

# A Research of the Crisis of Farmworkers' Right to Health from the International Perspective

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## ABSTRACT

Farmworkers' right to health has been difficult to be guaranteed for a long time, and this problem became more serious during the COVID-19 pandemic. The purpose of this review is to explore the reasons why farmworker's right to health cannot be guaranteed, and give feasible solutions. Farmworkers have made great contributions to the world economy and food production, but their employment and legal status make them in the marginal zone of the agricultural economy. The low degree of convergence with the relevant provisions of international law and the relative lack of legal aid for agricultural groups inhibit farmworkers from seeking medical services and related legal services. Emphasizing the legal status and legal resources protection of farmworkers through domestic legislation, further strengthening the cooperation between domestic law and international law, and developing public welfare legal consultation websites at the technical level will help to improve the protection of Farmworkers' right to health.

**Keywords:** *right to health, Farmworker, human rights*

## 1. INTRODUCTION

“Rape in the fields”, a documentary made by PBS, offered an insight look of the sexual abuse of undocumented immigrant animal farmworkers in the US. Human right, especially the right to health, is further violated when considering farmworkers' poor working conditions since they are exposed to countless safety hazards such as respiratory disease (like avian flu mentioned) and antibiotic-resistant bacteria. During the COVID-19 pandemic, this phenomenon reached a new peak. In the US, farmworkers are declared as basic workers by the federal government because they play a key role in ensuring the national food supply and maintaining the global supply chain. However, during the current pandemic, there are few measures to protect workers, such as unemployment insurance, paid vacation or medical insurance [1]. In Andalusia, the number of cases in COVID-19 has soared, and the migrant workers there have no running water, electricity, sanitation facilities or formal housing, let alone personal protective equipment [2]; In India, rural migrant workers bore the brunt of the government's chaotic lockdown, with some dying on their feet trying to reach some semblance of social support in their villages [3].

Actually the International Labour Organization has successively issued eight international labour

conventions, including convention on freedom of association and protection of the right to organize (No.87) in 1948, convention on the right to organize and collective bargaining (No.98) in 1949, convention on forced labor (No.29) in 1930 and convention on abolition of forced labor (No.105) in 1957, Convention concerning Equal Remuneration for Men and Women Farmworkers for Work of Equal Value, 1951 (No.100), Convention concerning Discrimination in Employment and Occupation, 1958 (No.111), Convention concerning Minimum Age, 1973 (No.138) and Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No.182) [4]. Meanwhile, states parties to the International Labour Organization have been settled down for over 100 years [5].

However, just as the Covid-19 pandemic has dramatically impacted the global world, it is also an international problem that farmworkers are deprived of their health right. Farmworkers have been on the edge of agricultural economy for a long time. This social and spatial inequality always puts farmworkers in danger, which is the same as the conditions for destroying the community of farmworkers in COVID-19, which is embodied in the poor working conditions, living environment and lack of medical security [1]. This article analyzes the challenges faced by this occupational group

in the context of the current global pandemic and possible risk mitigation strategies from an international perspective, and offers the reasons for these challenges and proposal solutions.

## **2. LEGAL REASONS OF THE PROBLEMS FACING BY FARMWORKERS**

### ***2.1. The weak social status of the occupational group***

For a long time, the social status of farmworkers has been on the edge of agricultural economy and even the whole social economy, one of the reasons comes from the composition of farmworkers' occupational groups. Looking at the international community, farmworkers are mainly composed of migrant workers and even undocumented migrant workers, because of the difficulty of farm working.

This problem is most obvious in the United States, the largest immigrant country in the world. Unlicensed Farmworkers are an important part of American agricultural labor force. About 2.7 million people are employed as Farmworkers in America every year, half of whom work without authorization, and most of them are young Hispanic men and immigrants [6]. In the U.S, half of the 1 million to 3 million Farmworkers work without authorization [7]. As undocumented farmworkers, they have caused great legal and economic obstacles in obtaining medical care [8]. They may be unwilling to seek medical care services because they are worried that such contact may lead to unemployment, damage their chances of obtaining legal status in the future, or cause them to be deported if they should be detained [8-10]. Any medical services they seek-unless they are injured at work-must be paid at their own expense, because most undocumented farmworkers lack health insurance and are excluded from the Affordable Care Act [9,10]. This problem is more obvious in the COVID-19 pandemic, and public health officials urge people with COVID-19 symptoms to stay at home and contact their doctors, and if their symptoms do not subside, seek medical services [10]. They rely on their daily income to support themselves and their families, which means that even if they are infected, they can't miss their jobs [9]. They are also excluded from the recently promulgated Coronavirus Assistance and Relief and Economic Security Law, which provides free testing for uninsured persons, but excludes some types of immigrants [8]. Unlicensed farmworkers are not eligible for other government assistance programs, such as temporary assistance and supplementary nutrition assistance programs for poor families.

In China, a similar situation is happening. China's rural economic development level is still very low, and the income level of most rural residents is low. Compared with the progress of urban social insurance reform, rural

social insurance is limited to some wealthy areas in the pilot stage, and family security is still the main body of rural social security. It can be said that rural social security is always on the edge of China's social security system. Taking medical insurance as an example, the current medical insurance reform in China is different from that in developed countries. The biggest reason is that there is no universal medical insurance or medical insurance reform for urban workers, which solves the problem of excessive burden of public medical care and guarantees basic medical services. For those non-local farmworker, the problems related to medical insurance become more complicated, because it involves the inter-provincial settlement of medical insurance for off-site medical treatment, and it was not until February 2021 that the off-site medical treatment started trial operation in the pilot provinces [11].

Therefore, a very contradictory situation occurred during the COVID-19 pandemic. Farmworkers made great contributions to the economy because of their basic work, but they were at high risk of being infected with COVID-19 virus. Two key factors aggravate their risks-their occupation is Farmworkers, and their legal status is undocumented immigrants, non-local farmworkers and so on. Each of these factors raised its own challenges during the pandemic. When these factors are combined, they will make Farmworkers susceptible to infection and threaten their right to health.

### ***2.2. The low degree of the connection between relevant provisions of domestic law and international law***

The ILO has 187 member countries, covering almost 90% of the countries in the world. However, only a few countries have adopted international labor standards. The international labor standards defined in this paper are the four core labor standards determined by the International Labor Organization in the Declaration on Fundamental Principles and Rights at Work and its Follow-up Measures in 1998, namely, the right of free association and collective bargaining, the elimination of all forms of forced labor, the abolition and prohibition of child labor and the elimination of discrimination in employment and occupation. Whether the core labor standards can be applied in a country depends on whether the member countries recognize and ratify the relevant international labor conventions, and the core labor standards are only binding on the ratifying countries. Take China as an example. China has adopted four core labor standards [4]. Generally speaking, whether or not to join international labor standards depends on economic factors, and countries make their decisions mainly based on economic considerations [12]. Therefore, there is a problem of linking the international law of labor, including farmworker, with the domestic laws of other countries.

For example, the United States has ratified only 14 of the 189 conventions of the International Labour Organization, of which only 2 of the 8 “core conventions” of the organization on forced labor and child labor. It has neither ratified the International Labour Organization's migrant labor convention nor the United Nations immigration convention [13,14]. It can be said that international law and international labor and human rights standards have limited influence in American policy discourse. For example, almost only the United States in the world refuses to ratify the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 40 and the Convention on the Rights of the Child [15]. Faced with American exceptionalism, is America ready to examine and learn from international standards and international discourses on the rights of migrant workers? Here is how Maria Lorena Cook characterizes the problem: There are political, legal, and discursive limits on the use of human rights frames, particularly in the United States. Moreover, much of the contemporary debate on immigration in the US and other advanced industrial democracies revolves around arguments about security, economics, and law-arguments that are rooted in the nation-state. This gives rise to the advocate's dilemma: on the one hand, universal norms such as human rights, which are theoretically well suited to advancing immigrants' claims, may have little resonance within national settings; on the other hand, the debates around which immigration arguments typically turn, and the terrain on which advocates must fight, derive their values and assumptions from a nation-state framework that is self-limiting [16].

Therefore, when there is a problem in the connection between international law and domestic law, international law will be ineffective in solving the right to health of workers including farmworkers.

### ***2.3. The relative lack of Legal aid in rural areas***

Legal aid in rural areas is a global problem. Taking China as an example, due to the long-standing development mode of urban-rural dual structure in China, there are huge differences between agricultural population and non-agricultural population in political, economic, cultural and social development, and the legal service resources in rural areas are seriously insufficient. Article 21 of the Regulations on Legal Aid promulgated in 2003 stipulates that at present, legal aid cases in China are mainly handled by lawyers appointed by law firms, staff of legal aid institutions and social organizations. Judging from the current practice in China, there are many problems in the operation of this regulation. First of all, China's lawyer resources have not been used reasonably and fully, and lawyers are mainly concentrated in large and medium-sized cities, while rural areas are hardly within the scope of lawyers' work,

which results in extremely uneven distribution of lawyer resources. Legal aid cases in areas where lawyers are concentrated can be paid attention to and solved. However, in areas where lawyer resources are scarce, conventional legal relief has not yet reached the due standard, let alone legal aid, so the rights and interests of rural vulnerable groups cannot be fully guaranteed through legal aid [17].

Rural areas in the United States also have the dilemma of lack of legal aid resources [18]. The 2017 Justice Gap Report of the Legal Services Company (LSC) pays special attention to the rural population in the United States, and thinks that they are highly vulnerable populations worthy of analysis. In addition, the highly vulnerable groups in this report also include: seniors over age sixty-five, veterans, persons with disabilities, parents/guardians of children under eighteen, and survivors of domestic violence/sexual assault. The report estimates that the income of 10 million rural Americans is less than 125% of the federal poverty line, so they are eligible for LSC-funded services. The report also found that three-quarters of low-income rural residents in the United States faced at least one civil legal problem within one year, while nearly one-quarter of rural residents experienced six or more civil legal problems within one year. However, only 14% of rural residents have received sufficient assistance on civil law issues, which is less than half of the national average [19]. This is true for American rural residents with legal status, and it is more difficult for undocumented migrant workers to obtain legal aid.

## **3. CONSTRUCTIONS FOR A SYSTEMATIC LEGAL REGIME TO PROTECT FARMWORKERS' RIGHTS**

### ***3.1. Emphasize the legal status and legal guarantee of Farmworkers through domestic legislation***

Domestic law and policy reform should start at the highest level and incorporate the right to health into the national constitution. The right to health granted by the Constitution does not guarantee that the government will respect this right or that health outcomes will be improved. However, it does provide a basis for action, whether it is to promote legal and policy reform, or to release the potential of litigation to implement this right when other means, such as constitutional right to life, judicially enforceable international treaties and legislation, are unavailable or insufficient. Incorporating the right to health of Farmworkers does not require large-scale constitutional reform, but can be incorporated as a separate constitutional amendment.

Laws, regulations and policies should include the principles of fairness, participation and accountability. A comprehensive approach to health equity will include

non-discrimination legislation with effective sanctions; Decompose health data and equity targets for poor and marginalized people, and formulate corresponding strategies and time-bound benchmarks; Equitable distribution of funds, health workers and facilities. Legislation should require that all health-related decision-making processes involve civil society and community members in setting standards, so as to ensure that members of marginalized groups can fully participate [20].

Accountability requires people to have the opportunity to understand and question the government's policies and actions, get answers, respond to questions, and get remedies for violations of rights. Transparency is essential for accountability: India's Right to Information Act of 2005 has proved to be one of the most important new tools for civil society to promote human rights in recent years [21]. Transparency will also help fight corruption and protect rights, as will a strong and independent anti-corruption agency.

The advancement of this agenda needs to solve the problem of lack of legal resources in rural areas. A feasible solution is to make students, that is, future legal workers, realize that rural areas are also a good employment channel in the earliest law school education. This requires law schools to take seriously the rural prospects and the need to train students to develop in rural areas, and reflect them in the substantive curriculum arrangement. For example, in the first year's tort (local rules) and the subsequent advanced courses on the legal system for managing families, we can also notice the differences between rural and urban areas: taxation; Health care; Education and so on [22].

### ***3.2. Further strengthen the cooperation between domestic law and international law***

Looking back at the development history of "the right to health", there is no doubt that the right to health plays an important role in internationally recognized human rights. The concept of "right to health" first appeared in the constitution of the World Health Organization in 1946: The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition [23].

The American Declaration of Human Rights and Duties adopted in 1948 contains the concept of the right to health, which stipulates that every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources [24].

When the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) in December 1948, although the right to health was not

listed as a specific right, it was bound with a series of economic and social rights in Article 25 (1), which state that: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services [25].

In 1966, when the International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted, the "right to the highest health" established its independent status on the international stage with the following expression:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness [26].

This normative commitment to the right to health in international law is maintained in the subsequent adoption of other international human rights treaties and regional treaties, the right to health can also be found in various expressions in instruments such as the European Social Charter [27]; African Charter on Human and Peoples' Rights [28]; and the Additional Protocol to the American Convention on Human Rights in the field of economic, social and cultural rights, commonly known as the San Salvador Protocol [29].

Since the right to health of Farmworkers is an inalienable human right, in view of the plight of the right to health of Farmworkers at present and during the epidemic period in COVID-19, it is an urgent task to raise the protection and importance of the right to health to the same status as other human rights. Thus, beyond the need to develop a common understanding as to the content of the right to health, the next challenge in securing the implementation of this right is to stimulate a conversation within the interpretative community about the right's relevance and the obligations it imposes upon states both individually and collectively in relation to both local and global health needs. Therefore, the relevant provisions of domestic law can better match the requirements of international law on the right to health of farmworker.

### 3.3. Technical support for efficient resolution of related cases

This article has analyzed and listed the lack of legal resources, insufficient supply of legal services, and difficulty in ensuring sustainability are the realistic problems that many farmworker communities are generally facing at present. It is one of the feasible measures to make rural areas have sufficient legal resources, but this process takes time. Moreover, seasonal farmworkers have strong mobility, so this part will focus on using technical measures to make farmworkers more accessible to legal resources and obtain legal aid. Furthermore, the development and construction of websites/apps providing free legal consultation. In other legal fields, discussions around Legal Zoom and pro se software have started [30], but similar discussions have not started in the unique field of Farmworker's right to health.

In an era when Indian rural farmers gain power by negotiating grain prices with smart phones [31], it is a trend for non-profit legal service organizations to provide technical and online services. Citizenshipworks and Own the Dream model adopt application support software for non-profit organizations, and connect users with free legal services, which is a good solution and helps to narrow some gaps in obtaining legal services [30]. This kind of procedure and website need to fill in not only a simple form, but a qualification questionnaire supervised by an appropriate lawyer can save a lot of resources currently used for admission. In addition, under the supervision of appropriate lawyers, the software and website can guide farmworkers to protect their right to health in correct ways, such as applying for medical insurance. Non-citizen farmworkers can complete the drafting of their own supporting affidavit and complete the correct immigration process, which can save a lot of lawyers' time and resources, and enable those who charge little or no fees to help more people while maintaining quality [30].

Once these mechanisms are developed, a prudent and lawyer-supervised supervision system is in place, and the focus should be on market penetration. These services must be more attractive to low-income or middle-income farmworker than gossip and other swindlers. These services should be optimized for the use of smart phones, and limit the need for individuals to own personal computers or printers as much as possible. At the same time, considering that the education level of farmworkers is generally not very high, and non-citizen farmworkers also have language problems, the development of websites and software should be set in multiple languages, and the content provided by customer service, lawyers and websites should be as concise and understandable as possible, so that farmworkers can better understand how to better safeguard their right to health.

## 4. CONCLUSION

The status of farm workers has been on the edge of farm economy for a long time, and their right to health has been unable to be guaranteed. This problem reached a new peak during the pandemic in Covid-19. Under this background, exploring the realization of farmworker's right to health from three aspects: subject status, legal guarantee system and emerging solutions will be of theoretical and practical significance, and will be of reference significance to the legalization of farmworker's right in the world.

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