



**Human Rights Council**

**Universal Periodic Review (UPR) of the United States of America**

**9<sup>th</sup> Session**

***Human rights situation in the United States of America***

*General consultative status with ECOSOC:*

**Franciscans International (FI)**

*Special consultative status with ECOSOC:*

**International Presentation Association of the Sisters of the Presentation of the Blessed  
Virgin Mary**

**UNANIMA International**

**Geneva / New York, April 2010**

## **I. Introduction**

1. Franciscans International, the International Presentation Association of the Sisters of the Presentation of the Blessed Virgin Mary and UNANIMA International are all NGOs having a large number of members in the United States of America who are engaged at various levels in community and social work. Based on their experience and expertise, and considering the need to achieve positive change with regard to the implementation of human rights in the USA, the above mentioned co-signing organizations would like to draw the attention of the Human Rights Council's Working Group in charge of reviewing the United States of America in November 2010, to the following issues:
  - Homelessness and the right to adequate housing;
  - Migrant workers: the mandatory detention and administration of justice;
  - Human Trafficking;
  - Mining and its impact on the right of indigenous people to the highest attainable standard of health and to clean water;
  - Right to food and genetically engineering (GE) technology.

### **I. Homelessness and the right to adequate housing**

2. There is no mechanism at national level in the US that relays, follows-up and implements adopted treaty bodies' and special procedures' recommendations on the right to adequate housing. The creation of such a mechanism would be essential in order to foster a human rights approach to the housing issue in the USA.
3. In the context of the current economic crisis and its impact on access to housing, the federal government has recently attempted to limit foreclosures and stabilize the housing market in general. Successful programs have been the Family Unification Program (FUP), which provides vouchers to families who are in danger of, or are already homeless, in order to keep the family unit together, and the Protecting Tenants at Foreclosure Act, which allows residents to remain in apartments that have been foreclosed. However, both of these programs are set to expire in 2012 and the current administration has already signaled that they have no intention to work for their renewal.
4. Despite these measures, there is a general increase in homelessness in the United States. As more and more homes foreclose, additional numbers of people are forced into rental units, causing an increase to the burden of an already tight rental market. The end result is higher rents.<sup>1</sup> The current supply of public housing is approximately 1.2 million units.<sup>2</sup> 170,000 public housing units have been lost due to aging infrastructure and from 1996-2006, funding for public housing units dropped by 25%.<sup>3</sup> On redeveloped public housing units only 12% of former residents are accepted as residents again.<sup>4</sup> The waiting list for rental housing vouchers has typically been five years.<sup>5</sup>
5. Additionally, there is a severe shortage of shelter space. On any given night, 800,000 people are homeless.<sup>6</sup> What are not included in official statistics are those who have lost their homes and currently live with friends or relatives. If this number were to be

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<sup>1</sup> National Law Center on Homelessness and Poverty. "A Report to the UN Human Rights Council on the Right to Adequate Housing in the United States." April 2010.

<sup>2</sup> Rolnik, Raquel. "Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context. Mission to the United States of America", A/HRC/13/20/20/Add.4, 12 February 2010, § 14

<sup>3</sup> *Ibid.* § 21

<sup>4</sup> *Ibid.* § 27

<sup>5</sup> *Ibid.* § 36

<sup>6</sup> *Ibid.* § 51

included, it would add an additional million people to the annual figure of approximately 3.5 million homeless.<sup>7</sup>

6. A distinctive feature of homelessness in the United States has been the criminalization of those who lack shelter by legislating against the act of sleeping, sitting, eating outdoors – even when the homeless persons have no other place to be. Those who find themselves on the streets are routinely arrested. In addition, housing applicants that have a prior criminal or drug record are denied access to subsidized housing. Once in subsidized housing, renters can be evicted if they commit a crime on or off the premises.<sup>8</sup>
7. The United States does not view housing as a right, but as a commodity. Due to a woefully low federal minimum wage, a one-bedroom apartment is out of reach for those who earn \$7.25 an hour (corresponding to the federal minimal wage). There is a shortage of incentives to create additional affordable housing or for raising wages. Yet, it is the lack of affordable housing that is the main primary cause of homelessness.<sup>9</sup>
8. Two groups in particular face difficult situations with regard to housing. Native Americans as exemplified by the case of the Pine Ridge Reservation visited by the Special Rapporteur in 2009 – a situation which is duplicated on other reservations throughout the western part of the U.S. in particular. The second group, is the group of homeless veterans whose needs are not being adequately met.
9. According to the National Coalition for Homeless Veterans, the Veterans' Administration estimates that more than 107,000 veterans are homeless on any given night. Contributing to this are the factors affecting all homelessness: extreme shortage of affordable housing, livable income and access to health care. In addition though, many displaced and at-risk veterans also live with the effects of post-traumatic stress disorder (PTSD) and substance abuse and lack family and social support networks.<sup>10</sup>

10. Based on these facts and figures and the numerous studies that document the situation of housing and homelessness in the United States, we would like to make the following recommendations:

- a) **The right to adequate and affordable housing should be guaranteed by the law. The housing issue should be systematically addressed from a rights based approach.**
- b) **Ratify and implement the International Convention on Economic, Social and Cultural Rights and its Optional Protocol.**
- c) **Extend the Family Unification Program (FUP) and the Protecting Tenants at Foreclosure Act beyond 2012.**
- d) **Create a national foreclosure prevention program.**
- e) **Demolition of existing public housing should systematically be accompanied by a 1-for-1 replacement system, and the right for former tenants to return should be guaranteed.**
- f) **Stop the decrease in the number of available public and subsidized units through incentives to private owners to continue participation in the federal “section 8” housing programs.**

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<sup>7</sup> *Ibid.* § 51

<sup>8</sup> Rolnik, Raquel, A/HRC/13/20/20/Add.4, § 71

<sup>9</sup> National Law Center on Homelessness and Poverty.

<sup>10</sup> <http://www.nchv.org/background.cfm> (31 March 2010)

- g) **Develop and implement alternatives to the criminalization of homelessness (in consultation with civil society groups).**
- h) **Honor legal obligations by trust and by treaty to Native Americans which entitle them to adequate resources to ensure housing rights, held by the federal, state and local governments.**
- i) **Provide for adequate housing and health services for Veterans.**
- j) **Promote greater civil society participation by those who are homeless and at risk of homelessness by fostering improved and increased dialogue between civil society and tenant organizations (e.g., town hall meetings). Find more funding for housing assistance programs.**
- k) **Use foreclosed homes owned by the government to house the homeless.**
- l) **Expand the definition of homelessness to include those who live with family and friends so they can be eligible for rental or other assistance.**

## **II. Migrant workers: the mandatory detention and administration of justice**

11. In the US, migrants in irregular situation who either are awaiting a trial or a removal order, or who are waiting to be removed, are systematically and indefinitely held in mandatory detention. This system is based *inter alia* on Act 236 of the Immigration and Nationality Act, as revised in 1996. Release or conditional parole is exceptional. In fact, this means that migrants in irregular situation are systematically detained and treated as criminals, and denied constitutional and due process rights or a real opportunity to challenge that detention. As a consequence of this system, the immigration detention's capacity has expanded six-fold, from 6,785 beds in 1994, to 33,400 in 2008.<sup>11</sup> In 2008, 378,582 migrants were thus held in detention.<sup>12</sup> Conditions of detention often do not meet international standards nor ICE's (Immigration and Customs Enforcement) own guidelines. Immigrants are routinely incarcerated in over 300 state or private contract jails alongside persons convicted of a criminal offense. This system is contrary to art. 9 and 10 of ICCPR.
12. We are concerned by cases of migrants in irregular situation, who are *de facto* forced to plead guilty in order to accelerate the judicial procedure, even though they rightly believe that they are not guilty. This situation occurs in particular with so called cases of "identity thefts": employers of migrants in irregular situation register them under a false Social Security Number (SSN). When they are caught by ICE, these migrants get accused of "aggravated identity theft" for "knowingly (...) possess[ing] or us[ing], without lawful authority, a means of identification of another person » (See *Identity Theft Penalty Enhancement Act*). If pleading not-guilty, the migrant would have to wait for several

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<sup>11</sup> Migration Policy Institute, *Immigrant Detention. Can ICE Meet Its Legal Imperatives and Case Management Responsibilities ?*, September 2009, p. 6

<sup>12</sup> *Ibidem*, p. 7

months in mandatory detention (about 6-8 months or more) until the trial takes place. If found guilty, they would face a two year minimum prison sentence. However, if the person makes a Plea Agreement, he/she would “only” be detained about 5 months before deportation. It is thus in his/her interest to plead guilty, even if the person knows he/she is not. This violates art. 14§3 g) of ICCPR. In addition, charges faced by employers are much milder than those faced by the irregular migrants.

13. An example of this practice happened during the largest raid ever launched by ICE in Postville (Iowa), on 12 May 2008. During that raid, 389 migrant workers were arrested. Of the 297 persons who were charged on time, 270 were charged with aggravated identity theft and went to jail. The 27 others had a different treatment, because the false SSN that they had been attributed corresponded to a vacant number, meaning they would only be charged with social security fraud, and be released for deportation. The 270 other persons all pleaded guilty, even though none of them was using another person’s identity “knowingly” (they did not even know the name of the person who actually was using the authentic SSN), in order to face shorter detention periods before being deported.

#### **14. Recommendations:**

- a) Modify the legislation, in order to avoid systematic detention of migrants in pre-trial detention or migrants waiting to receive a removal order, or waiting to be removed. Detention should only be applied as a last resort measure, based on an informed case by case decision, when no alternatives to detention can be applied.**
- b) Develop a comprehensive system of alternatives to detention, and always apply the least restrictive means necessary for a limited time period.**
- c) Afford migrants full constitutional and due process rights, including the right to reasonable bail and the right to an attorney.**
- d) Explore ways to respond to the demand for unqualified workers through legal migration channels and regularization of migrant workers who have an employment.**

#### **III. Human Trafficking**

15. In 2000 the U.S. Congress passed a law against human trafficking called the Trafficking Victims Protection Act. Since its first passage the TVPA has been renewed and/or amended in 2003, 2005, and 2008. One of the elements of this Act that has made prosecution extremely difficult is the requirement of “force, fraud or coercion.” Legal experts who have worked in this field state that often brutal and exploitative sex traffickers need not resort to “force, fraud or coercion” because their victims are so vulnerable, terrified or traumatized that such conduct is not necessary. This high threshold is not in compliance with the definition provided in art. 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime. According to the Department of Justice’s statistics report to Congress in 2007, from 2001 through 2006, 90 sex trafficking and sexual slavery prosecutions requiring proof of force fraud or coercion have been brought against 274 defendants. Only 54 of those cases, against 186 defendants were brought under the “force, fraud, coercion” TVPA provisions.

16. The most quoted U.S. government statistic estimates that between 14,500–17,500 individuals are trafficked into the U.S. each year. Unfortunately investigations, prosecutions and convictions of those responsible for the crime remain relatively minimal.
17. Between 2001 and 2007, the Federal Bureau of Investigation’s Civil Rights Unit, agencies from within the Department of Justice (DOJ) and the Immigration and Customs Enforcement (ICE) opened a composite of 1,789 cases involving all forms of trafficking over six years. Convictions from all three government agencies totaled only 616.<sup>13</sup> In January of ’07, the Human Trafficking Prosecution (HTP) Unit was created within the Criminal Section of the Justice Department’s Civil Rights Division to improve and advance investigations and prosecutions throughout the country.
18. Though it is reported that three-quarters of all foreign adult victims identified during the Fiscal Year 2008 were victims of trafficking for forced labor, the DOJ that same year obtained 77 convictions in 40 human trafficking cases of which only 13 were associated with labor.<sup>14</sup> Though there is, therefore, no significant evidence that this arrangement has been especially effective, the International Labor Organization (ILO), in 2009, maintained that the United States had, by including a specific provision on forced labour in anti-trafficking legislation, paved the way for a gradual increase in forced labour prosecutions.<sup>15</sup>
19. The creation of a Task Force to monitor progress in halting trafficking was mandated by TVPA of 2000. It also called for collecting and organizing data. Statistical information has been requested of the Attorney General’s office in ’03, and by the State and Labor Departments in ’08. In 2009, recommendations also called for expanding research and data collection. Despite these mandates, adequate and coherent government data is still seriously lacking. Particularly absent are estimates on the number of American citizens trafficked within the U.S.<sup>16</sup>
20. Correct information about the particulars of the problem is essential to mitigating its damage and halting its progress.<sup>17</sup>
21. Trafficked victims are crucial witnesses in a case seeking conviction, but they are understandably hesitant, fearful and cautious to come forward. Trafficked laborers are fearful they will be deported and sent back to face the people from whom they heavily borrowed and cannot now repay. They are concerned about putting their entire family as well as themselves in jeopardy. In addition, victims of trafficking often have to wait for a year or more until their case is examined. This is particularly burdensome and costly when legitimate work authorization has not been granted.<sup>18</sup> Trafficked sex offenders are even

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<sup>13</sup> Polaris Project, Human Trafficking Statistics, 2009

<sup>14</sup> *Trafficking in Persons Report*, June 2009, p. 57

<sup>15</sup> “Forced Labour: Facts and Figures” – The Cost of Coercion: Regional Perspectives – Fact Sheet, 2009

<sup>16</sup> *Trafficking in Persons Report*, June 2009, p.57 An example of this is that despite the large number of children trafficked within the US every year, the Department of Health and Human Services has identified an average of 20 children per year as trafficking victims since the enactment of the TVPA (from 2001-2006)

<sup>17</sup> It is interesting to note that in the United States TIP report those countries which have significant relations with the United States (almost all countries in the world) are analyzed into 3 tiers but that the US itself is not subject to a similar review from an independent source. The Dept of Justice does do an annual report but this is not an independent agency.

<sup>18</sup> “Waiting” has been the dominant experience of pipe-fitters recruited from India by Signal International. Initially the men waited for escape from labor bondage and from then on they waited for justice. Some have been waiting for over a year for a definitive resolution to their case. They and their families are deplorably in debt since each man paid \$20,000 just to come to the U.S. Their living expenses in the U.S. continue to be covered by charity.

On January 26, 2010, the men in Fargo, ND, were notified that their case was administratively closed, and they would be eligible to receive their T-Visas and work permits. It took 16 months just for that to occur, but the end was not yet. An ICE official in Bloomington, MN, would forward this information with his signature to a judge

more hesitant to speak, identify their perpetrators or share information generally because they, too, have frequently been traumatized and manipulated or misled. Furthermore, they have likely been victims of repeated physical violence and remain skeptical of any protection assurances that may be offered.

22. Though the DOJ says, “Experience has shown that employing a victim-centered investigation and prosecution model secures victims’ trust and thereby fosters truthful statements,”<sup>19</sup> the reality is that their investigative procedures do not ordinarily demonstrate such belief. In order to be effective interrogators, it is essential that law and ICE enforcement officers be trained in the pattern of social service providers who first aid the victims and over time may gain their confidence, cooperation and truth.

**23. Recommendations:**

- a) Urge the United States Government to ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**
- b) Revise the TVPA, by extending the definition of human trafficking beyond the strict “force, fraud or coercion” threshold, in order to comply with the the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and ensure that all victims of trafficking are effectively protected.**
- c) Increase efforts to identify, investigate and prosecute those responsible for recruiting and maintaining labor trafficking in the US. Court proceedings should be conducted in a swift and fair manner.**
- d) Federal agents arresting and deporting immigrants should employ systematic techniques to verify whether they are victims of human trafficking deserving special protection.**
- e) Put in place a systematic procedure to guide law enforcement and other front-line responders such as education, healthcare and social workers in the process of victim identification. Victims should not be expected to identify themselves.**
- f) Improve collection and organization of disaggregated data with respect to human trafficking to, from, through and within the US, in order to be able to establish an adequate and comprehensive human rights-based response to human trafficking.**
- g) Require law enforcement to provide sensitivity training for their officers in order to prevent further trauma for trafficked victims.**
- h) Dedicate more resources for prevention activities and education of at risk groups, in particular in poverty stricken areas.**

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in VT who would then sign and forward the final eligibilities to the Indian men in Fargo. That, alone, took up to two months. On March 30, 2010, work authorization was finally provided, but T-Visas were still on the way.

<sup>19</sup> U.S. Dept. of Justice; Office of Justice Programs. “Sex Trafficking: Identifying Cases & Victims” by Robert Moosy, J.D. at 4<sup>th</sup> Nat’l Human Trafficking Conf., Sept., 2007

- i) Sufficient time and assistance should be given to trafficking victim, particularly in the case of sexual exploitation to have assistance to deal with this trauma without threat of deportation or arrest.**

***Extraterritorial obligations in relation to human trafficking***

24. Trafficking victims are likely to be employed by both small and large businesses operating both domestically and internationally. Companies can and must play a significant role in ensuring that the products they provide are not derived wholly or in part from forced labor.

**25. Recommendations:**

- a) Require companies to have measures in place to recognize, address, and prevent trafficking from happening in the course of their production of goods and services.**
- b) Develop standards for holding corporations accountable for human rights violations committed abroad.**
- c) Include enforceable human rights conditions in all trade agreements.**
- d) Develop a Tier System to assess the human rights standards of the activities of U.S. corporations operating in this country and abroad. Subsequent to such assessment the government should provide incentives, penalties and opportunities for corporations to improve their performance.**

**IV. Mining and its impact on the right of indigenous people to the highest attainable standard of health and to clean water**

26. In April 2010, a decision was made by the 10th Circuit Court of Appeals over a license issued by the Nuclear Regulatory Commission (NRC) for four uranium mines on the Navajo reservation. The four proposed in-situ leach (ISL) mines would purposefully and irreversibly contaminate the sole source of water for Navajo communities in Churchrock and Crownpoint. The decision of 2-1 in favor of upholding the NRC's authority to issue the permit follows a 15 year long battle in front of administrative law judges and Federal courts. The proposed mines by Hydro-Resources, Inc. (HRI) would use a method of mining known as in-situ leach (ISL) mining which injects chemicals into aquifers to mobilize uranium and pump it out of the ground.
27. No ISL mine in the country has ever been restored to its pre-mining condition. Two of the proposed HRI mines are less than a half mile away from Crownpoint's municipal water wells. The decision by the court supports HRI and the NRC even though all available data show that the sole source of water for more than 15,000 Navajo community members will be irreversibly contaminated.
28. The devastating uranium legacy in other places in the United States have strongly affected indigenous communities, and resulted in high rates of various cancers, kidney disease, autoimmune disease, birth defects, and miscarriages. It has been more than thirty years since mining companies left the Navajo reservation and the Grants Uranium mining belt and state and federal agencies that are responsible for protecting the environment and human health are only now beginning to take steps towards reclaiming these areas.

29. The contamination of uranium on indigenous peoples' territories has been ignored and dismissed by US agencies. It has been over thirty years and federal agencies are only beginning to look at solutions to dealing with the contamination of air, water, and soil. The US has not even designated an agency to deal specifically with Abandoned Uranium Mines, which has allowed the federal government to sidestep responsibility for reclamation.

**30. Recommendations:**

- a) Take every necessary step to stop in-situ leach uranium mining, considering its impact on the right to the highest attainable standard of health and the fact that it leads to the destruction of indigenous people's resources.**
- b) Fully protect indigenous peoples' right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures.**
- c) Designate a specific federal agency to deal with abandoned uranium mines, and give adequate reparation to those who have been affected by those sites.**
- d) Recognize the Declaration on the Rights of Indigenous People.**

**V. Right to food and genetically engineering (GE) technology**

31. The right to participate in decisions is an important human right, most explicitly mentioned in article 25 of the International Covenant on Civil and Political Rights. Among the elements of farmers' rights as defined in the International Treaty on Plant Genetic Resources for Food and Agriculture is "the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture." (article 9 (2) (c)).

32. In 2008, half the world's cultivated acres were planted with seeds that were developed using genetic engineering (GE) technology.<sup>20</sup> Since 1996, Monsanto, which is the world's largest agricultural biotechnology corporation and which is based in the US, acquired more than a dozen smaller companies, and has licensing agreements with seed companies that let those companies insert Monsanto genes into about 92% of U.S. soybean crops and 85% of all corn crops. All GE seeds are now patented, giving enormous control to a few companies. As a result, at least 200 independent seed companies have been lost in the last thirteen years alone. This level of concentration considerably reduces choice and increases prices for the average American producer. (See: Annex 1 and Annex 2)

33. The rights of producers to use local non GE seeds have been threatened, especially through corporate tactics of policing the producer. GE plants are patented by the biotechnology corporations who develop them, which gives the corporations exclusive ownership rights to any plants that contain the DNA they engineered. This means that when non-GE plants on farmer's land are pollinated by GE plants nearby, or if seeds drift onto the property, the offspring (seeds, plants, and crops) that result are legally the property of the patent holder. Biotechnology corporations have successfully sued

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<sup>20</sup> International Service for the Acquisition of Agri-biotech Applications, "ISAAA Brief 39-2008: Global Status of Commercialized Biotech/GM Crops: The First Thirteen Years, 1996 to 2008." able 1 of Executive Summary (2008).

landowners whose lands were contaminated by GE plants by no fault of their own, and have collected very large cash settlements. The biotechnology industry continues to seek policies and legislation that protect patent holders from liability, and prohibit state and local governments from passing laws that protect landowners and consumers. In fact, the US States Department of Agriculture has proposed policy that would protect biotechnology corporations and producers of GE plants from any liability for the impacts of contamination.

34. Farmers cultivating patented seeds do not have any rights over the seeds they plant. Patents have resulted in a prohibition in seed saving. Farmers' ability to save seed provides them with options and choices that are no longer available. Monsanto has employed a "trait penetration plan" to force farmers to use multi-stacked, GE seed varieties.<sup>21</sup>

### **35. Recommendations:**

- a) Put in place mechanisms ensuring the active participation of farmers in decisions related to the conservation and sustainable use of plant genetic resources for food and agriculture, particularly in the design of legislation covering the certification and trade of seeds or the protection of plant varieties, so as to strike the right balance between the development of commercial and farmers' seed systems.**
- b) Make swift progress towards the implementation of farmers' rights and ratify and implement the International Treaty on Genetic Resources for Food and Agriculture that the US signed in 2002.**
- c) Revise legislation to ensure protection of farmers whose fields have been contaminated by GE seeds.**
- d) Pressure the Department of Justice (DOJ) to closely examine anticompetitive conduct in the industry. All proposed and pending mergers that could result in further concentration of the seed industry, the DOJ and U.S. Department of Agriculture (USDA) should establish a public, consultative process that assesses how the merger will impact the structure of agriculture. This assessment should be made public with ample opportunity for public comment prior to any governmental action on the merger.**

### ***The effect of GE technology on the right to food***

36. The long term health effects of consuming biotech foods are unknown. Crossing traits from one plant to another plant or animal could expose consumers to allergens. Vegetarians, as well as Jewish and Muslim consumers object to eating food genetically modified with genes from animals. The future choice of consumer of organic crops is being threatened because of complete absence of measures to protect organic production systems from GE contamination and subsequent environmental, consumer and economic losses. General Comment 12 of the Committee on Economic, Social and Cultural Rights

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<sup>21</sup> See the recommendation from the Special Rapporteur on the right to food (A/64/170, §57) in this regard; "Ensure that [States'] seed regulations (seed certification schemes) and their programmes to support access to seeds do not lead to an exclusion of farmers' varieties. Instead, the development of such varieties should be encouraged by including sufficient traditional seed varieties in government-approved seed lists as well as subsidized seed distribution programs, as well as by participatory plant breeding and farmer field schools."

(§6-13) states that under the obligations relating to the right to food, States have to make sure that food is “free from adverse substances” and take into account “cultural or consumer acceptability.” This implies that if some people do not want to eat GE food, they should be able to do so.

37. In a 2009 study released by the International Journal of Biological Sciences, analyzing the effects of genetically modified foods on mammalian health, researchers found that Monsanto’s GE corn is linked to organ damage in rats. In addition, some effects on heart, adrenal, spleen and blood cells were also frequently noted.
38. According to the United Nations Food and Agricultural Organization (FAO), about 75% of the genetic diversity of agricultural crops has been lost. Genetic diversity is essential if the increasing population of the world is to be fed, and global food security guaranteed. There is also growing evidence that GE crops are adversely affecting beneficial insects and soil microorganisms, bees and possibly birds. In addition, the use of GE organism has resulted in a dramatic increase of use of herbicides.
39. The U.S. Department of Agriculture is getting closer to approving Monsanto’s GE alfalfa,<sup>22</sup> despite the fact that it is likely to contaminate other crops, including organic alfalfa. The approval of GE alfalfa, will inevitably lead to contamination of other crops and the food supply and is contrary to the precautionary principle. (See: Annex 6)
40. In 1980, the Bayh-Dole Act allowed universities for the first time, to patent inventions that result from publicly funded research projects on the theory that the law would increase innovation. With passage, industry funding of public research surged and public funding dropped dramatically. The result has been the privatization of public research, leading to restrictions on the free exchange of basic research, less public analysis of new varieties, and diminished innovation, which correlates to few choices.<sup>23</sup> (See: Annex 4)

#### 41. Recommendations:

- a) **Change the agricultural paradigm from one that benefits corporations and special interests to one that uses a sustainable rights-based approach to agriculture in the U.S., ensuring that the right to food is protected for everyone both now and into the future. This includes adequacy and sustainability of food availability, as well as making sure that food is safe (precautionary principle should be applied), nutritionally adequate and free from any adverse substance.**
- b) **Pursuant to article 9 (2) (b) of the International Treaty on Plant Genetic Resources for Food and Agriculture, recognize the fact that genetic resources constitute a common heritage which generations of farmers across the globe have contributed to and that farmers have “the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture.”**
- c) **Require consumer labeling of GE foods, in order to respect the right to acceptable food.**

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<sup>22</sup> Alfalfa is the fourth most widely grown crop in the U.S. and a key source of dairy forage. It is the first perennial crop to be genetically engineered. It is open-pollinated by bees, which can cross-pollinate at distances of several miles, spreading the patented, foreign DNA to conventional and organic crops. Such biological contamination threatens the livelihood of organic farmers and dairies, since the U.S. Organic standard prohibits genetic engineering, and alfalfa exporters, since most overseas governments also reject GE-contaminated crops.

<sup>23</sup> See the recommendation from the Special Rapporteur on the right to food (A/64/170,§57) in this regard: “Ensure that protection of patent-holders or plant breeders’ rights does not discourage innovation in the name of rewarding it, by introducing barriers to the use of patented material. In particular, States should not allow patents on plants and should establish research exemptions in legislation protecting plant breeders’ rights. If States do allow patents on plants, they should establish research exemptions based on article 30 of the TRIPS Agreement.”

- d) Re-evaluate and reform the Bayh-Dole Act (Patent and Trademark Law Amendments Act) to prohibit mandates for seed patenting and exclusive licenses relating to technologies and innovations developed through publicly funded research.**

## Annexes

### Annex 1

Paul Rozwadowski, has operated a dairy farm for 30 years in Stanley, Wisconsin, and can attest to changes in the corn seed industry that have led to farmers paying exorbitant prices with less choice in the marketplace. “This year there are no seed corn varieties available that are three-way and four-way cross,” Rozwadowski says. All GE varieties are single-cross hybrids, he explains, and while some conventional corn are single cross varieties, all three-way and four-way crosses are conventional. Single-cross hybrids are more genetically uniform, lending to predictability but also vulnerability. Three-way and four-way hybrids have more genetic variety and cost less. “Three-way crosses did the best on my farm because it’s a diversified plant – much more diversified than the single cross trait. A lot of farmers I know bought four-way crosses, too,” he explains. Another thing that plays into the elimination of three-way and four-way crosses, he says, is the fact that farmers who sell their seed to Monsanto are getting more for the single cross GE seed than conventional. “It costs essentially the same to grow both but Monsanto is paying growers more for GE seed than conventional...Because of these trends, the availability of conventional corn keeps going down,” Rozwadowski says.

“Farmers’ income was really low,” he explains. “There were lots of farmers struggling and some didn’t have enough money to buy their seed.” As seed companies and dealers started to push GE varieties, he and others wanted farmers to have an outlet to buy conventional corn at a reasonable price. He and his friends searched for a cheaper supply and self-distributed the seed, working directly with companies to cut out the middleman. “The project has kept some farmers in business who otherwise would’ve gone under,” he said.

(Farmer to Farmer Campaign on Genetic Engineering (Kristina Hubbard), *Out of Hand: Farmers Face the Consequences of a Consolidated Seed Industry*, Dec 2009, p. 31)

## Annex 2

### TOP TEN COMPANY SHARE OF GLOBAL PROPRIETARY SEED MARKET (2008)\*

COMPANY	2008 SEED SALES MILLION	% of GLOBAL PROPRIETARY SEED
<u>MARKET</u>		
Monsanto (US)	\$6,634	22.4
Dupont/Pioneer Hi-Bred (US)	\$3,976	14.0
Syngenta (Switzerland)	\$2,400	8.4
Bayer CropScience (Germany)	\$1,462	5.1
Limagrain (France)	\$1,254	4.4
Land O'Lakes (US)	\$1,185	4.2
KWS (Germany)	\$ 839	2.9
Sakata (Japan)	\$396**	1.4
DLF-Trifolium (Denmark)	\$391**	1.4
Takii (Japan)	\$347**	1.2

#### Total Global Proprietary Seed Market \$28.4 Billion

Source: Seed sales figures compiled from annual reports and the ETC Group. Seed market estimates provided by the Context Network. \* Dow does not publicly share market share figures as they pertain to seed sales specifically. However, one recent article notes that Dow AgroSciences is the fifth largest seed producer in the world. (Source: "Suitors" interest grow in Dow uni," May 15, 2009. \*\* Sales figures for Sakata, DLF-Trifolium, and Takii are from 2007.

### Annex 3

David Runyon's family lives and farms in eastern Indiana. Five years ago, Monsanto alleged Runyon had infringed its patents based on an anonymous tip, which led to years of unrest for Runyon's family. In July of 2004, two men appeared at the Runyons' door and presented the business card of McDowell & Associates, LTD. "Providing actionable information and real life solutions," it read.

"They arrived unannounced and said they wanted to ask me questions about our farming operation," Runyon said, "They did not tell me they were investigators from Monsanto."

Four months later, Runyon received a letter from a Monsanto attorney demanding his production records within seven days. "I kept wondering, "Why are they after me?" Runyon recalls. "I do not plant or use any of their products." Runyon only plants public, non-patented seed that comes from two universities.

Monsanto's seed licensing contracts require all patent infringement cases be tried on its home turf in St. Louis, Missouri. This means farmers shoulder expensive transportation and lodging costs on top of attorney fees if they choose to defend themselves in court. "I don't believe any company has the right to come into someone's home and threaten their livelihood," his wife, Dawn Runyon, said in a *CBS NEWS* interview in 2008, "to bring them into such physical turmoil as this company did to us." Runyon says farmers who have not planted patented seed deserve to be protected from unreasonable allegations."

(Farmer to Farmer Campaign on Genetic Engineering (Kristina Hubbard), *Out of Hand: Farmers Face the Consequences of a Consolidated Seed Industry*, Dec 2009,, p. 47)

#### **Annex 4**

South Dakota Peace and Justice Center is a non-profit organization founded in 1979 by faith leaders from throughout South Dakota, advocating for environmental sustainability, vision for a more just and peace world.

This resolution was send to the South Dakota State University Board of Regents and to Dr. Chicoine's office, President of South Dakota State University in August, 2009.

WHEREAS, South Dakota State University was founded as a land grant college, with a specific mission to educate the farm community and to provide scientific expertise to production agriculture, and

WHEREAS, Dr. David Chicoine is employed as President of South Dakota State University with an annual salary of \$300,000 plus benefits, and

WHEREAS, Dr. Chicoine has now been appointed to the Board of Directors of the Monsanto Corporation, in which capacity he is receiving substantial additional compensation, and

WHEREAS, Monsanto sells and actively promotes agricultural chemicals and genetically modified crops, with a detrimental impact on the natural environment, on neighboring organic farmers, and on gnetic biodiversity, and

WHEREAS, Dr. Chicoine's dual role creates a clear conflict of interest and also has ominous implications for academic freedom within the academic community, possibly including a chilling effect on professors and researchers at SDSU who might wish to study the impact of Monsanto's products and sales practices on the future of South Dakota's farm and ranch community, and

WHEREAS, the South Dakota Peace and Justice Center is a statewide organization of almost 1,000 South Dakota households, institutions, and congregations, which is dedicated to protecting family farmers and ranchers from corporate agriculture and to promoting a healthy environment,

NOW, THEREFORE, be it resolved, that the South Dakota Peace and Justice Center does hereby call upon the South Dakota Board of Regents to require Dr. David Chicoine to choose between his role as President of South Dakota State University and his service on the Board of directors of Monsanto, since it is a clear conflict of interest for him to remain in both positions.