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The Rights of Workers and Toxic Chemical Exposure
Submitted by the Farmworker Association of Florida
to the Special Rapporteur on Human Rights and Hazardous Substances and Waste
of the United Nations Human Rights Council
March 30, 2018

As a statewide, grassroots, community-based farmworker membership organization with a 35-year history of working on issues of farmworker health and safety, we are concerned with changes in norms and regulations meant to protect farmworkers' exposure to chemicals and pesticides in the United States. The ensuing document addresses what we feel are the most pressing issues facing farmworkers that we would like to bring to the attention of the Special Rapporteur on Human Rights and Hazardous Substances and Wastes.

FWAF has over 10,000 member families statewide who work in the vegetable, citrus, mushroom, tropical fruit, fern, and foliage industries in eleven counties throughout Central and South Florida. The members are approximately 94% Latino (predominately Mexican, Guatemalan, Honduran, and Salvadoran), 3% Haitian, and 3% African American. Approximately 40% are women. FWAF works in communities composed of low-income, ethnic-minority, migrant and seasonal farmworkers, many of whom are documented or undocumented immigrants, with little or no formal education, and who speak little if any English. A large percent live in substandard company or subsidized housing communities, and have no health insurance or worker benefits.

Agriculture is one of the three most dangerous occupations in the United States, and farmworkers have the highest rate of chemically related illnesses of any occupational group. According to the EPA, agriculture accounts for 76% of conventional pesticides – approximately **944 million pounds** – used annually in the United States. The extensive use of pesticides for agricultural production puts Florida farmworkers at high risk for pesticide exposure, acute poisoning, and associated adverse health effects. A number of factors further threaten workers' health and safety such as: language barriers, fear of employer retaliation, lack of access to hand-washing and toilet facilities, low wages, inadequate access to health care, substandard farmworker housing, and unsafe transportation.

In addition to the high risks associated with pesticide exposure, agricultural workers are excluded from many of the basic legal rights afforded to other workers in this country, such as the right to organize or join a union, overtime pay, minimum wage, and child labor restrictions. Exempted from national labor laws, farmworkers' primary pesticide protections come from the Environmental Protection Agency's Worker Protection Standard (WPS), which was implemented in 1995, and updated, revised, and improved in 2015. While the farm lobby continues to push for

more relaxed protections for workers, farmworker groups advocate for better, more interactive worker training; better implementation of existing WPS and Field Sanitation Laws; increased enforcement of current regulations; and a legal framework allowing for third party filing of worker complaints, such as the designated representative provision in the new WPS

Farmworkers are exposed to pesticides via inhalation, ingestion and dermal contact and pesticide residues can be found on food, in drinking water, and in the air through toxic spray drift. On a daily basis, farmworkers can have contact with pesticide residues through direct contact with the plants they are working in or with, through pesticide volatilization, which can re-release the toxins into the air, and through absorption of the chemicals by their shoes, clothing, work implements, and directly on their bodies. There are serious risks to farmworker children from their parents unknowingly bringing these residues into their homes, exposing their offspring to chemicals that can have detrimental effects both in the short and long term. In addition, pregnant farmworker women and women of reproductive age are of greater risk, both to themselves, their reproductive health and the health of the fetus, as the most vulnerable parts of the body to pesticide absorption are the genital areas.

Pesticide Exposure

There have been various existing regulations to protect farmworkers from exposure to pesticides in the United States. However, some of the newly revised rules (the WPS) are being delayed from implementation or are under attack by the current administration. Worker exposure to pesticides, however, is not a problem unique to this administration, and there are several chemicals in use today in agriculture of concern when addressing worker safety. Specifically, in our comments we want to address uses of chlorpyrifos and glyphosate, and the Environmental Protection Agency (h EPA) Agricultural Worker Protection Standard (WPS). Chlorpyrifos is a pesticide manufactured by the chemical giant Dow Chemical. Scientists in the National Academy of Sciences determined in the 1990s that children were more susceptible than adults to the neurological damage caused by pesticides, because they are more exposed to water and food of which they consume more per body weight than adults. Congress responded to these findings by passing in 1996 the Food Quality Protection Act (FQPA). This act charged the United States EPA with designing risk assessment for pesticide tolerance that assessed the susceptibility of vulnerable individuals. As the FQPA stated, the EPA could only reduce the safety factor if reliable data could demonstrate that this change would still protect the safety of infants and children.¹

Chlorpyrifos is a neurotoxic organophosphate pesticide (OP) that has been linked to learning disabilities, ADHD, and neurodevelopmental problems in children. Epidemiological research in 2010 revealed neurological birth defects associated with *in utero* exposure to OPs, as well as lower levels of the detoxifying enzyme paraoxonase 1 of children at birth. This enzyme helped mothers lower their OP levels, and its lower levels in infants makes them more vulnerable to the adverse effects of OP exposure.² The Mt. Sinai and Columbia scientific studies in urban areas in New York had such disturbing results, that chlorpyrifos was banned for residential use in

¹ Brief of Amici Curiae Health Professional Organizations in Support of Petitioners, LULAC et al. v. S. Pruitt, US 64 (2018) (no. 17-71636), ID 10762600, pp. 8-10; Brief of Amici Curiae Congressman Henry Waxman in Support of Petitioners, League of Latin American Citizens et al. v S. Pruitt, US 64 (2018) (no. 17-71636), ID 10762889, p. 7-11.

² Karen Huen, Asa Bradman, Kim Harley, Paul Yousefi, Dana Boyd Barr, Brenda Eskenazi, and Nina Holland, "Organophosphate Pesticide Levels in Blood and Urine of Women and Newborns Living in an Agricultural Community," *Environmental Research* 117:8-16 (2012).

2001³. Sadly, it has continued to be approved for use in agriculture, where men, women and children are regularly exposed through contact with residue at work and in their homes and through drift from nearby fields. It has been known to drift as far as one mile. In addition, chlorpyrifos has been found on our food at 140 times over what EPA considers to be safe levels for children. And, it is found in our drinking water at levels that are unacceptable.

After several decades of studies, EPA finally concluded in 2016 that food should no longer be produced with the use of this pesticide, and they decided to cancel all food tolerances of this chemical.⁴ However, under the new U.S. administration, the Environmental Protection Agency reversed the previous administration's decisions and removed the food tolerances ban on chlorpyrifos from use in agricultural operations in the U.S., disregarding the agency's own scientists' recommendations. Following EPA's refusal on March 29th to ban all food tolerances for chlorpyrifos, Earthjustice filed an administrative appeal and a lawsuit, of which FWAFF is a part, on behalf of a dozen civil rights, labor, health and environmental organizations to challenge the EPA decision.

Even while EPA is backtracking on the decision to ban food tolerances for chlorpyrifos, the chemical continues to be used in greenhouses in the ornamental plant industry, on golf courses, and in food handling establishments and on a wide variety of crops, including apples, oranges, strawberries, corn, wheat, broccoli, and other citrus fruits—all foods which children and families eat on a daily basis. Rather than walk back a regulation already deemed necessary to protect workers in agricultural food production and the public, the ban on chlorpyrifos should be expanded to include all uses, agricultural or otherwise. In a blog by the Migrant Clinicians Network (MCN), MCN Board member, Rosemary Sokas, MD, MOH, stated that, “The agency [EPA] allowed continued use of the pesticide in agriculture, resulting in exposure to the children of farmworkers and other rural residents. This double standard has exposed generations of farmworkers and their children through airborne drift, water contamination, and even residues on work clothes. It is not possible to reduce the level of exposure below the threshold for damaging the fetus.”⁵ It is very important to get this dangerous pesticide off the market where it continues to harm farmworkers, their families and communities, as well as millions of consumers, among them children, who unknowingly eat fruits and vegetables that have been exposed to this chemical.

The issue of chemical exposure through pesticides is not limited to chlorpyrifos. Another chemical farmworkers have been increasingly exposed to in the United States is glyphosate, a chemical manufactured by Monsanto marketed under the name Roundup. Chronic exposure to glyphosate residues over a prolonged period of time is believed to predispose humans to obesity, neurological degenerative diseases such as Alzheimer's and Parkinson's, as well as gastrointestinal diseases that include inflammatory bowel disease, chronic diarrhea, colitis, and Crohn's disease.⁶

³ Gina S. Lovasi, James W. Quinn, Virginia A. Rauh, Fredereica P. Perera, Howard F. Andrews, Robin Garfinkel, Lori Hoepner, Robin Whyatt, and Andrew Rundle, “Chlorpyrifos Exposure and Urban Residential Environment Characteristics as Determinants of Early Childhood Neurodevelopment, *American Journal of Public Health* 101, 1:63-70.

⁴ Amici Curiae Health Professional Organizations, p. 24.

⁵ Claire Hutkins Seda, “MCN's Rosie Sokas Urges Maryland to Ban Chlorpyrifos,” Migrant clinicians Network, 02/08/2018 <https://www.migrantclinician.org/blog/2018/feb/mcns-rosie-sokas-urges-maryland-ban-chlorpyrifos.html>

⁶ Pamela Coleman, “Gut Wrenching: New Studies Reveal the Insidious Effects of Glyphosate,” Cornucopia News, 03/26/2014. <https://www.cornucopia.org/2014/03/gut-wrenching-new-studies-reveal-insidious-effects-glyphosate/#1note>; Joseph Mercola, MD, “Gut Wrenching: New Studies Reveal the Insidious Effects of Glyphosate,” *Mercola.com* 04/15/2014 <https://articles.mercola.com/sites/articles/archive/2014/04/15/glyphosate-health-effects.aspx>

In 2015, the International Agency for Research on Cancer, the cancer agency under the WHO, determined that glyphosate was probably carcinogenic to humans.⁷

Regulations Relaxation

In addition to disregarding science in favor of chemical manufacturers of toxic material used in agriculture, we have also seen favoritism by the regulatory system and virtual impunity of some of the agricultural companies that use these chemicals. An example of that kind of impunity is Syngenta. In 2016, this seed and agrochemical company sent 19 workers at a research farm in Hawaii into a field that had been sprayed with chlorpyrifos without providing them any personal protective equipment. After the workers had been exposed to the pesticide and experienced symptoms, the company did not provide emergency medical attention or decontamination supplies to mitigate the effects of the pesticide on the farmworkers. The fine originally proposed by the Environmental Protection Agency under the previous administration of \$4.9 million USD was lowered by the same agency under the new administration to \$150,000 USD, plus an additional \$400,000 to train small-scale farmers in pesticide use. This new penalty represents close to a 90 percent reduction in fines.

Pesticide drift is another factor resulting in increased exposure of farmworkers to toxic chemicals. Last fall a spraying incident in Watsonville, California sent several farmworkers to the hospital after drift of pesticides by wind caused them to be exposed, and they had to be hospitalized. Although this incident received wide coverage by farmworker advocacy groups and local news outlets,⁸ it was, for the most part, left out of national news coverage and discussion. That these workers were exposed to this chemical beyond the area where the pesticide was applied was violates pesticide labeling that establishes application procedures that prohibit drift. Under the new WPS, a provision called the Application Exclusion Zone requires a pesticide applicator to suspend pesticide application within a specified zone around the application site while anyone is within the designated zone. This provision is expected to come under re-review under this Administration, even though it had received extensive public comment previously.

Given the recent actions taken by the federal government on this problem, some states have taken their own actions to protect farmworkers and farmworking communities in their jurisdiction. A recent example is the state of Maryland, where the state legislature recently introduced HB 116, legislation aimed at banning the use of chlorpyrifos in that state's agriculture operations. However, these types of legislation are limited because their effectiveness is limited by their geographic extent, and workers and communities whose homes and places of employment are close to borders with states that do not ban this chemical can still be affected.

Another issue that is of grave concern to our community is the movement of the Environmental Protection Agency to end the age requirement for handlers of pesticides under the WPS and under the Certified Pesticide Applicators (CPA) rule. The requirement for certified applicators was only approved into the WPS on January 4, 2017 and had a tiered plan for implementation in stages, allowing for state agencies to make provisions to implement the new

⁷ *The Guardian*, "Roundup Weedkiller 'Probably' Causes Cancer, Says WHO Study," 03/21/2015

<https://www.theguardian.com/environment/2015/mar/21/roundup-cancer-who-glyphosate->

⁸ Cortez, Felix, "18 Salinas Farmworkers Rushed to Emergency Room, KSBW8, 06/23/2017,

<http://www.ksbw.com/article/18-salinas-farm-workers-rushed-to-emergency-room/10215822>; Goldberg, Ted,

"Chemicals Sicken Two Dozen Central Coast Farmworkers in One Week," KQED, 06/30/2017.

<https://www.kqed.org/news/11540965/chemicals-sicken-two-dozen-central-coast-farm-workers-in-one-week>;

Towers, Paul, "California, Stop the Drift," Pesticide Action Network, 08/10/2017, <http://www.panna.org/blog/why-cant-california-regulators-stop-pesticide-drift>.

regulations over a period of three years. The WPS is a regulation issued by the Environmental Protection Agency in 1992 and not implemented until 1995 with the objective of reducing the risks associated with the use of pesticides in agriculture to the workers and handlers. The CPA was delayed three times by the Trump Administration EPA Administrator, resulting in legal action by Earthjustice on behalf of farmworker, legal foundation and pesticide organizations, including FWAF. In December of last year under a new US administration, the Environmental Protection Agency announced its intent to revise that rule but has not yet opened its online public platform for comments to those revisions. Plans to open discussion to the general public, and specifically stakeholders, have extended as far as the end of fiscal year 2018. The pesticide applicator minimum age requirement would leave some of these children vulnerable to intimidation by employers into applying pesticides, unaware of the risks associated with that occupation. Moreover, the EPA's refusal to ban chlorpyrifos as stated above, places children at especially higher risks associated with spraying pesticides.

The regulations to protect farmworkers from exposure to pesticides do not receive parity with the regulations for workers in other industries that are exposed to hazardous substances and that are regulated and protected under the U.S. Occupational Safety and Health Administration (OSHA.) This is an example of *agricultural exceptionalism*, which positions farmworkers today as living the legacy of slavery, as the first “farmworkers” in the U.S. southeastern states were enslaved peoples. Labor laws that were passed in the 1930s in the U.S. – the National Labor Relations Act and the Fair Labor Standards, intentionally and deliberately excluded farmworkers from regulations that protected most all other U.S. workers. The agricultural lobby, of which the southeastern states were very powerful, was the force behind this exclusion that was approved by the then U.S. Congress. Likewise, when OSHA was formed, farmworkers were excluded from health and safety regulations related to toxic pesticides, and, instead, it was left to the EPA, which is not a worker agency, to regulate.

For decades, African Americans constituted the majority of farmworkers in the southeast United States. Demographic changes began to be seen during World War II and again, to an even larger extent, after the passage of the Civil Rights Act in 1964. Always looking for a cheap, vulnerable labor force to produce food and agricultural products in this country, Mexican workers became to be recruited to come to the U.S. to harvest crops through the Bracero Program between 1942 and 1964.⁹ Economic policies of the 1990s, such as NAFTA that resulted in dumping practices of U.S. agricultural products in Mexico, led to millions of small family plot holders to abandon small-scale agriculture and move to the U.S. as agricultural workers.¹⁰ Today, the majority of farmworkers in the U.S. are of Hispanic origin, with other ethnic groups including Haitians, African Americans, Asians on the west coast, and workers from other Caribbean countries. Low-income minority communities are more vulnerable to exploitation, intimidation, and abuse by employers, and lack of strong legal and regulatory protections exacerbates their vulnerability in the workplace.

The current political climate has recently increased a vitriolic anti-immigrant sentiment, which further threatens the lives and livelihoods of the nation's largely immigrant farmworker workforce. Increased raids by Immigration and Customs Enforcement and passage of laws that criminalize unauthorized presence in the United States make, consequently, immigrant

⁹ Richard B. Craig, *The Bracero Program: Interest Groups and Foreign Policy*. University of Texas Press, Austin (2014); Bracero History Archive, <http://braceroarchive.org/about>.

¹⁰ Gerardo Otero, Neoliberal Globalization, NAFTA, and Migration: Mexico's Loss of Food and Labor Sovereignty. *Journal of Poverty* 15:384-402.

farmworkers less willing to report violations of pesticide and toxic chemical use. Some researchers have expressed interest in the study of experience of stress and stressful situations and the relation to increased vulnerability to pesticide exposure impacts. This situation is making immigrant farmworkers and their families more vulnerable to abuses in exposure to toxic pesticides, and at the same time allowing large scale industrial agriculture operators to be less accountable to the public and to the same communities on which they depend for labor.

As the Inter-American Court of Human Rights declared late last year, living in a healthy environment is an autonomous right fundamental to the existence of humanity. For the plenary to enjoy human rights, the court declared, is dependent upon a propitious environment.¹¹ The Farmworker Association of Florida agrees. Environmental justice is an essential right to which farmworkers are often denied.

In 2012, anthropologist Laura Bermudez, M.A., conducted interviews with farmworkers in Central Florida and compiled a report of her findings. The following are several excerpts and quotes from her report here, to add the voices of the people, the workers, themselves, to our comments.

Marianna saw one of her co-workers develop a rash on her face and arms from one of the plants. Marianna learned that the “patron” [*“boss”*] took her co-worker to the company doctor, who assured the co-worker that the rash was not due to the plants there. “(ella) siguió trabajando y ya. Si quiere curarse, tiene que ir al doctor por su propia cuenta.” [*“(she) continued working and that was that. If you want to be cured, you have to go to the doctor on your own dime.”*]

He works at a small nursery. Eight months ago, he developed a severe skin rash, first on one arm, and then it extended to his whole body. He talked to the nursery owner, “pero el le dijo que no le parecía que los químicos fueran la causa” [*“but (the owner) told him that he didn’t think that the chemicals had caused it”*]. The brother-in-law then reached out to Camila’s husband, who told him to ask his doctor for documentation of the rash that proved that it was caused by chemicals at work. Both the doctor in Florida and his doctor in Mexico have independently come to the conclusion that his skin rash was caused by the harsh chemicals with which he works. The brother-in-law continues to work at the same nursery in the same position. Camila explained that the reason he stayed is that he is making approximately \$16 per hour and that other types of jobs would not pay as much to someone with his skills. The researcher tried to contact the brother-in-law to document his case in further detail, but he declined to participate in the research out of fear for his job.

Independent of her fall (referenced above), the skin on Flor’s hands was also constantly irritated and peeled. One of her duties was to wash plant trays, which have soil residue. She thinks that the chemicals in the soil caused the skin on her hands to peel off. She never saw the doctor about this, because it was too expensive. Flor explained that pesticides are very strong chemicals and, although nursery bosses sometimes gave out gloves, they didn’t give them out often enough. It is because of that, that when the gloves would wear out, people would simply work with their bare hands. Today, she cannot touch household cleaning products (like: Windex or Clorox) because her fingers start to peel. Flor specified: “en Mexico (los productos de limpieza) no me pelaban los dedos” [*“Back in Mexico my fingers didn’t used to peel”*]. When I asked why she and

¹¹ Corte Interamericana de Derechos Humanos, *Medio ambiente y Derechos Humanos*, Opinión Consultiva OC-23/17 Solicitada por la República de Colombia. 11/15/2017.

her family had remained in these nursery jobs for so long, Flor replied: “La necesidad y el miedo de no encontrar otro trabajo. Nos daba miedo hasta pedir un permiso (para ir al medico)” [*“The need and the fear of not finding another job. We were even afraid of asking for permission to go see the doctor.”*]

He used to get allergies when they asked him to spray pesticides. “...le daba mucha tos y le salían ronchitas con manchas blancas. Llegaba (del trabajo) con la piel llena de ronchas en todo el cuerpo. Los ojos estaban rojos cuando esprayaba. Le duraban las ronchas y los ojos rojos como dos o tres días... Cuando esprayaba le daban mascararas, guantes y trajes que protegen. Pero es tan fuerte el químico, porque le pasaban (*los químicos*). Ahora, que no trabaja en eso, ya no le dan esas alergias. Por eso, me di cuenta yo que era por el químico de la nurseria.” [*“...I would cough a lot and get little bumps with white blotches on my skin. I would come (from work) with my skin covered in bumps throughout my body. My eyes were red when I had to spray. The bumps and red eyes would last for two or three days...when I sprayed they gave me face masks, gloves and suits to protect me. The chemical is so strong, it would pass through. Now that I don’t work in that, I no longer gets those allergies. That’s how I realized it was due to the chemical at the nursery.”*]

Note: Rashes are the most common symptom of pesticide exposure experienced by farmworkers.

Marcela recounted that when spraying fertilizers, the “sprayadores” wore mouth and nose covers as well as gloves. They sprayed pesticides while the rest of the workers were in the same room. Non-sprayadores did not receive protective gear during or after spraying. Marcela also explained that there were no signs to explain to workers that they should leave the room and come back at a later time. Marcela and her co-workers at this nursery never received any pesticide training or information about the dangers of pesticides during the 10 years that she worked there.

Pesticide safety was not strictly practiced but Rosa Maria managed to protect herself, “yo siempre he sido resongona, no me dejaba esprayar encima. Cuando el (sprayador) echaba (pesticidas) yo me salía...el esprayador si se protegía pero a nosotros nos echaba encima”. [*“I have always been rebellious, I wouldn’t let myself get sprayed on. When the sprayador sprayed, I would get out...the sprayador did protect him/herself, but would spray right on top of us.”*] Rosa Maria decided to help make signs in Spanish, telling workers not to enter the nursery after spraying.

“A veces sprayaban a dos líneas de uno y con el movimiento del aire igual nos caía todo el spray...antes (personas externas) iban a chequear las nurserias, entonces ponían los avisos de no entrar despues de sprayar. [*“sometimes they would spray two rows from you and with the movement of the air, all the spray would still land on us...before, (people from outside) would come to check on the nurseries, so they would put up the signs saying not to enter because they had just sprayed”*] But now, since no one has come to check whether nurseries follow the regulations set for pesticide use, the safety practices at this nursery have been widely ignored.

The nursery showed their staff videos about pesticide safety and began posting signs in English and Spanish. Still, she remembers that sometimes they did not put up the signs that keep people away from closed off areas after a chemical has been sprayed. In addition, people sometimes ignored the instructions and precautions on the labels. She feels that people have a lax attitude toward chemicals.

Melisa, another participant, has four children:

They are 11, 8, and 5 years old and 1month old. Her 11 year old son has constant sinus infections. Her 8 year old son had asthma since birth and was recently diagnosed with ADHD (Attention Deficit Hyperactivity Disorder). He takes medication for both conditions and goes to

therapy for his ADHD. Her 5 year old daughter was born with a skin rash. Her 1 month old baby also has skin rashes.

Camila's family lived on a nursery property for a few years:

When they were still living at the nursery, she sometimes became concerned because of their proximity to all the chemicals. All four of her daughters were diagnosed with asthma; there is no history of asthma on either side of the family. All four girls outgrew their asthma by age three, but two of the girls still have allergies. Camila explained: "esa cosa vuela, quien sabe si uno esta inhalando eso." [*"That stuff flies, who knows if you are inhaling it."*]. She thought back and added, "vivíamos al lado cuando las niñas tenían asthma." [*"we lived next to the nursery when the girls had asthma."*]

Note About the Farmworker Association of Florida (FWAF): The Farmworker Association of Florida, Inc. (FWAF or Association) evolved from the Farmworker Association of Central Florida, an organization that was established in 1983 to respond to the needs of the farmworker community in Central Florida and to organize farmworkers more effectively in their struggle for better housing, wages, and working conditions. The Association was incorporated in 1986 and expanded statewide in 1992. FWAF's long-standing mission is to empower farmworker and rural poor communities to respond to and gain control over the social, political, economic, workplace, health and environmental justice issues affecting their lives. The organization's vision is a social environment where farmworkers' contribution, dignity, and worth are acknowledged, appreciated, and respected through economic, social and environmental justice. This vision includes farmworkers being treated as equals, and not exploited and discriminated against based on race, ethnicity, immigrant status, gender, or socioeconomic status.

Thank you very much for giving us the opportunity to submit these comments on behalf of the men, women and children with whom we work and whose labor drives much of the economy of the United States and feeds America.