CHAPTER II

INTERNATIONAL SCENARIO PERTAINING TO

AGRICULTURAL LABOUR AND LAW: A BIRD’S EYEVIEV

2.1 Introduction:

If the task of drafting law is being undertaken for a particular country covering a specific area it has to be done with an open mind. It is necessary to find out what is already available in other countries to tackle the issue on hand so as to identify the strong points from the working of such laws that may be of great relevance while drafting a purposive legislation. For this, the research need to be broad based. Therefore, in the present work the researcher has brought in an overall study pertaining to agricultural labour and law in various countries where agriculture is dominant in the present Chapter. Further, the existing measures taken by Government over there with the help of ratified ILO Conventions whether could help in Indian context with possible inclusions after situational modification has also been researched over. The relative directly or indirectly applicable statutes which are in force in several countries have been studied to look into suitability of the same in Indian conditions. The framework to what extent could prove helpful in every regard is also verified. All possible precautions have been taken to keenly identify the drawbacks prevailing in the already existing statutes.
Agricultural workers represent 40 percent of the world's workforce, and the number is increasing in most regions of the world\(^1\). Women waged agriculture workers account for 20-30 percent of the waged workforce, rising to 40 percent in Latin America and the Caribbean, and their numbers too are increasing in most regions\(^2\). Agricultural workers are among the poorest and most food insecure groups: in many countries, more than 60 percent of them live in poverty\(^3\). Furthermore, most rural and agricultural employment is based on informal arrangements, in the sense that workers are not recognised or protected under legal and regulatory frameworks.

Agricultural workers suffer high rates of poverty, food insecurity, death, injury and illness. They are also often denied basic human rights. This is mainly due to the informal character of agricultural production. Other factors such as, incomplete markets, asymmetry of information, high transaction costs, and imperfect functioning of complementary markets especially land and credit, labour is not homogeneous and comes with a wide range of contractual arrangements and employment relationships are also adding agony to the situation\(^4\). It is important to recognize the variety of employment relationships and conditions of rural workers because, while

\(^1\) economics.ouls.ox.ac.uk/uuid9ef3c3c6-512f-44b6-b74e-53266 [accessed on 02-03-2012].
they suffer the highest incidence of poverty and vulnerability, the lack of homogeneity in the sector and the predominance of informality are the main causes for their low level of organization and unionization. This is, in turn, one of the determinants of their continued invisibility with policy-makers and institutions at micro and macro level: civil society groups working directly with workers continues to enjoy little support for strengthening their capacity and improving their livelihoods, if compared with farmers' groups.

Farm workers have always lived in the shadows of communities, living and working under hazardous unsanitary conditions while surviving on meager wages with poor access to education, welfare, and health care. Small farmers rely on family, locally hired hands, or neighbors to meet the seasonal labor demands of agriculture.

2.2 United Nations and the Law Governing Agricultural Labour:

International Labour Organization [hereinafter referred as ILO] is a specialized agency of the United Nations in dedication to improve labour's conditions as well as living standards throughout the world⁵. International labour standards are laid down through the ILO in the form of *inter alia*, Conventions and Recommendations. ILO standards span most subjects relevant to labour and the social aspects of development and thus provide

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guidance to member States for the improvement of national labour legislation and social policy. ILO standards are universal in character and are formulated with sufficient flexibility to take account of variations in conditions and practices in countries at different levels of development.

ILO Conventions are codifications of universally applicable labour standards and have led many countries to accept labour rights as basic rights. However, the ILO Conventions are binding on those member States who have ratified them. While the ratified Conventions work as legal sanction, the other Conventions have the force of moral sanction for the practices of member States. In the 86th Session of the International Labour Conference in 1998, the ILO adopted the “Declaration on the Fundamental Principles and Rights at Work”, which was an affirmation of the eight core Conventions. These Conventions are seen as representing core labour standards, which are fundamental to the implementation of other standards. These fundamental principles and rights at work are Right to Organise and Collective Bargaining, Abolition of Child Labour, Elimination of Discrimination and Against Forced Labour. The follow-up mechanism

6. United States, Angola, China, Germany, Brazil, Denmark, South Africa, Russia, Saudi Arabia, Algeria.
envisaged in the Declaration makes it binding on member States, irrespective of whether the concerned State has ratified the Conventions or not, to submit annual reports to the ILO on the observance of the respective Conventions\textsuperscript{11}.

India and United States are the two important countries mentioned in the Global Report of ILO, 2010\textsuperscript{12} as key countries with poor track record on ratifying ILO Conventions. Out of the 189 Conventions adopted by the ILO so far, India has unfortunately ratified only 43\textsuperscript{13}. Out of the eight “core” Conventions, it has ratified only four\textsuperscript{14}. Core Conventions not ratified by India include Conventions on Worst Forms of Child Labour and Trade Union Rights\textsuperscript{15}. When ILO has set a target of eliminating all the worst forms of child labour by 2016 Indian Government ironically is still “examining the prospects of ratification of Convention on child labour”. Effective Government intervention is absent. Basic ILO standards should have universal application\textsuperscript{16}.

\textsuperscript{13} Frequently Asked Question and Reply Thereto to be published on the Website of Ministry of Labour and Employment, \url{http://labour.nic.in/main/FAQ_ILAS.pdf} [accessed on 12-06-2012].
\textsuperscript{14} \textit{Ibid.}
The Government of India has passed labour laws from time to time which recognize the rights of agricultural workers to promote and protect the social and economic interests of workers. These laws are quite in conformity with various ILO Conventions and Recommendations such as Freedom of Association and Protection of the Rights to Organize Convention\textsuperscript{17}, Rights to Organize and Collective Bargaining Convention\textsuperscript{18}, Equal Remuneration Convention\textsuperscript{19}, Discrimination (Employment and Occupation) Convention\textsuperscript{20}, Forced Labour Convention\textsuperscript{21}, Abolition of Forced Labour Convention\textsuperscript{22}, Minimum Age Convention\textsuperscript{23}; (viii) Worst Forms of Child Labour Convention\textsuperscript{24}, the Safety and Health in Agriculture Convention\textsuperscript{25} and Recommendation, Plantations Convention\textsuperscript{26}, Rural Workers’ Organizations Convention\textsuperscript{27}, The Promotion of Co-operatives Recommendation\textsuperscript{28}, Labour


Many ILO Conventions apply to all workers. These include, but are certainly not limited to, ILO core labour standards on freedom of association, the right to collective bargaining, non-discrimination, equal pay for men and women workers, the abolition of forced labour, and the elimination of child labour. These core labour standards are often referred to as human rights at work. Not only are they important in their own right, but they also serve as enabling rights. That is, they create conditions to allow access to other rights. Freedom of association is a prime example of that function. The right of workers and employers to establish and join independent organizations of their own choosing creates the basis on which social dialogue between employers and workers can take place, with a view to regulating terms and conditions of employment through collective agreements. Freedom of association is a fundamental human right which

32. Right to Organize and Collective Bargaining Convention, 1949 (No.98); 154 ratifications as of 23 March 2005.
34. Equal Remuneration Convention, 1951, (No. 100); 161 ratifications as of 23 March 2005.
paves the way for improvements in social and labour conditions, for example, through collective bargaining\textsuperscript{37}.

Despite nearly universal recognition of the right to freedom of association\textsuperscript{38}, legal impediments to the right of agricultural workers to organize remain in a significant number of countries, where national legislation either denies the right to organize in agriculture, or excludes the sector from the relevant legal protections. Some national governments may consider it impossible for their labour administrations to enforce this right in practice in rural areas\textsuperscript{39}. Others may consider that the nature of work in agriculture, with its atypical, seasonal or casual employment relationships, makes the sector less accessible to the right to organize\textsuperscript{40}.

International labour standards, because they are formulated and adopted by representatives of governments as well as employers’ and workers’ organizations, offer member States valuable guidance on what minimum standards should apply in the world of work. Not only do ILO Conventions and Recommendations stimulate improvements in national


\textsuperscript{38} With the adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998, it was agreed that all ILO member States, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith the principles concerning the fundamental rights embodied in the core labour standards.


\textsuperscript{40} ILO, “Your voice at work”, \textit{Global report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work} 2000, Geneva: ILO, p.31.
social and labour legislation, but also inspire good practices at the sectoral and enterprise level, as employers and workers integrate their principles into collective agreements.

Given the predominance of women in the agricultural sector notably in developing countries and their vulnerable situation, it is particularly important that the gender implications of collective bargaining be understood and addressed. There are issues that in practice are of particular concern to women, which can be addressed through collective bargaining, such as equality of opportunity policies, equal pay for work of equal value, maternity leave and benefits, child care issues, reproductive health services. It is also important that the gender implications of apparently neutral issues for collective bargaining be assessed, including regarding wages, leave, overtime, bonus systems since these often in reality impact on women and men differently.

In today’s developing countries a typical workweek for agricultural workers may be 70 hours. Recent studies in countries such as Vietnam find

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that the number of hours worked on farms by children decrease systematically with improvement in parental income⁴⁴.

2.2.1 International Labour standards supporting the Right to Bargain Collectively

The right of workers to bargain collectively with their employers is supported by the ILO, Right to Organize and Collective Bargaining Convention⁴⁵, which is also linked to the right to Freedom of Association⁴⁶.

2.2.2 Hours of Work and International Standards

Hours of work for waged agricultural workers tend to be long compared with other sectors, often over 45 hours per week, and remain largely unregulated. Hours tend to vary due to a variety of factors such as, for example, seasonal and climatic conditions, peak periods of sowing and harvesting.

2.2.3 Food Security and Food Sovereignty

The right to adequate and nutritious food, freedom from hunger as well as the development right to food security is set out in the preamble to the Rome Declaration on World Food Security⁴⁷.

The responsibility of government for providing food security for the world’s population is specified in *International Covenant on Economic, Social and Cultural Rights*, including overarching strategies for meeting these entitlements on a global scale. It is especially worth noting the need for wider international co-operation to address issues created by the export and import of food: “The state parties to the present Covenant, recognising the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed to ensure an equitable distribution of world food supplies in relation to need”.

The Final Declaration of the World Forum on Food Sovereignty, made the following statement regarding the idea of food sovereignty: “Food sovereignty is the means to eradicate hunger and malnutrition and to guarantee lasting and sustainable food security for all of the peoples”48.

### 2.2.4 Education and Training for Agricultural Labour:

Article 6 of the International Covenant on Economic, Social and Cultural Rights specifies government provision of “technical and vocational guidance and training programs” as a requirement for the fulfillment of the right to work. The *Universal Declaration of Human Rights* proclaims that “everyone

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has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be made compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.\textsuperscript{49}

\textbf{2.2.5 Traditional, Alternative, and Sustainable Farming Techniques}

Article 11.2(a) of the \textit{International Covenant on Economic, Social and Cultural Rights} sets the broad objective of improving “methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources.”

The integrated trade union approach to the human rights of agricultural workers also addresses issues related to different agricultural production systems, the availability and affordability of such systems and the safety and sustainability of these production systems.\textsuperscript{50}


2.2. 6 Sound Management of Chemicals in Agriculture

The Chemicals Convention\textsuperscript{51}, 1990 represent international efforts to upgrade the national measures and harmonize regulatory standards. They emphasize the need to establish a coherent national policy of chemical safety ranging from the classification and labeling of chemicals to the control in all aspects of the use of chemicals. Particular emphasis would thus be placed on roles and responsibility of the competent authority, suppliers and employers, as well as duties and rights of workers.

2.2. 7 Challenge of tackling equality at work

*The Convention on Equal Remuneration*, 1951 requires the application of principle of equal remuneration for women and men for work of equal value. It defines equal remuneration for work of equal value as remuneration established without discrimination based on sex, and which requires objective appraisal of jobs on the basis of the work to be performed, as one of the means of giving effect to this Convention with the co-operation of employers’ and workers’ organizations.

2.2. 8 Elimination of Discrimination in respect of Employment and Occupation

Discrimination (Employment and Occupation) Convention\(^{52}\) requires the promotion of equality of opportunity and treatment in relation to employment and occupation and calls on States to declare and pursue a national policy designed to eliminate all forms of discrimination. It defines discrimination as “any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin affecting equality of opportunity or treatment in employment and occupation; and covers access to vocational training, employment, and terms and conditions of employment”.

2.2. 9 Safety and Health in Agriculture

An important breakthrough in this respect is Article 20 of the ILO Safety and Health in Agriculture Convention, 2001\(^{53}\) on hours of work which states: "Hours of work, night work and rest periods for workers in agriculture shall be in accordance with national laws and regulations or collective agreements". This is the first time in an ILO Convention that the connection between hours of work, rest periods, night work, and health and safety on the

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job has been made, reflecting modern thinking and research on issues which were too often neglected in the past.

Human suffering cannot be assigned a monetary value, but the economic losses associated with poor occupational health, safety and environmental standards can. High levels of deaths, accidents and ill-health resulting in lost workdays and increased medical expenses have a considerable negative impact on agricultural productivity and place enormous social and financial burdens on enterprises. The ILO estimates that four per cent of Gross Domestic Product is lost due to fatalities, accidents and work-related diseases. A safe, healthy and environmentally conscious workforce is an essential element of a profitable and sustainable agricultural industry.

For trade unions, workplace organization and representation are the keys to maintaining and improving health, safety and environmental standards in the workplace. Legally appointed and empowered worker health and safety representatives are the backbone of trade union organization on health and safety at work. They are the eyes and the ears of trade unions on workplace occupational health and safety problems and play crucial roles in reducing fatalities, accidents and ill-health at work. Many deal with
workplace environmental issues as well. These help protect workers, the public and the general environment\textsuperscript{54}.

However, on many farms there are no safety representatives due to the small scale of these enterprises, their scattered nature, and a general lack of resources and technical support. Even on larger farms and plantations, where selected or elected by the workers, or the legal right to do so clearly exists, safety representatives may only have limited scope to improve occupational health, safety and environmental standards, due to a lack of training and technical support.

Article 8.1(b) of the ILO Safety and Health in Agriculture Convention, 2001 gives workers the right to select their own workplace safety representatives. However, to turn this right into reality, what are termed "roving safety representative schemes" need to be put in place, based on external worker representatives who visit agricultural undertakings in a given geographical area\textsuperscript{55}.

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Worker representatives on legally-constituted, joint worker-management health and safety workplace committees also play a vital role in maintaining even environmental standards. Such committees are only found in larger workplaces (generally, those with 50 employees or over). Safety committees deal with ongoing problems, and look at longer-term solutions on a joint problem-solving basis.

2.2.10 International Commitment towards Inspection of Labour at Workplace

To advice both employers and workers, to administer social and labour policy, and to supervise and enforce labour legislation and standards, effective national systems of labour inspection are required. Labour inspection is a public function, a responsibility of government, best organized as a system, within the context of a larger State system\(^6\).

The ILO *Labour Inspection Convention*, 1947\(^7\) sets out the basic international standards, supplemented by the *Labour Inspection (Agriculture) Convention*, 1969\(^8\) which take into account the special characteristics of the agricultural sector.

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Labour inspectorates work to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, weekly rest and holidays, safety, health and welfare, the employment of women, children and young persons and other connected matters. Inspectors also supply technical advice and information to employers and workers concerning the most effective means of complying with the legal provisions. Labour inspection systems vary, with some countries having, for example, specialized health and safety inspectorates.

2.2.11 United Nation and the Protection against Unemployment

The Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations on 10 December 1948, is an assertion of the universal right to freedom and life with dignity. Article 23(1) of the Declaration states: “[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.” In fact, the legislative steps a country takes should satisfy the contents of this Article. This UN Declaration is one of the basic documents on human rights and justice that has become a standard-bearer or standard setter for peoples, communities and nations.
2.2.12 *Plantations Convention, 1958:*  
This Convention covers the recruitment and engagement of migrant workers and affords protection to plantation workers in respect of employment contracts, wages, working time, medical care, maternity protection, accident compensation, freedom of association, labour inspection, and housing.

2.2.13 *Rural Workers’ Organisations Convention, 1975*⁵⁹  
All categories of rural workers, whether they are wage earners or self-employed, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations, of their own choosing without previous authorization. The principles of freedom of association shall be fully respected; rural workers' organizations shall be independent and voluntary in character and shall remain free from all interference, coercion or repression. National policy shall facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of rural workers as an effective means of ensuring the participation of these workers in economic and social development.

2.2.14 *Convention on Right of Association (Agriculture), 1921* provides for securing the same rights of association and combination as to industrial

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workers, and to remove any statutory restriction on such rights for workers engaged in agriculture\textsuperscript{60}.

\textbf{2.2.15 Convention on Workmen’s Compensation in Agriculture, 1921:}

This Convention requires states to extend to all agricultural wage earners by law, compensation for personal injuries by accident arising out of, or in the course of their employment\textsuperscript{61}.

In the light of above discussion let us now find out what steps member countries have taken in protection and promotion of interest of agricultural labour.

\textbf{2.3 Agriculture Labour and Law in Morocco}

Morocco is a country located in North Africa. The Moroccan Constitution provides equal treatment under the law for its citizens and guarantees them the right to freely choose work, equality in gaining employment, the right of freedom of association, and the right to strike\textsuperscript{62}.

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2.3.1 Laws pertaining to Freedom of Association in Morocco

The Constitution of Morocco guarantees freedom of association for the citizens of Morocco, including the freedom to belong to any union of their choice. The 2003 Labor Code provides workers with the right to freely join and to withdraw from trade unions.


The Constitution guarantees the right to strike and mandates that the implementation of this right is to be determined by organic law. Workers regularly exercise this right. Several Articles in the new Labor Code strengthen the right to strike by prohibiting attempts by employers to undermine a strike by hiring substitute workers and by prohibiting employers from discriminating against any worker or union who engage in strike activities. The Labor Code requires that any labor dispute that could become a collective dispute must go to reconciliation.

Some restrictions exist on the right to strike. Civil servants may be punished, without regard to disciplinary guarantees, for participating in coordinated work stoppages or collective acts of indiscipline. In addition, the Penal Code establishes a sanction of one month to two years imprisonment for any individual using force, threat, or fraudulent activities to cause a coordinated stoppage of work in order to force a change in wages or that jeopardizes the free exercise of work.\(^\text{65}\). The Penal Code also prescribes compulsory labor for persons sentenced to imprisonment\(^\text{66}\).

The ILO’s Committee of Experts on the Application of Conventions and Recommendations has remarked on the high number of prison sentences given to striking workers in Morocco’s private sector and has indicated the possibility of abuse of Article 288 of the Penal Code. The Government has acknowledged that an abundance of court decisions have been rendered pursuant to Article 288 but has observed that, when exercising the right to strike, workers must also respect the constitutional guarantee of freedom to work\(^\text{67}\). The Government contends that Article 288 constitutes an assurance of this freedom. The ILO’s Committee on Freedom of Association have stressed to the Government that workers should not be deprived of their

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freedom or subject to penal sanctions for organizing or participating in peaceful strikes\textsuperscript{68}.

\subsection*{2.3.2 Laws pertaining to Organize and Bargain Collectively}

The new \textit{Labor Code} bans employer and worker organizations from interfering in each other’s affairs with regard to their formation, management, and administration. Acts of interference include the establishment of employer-controlled unions or the provision of financial or other support to unions by employers to assert control\textsuperscript{69}. The \textit{Labor Code} also prohibits employers from taking disciplinary action against workers or firing them for belonging to a union, participating in union activities during non-work hours or during work hours with the employer’s consent, being nominated as a labor representative, performing the duties of a labor representative, or filing a complaint against an employer\textsuperscript{70}. The courts have the authority to reinstate unfairly dismissed workers and are able to enforce rulings that compel employers to pay damages and back pay. The new \textit{Labor Code} provides for conciliation and voluntary arbitration in resolving such

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\item Under Decree No. 1-57-119, as amended by Law No. 11-98, legal entities and natural persons were also prohibited from hindering the right to organize. The new \textit{Labor Code} has replaced Decree No. 1-57-119. \textit{See}, Art. 397, \textit{Labor Code}.
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Intense labor-management conflict and bitter rivalries among the country’s major labor federations prevented the modernization of labor law and enactment of a Labor Code for over 25 years. The impasse was broken on April 30, 2003, when the social partners signed a historic tripartite accord that reconciled the outstanding issues, providing concrete benefits to Moroccan workers, while giving employers long-sought regulations on strikes, severance pay, and indemnities. The accord also committed Morocco to adopt and ratify ILO Convention on Freedom of Association and Protection of the Right to Organize and to consider adoption and ratification of ILO Convention on Labor Relations in Public Service.

The Labor Code governs specific labor and employment issues, including Conditions of employment and work, employment contracts, and termination of employment and dismissal; terms of work and wages including minimum wage; minimum age for employment; maternity protection; hours of work and overtime; paid annual and holiday leave; policies for special categories of workers; and occupational safety and health

72. ILO, Ratifications by Country.
73. Supra note 149.
protection; prohibition of forced labor; trade union affairs and the election and functions of labor representatives; collective bargaining and the settlement of collective labor disputes, including conciliation and arbitration; labor market programs to match workers with employment opportunities, including for Moroccan workers abroad and foreign workers; and labor inspections, including the roles and responsibilities of labor inspectors.

The new Labor Code amends and supersedes a number of decrees regulating labor matters such as Decree on professional unions, collective labor agreements, on representation of employees within enterprises, on work regulations, that regulates the work period and the minimum wage and on weekly rest.

The Department for the Social Protection of Workers develops measures and actions to provide workers with social safety net protection, while the Department of Social Affairs develops policies regarding the prevention, protection, and social promotion of the family, women, and children. The latter is also responsible for improving the social conditions of

75. Ibid.
76. Ibid.
79. Art. 586, supra note 149.
the elderly. The Department of Professional Training provides vocational and technical training and professional development programs in training centers located throughout the country.

The Labor Inspectorate operates within the External Services of the Ministry and comprises six prefectural delegations and 27 provincial delegations. Labor and social affairs inspectors conduct general labor inspections, while social law inspectors are responsible for labor inspections in the agricultural sector. Physicians and engineers also may be commissioned to conduct labor inspections within the scope of their specialties. Currently, Morocco has approximately 496 labor inspectors, including doctors, engineers, and hygienists. These labor inspectors are specifically tasked with supervising the application of legislative and regulatory labor provisions, providing employers and workers with technical advice on complying with the legal provisions, and attempting to reconcile labor disputes.

Inspectors may freely enter any establishment subject to inspection at any time of day or night but must inform the employer of their presence unless they deem that this may harm the effectiveness of the visit. They may undertake any investigation or search deemed necessary to ensure that the country’s labor laws are being observed, including questioning the employer and workers about company practice. The labor inspectors also may demand any type of records required to carry out the inspection and may make copies or remove records from the establishment if necessary.\textsuperscript{84}

Training of labor inspectors was identified as an area needing improvement, given that Moroccan labor inspectors have historically been provided little training.\textsuperscript{85} To address this issue, training was afforded as part of a technical cooperation program conducted by the Arab Safety and Health Institute in 1999 and 2000 on child labor in the agricultural sector.\textsuperscript{86} In addition, in October 2003, the U.S. Department of Labor launched a two-year project, executed by the ILO, to provide necessary training to Moroccan labor inspectors on how to conduct general labor inspections.\textsuperscript{87} As a supplement, the U.S. Department of Labor is also funding another ILO project aimed at increasing compliance with labor standards in Morocco.

\textsuperscript{84} Art. 532, \textit{supra} note 149.


which includes the training of labor inspectors in performing occupational safety and health inspections\textsuperscript{88}.

The Labor Inspectorate requires additional resources to properly monitor working conditions and investigate accidents, particularly in rural areas\textsuperscript{89}. In 2001, some 36,000 inspections were conducted in 8,000 companies (or 10 percent of all enterprises). Very few workplace inspections occurred in rural areas. Labor inspectors spent the majority of their time (70 percent) settling individual and collective labor disputes through conciliation\textsuperscript{90}. During the first nine months of 2003, the Labor Inspectorate intervened in 23,400 individual conflicts. It recouped 39 million dirhams (US$4.2 million) in back wages and reinstated some 3,000 workers. The majority of individual conflicts concerned dismissals of workers (27.5 percent), non-payment of paid leave (24.2 percent), and non-payment of salaries (22.7 percent). The Labor Inspectorate settled roughly 70 percent of the collective labor conflicts\textsuperscript{91}.

The Social Chamber of the Court of First Instance is the judicial body that hears labor cases. It is composed of three sections: industry, commerce and


\textsuperscript{89} U.S. Department of State, Country Reports 2003: Morocco, Section 6e.


\textsuperscript{91} \textit{Id.}, at 2.
professionals, and agriculture. The court is presided over by a labor judge, who is assisted by four assessors appointed by the Minister of Labor and the Minister of Justice for a three-year period.  

2.3.3 Laws pertaining to Prohibition of Forced or Compulsory Labour

The Labor Code prohibits employers from coercively or forcibly subjugating workers to perform work, and those who violate this provision may be sanctioned with a fine of 25,000 to 30,000 dirhams (US$2,706 to US$3,247). Although the Government lacks the resources to inspect all workplaces to ensure that compulsory labor is not being used, forced labor is not viewed as an issue in the commercial and agricultural sectors. Morocco ratified ILO Convention on Forced Labor in May 1957 and Convention on the Abolition of Forced Labor in December 1966.  

2.4 United States and Laws for Agriculture Labour:

Agriculture is a major industry in the United States and the country is a net exporter of food. Because of its unique geography, weather, history and policies, the United States has an agriculture that has been dominated by production of commodity crops for use in animal, industrial and export enterprises.

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92. Supra note 82.  
93. Arts. 10 and 12, supra note 149.  
94. S. 6c, supra note 155.
In United States agricultural labor includes the following activities performed by a worker in the employ of any person without regard to the place where such services are performed:

(a) the production or harvesting of agricultural commodities limited to crude gum, also known as oleoresin, from a living tree and gum spirits of turpentine and gum rosin processed from crude gum by the original producer of the crude gum; or

(b) the ginning of cotton; or

(c) the operation or maintenance of ditches, canals, reservoirs or water ways if not owned or operated for profit and used primarily for farming purposes.

(d) Processing services which change the commodity from its raw or natural state do not constitute agricultural labor. For example, the extraction of juices from fruits or vegetables is a processing operation which changes the character of the fruits or vegetables from their raw or natural state and, therefore, does not constitute agricultural labor. Likewise, services performed in the processing of maple sap into maple syrup or maple sugar does not constitute agricultural labor. On the other hand, services rendered in the cutting and drying of fruits or vegetables are processing operations which do not change the character of the fruits or vegetables and, therefore, constitute agricultural labor, if the other requisite conditions are met. Services performed with respect to a commodity after its character has been
changed from its raw or natural state by a processing operation do not constitute agricultural labor\textsuperscript{95}.

As per the \textit{Federal Unemployment Tax Act} of United States, the term “farm” includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, as well as plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. Agricultural labor does not include reselling activities that do not involve any substantial activity of raising agricultural or horticultural commodities, such as operation of a retail store or a greenhouse used primarily for display or storage\textsuperscript{96}. If a worker performs both agricultural and nonagricultural labor, the entire service will be considered to be agricultural labor if 50\% or more of the time in a pay period was spent in agricultural labor.

The United States federal definition of farm worker is an individual whose principal employment at least 51 percent of the time is in agriculture and who has been so employed within the last twenty-four months\textsuperscript{97}. Those who are involved in agricultural production including planting, cultivating, harvesting and processing crops for sale and caring for animals fall in this

\textsuperscript{96} Jerry J. Weygandt, \textit{Accounting Principles} 58, 9\textsuperscript{th} edn., Hoboken: John Wiley and Sons, 2009.
definition. They also include seasonal farm workers, individuals whose principal employment is in agriculture on a seasonal basis who establish a temporary home\textsuperscript{98}.

Poultry hatchery services are agricultural labor provided they are performed on the farm or in the employ of a farm operator or group of operators who produced more than one-half the eggs. Raising livestock and related activities performed on a farm are agricultural labor. Services in connection with livestock held, cared for and fed in a feed lot over an extended period of time to make an appreciable weight increase are agricultural labor\textsuperscript{99}.

As per the \textit{Federal Insurance Contributions Act}, of United States term "agricultural labor" includes all service performed--

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;


(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) in connection with the production or harvesting of any commodity, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) (A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) in the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced the entire commodity with respect to which such service is performed. For
purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;

(5) on a farm operated for profit if such service is not in the course of the employer's trade or business

Many laws exclude agricultural workers, for example, from freedom of association and collective bargaining rights, and some countries restrict or prohibit public sector workers from organizing or collective bargaining.

Most countries’ laws are a mix; some features comply with freedom of association standards and some do not. For example:

United States law forbids discrimination against workers because of union activity, a *sine qua non* for protection of the right to organize. However, U.S. law also excludes from coverage large segments of the labor force—agricultural workers, domestic workers, low-level supervisors, and “independent contractors” who are really dependent on one employer for their livelihoods. The *National Labor Relations Act* excludes about twenty million private sector workers. These workers can be fired for union activity with impunity. The First Amendment protects public employees’ rights of

101. *Contra*, in ILO jurisprudence, the only exceptions to the guarantees of right to organize under Convention No. 87 are the armed services and the police. Provisions prohibiting the right to organize for public servants, domestic workers, or agricultural workers, for example, have been held to be incompatible with Convention No. 87 (Tajgman and Curtis, 2000).
association, prohibiting their discharge for union activity. It also guarantees their right “to petition the government for a redress of grievances.” In many states that prohibit collective bargaining, public employees form unions and “bargain” their terms and conditions of employment with the legislature through the political process.

2.4.1 Laws relating to Agriculture Labour in Utah

Utah is a State in the Western United States having *Utah Administrative Code* which describes agricultural labor as services performed on a farm by a worker in connection with any of the following activities:

(i) The cultivation of the soil;

(ii) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(iii) The raising or harvesting of any other agricultural or horticultural commodity.

(a) Agricultural labour includes the following activities performed by a worker in the employ of the owner or tenant or other operator of one or more farms, provided the major part, defined as 50% or more, of such services is performed on a farm:
(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane, storm, flood, or other natural disaster.

(b) The services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semi-skilled workers, which contribute in any way to the conduct of the farm or farms operated by the person employing them. Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the term "agricultural labor" does not include services performed by workers of commercial concerns that contract with a farmer to repair, maintain, or renovate farm properties.

2.4.2 Agricultural Labour Laws in British Columbia

British Columbia is the westernmost part of Canada's provinces. British Columbia's economy is largely resource-based. Land is arable that can be used for growing crops and province is agriculturally rich because of its mild weather. As per the Employment Standards Act and Regulations, 1995 farm worker means a person employed in farming, ranching, orchard or agricultural operation and whose principal employment responsibilities consist of
(a) growing, raising, keeping, cultivating, propagating, harvesting or slaughtering the product of a farming, ranching, orchard or agricultural operation,

(b) clearing, draining, irrigating, or cultivating land,

(c) operating or using farm machinery, equipment, or materials for the purposes of paragraph (a) or (b), or

(d) direct selling of agricultural product. If the sales are done at the operation and are only done during the normal harvest cycle for that product, but does not include any of the following:

(e) a person employed to process the products of a farming ranching, orchard or agricultural operation other than to do the initial washing, cleaning, sorting, grading, or packing of

(i) an unprocessed product of the operation during the normal harvest cycle for that product, or

(ii) during the same harvest cycle, the same or similar unprocessed product purchased by the operation from another farming, ranching, orchard or agricultural operation;

(f) a landscape gardener or a person employed in a retail nursery, aquaculture\textsuperscript{102}.

2.4.3 Laws pertaining to Agricultural Labour in the State of California

California is a State located on the west coast of the United States. The goal of the California Agricultural Labor Relations Act, 1975, which is enforceable law for agricultural labour, is to "ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations"\textsuperscript{103}. The Act which is a part of the California Labor Code, explicitly encourages and protects "the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment, and to be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection"\textsuperscript{104}.

The Agricultural Labour Relations Act, 1975 of California defines an agricultural employer as any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee including land owners, farm operators, custom harvesters and farm management companies. The major exclusion is farm contractors\textsuperscript{105}, who are excluded, which argued

\textsuperscript{104} Alex Nava, Agricultural Labor Relations Act 54, San Francisco: Civil Rights Presentation, 2012.
\textsuperscript{105} The Federal Migrant and Seasonal Agricultural Protection Act defines the term farm labour contractor as any person other than an employee of an agricultural employer, who for any money performs any farm
could not establish stable bargaining relationships with contractors because farmers set wages and working conditions for workers that contractor bring to farms.

*The Agricultural Labour Relations Act* also defines agriculture to include farming (which includes cultivation and tillage of soil; dairy production; cultivation, growing, and harvesting of agricultural or horticultural commodities; raising livestock, bees, furbearing animals, or poultry; and/or forestry or lumbering operations), and includes all activities incidental to or in conjunction with agriculture (such as preparation for market, transportation, or storage)\(^{106}\).

Agricultural Employment is also defined under *the Agricultural Labor Relations Act*, as any service or activity that is considered to be agricultural under Section 3(f) of *the Fair Labor Standards Act*, 1938 or under *the Internal Revenue Code* of 1986. The term "agriculture" includes farming in all its branches, and among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or

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lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. And the term "agricultural employee" means one who is engaged in agriculture\textsuperscript{107}.

_The Agricultural Labor Relations Act_ defines unfair labor practices for both employers and labor unions\textsuperscript{108}. The Act bans strikes by workers who have not selected an organization as their labor representative through the procedures outlined by the Act, but protects secondary picketing and publicity only if the labor union is the certified bargaining representative or has not lost an election at the worksite in the past 12 months and only if the publicity or picketing does not induce others to engage in strikes\textsuperscript{109}. Section 1154.5 explicitly bans hot cargo agreements\textsuperscript{110}. Declaration of an impasse, to encourage the adoption of collective bargaining agreements, the Act provides for mandatory and binding 30-day mediation and conciliation, review of the mediator's report, and court review of binding mediation. The

\textsuperscript{109} Ibid.
\textsuperscript{110} Hot Cargo agreement is voluntary agreement between a union and a neutral employer. In this agreement, a neutral employer agrees to pacify another employer with whom a union has a dispute. The neutral employer also agrees to cease or refrain from using, selling, transporting, and dealing in any of the products of an employer that the union has labeled as unfair. See, Roger LeRoy Miller, Frank B. Cross, _The Legal Environment Today: Business in Its Ethical, Regulatory, E-commerce and Global Setting_ 522, 7\textsuperscript{th} edn., Mason: South Western Cengage Learning, 2012.
Act contains a "make-whole" remedy\textsuperscript{111} for bad-faith bargaining intended to encourage employers to bargain in good faith.

\subsection*{2.4.4 Federal Laws available in United States for Protecting and Promoting interest of Agricultural Labour:}

\subsubsection*{2.4.4.1 Minimum Wage and Overtime Pay}

The \textit{Fair Labor Standards Act} establishes standards for minimum wages and overtime pay. The Act requires employers of covered employees who are not otherwise exempt to pay these employees a minimum wage. While virtually all employees engaged in agriculture are covered by the \textit{Fair Labor Standards Act} because they are associated with the production of goods for interstate commerce, there are exemptions from the minimum wage provisions, the overtime pay provisions, or both for certain agricultural employees\textsuperscript{112}.

\subsubsection*{2.4.4.2 Migrant and Seasonal Agricultural Workers}

\textit{The Migrant and Seasonal Agricultural Worker Protection Act} safeguards most migrant and seasonal agricultural workers in their interactions with

\footnotesize{\textsuperscript{111} Make whole is a term used in reference to compensating a party for a loss sustained. http://definitions.uslegal.com/m/make-whole/ [accessed on 26-08-2012].
\textsuperscript{112} http://www.usda.gov/oce/labor/laws.htm [accessed on 23-07-2012].}
farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing.\textsuperscript{113}

2.5 Agricultural Labour in China

China is a major global consumer of agricultural products. It consumes one-third of the world’s rice, one-fourth of all corn, and one-half of all pork and cotton, and it is the largest consumer of oilseeds and most edible oils.\textsuperscript{114} Rural China fits the dualistic framework reasonably well. Before 1978, the collectivized institutional framework of agriculture, mainly represented by the rural communes and the household registration system (\textit{hukou}), was an effective mechanism for controlling the huge rural population, in accordance with the strategic imperative of prioritizing heavy industrial development.\textsuperscript{115} However, with the modification of this strategy by the end of the 1970s, rural enterprises (mainly industrial firms) were the main non-agricultural activity that ‘absorbed’ rural labour. Since then, peasants were more successful in engaging in farming activities under various forms of the household responsibility system, especially the popular \textit{Baogan Daohu} (contracting everything to the households).

\textsuperscript{114} Gale and Huang, Demand for Food Quality and Quantity in China, January 2007, 1, 8.
Labour has become noticeably more mobile since the rural reforms, making temporary migration possible, even under the official *hukou*. The strategy of ‘leaving the land soil but not the countryside’ allows people to depart from crop production and to engage in non-agricultural activities in the countryside, or in neighbouring areas. These changes bring about two effects. Firstly, labourers are relatively free to choose between farm and non-farm work, thus relieving man–land pressure in most parts of rural China. Secondly, the rapid growth of rural enterprises (especially industrial enterprises) has provided more job opportunities and increased the peasants’ income. Having become a member of WTO in 2001, China is facing challenges in sectors demanding a higher degree of openness. Agriculture is one of them. The most obvious has been the steady continuing contraction of the cropping sector, as such activities offer relatively low returns to Chinese peasants. Since crops are still the major component in agriculture, increasing pressure to release more redundant labour can be expected, and this is reflected in the continuous decline of labour participating in agriculture. Eventually, peasants in the poor countryside received less investment in farming. Therefore, peasants with lower income become less competitive in a more market-oriented farm sector (because richer peasants can benefit more from the price reduction of inputs), with China’s WTO accession enacted. Thus, income inequality in rural areas will inevitably increase, at least in the short term. In sum, peasants in China appear to benefit
marginally in the process of economic expansion. At the same time, the problem of ‘peasants’ that existed in the agrarian economy under the development of ‘socialist new countryside’ was identified. The results show that the improvement of farm and agricultural technical efficiency is inconclusive in China. The surplus labour in farming is around 67 million at national level and 138 million in agriculture, which are similar to other estimates\textsuperscript{116}. However, adjustment of provincial heterogeneity has been introduced in our theoretical framework and it is found that this specification is valid and is considered a better approach. The amount of surplus agricultural labour in China was getting smaller, which can be accounted for by the economic reform, but larger after China’s WTO accession since 2001. Nonetheless, with the exception of provinces in the Northeast and Northwest regions, China is still far from the end of the labour surplus phase. Surplus labour in rural China can be viewed as the legacy of supporting industrialization but has been transformed into a burden since the 1990s. Between these two stages, rural China has undergone tremendous economic changes, to which the peasants have contributed\textsuperscript{117}.

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2.6 Agricultural Labour Laws in Bangladesh

The backbone of Bangladesh economy is agriculture yet sixty-five percent of the farmers are landless. Most of the agricultural workers in Bangladesh are casual workers. They are engaged on ‘no work - no pay’ basis\textsuperscript{118}. \textit{The Bangladesh Labour Act}, 2006 is the law applicable to labour has been proposed to be amended in three sections of the law to bring agricultural workers within its ambit. The existing section says the Act ‘shall not apply to agricultural farms where less than ten workers are normally employed’ while the proposed amendment says the act ‘shall not apply to agricultural farms where less than five workers are normally employed’.

The draft proposes insertion of a definition of farm worker. The proposed definition says, ‘an agricultural worker means a person who is employed in production of grains, vegetables, fruits, trees, betel leaf, dairy, poultry, fishery and any other agricultural production under a daily, monthly or yearly contract or under a contract of doing any specific work in exchange of wage’\textsuperscript{119}.

Agriculture in Bangladesh remains a small-scale family-based farming operation. Bangladesh has developed an export-oriented fishing industry.

\textsuperscript{118} Bangladesh Bhumiheen Somity, \textit{Implementation of Genuine Land Reform and ILO}, Dhaka, 07/10/2012.
\textsuperscript{119} Moloy Saha, ‘Farm Workers to be brought under Labour Act’, \textit{New Age Newspaper} 10-03-2012.
This activity grew at a record pace in the 1990s, driven by the export-oriented shrimp production. The favourable exchange rates, trade incentives and the liberalisation of imports (that allowed duty-free inputs for commercial fish farming) helped the rapid growth of this sector. In the coastal areas, shrimp farming has become the most profitable economic activity. As shrimp-farming remains labour-intensive, this sector employs over half a million rural poor in various stages of processing and shrimp culture. This sector also employs a large number of female workers in both upstream and downstream activities, such as services, transport, catching of shrimp fries, and shrimp processing.

The rural economy of Bangladesh has diversified over the past two decades and this has created considerable employment opportunities for both skilled and unskilled workers in farming and non-farming activities. Given the informal nature of employment contracts, the switch from farm to non-farm activities remains relatively easy and this has helped rural workers who lately devote a considerable amount of time to gainful non-farm activities. The increase of employment opportunities in non-farm activities explains why there has been absorption of the incremental labour force in the rural economy. Given few wage-rigidities, employment has increased at a steady pace while real wages have increased at a relatively slow pace. However it

was not the industrial sector but the non-farm activities in both the rural and urban areas that provided most employment for the incremental labour force. The industrial sector did not exhibit expected dynamism. Likewise, the agricultural sector faces a number of growth-inhibiting constraints such as controls over output pricing and marketing, less export orientation and the slowdown of demand for agricultural products, especially food crops that have a lower than one income elasticity of demand\textsuperscript{121}.

Agricultural real wages in Bangladesh are flexible and can be explained within the classical/neoclassical labour market paradigm. Various income generating activities in the non-farm sectors have also affected the supply of labour in farm activities\textsuperscript{122}.

2.7. Position of Agricultural Labour in Zimbabwe

Production in agriculture has declined massively and many workers have lost their jobs. This loss of employment opportunities in agriculture is irreversible worldwide general drift off the land into the urban areas. The drift is particularly pronounced in modern agriculture where mechanization has reduced the demand for labour.


Poverty, hardship and disempowerment are facts of life for farm workers. In most agricultural settings farm workers depend on having accommodation on the farm they are employed on. When this is combined with the constitutional and legislative flaws the result is that workers are forced to live with what are poverty level wages or less unless they are on agri-business farms. Even there their wages are, on average, not enough to feed a family of three.

The trend of the early years of the land reform process towards nonpermanent forms of employment seems to have changed. A growing proportion of workers are becoming permanent employees. The workers committees are functioning and are getting a better deal for workers. The dimension of availability of secondary schools for children of farm workers needs to be addressed because of the loss of potential lifelong earnings for children of farm workers.

Labour, the union and management are going to need to restructure the reward systems so that monthly wage bill are minimized but total annual remuneration increases. Recovery for agriculture will have to be accompanied by a change in the present practice of poverty level remuneration. Total annual remuneration through some sort of profit sharing will keep labour affordable.
Women workers are significantly disadvantaged in employment opportunities and status. The research found that they generally stay out of workers committee involvement, and if that changed their employment and their prospects are more likely to improve\textsuperscript{123}.

Farmers have no tenure they develop the land leaving workers living in dilapidated houses. The settlers are also evicting the farm workers out of their houses. Some of the workers who have houses are made to share them so those houses are overpopulated. They need villages built for the farm workers, this would reduce congestion in overcrowded farm compound houses. Farm workers should be given title deeds when their village is established.

The other problem is that of sanitary facilities. No one is responsible for erecting or maintaining these sanitary facilities due to the land invasions. The problem of farm housing disempowering workers that a problem that the participants have been advocating for a long time. Farm workers need their own houses and access to land. There are no health workers or crèche attendants anymore in the farming areas. Due to land invasions there are no facilities such as schools but if villages were established they could be in the villages.

\textsuperscript{123} www.aiastrust.org/index.php?option=com_content&view= [accessed on 08-06-2011]
Government has the view that as long as farm workers are given land and houses they will no longer go to work. But with no secure accommodation the farm worker becomes stranded after he leaves employment. In terms of health the workers are really suffering as the former white farmers who used to provide transport facilities are no longer there. The new settlers are not able to provide these facilities.

The provision of a fair deal for labour is closely tied to workers having tenure rights to homes of their own and each of the respondents’ reflections points to the need to empower workers and progress away from labour practices which are strongly shaped by the power relations entailed in domestic Government.

Farm workers are politically, economically and socially identified by power-wielders in the rural areas. Farm workers, historically, have been on the margins of the Zimbabwean nation. Their low-status employment, their association with “whites” whose own belonging to the nation has been increasingly questioned by a narrowly defined African nationalism, and their ambiguous citizenship claims define the farm worker in relation to others who comprise the entirety of Zimbabwean society.¹²⁴

Farm workers always needed to play the ‘identity game’, even under the domestic Government system. But there is so much more at stake when identity politics are predicated on stripping a group of their contribution to the State, by reframing their role in society as a threat. The risk of fluctuating alliances and constantly shifting local authorities make farm workers susceptible to losing a fragile hold on land, livelihoods and life itself.

This economic marginalisation pushes farm workers into the spaces occupied by black peasants battling to secure their own tenuous livelihoods in a country wracked by more than 200% inflation and 70% unemployment. This increased competition for resources and limited job prospects results in the group that is in a more precarious social position seeking remuneration through activities that exist outside the accepted, formal economic framework of a community. This parallel sector, referred to as subversive and illegal in many cases, serves to propagate and perpetuate the farm workers’ identity as criminal\textsuperscript{125}. The experiences of labour, since 1985 when the first Labour Relations Act was passed, has proved that it is inadequate to argue that the rights are protected through and covered by the labour legislation\textsuperscript{126}.


2.8 Agricultural labour in Spain

Agricultural workers in Spain are covered by a separate system of unemployment protection. The unemployment protection system is based on two instruments: the Agricultural Subsidy and the Development Plan for Agricultural Employment, in addition to an Occupational Training Plan\textsuperscript{127}.

The Development Plan for Agricultural Employment is a public plan, which is applied in rural areas with a level of unemployment higher than the national average\textsuperscript{128}. Its main objective is to generate immediate temporary employment in areas through public works financed by different institutions - ministerial bodies of the central government, the National Employment Institute (through agreements with local corporations) and the regional governments, using their own funds or through the Inter-regional Compensation Fund\textsuperscript{129}. In general, these works have focused on improving infrastructures (such as construction or rehabilitation of buildings or public parks, and road repairs) on the basis of the projects approved annually and incorporated in the Plan by decree\textsuperscript{130}.

\textsuperscript{128} Clout Hugh D., \textit{Regional Development in Western Europe} 28, Fulton: University of Michigan, 2009.
\textsuperscript{129} Robert Agranoff, \textit{Local Governments and Their Intergovernmental Networks in Federalizing Spain} 147, Mcgill-Queen’s University Press, 2010.
The Agricultural Subsidy is a protection system for casual agricultural workers\textsuperscript{131}. It is a non-contributory benefit applicable in the autonomous communities in which seasonal unemployment of casual agricultural workers is higher than the national average and the number of these workers is proportionally higher than in other agricultural areas\textsuperscript{132}.

Under the scheme, the worker is entitled to receive a maximum annual benefit of 180 days of subsidy, equivalent to 75\% of the national minimum wage. Payment is spread over nine months of the corresponding year at 20 days per month. The unusual feature of this protection system is that while the unemployment benefit is being received the beneficiary must perform some work in order to accumulate the necessary working days to be entitled to the subsidy the following year\textsuperscript{133}.

The relationship between the Development Plan for Agricultural Employment and the Agricultural Subsidy is that the working days performed by casual workers under the Plan are calculated for the purposes of reaching the necessary number of days to be entitled to the unemployment subsidy. The Development Plan for Agricultural Employment, have acted as

\textsuperscript{133} http://www.eurofound.europa.eu/eiro/1999/09/feature/ex9909252f.htm [accessed on 12-07-2011]
a good supplement to the Agricultural Subsidy in some areas in which it is difficult to accumulate the necessary number of working days in agriculture.

As a supplement to the current system of protection for agricultural workers, other measures to generate employment in rural areas have been applied within European Union programmes for rural development. Like other regional initiatives and unlike the Development Plan for Agricultural Employment does not seek final results but is a strategic plan aimed at promoting and supporting initiatives in rural areas that generate stable employment both in the agricultural sector and outside it, within the more general objective of diversifying production. The main feature of the plan is participation of rural society in the development projects, in line with the rural development initiatives of the European Commission and its proper methodology. The objective is therefore to energise and mobilise existing material and human resources in the rural areas in order to generate stable employment and wealth. By its very nature, it is a medium- to long-term plan whose results will not be seen immediately, unlike the Development Plan for Agricultural Employment.

The agricultural workers' federations had on several occasions called for the abolition of this system and the inclusion of casual agricultural workers in the general system of unemployment protection, so that they
receive the same social and economic benefits as other unemployed workers. This aim was included in the "agreement for agricultural employment and social welfare" concluded by the unions and the Ministry of Labour and Social Affairs in 1996 and ratified by the Government, which set up a commission to study the proposal. This commission, three years later, has still reached no agreement, a situation which has brought about major protest mobilisations by agricultural workers. The main reasons that have led the two majority trade unions to propose the abolition of the special protection system for unemployed agricultural workers are as follows:

By creating a new relationship of dependence between the worker and the employer the system of casual agricultural workers has left negative effects. This is due to the need to reach the necessary number of working days to qualify for the subsidy\textsuperscript{134}. In this situation there is a relationship of individual dependence in which the trade unions are unable to act as mediators because on most farms there is no union representation.

After reaching the minimum number of working days to qualify for the subsidy, the worker has no incentive to continue working. Consequently, some distortions the current system has produced in the agricultural labour market. Such distortions, many a times, have led to serious cases of

\textsuperscript{134} \url{www.crls.org.za/documents/Briefing%20paper%20agric%20trade.pdf} [accessed on 26-07-2011].
connivance between employers and workers in favour of hidden employment.

As a result of unemployment some regions were meted out with unfair treatment due to which others\textsuperscript{135} were the beneficiaries of agricultural subsidy. Some regional trade unions have demanded the extension of the subsidy to the whole of Spain.

The Special Agricultural Social Security Scheme pays less benefit than the general unemployment benefit system; and finally, a reason of a more ideological type, which is the fact, are moving away from their traditional position on the rural proletariat. They no longer claim that it is a differentiated social group and feel that it should come under the same system as other workers in paid employment.

The current protection system for casual agricultural workers has been seen as socially legitimate for several reasons: it was agreed by consensus with the trade unions to replace the former "Community Employment" system; The Development Plan for Agricultural Employment has proved to be a good public works plan to palliate agricultural unemployment and to improve the infrastructures of many rural municipalities; and the

\textsuperscript{135} V.V. Narayanan, television interview on "Pravasa Lokam," Kairali television channel, Kerala, India, broadcast on July 3, 2008.
Agricultural Subsidy has made it possible to extend unemployment cover to groups that were excluded from the general system because they were casual workers.

In response to the proposals of the two majority trade unions, one must consider whether it would not be more advisable and more economically feasible to reform rather than to abolish the present system. The author believes that the current system, extended to other Spanish regions, provides better protection for casual agricultural workers than if they were included in the general system. The great advantage of the special system lies in the fact that it has no time limit (workers can earn the subsidy permanently providing they have worked a minimum number of days in the previous year), whereas the general system places limits on both the duration and the amount of the subsidy. The other great advantage is that workers can continue working while they receive the subsidy (in order to accumulate the working days needed for the subsidy for the following year), which allows them to combine the two sources of income.136

To sum up, the discussion pertaining to international scenario on agricultural labour and the law in the present Chapter subsumes a detailed study on several International Conventions adopted supporting the right to

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collective bargaining, restricting hours of work, providing food security and sovereignty, emphasizing on education and training of agricultural labour. Further, international steps taken for better management of chemicals used in agriculture, along with the ways and means suggested for tackling the challenges faced in bringing in equality at work by eliminating discrimination in employment and occupation are dealt with. With regard to international commitment towards safety and health of agricultural labour the suggested inspection modalities have also been discussed in a nutshell.

This apart, glimpses of laws governing agricultural labour in countries like Morocco, Utah, British Colombia, California, China, Bangladesh, Zimbabwe and Spain have also been incorporated. This ultimately helps the researcher to identify the challenges of agricultural labour in Indian context so as to suggest a better model law to protect and protect the interest of agricultural labour in the country. In the next Chapter such an attempt is undertaken.