at enforcement and ongoing investigations by the US Department of Justice and FBI, agricultural workers in Florida continue to work under slavery and forced labor conditions.<sup>2</sup>

Sweatshop conditions in the fields are pervasive; violence and various forms of intimidation are common; and wages have plummeted while slavery has become more prevalent. Workers are pushed into severe poverty and dangerous working conditions, including up to 14 hour days for wages significantly below the official poverty rate.

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<sup>1</sup> Specifically, as addressed in Agenda Item #4 and in Res. 2004/102 and 2004/114. See U.N. Doc. E/CN.4/Sub.2/2004/48 (2004, para. 71 and 75.

<sup>2</sup> See *Like Machines in the Fields: Workers Without Rights in American Agriculture*, [hereafter Oxfam Report] Oxfam America, March 2004, p.10. Slavery and forced labor are clearly prohibited by a wide range of international human rights instruments applicable to the US including the International Covenant on Civil and Political Rights (hereafter ICCPR), UN Res. 2200A (XXI), entered into force March 23, 1976 and ratified by the U.S. on June 8, 1992; and the Declaration on Fundamental Principles and Rights at Work, at par. 2(b), International Labour Organization (1998)

## A) Violations by and Obligations of the United States Government

Currently, the U.S. government violates the rights of farmworkers and contributes to the continued prevalence of agricultural slavery through a discriminatory scheme of labor protection and failure to take other actions.

The U.S. Government excludes farmworkers from the National Labor Relations Act, America's primary federal labor law, denying them protection for exercising their rights to associate and joint trade unions.<sup>3</sup> Similarly, unlike most workers, farmworkers are not guaranteed overtime pay under the Fair Labor Standards Act (FLSA). Moreover, even existing minimum wage and workplace safety protections, found respectively in the FLSA and the Occupational Safety and Health Act, are severely under-enforced in the agricultural sector, contributing to the poor working conditions, pervasiveness of lower than federally mandated wages, as well as a regulatory environment conducive to forced labor and other abuses.<sup>4</sup>

The United States government must go beyond prosecution to address forced labor and slavery. It must also prevent such violations, by addressing discrimination and ensuring basic economic and social rights. Agricultural workers who have suffered serious rights violations must also be allowed to switch employers without facing immigration consequences (as is now prohibited within the United States' H2A visa program) and legislative and other mechanisms must be utilized to ensure corporate actors are held accountable if they knowingly profit from severe human rights abuses such as slavery and forced labor.<sup>5</sup>

## B) Violations by and Obligations of the Corporate Sector

The consolidation of large corporate food purchasers, in the broader context of globalization and U.S. trade policy, has been the driving force behind deteriorating human rights conditions in American fields. Through consolidated buying power, large corporate purchasers have placed extreme downward pressure on wages by systematically under-paying produce suppliers. To remain viable, growers must cut labor costs, often through the use of largely unregulated sub-

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<sup>3</sup> This is in violation of Article 22 of the International Covenant on Civil and Political Rights (hereafter ICCPR), and Article 8 of the ICESCR, both regarding the right to freedom of association. As the ILO's Committee on Freedom of Association in Case No. 2227, Report No. 332 (United States) found regarding the necessity of procedures to ensure effective protection of the exercise of the right to freedom of association by undocumented workers in the United States: "The basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed" (See para. 608). Likewise, farmworkers are categorically excluded from remedies to protect them in their exercise of freedom of association rights in such a way as to strip these rights of any real meaning.

<sup>4</sup> Such a regime of labor protections that is discriminatory both on its face and in its enforcement flies in the face of the fundamental principle of equality before the law as well as the US Government's obligations under Article 2 of the ICCPR, which states that "1. Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, *without distinction of any kind*, such as race color, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*" (emphasis added). There is no objective or reasonable justification to deny farmworkers rights afforded to most other categories of workers.

<sup>5</sup> According to international human rights treaties, governments are required to respect and ensure human rights. The obligation to "ensure" has been interpreted to require prevention and punishment of private interference with protected rights. *See X & Y v. The Netherlands*, Series A. No. 91, Application No. 8978/80 Eur. Ct. J. 8 EHRR 235 (1986) (State must provide remedies for private sexual assault of a mentally disabled person.). As the obligation to ensure extends to all the structures through which public power is exercised and States have obligations of due diligence to prevent human rights violations perpetrated by private actors, prosecution of enslavers alone does not meet the US Government's obligation to ensure the free and full exercise of human rights of those within its territory and jurisdiction.

contractors.<sup>6</sup> Sweatshop labor, slavery, and forced labor are used as cost-cutting measures. The International Labor Organization has highlighted that such trends are not limited to Florida:

It is now clearer that competitive pressures can have an adverse impact on conditions of employment and, at their extreme, can lead to forced labour. With global pressures on suppliers to reduce costs by every available means, retailers and intermediaries can take advantage of the intense competition between suppliers in order to squeeze profits out of them.<sup>7</sup>

One court presiding over a Florida slavery case pointed to the responsibility of corporations. Judge Moore of the U.S. Southern District Court of Florida stated that “there are others at another level in this system of fruit-picking, at a higher level, that to some extent are complicit in one way or another in how these activities occur.”<sup>8</sup> At the same hearing, Judge Moore identified those in the “higher level” as large packing companies and “corporate individuals who are more sophisticated in the ways in which they can victimize the illegal immigrants coming to the United States.”<sup>9</sup>

Corporate actors must take responsibility for their role in creating and affecting human rights conditions. The U.N. Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights state:

Within their respective spheres of activity *and influence*, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law<sup>10</sup>

It is well within the “sphere of influence” of corporate purchasers to change the conditions in American fields. Indeed, the concentration of buying power among a small number purchasers makes them uniquely positioned to demand greater respect for farmworkers’ rights.

One promising model is the agreement between the CIW, Yum!Brands, and Taco Bell—a model that reveals the importance of localism in achieving coherence between social and economic objectives. Taco Bell has agreed to pay a surcharge to be passed on to workers in the form of wages. Yum!Brands has agreed to establish a code of conduct prohibiting forced labor, work with the CIW to monitor working conditions, and institute a preferential buying policy to support growers who adhere to standards closer to those in U.S. in non-agricultural industries. These actions are highly consistent with the responsibilities laid out for corporations in the U.N. Norms.

Moreover, Taco Bell and Yum!Brands’ steps demonstrate that it is well within the spheres of activity and influence of purchasing corporations to promote, secure the fulfillment of, respect,

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<sup>6</sup> Oxfam Report at 2, 34-36.

<sup>7</sup> “A global alliance against forced labor: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at work, 2005” from the International Labor Conference 93<sup>rd</sup> session 2005 – Report I (B). See “6. Forced labour and the global economy: Policy issues” at para. 290 – 293 for a more detailed description and policy options.

<sup>8</sup> *United States v. Ramos*, No. 01-14019-CR-Moore, Sentencing Hearing, Tr. at 33 (S.D. Fla. Nov. 20, 2002).

<sup>9</sup> *Id.* at 33.

<sup>10</sup> U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003) at para. 1. The U.N. Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights have not acquired a binding character, but represent an evolving standards within international law.

ensure respect of and protect human rights recognized in international as well as national law. The CIW is now working to establish similar agreements with other major produce buyers—including McDonald's, Burger King, and Subway.

The obligation of these and all corporations to cease from enabling slavery and other violations and to take steps to ensure the progressive realization of rights within their spheres of influence must be recognized if slavery and other abuses now spurred by corporate actors are to be eliminated.

### C) Recommendations

We urge the Sub-Commission to undertake studies regarding and include in its report to the Commission the following:

- The duty of the United States government to prevent human rights abuses, in particular the continued and widespread existence of modern-day slavery of farmworkers, by regulation of corporate actors who enable these abuses, as well as by any other reasonable and necessary means.
- The duty of the United States government to remedy the discriminatory regime of labor laws governing farmworkers, including exclusions from the legally protected rights to organize and to overtime pay, which results in sweatshop like conditions.
- The duty of the United States government to vigorously enforce existing labor protections governing migrant farmworkers, such as minimum wage and health and safety standards.
- The duty of corporate actors to take action to prevent human rights abuses in their spheres of influence, including in their supply chains.

We thank the Sub-Commission for addressing this serious human rights situation in the United States.

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