



# **A state of fear:** Human rights abuses in North Carolina's tobacco industry



“”

A company’s responsibility to respect [human rights] applies across its business activities and through its relationship with third parties connected with those activities—such as business partners, entities in its value chain, and other non-state actors and state agents.

John Ruggie, UN special representative

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# Abbreviations

AgJOBS	Agricultural Job Opportunities, Benefits, and Security Act
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AFOP	Association of Farmworker Opportunity Programs
AWPA	Migrant and Seasonal Agricultural Worker Protection Act
CBA	collective bargaining agreement
CDC	Centers for Disease Control and Prevention
EPA	Environmental Protection Agency
FLOC	Farm Labor Organizing Committee
FLSA	Fair Labor Standards Act
GAP	good agricultural practices
GTS	green tobacco sickness
HRIA	human rights impact assessment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
MSA	Master Settlement Agreement
NCag	North Carolina Agribusiness Council
NCCAHT	North Carolina Coalition Against Human Trafficking
NCDOA	North Carolina Department of Agriculture
NCDOL	North Carolina Department of Labor
NCESC	North Carolina Employment Security Commission
NCGA	North Carolina Growers Association
NCJC	North Carolina Justice Center
NGO	nongovernmental organization
NIOSH	National Institute for Occupational Safety and Health
OECD	Organization for Economic Cooperation and Development
OSHA	Occupational Safety and Health Administration
PMI	Philip Morris International
PM USA	Philip Morris USA
RAFI-USA	Rural Advancement Foundation International-USA
RIA	Regulatory Impact Analysis
USDOL	US Department of Labor
WHD	Wage and Hour Division (USDOL)
WPS	Worker Protection Standards (EPA)



# 1. Executive summary

## Introduction

Fifty harvests have come and gone since Edward R. Murrow's "Harvest of Shame" aired on CBS, shocking the nation's conscience with its grim portrait of the conditions suffered by the migrant workers who tended and harvested America's crops. Since that time the faces of the workers have changed—the impoverished African-American and white workers of Murrow's day have given way to a population that is now almost exclusively Latino, mostly Mexican, and undocumented. Yet despite decades of legislative, legal, and regulatory reforms, and periodic media exposés, the essential features of migrant farm laborers' abusive working and living conditions have changed little, if at all. Today, as in 1960, America's migrant farmworkers toil endless hours for subpoverty wages under some of the most dangerous working conditions in the nation.

Oxfam America and the Farm Labor Organizing Committee (FLOC), which is affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), began this study jointly in early 2010 to assess the tobacco industry's impact on the human rights of farmworkers in the fields of North Carolina. This research was gathered through face-to-face interviews with men and women who work these fields, as well as with others from all along the tobacco supply chain, and with representatives of government and nongovernment agencies who work with and advocate for the workers. The portrait that emerges from these interviews reveals the need for something larger than traditional legislative reform efforts. This project's recommendations reflect the need for a fundamental restructuring of the exploitative industrial structure that denies tobacco farmworkers the most basic rights.

The research team spoke with hundreds of farmworkers throughout the season and conducted 86 interviews, which included 103 workers. Two common themes emerge from these interviews. The first is a deep sense of responsibility that makes these men and women desperate to work and provide for their families, whether those families were with them in the camps or, more often, back in their homeland. The second is a strong sense of fear that dominates the workers' lives—fear of arrest and deportation, and therefore of seeking any help from the government; fear of losing their jobs; fear of being unable to repay the thousands

of dollars demanded by the recruiters and “coyotes” who brought them across the border to these jobs; fear that the grower who employed them or the crew leader who supervises their work will retaliate if they don’t work fast enough, if they get sick from exposure to toxins in the tobacco or pesticides, or if they need a break for water or for the bathroom. Much of this fear stems from the fact that nine out of every 10 farmworkers in North Carolina are undocumented. Their desperate need to work and their fears benefit all actors in the supply chain who are complicit in the subpoverty wages, degrading treatment, and inhumane conditions that workers far too frequently face without the right to complain.

The research team also reached out to other key stakeholders for interviews, including growers, local nongovernmental organizations (NGOs) that work with the farmworker community, government agencies, and 10 of the largest tobacco companies. Several growers and organizations representing growers spoke with the team about their experiences with the tobacco industry, and the North Carolina Department of Agriculture (NCDOA) and US Department of Labor (USDOL) provided information about their efforts to enforce current regulations protecting farmworkers’ rights. Of the 10 tobacco companies contacted, only Philip Morris International (PMI) and Philip Morris USA (PM USA), an Altria company, were willing to participate in an interview.<sup>1</sup> Several local NGOs also contributed information on common problems they have seen in the tobacco fields and labor camps.

## Research findings

### **Violation of just and favorable work conditions: Fair wages**

One in four—22 out of the 86 workers interviewed—reported that they were paid less than the federally mandated minimum wage of \$7.25 per hour, and 57 workers said that their pay was not enough to meet their basic needs.

### **Violation of safe and healthy working conditions**

A majority of workers interviewed reported regularly suffering symptoms of green tobacco sickness (GTS), a form of acute nicotine poisoning caused by absorption of excessive amounts of nicotine through the skin. These symptoms include dizziness, vomiting, weakness, coughing, and headaches. The workers interviewed also said that growers fail to provide them with protective clothing (such as gloves) or training that would enable them to take steps to protect themselves. Heatstroke is the leading cause of work-related death among farmworkers, even though North Carolina law requires that every fieldworker have access to cold, fresh water. Many reported that clean water was not available.

In addition, many workers reported that they were not given sufficient breaks and that they often felt pressured by supervisors to work faster.

Several participants reported working in a field while pesticides were being sprayed, and more than one-third reported pesticide-related illnesses.



### **Violation of adequate housing**

Nearly all the workers living in employer-provided housing described problems such as inadequate or nonfunctional showers and toilets, overcrowding, leaky roofs, lack of locks, lack of heat, lack of ventilation, beds with worn-out mattresses or none at all, infestations of insects and rodents, lack of laundry facilities, and inadequate cooking facilities.

### **Violation of freedom of association: Workers' voices silenced**

Few workers said they felt free to join a union or collectively bargain with their employer. Many said fear of incarceration and deportation or of being fired keeps them from speaking out about problems. Among workers with US government H-2A temporary visas who are covered by a collective bargaining agreement between FLOC and the North Carolina Growers Association (NCGA), attitudes were more positive, reflecting the importance of workers having a voice and of an effective and safe grievance procedure.

### **Growers losing ground**

Changes in the industry in the past decade have made it impossible for many growers to survive on the income from their tobacco: profits have shrunk, and growers can't cover rising production costs. Growers also expressed an inability to influence the prices the tobacco companies offer and their policies for grading harvests. For growers, the H-2A visa program is complicated and costly, causing many to turn to labor contractors to find workers, which usually means hiring an undocumented work force.

### **Failure of most tobacco product manufacturers to include farmworkers in farm audits**

Of the 10 tobacco product manufacturing companies contacted, only PMI and PM USA were willing to cooperate in the study. Both companies have developed policies for good agricultural practices (GAP), which set standards for labor management and farm safety that all growers from whom they buy tobacco must follow. However, the two companies failed to include farmworkers in the development of the standards. Nor did they include farmworkers in their assessment programs. PMI said it was working on programs to improve its outreach to farm labor. To date, however, what companies perceive is happening on many farms is still very different from the reality workers face.

### **Needed: An industry-wide solution**

Past strategies for addressing abuses experienced by farmworkers have centered primarily on enforcement efforts focused on the bottom two links in the supply chain: the workers and their employers. However, interviews with other actors in the tobacco supply chain reveal that changes in the tobacco industry have consolidated power in the hands of tobacco product manufacturers and created an uncertain future for tobacco growers. Current legal requirements often go unenforced, creating

a competitive disadvantage for those who seek to comply with the law, which makes it imperative that manufacturers become part of the solution. Recommendations of this report include:

- Tobacco product manufacturers should act to ensure stability in the tobacco industry by allowing more grower input in their pricing formulas and by using multiyear contracts, among other things.
- Tobacco product manufacturers must ensure compliance with international human rights and US laws just as strictly as they ensure quality and quantity of tobacco from their growers.
- Tobacco product manufacturers should create a council that brings together manufacturers, growers, farmworkers, and their chosen representatives, allowing all parties to have a voice and creating an effective tool for workers to ensure legal compliance in the workplace. A safe and legal work force would benefit all.

The persistence and severity of the abuses that are documented in this report make it essential to adopt a new, industry-wide approach that holds the companies that control the industry accountable for industry conditions. Only after all parties have a voice can the industry work together to end the antiquated system that is the source of illegal and unconscionable abuses of farmworkers.

## 2. Project description

### Background

Although abusive living and working conditions have been amply documented in agriculture,<sup>2</sup> there has, nevertheless, been a dearth of primary research studies conducted at the worker-community level by those representing workers. In early 2010, FLOC and Oxfam America partnered to conduct such a study, using the human rights impact assessment (HRIA)—a research protocol developed by the Canada-based organization Rights & Democracy and increasingly used by researchers around the world—to evaluate and document practices and conditions in the tobacco industry and their impact on migrant farmworkers in North Carolina.

Over the course of 18 months, with Oxfam’s support and guidance, a team of FLOC researchers used the HRIA methodology as a tool to document living and working conditions among migrant farmworkers and to evaluate the status of human rights in the North Carolina tobacco industry. The research team examined the role of corporations, government, and civil society in promoting and protecting the civil and political—as well as the social, economic, and cultural—human rights of North Carolina tobacco farmworkers.

This project sheds important new light on the state of human rights in the tobacco fields, told from the perspectives of the farmworkers, as well as the perspectives of other stakeholders involved in the North Carolina tobacco supply chain.

FLOC, a labor union representing migrant farmworkers in the US Midwest and South, represents more than 6,000 farmworkers in North Carolina under a collective bargaining agreement with NCGA.<sup>3</sup> FLOC brings to this research project a deep understanding of agricultural work and access to workers and other stakeholders in the industry, both of which are essential to a full examination of working and living conditions in the tobacco fields and labor camps.

Oxfam America is an international relief and development organization working with local groups in more than 70 countries—including the US—to create lasting solutions to poverty, hunger, and injustice. Oxfam’s long experience in researching and documenting human rights conditions, together

with its expertise in using and adapting the HRIA methodology to varying countries, industries, and populations, guided the design of the project and the execution of the research in the field.

### Human rights impact assessment<sup>4</sup>

Inspired by social and environmental impact assessments and rooted in the international human rights framework, an HRIA measures the gap between human rights principles, as embodied in the commitments made by a government, and human rights practices within that country or jurisdiction.

An HRIA of a private industry seeks to identify that industry's actual and potential impact on human rights and reports any failures to respect human rights or, if found, violations of human rights. During the assessment, information is systematically collected, analyzed, and documented in a report that creates the foundation for remedial action to correct human rights violations within a community.<sup>5</sup>

While various tools are at the disposal of companies for assessing risks related to their investments, very few are available to communities affected by investment projects. Six years ago, Rights & Democracy began addressing this gap, and developed a community-based HRIA methodology designed specifically to help communities and their support organizations identify the impacts of private industries on human rights.<sup>6</sup> It is this methodology, with adaptations necessitated by distinctive characteristics of the migrant agricultural work force and the tobacco industry, that has yielded the findings reported in this report.

# 3. Research plan and methodology

The unique nature of the farmworker community posed special challenges to data collection. First, tobacco farmworker communities are dispersed among thousands of farms throughout the state and are often isolated, making it difficult to organize community-wide training and workshops and to get community feedback on the project. Moreover, during the busy harvest months, when the number of workers is at its peak, workers are generally unavailable until evening—often not until as late as 8 p.m.

In addition, the vast majority of North Carolina’s farmworkers do not have an H-2A temporary work visa,<sup>7</sup> and most workers encountered throughout the outreach and interview process were undocumented.<sup>8</sup> Interviewing undocumented workers takes more time as interviewers must gain the trust of these workers before they will consent to answer questions.

## Research goals and focus

First, the research team decided to focus on the top five tobacco-producing counties: Sampson, Johnston, Wayne, Wilson, Nash.<sup>9</sup> Because H-2A workers represent less than 9 percent of the state’s farmworker population, the team further decided to focus the majority of its research on non-H-2A camps and non-H-2A workers.<sup>10</sup> Finally, it was decided that the new research undertaken by the project would focus on interviews with five main groups of stakeholders: farmworkers, growers and grower representatives, government agencies, NGOs, and tobacco companies.

The questions were designed to gather information on and assess six core human rights:

- Just and favorable work conditions
- Health
- Freedom from forced and compulsory labor
- Adequate housing
- Freedom from child labor
- Freedom of association

The research team selected these rights based both on experience working in the farmworker community and on previous reports that have identified human rights issues in these areas.<sup>11</sup>

## Worker interviews

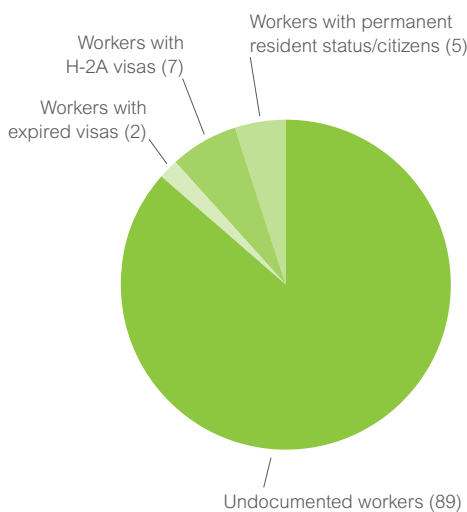
Throughout the tobacco season (from approximately May to September), interviewers visited more than 100 labor camps throughout the five focus counties and spoke with hundreds of farmworkers. The information in this study was collected in a series of face-to-face recorded interviews.<sup>12</sup> Altogether, the research team conducted 86 full interviews, which included the participation of 103 individuals. Most of these were private interviews with one worker at a time. Several workers, however, asked to be interviewed with one or more other workers—usually a spouse, sometimes a few trusted co-workers—to increase their comfort with the process. Of the 86 interviews, 78 were with individuals; the remainder included two-to-four workers interviewed together.<sup>13</sup> The participants were spread over 34 labor camps and five non-camp sites (one hotel and four trailers rented by families).<sup>14</sup> Of the 103 farmworker participants in the study, 89 were undocumented, two had expired visas, seven had H-2A visas, and five had permanent resident status or were citizens.<sup>15</sup> Most participating workers (78) were Mexican citizens, while the others were Guatemalan, Honduran, or US-born. Interviews were conducted in each worker's native language.

National statistics collected by the National Center for Farmworker Health show that 79 percent of crop workers are male, the average age is 33, and half are younger than 31.<sup>16</sup> The research team for this project found that the population that works North Carolina's tobacco fields is younger and much more male than the national averages. The team found far fewer women working in tobacco, with many camps made up only of men. In the camps where women lived, they generally worked in other crops or did other work, such as cooking or providing child care. In the sample interviewed for this study, just eight of the 103 participants were women. Participants' ages ranged from 15 to the early 60s<sup>17</sup>:

- 15–18 years old – 9%
- 19–24 years old – 23%
- 25–34 years old – 21%
- 35–44 years old – 20%
- 45–54 years old – 12%
- 55–64 years old – 4%

Interviewing undocumented workers created several challenges. Most workers feared talking with researchers at first, sometimes assuming that the research team worked for the government. Workers hesitated to talk about their experience until they were assured there would be no negative consequences from their employers or any government agency. For the protection of all participants, the research team agreed to keep the names and

**Figure 1. Status of farmworker participants**





camp locations of all participating workers confidential and to provide alternative names for the authors of the quotes and accounts used in this report.

## Outreach to tobacco industry, government, growers, and NGOs

Other stakeholders invited to participate by the project team included 10 of the world's largest tobacco companies. Only PMI and PM USA were willing to participate.<sup>18</sup> Japan Tobacco International responded but eventually declined to participate on the grounds that the company believed the study's methodology was inconsistent with Organization for Economic Cooperation and Development (OECD) and European Union guidelines.<sup>19</sup> Imperial Tobacco responded with information about its social responsibility program but declined to be interviewed. All other companies contacted, including Alliance One, British American Tobacco, Lorillard, Reynolds American, and Universal Corporation, were unresponsive to our interview request.

The research team also contacted key government agencies that enforce the laws affecting farmworkers, including the US Department of Labor (USDOL), the US Environmental Protection Agency (EPA), the NCDOA, the North Carolina Department of Labor (NCDOL), and the North Carolina Employment Security Commission (NCESC). The USDOL was the only agency that agreed to a formal interview; the NCDOA responded in writing to initial interview questions but declined to be interviewed. The NCDOL, after several attempts by our team to set up an interview, declined to be interviewed. After some difficulty identifying the appropriate contact at the EPA, the team decided that this interview was not necessary, because the NCDOA has enforcement authority over the EPA's Worker Protection Standards (WPS). The NCESC did not respond to our request.

Interviews were conducted with several growers and grower representatives, including the North Carolina Growers Association, the North Carolina Farm Bureau, and the North Carolina Agribusiness Council (NCAG). After receiving only one response from letters requesting interviews that were sent to all 165 growers with registered labor camps in the five focus counties,<sup>20</sup> the team followed up by calling 42 of the growers with listed phone numbers. As a final step, the team visited 21 growers throughout the five counties. In the end, all but three growers were unavailable or refused to be interviewed. In response to the growers' expressed concern that having their names appear in the report could jeopardize their contracts with the tobacco companies, the team agreed to keep all names and farm locations confidential.

Various groups that work with the farmworker population in North Carolina provided invaluable input for this report. The team interviewed representatives from Legal Aid of North Carolina, the North Carolina Justice Center (NCJC), the Association of Farmworker Opportunities Program (AFOP), Student Action with Farmworkers, the North Carolina Coalition Against Human Trafficking (NCCAHT), and Carolina Family Health Centers in Wilson, North Carolina. These groups are involved with the farmworker community in a variety of ways, ranging from education and legal assistance to health care services. All stakeholders who agreed to an interview for the report were offered the opportunity to review and comment on a draft of this report prior to its publication.

## 4. Tobacco supply chain and industry structure

**Figure 2. Tobacco supply chain structure**

MANUFACTURERS



GROWERS



FARMWORKERS



Tobacco is a staple of the North Carolina economy, and North Carolina-grown tobacco accounts for more than half of all tobacco production in the US.<sup>21</sup> Despite a recent decline in national demand for tobacco products, tobacco remains the leading field crop in North Carolina, and tobacco products are the leading manufactured products in the state.<sup>22</sup>

Over the past 15 years, two significant developments have brought major changes to the tobacco industry in the US. In 1998, the key manufacturers of tobacco products entered into the Tobacco Master Settlement Agreement (MSA),<sup>23</sup> resolving claims of illegal activity by the industry in lawsuits brought by attorneys general of 46 states. Under the agreement, the companies agreed to curtail certain marketing activity and to make annual payments to states and growers in an effort to decrease tobacco usage, to reimburse states for costs of tobacco use, and to compensate growers for the revenue losses resulting from the expected decrease in consumption and purchases of raw tobacco.<sup>24</sup> From 1998 to 2007, sales of cigarettes in the US dropped by 25 percent.<sup>25</sup>

The event that had an even larger effect on the tobacco industry came six years later with the Fair and Equitable Tobacco Reform Act of 2004, also known as the “tobacco buyout,” which “replaced the direct payments being made to growers in the MSA.”<sup>26</sup> This legislation reversed nearly 65 years of government policy, which regulated the production of tobacco throughout the country.<sup>27</sup> From the 1930s until 2004, the federal government had supported tobacco growers by regulating the production of tobacco to restrict supply and maintain an inflated minimum price for domestically produced tobacco. With this system, tobacco farms were assigned a marketing quota that was calibrated to balance national production with domestic and export demand.

With the tobacco buyout, the federal government removed all regulation on the quantity and price of tobacco produced, and, around that time, most tobacco manufacturers switched to direct contracts with growers. To compensate farmers for anticipated losses as a result of the buyout, tobacco manufacturers pledged an estimated \$9.6 billion, which would be paid to growers and quota owners “in equal annual installments over 10 years. ...

While tobacco manufacturers would be paying for the buyout program, they also would be the direct beneficiaries of an expected reduction in prices for US-produced leaf.”<sup>28</sup>

This change brought about a major shift: quotas and pricing regulations no longer govern how much farmers grow and what they can expect to earn for their crop. A representative from Altria Client Services, speaking on behalf of PM USA, commented, “2004 was the period of the buyout, so you began to see a free market really entering tobacco in a way that it hadn’t.”<sup>29</sup>

A power shift occurred that had enormous consequences for the growers. As one grower interviewed for this study put it, “Once the tobacco buyout occurred, now essentially the companies, the cigarette manufacturers, the leaf merchants, they controlled how much tobacco is grown via contracts ... and so that’s where you see a consolidation. And because they control it, they control how much is paid for it, and so the profit margin per acre is down.” Numerous aspects of tobacco manufacturers’ contracting process put the power solely in the hands of the company. According to the Rural Advancement Foundation International-USA (RAFI-USA), “The process for awarding contracts is not transparent. ... Most of the contracts presented to tobacco farmers are pre-printed, standard forms from the company. ... There is little or no negotiation. Typically, the farmer must sign the contract as written or else lose the chance to grow tobacco during the upcoming season.”<sup>30</sup>

“That’s why you have to grow more to be sustainable on the farm, and that’s why small growers usually decided to get bigger or decided to get out, because you just can’t make it as a small grower,” said one grower. From 2004 to 2005, the average price per pound of flue-cured tobacco went down by \$0.38, a nearly 20 percent drop.<sup>31</sup> Recent studies indicate that the general trend has been consolidation, as smaller growers either went out of business or grew larger.<sup>32</sup>

Growers also discussed a concern that they are now competing in a global market, where foreign tobacco producers are slowly replacing contracts with US farms with contracts with foreign farms. “If they can buy it cheaper and put it on a boat and ship it over here and process it and manufacture it to sell cigarettes and make more money by doing that, they are going to do it,” said one tobacco grower. Brazil and China eclipse US tobacco production by almost double and more than six times, respectively.<sup>33</sup>

Large tobacco manufacturers have also seen consolidation as a means to grow, and a handful of companies now dominate the global tobacco market. Altria Group, Reynolds American, and Lorillard Tobacco Company, collectively known as “The Big Three,” hold over 85 percent of the market share in the US.<sup>34</sup>

Most, if not all, contracts between growers and manufacturers contain clauses that require the growers to comply with all applicable regulations, particularly regarding employment practices. However, growers make all hiring and employment decisions locally.

“Once the tobacco buyout occurred, now essentially the companies, the cigarette manufacturers, the leaf merchants, they controlled how much tobacco is grown via contracts ... and so that’s where you see a consolidation. And because they control it, they control how much is paid for it, and so the profit margin per acre is down.”

Grower, Sampson County, North Carolina

Accountability for labor rights violations within the North Carolina tobacco supply chain has become a vague and elusive concept. Growers often delegate the day-to-day responsibilities to contractors, who are notorious for their approach to legal compliance, which ranges from dismissive to hostile. This procurement system often causes controversy over how much responsibility manufacturers have for the conditions of fieldworkers who are not their direct employees. On the one hand, most manufacturers have made a public commitment to human rights and have created “ethical sourcing policies” that apply to their growers; at the same time, however, these same manufacturers maintain that because they do not employ farmworkers directly, they have no legal liability for any issues of noncompliance at the bottom of the supply chain. In a statement regarding farm labor issues, Reynolds American said, “We meet with growers regularly and encourage them to follow all applicable laws and regulations.”<sup>35</sup>

# 5. Understanding the labor force

## Background

The USDOL estimates that more than two-thirds of US agricultural workers were born outside of the US.<sup>36</sup> Although the nation's farmworkers cannot be counted precisely, principally because so many are migrant workers and undocumented, a recent study estimates the total number at 1.4 million.<sup>37</sup> Apart from family-based residency petitions or other narrow categories, the only legal way for foreign workers to work in agriculture in the US is to secure a temporary H-2A visa. Although this program has grown dramatically over the past decade, only a small percentage of agriculture workers come to the US with the H-2A visa—less than 7 percent nationally.<sup>38</sup> In North Carolina, the share of migrant and seasonal farmworkers who hold H-2A visas is higher than the national percentage, but still very small; out of the estimated 100,000 such workers in the state, less than 9 percent has an H-2A visa.<sup>39</sup>

Generally, tobacco growers procure agricultural labor in one of three ways:

- Contract local employees directly
- Hire foreign workers using the H-2A program
- Use crew leaders or contractors to procure field labor

With the third option, growers can choose to either supervise these “crews” as if they were direct employees or maintain a hands-off approach, allowing the crew leader to supervise the employees, both at work and in migrant housing. For the most part, North Carolina statutes provide a broad definition of the term “joint employer,” meaning that even if growers are somewhat hands-off, they can often be found liable for any violation of the law by the crew leader.<sup>40</sup>

Clearly, the overwhelming majority of the workers who tend and harvest America's crops are undocumented workers. Their status makes these workers vulnerable to exploitation, not only by the labor recruiters who often charge extortionate fees to secure work and transport them to the US, but

also by some contractors and growers who are aware that these workers are unlikely to complain to any authorities about mistreatment. It is a system that is highly susceptible to abuses.

### Farmworkers in this study

A USDOL study estimated that nationally 53 percent of hired crop workers were not authorized to work in the US, 25 percent were US citizens, 21 percent were legal permanent residents, and 1 percent were employment eligible on some other basis.<sup>41</sup> This FLOC/Oxfam America study found that the percentage of undocumented farmworkers is much higher in North Carolina than in the nation as a whole, and this finding was verified by other stakeholders interviewed as part of the research. “The overwhelming majority of workers and labor-intensive farm production today are undocumented, and most rely on the crew leader system,” said a representative with the NCGA, the largest H-2A user in the US.

The foreign-born workers interviewed for this project told the researchers, without exception, that they migrated to the US to find work and to support their families. Most described an economy that could not provide stable employment in their home country. “I came here because of the lack of work in Mexico. ... It is very rough. They said there was work, so I came,” said Esteban, a 21-year-old from Veracruz, Mexico, who began working in the US four years ago.

Many workers talked about the difficulties of crossing the border and working in the US without proper documentation. Some would not comment on how much they paid to cross the border, but of those who did, most said they paid between \$500 and \$3,000. Rogelio left his family in Guatemala in 2007 to find work in the US. “I came when I was 14. ... We crossed through Arizona. I walked six days and six nights ... and thankfully I made it. We walked during the day because [at night] you just walk in circles in the desert. There were 18 of us, but 10 didn’t make it...”



# 6. Human rights in principle

## Overview

The rights for workers under international law are encoded in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Rights of All Migrant Workers and Members of Their Families, as well as conventions adopted by the International Labor Organization (ILO).<sup>42</sup>

According to a 2005 US Department of State memo, “Although these treaties do not give rise directly to individually enforceable rights in US courts, the US is bound under international law to implement all of its obligations under these treaties and takes these obligations very seriously.”<sup>43</sup>

## Human rights principles and corporations

In 2008, the UN Human Rights Council unanimously approved a framework on business and human rights as proposed by UN Special Representative John Ruggie. The framework rests on three pillars:

1. State duty to protect against human rights abuses by third parties, including business
2. Corporate responsibility to respect human rights
3. Greater access by victims to effective remedy, both judicial and non-judicial

According to an explanation of the framework by the special representative, “A company’s responsibility to respect applies across its business activities and through its relationship with third parties connected with those activities—such as business partners, entities in its value chain, and other non-state actors and state agents.”

### UN Global Compact, *Principles on Human Rights and Labor*

Human rights principles:

- **Principle 1:** Businesses should support and respect the protection of internationally proclaimed human rights; and
- **Principle 2:** make sure that they are not complicit in human rights abuses.

Labor:

- **Principle 3:** Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- **Principle 4:** the elimination of all forms of forced and compulsory labor;
- **Principle 5:** the effective abolition of child labor; and
- **Principle 6:** the elimination of discrimination in respect of employment and occupation.

In addition, the UN Global Compact is the largest corporate responsibility initiative, with more than 8,700 corporate participants and another 130 stakeholders. Those in the compact are committed to aligning their business operations with 10 universally accepted principles on human rights, labor, the environment, and anticorruption.<sup>44</sup>

“We also have no option but to recognise the sorry catalogue of past and present human rights violations committed by companies or human rights violations committed by governments in which companies are complicit.

When we talk about accountability we must answer how to ensure the worst, and not only the best, respect the rules.”

Nicholas Howen, International Commission of Jurists.<sup>48</sup>

Although none of the companies that were contacted for this study participate in the compact, some cite it and other UN standards as the underpinnings for their social responsibility policies. In its “Statement on Our Efforts to Support Human Rights,” Reynolds American states, “Reynolds American Inc. and its operating companies believe that universally recognized human rights should be respected. ... Our understanding of the role we play, along with other companies, governments, and civil society, in supporting human rights, is also based on the UN Global Compact’s Guiding Principles, which declare that businesses should: Support and respect the protection of internationally proclaimed human rights within their sphere of influence and make sure they are not complicit in human rights abuses.”<sup>45</sup>

Altria’s Child and Forced Labor Policy requires growers, as a provision in their contract, to comply with the ILO’s minimum age standards or national law, whichever has the higher age requirement.<sup>46</sup> With the exception of Reynolds American and Lorillard, all other companies contacted for this report are members of the Eliminating Child Labor in Tobacco-Growing Foundation, a coalition of tobacco companies, unions, NGOs, and growers establishing programs in various countries to work to end child labor.<sup>47</sup>

# 7. Human rights in practice

## Just and favorable working conditions

The Universal Declaration of Human Rights specifically addresses workers' rights in Articles 23 and 24, as follows:

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration, ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.
5. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Workers rights are further reinforced and elaborated upon in the ICESCR. Article 7, which addresses the rights of workers, states:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;

- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

### **Fair wages and equal pay**

“Some [employers] pay minimum wage of \$7.25 and some pay less. ... The contractor decides the pay rate, and we have to either take it or not. ... If they say they are paying less, there is not much more to do. We need work. ... We are happy to have work.”

Juan Antonio, farmworker in Johnston County, North Carolina

Under US law, all workers, regardless of legal status, have the right to be paid for the hours they have worked.<sup>49</sup> However, the team’s interviews revealed a significant number of problems with wages among undocumented workers, including pay rates below the minimum wage and pay inequality among those doing the same work. In 2010, the federally mandated minimum wage was \$7.25, and wages for workers with H-2A visas were set at \$7.25 to around \$10 per hour, depending on the county. Of the 103 interview participants, 22 (about one in four) reported that they were paid less than the minimum wage, one as low as \$6 per hour. Fifty-one workers were paid at minimum wage, and only 11 were paid more than the minimum wage.<sup>50</sup> While most were paid by the hour, 23 workers said they were paid by contract at times, meaning that they were paid a contractually set sum for each barn or trailer filled, regardless of the number of hours required, or a combination of contract and hourly pay. Ten reported that contractors had underreported their hours or had taken deductions other than taxes out of their paychecks without their authorization. In two camps that had H-2A workers and undocumented workers doing the same job, the workers without H-2A visas were paid a lower wage. One worker told the interviewer that he was paid \$7.50 per hour. “Well, [it is] not enough,” he said. “But we have nothing to say because we are undocumented. When there are contracted people [H-2A visa workers] here they make about \$9.50.” All the H-2A workers interviewed were being paid at least minimum wage.

Many workers reported working more than 40 hours a week and often six or seven days per week. However, because agricultural employers are not covered by the overtime provisions of the Fair Labor Standards Act (FLSA), farmworkers are not entitled to overtime pay. None of the workers who were interviewed received any overtime pay or other extra compensation for working extra hours. All hours worked above 40 per week were compensated at the same rate as the first 40 hours in the week.

Fifty-seven workers—about two-thirds of those interviewed—said their income was not sufficient to meet their basic needs. Of the workers who said they felt their wages were sufficient, many said that they struggled financially but that wages were better in the US than in their home country. Workers who were interviewed expressed the general view that because they were undocumented they had no right to expect higher wages and no power to negotiate wages, even when they were being paid less than the minimum wage.

Most workers said that while they didn’t feel that wages were adequate, their job options were limited because of their legal and economic status; they didn’t feel they had any choice but to accept the living and working conditions they were

given. At several camps the team explained that even as undocumented workers they had the right to be paid minimum wage, and the team described the legal remedies available to workers being paid less than minimum wage. Nearly all the workers said that they felt they would be fired if they reported that they were being paid less than minimum wage. Not a single worker who was interviewed chose to file a complaint regarding wages.

Interviewers found that wage violations occurred most often under a labor contractor hired by the grower to manage, supervise, and pay the workers. “We work with a contractor and sometimes we don’t get paid all of the hours we work. ... I don’t earn enough,” said one worker from Wilson County. He was one of many who reported that the contractor paid less than minimum wage or stole from their wages. “Where [the grower] pays \$7 an hour, the contractor pays \$6.25, and where they pay \$8 an hour, the contractor pays \$7,” said Luis, a worker in Wayne County, North Carolina. The team found that workers often had a relationship only with the contractor and were unsure of the name of the grower for whom the contractor worked.

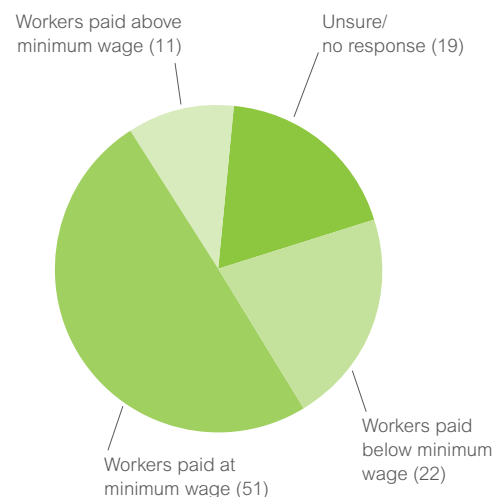
Many workers noted that the language barrier makes communication with the grower difficult, and that the contractor is the only resource available when there are problems. Such dependence on the contractor creates a system in which contractors often use fear and intimidation to control workers and discourage complaints about wages or other conditions. “There is nothing we can do,” one worker commented. “Nobody here complains because people don’t like to be retaliated against or fired, so they don’t say anything.”

In H-2A camps, the research team found far fewer growers using contractors. Even where contractors were present, workers knew who the grower was and sometimes had a relationship with both the grower and the labor contractor. H-2A workers generally knew more about wage rates and had access to resources if there was a problem with wages. All three H-2A workers interviewed who are covered by the FLOC/NCGA union contract were aware of resources and procedures available to them if they had problems with pay or working conditions. Marcelo, a union member since the signing of the contract in 2004, said, “Our contract tells us where we can go [for information], and the union gives us a flier of where we can find assistance.”

### Safe and healthy working conditions

Agricultural work is one of the most dangerous jobs in the US, with a fatality rate of 38.5 deaths per 100,000 workers.<sup>51</sup> According to a report by the Centers for Disease Control and Prevention (CDC) on crop worker fatalities, “During 1992–2006, a total of 68 crop workers died from heatstroke, representing a rate nearly 20 times greater than for all US civilian workers. The majority of these deaths were in adults aged 20–54 years, a population not typically considered to be at high risk for heat illnesses. In addition, the majority of these deaths were among foreign-born workers.”<sup>52</sup> Tobacco work is particularly dangerous because of high heat in the fields and exposure to high levels of nicotine and other toxic chemicals. Separately or together,

**Figure 3. Wage status of farmworker participants**



these dangers can cause illness or death unless proper precautions are taken. According to the NCDOL, every summer several farmworkers die in North Carolina as a result of heat-related problems.<sup>53</sup>

### **Drinking water, toilet and hand-washing facilities, and breaks**

“You can see that the water is dirty. One day we were working with a guy who gave us water with ants in it. It didn’t have any ice and it was over 95 degrees outside. He just said get to work. So what you get is poor treatment and no water.”

Gonzalo, farmworker in Johnston County, North Carolina

Both the CDC and the NCDOL recommend frequent water breaks to prevent heat-related illness.<sup>54</sup> According to state law, in the fieldworkers must have “cold fresh water, disposable cups, and sufficient time to drink water, one cup every 30 minutes.”<sup>55</sup>

Most workers identified heat as the most difficult part of the job, especially when they are not given enough breaks. “It is dangerous because sometimes it is very hot, and it suffocates you. It suffocates you and they don’t bring you water,” said Beatriz, who has worked in tobacco for many years. One worker said he was not given any lunch break throughout the day, and three others said they are not given a lunch break when they are working by contract (by field or barn). All other workers said they get a lunch break, ranging from 15 minutes to an hour, but 29 of the workers interviewed—more than one-third—said they are given no other breaks throughout the day. Ten workers said they are given one break apart from lunch, and 25 said they are given two, normally one in the morning and afternoon. Only nine workers said they felt they could take breaks whenever needed.

Workers who were being paid by contract (by barn or trailer) said they felt more pressure from contractors to work fast and without breaks, and several reported being threatened with firing to push them harder. Ramon, a 25-year-old from Guatemala working in Wilson County, told the interviewer he was afraid to take breaks. “[Even] if it’s too hot, you can’t stop. You have to follow the group. ... If you stop, they are simply going to replace you because you can’t do the work. The boss is going to tell you that if you can’t do it, he’ll get another guy. Then you’re gone.” Several other workers interviewed at Ramon’s camp expressed the same concern.

Sixty-one of the 86 workers interviewed said there was water in the field, but several said they were only allowed to drink it at certain times. Seven workers told interviewers that the water provided was dirty, hot, or often ran out during the day. Three workers said water was only provided sometimes, and three said water is not provided and they have to bring their own.

State law requires that toilets are accessible to workers while they are in the field. Only 31 workers interviewed (one-third) said they have access to a bathroom. “There are no toilets in the fields,” said one worker. “For the men it’s not too bad, but there are women workers, too,” said Silvero, from Johnston County. Most workers said they go to the woods or find bushes when no bathrooms are available. Even where there were bathrooms, workers reported being afraid to stop working to use them. “They get mad when you go to the bathroom,” another worker told interviewers. “The contractor tells you to hurry up because you’re going to get behind your co-workers because you are working by rows.”



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## FARMWORKER PROFILE

# Aparicio

For each of the past 11 years, Aparicio has trekked north from Mexico to spend six months toiling in the tobacco and vegetable fields of the US. A father of three, he has made sacrifices that are impossible to tally: How do you measure the anguish of a parent forced to miss half of his children's lives? How do you weigh the fear of being fired for falling sick against the fear of coughing up blood? How do you count whole seasons passed in a feeling of constant imprisonment? "You suffer a lot," said Aparicio, whose name we have changed to protect his identity.

Unable to earn enough at home to feed his family, Aparicio was 27 when he signed on to work in these fields—and began to learn just how profound the toll would be. "I came out of necessity," he said. "The first time ... was in '99: I lived in a cardboard shack. My bed would get wet when it rained." Over the years, he would find other accommodations for farmworkers to be equally wretched: bedbugs, rats, intense heat with no hope

for relief. "I think our housing is disgusting," said Aparicio, "Not everyone has a mattress to sleep on and there are 10 men in one room. There are three showers, but only one works, and the same goes for the toilets. We don't have a refrigerator or good ventilation."

For workers like Aparicio, adequate housing is not a right many are able to claim. Nor is the right to just and favorable working conditions—a truth that has left him, and untold others, battling waves of illness and injury. "I've seen people pass out, throw up, their hands swell. They get sick, then are forced to return to Mexico," said Aparicio. "Tobacco damages us in different ways." And the pesticides make things worse. "The majority of growers I've worked for spray pesticides when the workers are in the fields," Aparicio added. "We are not given work clothes or protective equipment for our work. My lungs don't inhale properly and I've coughed up blood." The pace of the work can also be relentless. "Every once in a while they will give

us a 15-minute break," Aparicio said. "It depends on the number of hours we work. If we work eight or nine hours, we are only given a 30-minute lunch break, which is deducted from our check."

The brevity of that rest is not the only hardship workers endure each day. None of the growers who have employed Aparicio have ever provided toilets in the field for their workers. "We have to run into the woods," said Aparicio. "But they tell us not to do that, or we will get fined."

The water provided to the workers is often hot and yellow, and when it runs out, no one brings them more, Aparicio said—even though the heat in the fields, coupled with the heavy labor, makes dehydration a real threat. "The working conditions have gotten a little better throughout the years," Aparicio said. "But neither the government nor the grower or contractor have done anything for us. They only want us to work like machines."

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## Dangers and their prevention in the tobacco fields

### *Nicotine exposure*

Green tobacco sickness (GTS) is an illness caused by acute nicotine poisoning from the absorption of nicotine through the skin. In 1993, the National Institute for Occupational Safety and Health (NIOSH) issued a health warning to tobacco workers regarding their high risk of GTS: "A recent NIOSH study indicates that a startling number of tobacco workers are becoming afflicted with this illness, which may require hospital care."<sup>56</sup> A study of tobacco farmworkers by the National Institutes of Health found that "moisture on tobacco leaves from dew or rain may contain as much as 9 mg of dissolved nicotine per 100 ml of dew, roughly equivalent to the nicotine content of six average cigarettes. On a humid day, especially after a recent rain, the average fieldworker may be exposed to as much as 600 ml of dew."<sup>57</sup>

“Yes, sometimes [I get sick]. Dizziness, vomiting, like being weak. Cough and headaches from how strong it is. The sickness, the vomiting, is the worst.

You don’t want to eat for two or three days because of the nausea. You just drink milk, that’s how I controlled it. I have had bloody noses. ... And I had pain in my back when I wanted to throw up but I couldn’t ...”

Felipe, a farmworker in Sampson County, North Carolina, who gets sick two to three times per week

“No one explained to me what we need to do when working with pesticides or in the heat or water. I was not given any protective clothing or gloves.”

Benito, farmworker in Wayne County, North Carolina

Many workers talked in their interviews about the debilitating physical effects from nicotine absorption, and more than one-half reported having been sick with a job-related illness or having symptoms indicating GTS. Common symptoms they reported included nausea, vomiting, headaches, skin irritation, weakness, dizziness, fatigue, difficulty sleeping, hallucinations, and a feeling like being intoxicated.

The CDC issued several recommendations for preventing GTS, including avoiding handling wet tobacco, wearing protective clothing (such as chemical-resistant gloves and plastic aprons or rain suits), and changing clothes if they become saturated from moisture on tobacco.<sup>58</sup> However, workers said they usually don’t have any choice about what hours they work, and that the tobacco is often wet with dew in the mornings. Only three out of 86 workers said they were provided with water- and chemical-resistant clothing, and nine others said they had to buy it themselves. “It is dangerous,” said Ana. “If the tobacco is wet, you need waterproof clothing, because if your clothes get wet, it gets into you. ... We buy the gloves and the clothing ... because if we don’t protect ourselves, who will do it for us?” All other workers said they were not provided with any protective equipment. Two workers said they were not allowed to wear gloves because the gloves slow their work.

Many organizations, such as the NCDOL, CDC, universities, and tobacco companies, have made resources available to growers on the dangers of GTS and on methods for preventing it. However, of the workers interviewed, only 27 said they had ever received training or information on the dangers associated with tobacco harvesting. Of those 27, seven said they had received information from a grower or contractor, eight reported seeing a training video, six had received information from a clinic, five said friends or co-workers had told them information, and one worker said he read literature from the Occupational Safety and Health Administration (OSHA). When asked whether they felt that they had access to information about topics such as their rights as a worker or safety, only 11 workers interviewed said “yes.”

### *Pesticides*

Tobacco growers apply a variety of dangerous chemicals to their crop—including a variety of pesticides, insecticides, fungicides, weed killers, and growth regulators<sup>59</sup>—which can, if handled improperly, cause symptoms in humans ranging from nausea and headaches to comas or even death.<sup>60</sup> The WPS established by the EPA include specific protections for workers who may come into contact with these and other pesticides. As with problems related to health and GTS, most workers are unaware of these laws, and even those who are aware are afraid to report violations.

Nine workers told interviewers they had been working in a field while it was being sprayed with pesticides, and four others reported they had felt the drift from pesticides being sprayed in a nearby field. “When we were out in the field, even though we were a good ways away, you could feel the spray from the pesticides,” said Hilario. Seven workers said they felt they had been told to enter the field too soon after pesticides had been sprayed. Another worker told interviewers, “They fumigate at 9 o’clock, and we have to enter



Tar and residue from harvesting tobacco leaves cover a worker's hands. Many workers suffer symptoms of green tobacco sickness, a form of acute nicotine poisoning caused by the absorption of excessive amounts of nicotine through the skin. *David Bacon*

[the field] at 10:30. ... It's strong, and after that the leaves are very sticky. I see this as bad, and I say, look, aren't they spraying ammonia? It smells bad and then the sun makes it suffocating, but you have to be there and you have to continue [working]." Twenty-nine workers said they had experienced illness or injury as a result of pesticides. Blanca, who has worked in the tobacco fields for eight years, said, "Everything about the job is difficult. ... I worked when I was pregnant with my oldest daughter. ... It was bad when they sprayed the chemicals. ... I could smell it, it made me vomit. I know it's not good to work like that when you're pregnant."

Although the law requires hand-washing facilities in or near the fields, only 20 of the workers interviewed—about one-fifth—told interviewers they were provided with soap and water. A lack of hand-washing facilities in the fields increases the workers' chances of exposure to pesticides, and many workers described eating lunch in the field with their hands sticky from the tar. "Tobacco is tough. What happens is that when you're picking and it comes time to eat, we have to eat with our hands which are covered in chemicals and all, and that is harmful. ... There is water, but the chemical is really sticky and doesn't come off without soap," said Fernando.

Several workers noted that although they had seen a safety video or poster about laws and pesticides, growers or contractors did not always follow those laws. Nelson told interviewers, "This year they showed us a video about pesticides. They don't respect it, because they spray one afternoon, and the next morning the pesticide is already mixed with the water and you have to go to harvest that treated field. The video says that you have to wait at least 72 hours before you enter the treated field. They only wait 12 hours before you enter the field." H-2A

“We don’t have access to a first aid kit here, nor are we given special clothes or protective equipment for the work. ... The work in tobacco fields is dangerous. ... One time I had an accident. I was sick for 22 days. I hurt my finger in the tobacco machine. I healed it on my own; I put a cream on it. The grower didn’t help me, neither did the contractor.”

Santos, farmworker in Wilson County,  
North Carolina

workers arriving through the NCGA all noted that they had seen a training video when they arrived, and many of these workers were more knowledgeable about the dangers of tobacco work and how to prevent illness, and were aware of what to do if growers were not complying with pesticide laws.

### *Injuries*

The majority of workers interviewed said that they felt their work was dangerous, either because of pesticide or nicotine exposure or dangerous equipment, and 19 said they had been injured on the job. Workers reported injuries such as strained or cramped muscles from repetitive motions in uncomfortable positions while harvesting, and burning and itching owing to contact with pesticides. Some described severe cuts and other injuries caused by heavy machinery, which often has sharp and moving parts and is used to harvest in the field and sort tobacco in the barns. Several workers said they had been injured while using forklifts to load large metal crates into the barns used to dry the wet tobacco. The dangers posed by using these machines in the fields and barns are multiplied when a worker is also suffering fatigue or disorientation from dehydration or nicotine exposure. Unfortunately, outside the H-2A program, many growers are not required to carry workers’ compensation insurance,<sup>61</sup> and most workers are unaware of what benefits workers’ compensation would offer them.

Jorge commented, “What about my safety? ... I don’t know where to call if I get injured at work. ... If one of us has an accident, I don’t know if we have insurance or anything.” Several workers who said they had been injured on the job also said they did not tell their contractor or grower for fear of being punished or losing their job. Others did tell their employers but did not receive proper medical attention: “I was cutting tobacco leaves with the machine. ... The machine stopped, and my finger got trapped in the chain. ... It cut my hand. ... I had to wait until the truck was filled [to go to the doctor]. ... They continued working. I waited for four hours,” one worker told interviewers. As with work-related illness, several workers said after an injury they continued working because they could not afford to lose the income for the hours missed to see a doctor. One worker told interviewers, “There are days when you are sick, but you know you need the money. If you miss a day, that is one less day [of pay] and you know that if you have a family, you have a commitment.”

Although various laws and regulations govern the health and safety of farmworkers, and international norms describe such laws as integral in protecting workers’ human rights, interviews showed that many problems persist in the fields. When workers are unaware of legal norms and remedies or mistrust the ability of the enforcement process to protect them, legal principles mean little. Interviews revealed that the training and education about the dangers of tobacco work that are required by law rarely happen, and when workers are informed of methods to protect themselves, often the day-to-day decisions that affect their well-being are out of their hands. This lack of effective legal protection and persistent violations regarding wage, housing, health, and safety means farmworkers are not being ensured “an existence worthy of human dignity,” a core principle of the human right to just and favorable working conditions.





A woman farmworker sorts harvested tobacco leaves. Briana Connors / FLOC

## Adequate health

The UN Declaration of Human Rights establishes a right to health in Article 25 wherein it states:

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, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.

The UN ICESCR, in Article 12, goes further in calling for the following:

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

The many serious health risks associated with tobacco work make access to affordable and adequate health care even more vital for tobacco farmworkers. Nationally, 85 percent of farmworkers are uninsured and do not qualify for government assistance because of their immigration status.<sup>62</sup> None of the workers interviewed for this study reported having insurance, though some had discount cards for certain clinics or pharmacies. Although several state health clinics focus on serving the farmworker population,<sup>63</sup> the need greatly exceeds the resources available, and workers face many barriers to receiving health care. The team interviewed four workers from a clinic in

“Most people have gotten sick, some have *entabacado* [sickness from the tobacco], and some get swollen hands. ... You can tell the contractor to take you to the doctor, but he doesn’t take you. He only brings you medicine ...”

Emilio, farmworker in Sampson County, North Carolina

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## FARMWORKER PROFILE

# Fernando

Fernando came to the US from Mexico in 2006, driven by a dream we all share: a better life for his family. What he has found, instead, is suffering.

Fernando is not his real name; we have withheld it to protect his identity as an undocumented worker willing to speak out about the ill treatment he endures and the toll it has taken on his body. The right to health is not easy to claim for farmworkers sweating in the tobacco fields of North Carolina. At 48, Fernando has six children and a wife to support, but finds himself now in a job he considers dangerous, not the least because of all the chemicals farmers use on their fields. “I get sick a lot,” said Fernando. “Coughing blood, nose bleeds, vomiting, diarrhea, and it makes my eyes red.”

Despite that, Fernando said no one in charge has ever told him about the hazards of working in the tobacco fields. One of the dangers is green tobacco

sickness, or GTS, caused by poisoning from nicotine absorbed through the skin. Symptoms can include nausea, headaches, dizziness, and fatigue. Some cases require hospital care. At the start of a new week recently, Fernando didn’t feel well enough to go to work. He had been battling a cold and a cough exacerbated by the vapors from the boxes of tobacco he had been working with. “I could not get up,” he said. But the day after, he dragged himself back to work. “I have been like this for the whole season,” Fernando said. “I think that it should be an obligation from the boss to pay our wages even when we are ill—when one has been helping him throughout the season. But if I don’t go to work, I won’t get paid.”

At \$7.25 an hour, the pay Fernando earns isn’t enough to allow him to cover major medical expenses and meet the obligations he has to his family. Every

two or three weeks he sends between \$600 and \$700 home, which doesn’t leave him much for emergencies. “I have had many accidents,” he said, recounting the time a fall put him in the hospital for two days. “I got the bill from the regional hospital. ... I paid for the medicines, but I could not pay for the hospital bill. It was too much.” Nor does the pace of the work—set by the boss—allow enough time for full recovery. “When my arm and hand were caught in the machine, the doctor gave me two weeks off work,” said Fernando. “But the boss only gave me two days off work. And that is how I was with all these ailments—even working with my hand bandaged. So they make you work almost by force.”

The boss scolds and yells, added Fernando. “All he is interested in is [that we] work fast. We don’t matter to him,” he said.

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Wilson, North Carolina, who do outreach to farmworkers in Wilson, Nash, and Edgecombe counties. The outreach workers expressed the difficulty in trying to reach hundreds of camps throughout the season. “We are the only clinic that I know of here. ... Sometimes I think that we are the only people out there doing it,” said a clinic staff member.<sup>64</sup>

Workers participating in about one-third of the 86 interviews said they knew where the nearest clinic or hospital was located, and 13 said that clinic workers had visited their camp. While local clinics are often able to provide basic care, there is a serious lack of affordable services available for specialty care and long-term treatment. One of the outreach health workers said, “We can provide a service that doesn’t have much treatment ... kind of like an office visit, but if they need to go to a specialist or have surgery or a procedure, there are no services whatsoever. For more specialty things, like going to the eye doctor or surgery, there are not any resources to help them for glasses or stuff like that. We had a guy that had an accident and broke his leg or something and was not sure if he was to have surgery or not but he could not come up with \$150 to see a specialist. They wouldn’t even see him without the \$150.”



Many workers identified transportation and cost as major barriers to getting care. Only six of the people interviewed had a car; others relied on the contractor or friends with cars for transportation. “There is a place in Newton Grove where you pay \$30 and they help you. So there are medical services, but the thing is we do not have a way to get there.” Workers said it was often difficult to get the contractor to take them to the doctor when needed.

Other workers said that they could not miss work for medical reasons, either because they were afraid they would be punished or fired, or they could not afford the economic loss. Antonio, a 62-year-old worker from Johnston County, said, “Obviously, you are going to work, because if you don’t work you don’t get paid. It is not like Mexico where you get days off to get better. ... We are here with our hands tied because we have no papers.”

For many workers who lack legal status, a general fear of government agencies prevents them from going to a clinic to seek medical attention. “We usually get a lot of H-2A [workers] that come to the clinic. ... It is really a struggle to try to get [undocumented workers to the clinic] because they’re superscared,” noted a clinic worker in Wilson, North Carolina.

For many workers, illnesses like GTS have become a common, normal condition of the job. Many choose not to go to the doctor and to try home remedies, such as Tylenol or milk instead. “People get sick daily. ... I had tobacco sickness and could not eat anything. I had to drink milk, drink milk, and get over it,” said one worker interviewed.

Interviews documented that the internationally recognized human right to health is rarely upheld in the North Carolina tobacco fields for various reasons. While a lack of workers’ compensation insurance, fear of retaliation, and lost wages are some of the institutional barriers to health care services, often it is simply the high cost of care and a lack of transportation that makes it difficult for tobacco workers to receive proper health care. The interviews make abundantly clear that farmworkers are far from experiencing the “right ... to the enjoyment of the highest attainable standard of physical and mental health” and are not provided with “conditions which would assure to all medical service and medical attention in the event of sickness.” In addition, with the often unsafe use of pesticides, heat exposure, and nicotine exposure, tobacco farmwork often compromises the health of workers; the lack of a functional system to address bad practices means that many tobacco farmworkers face conditions that violate their right to health.

## Forced labor and freedom of movement

The UN Declaration of Human Rights protects the right to freedom of movement through Article 13:

Everyone has the right to freedom of movement and residence within the borders of each State.

The ICPR prohibits forced labor as stated in Article 8:

No one shall be required to perform forced or compulsory labor.

“It was raining and I had a cold and a fever. I didn’t want to go, but the grower’s son came in and told me to get up and move my ass, and this is how one must go to work because if not, we get fired, so we go to work sick. ... I had to vomit, I had a headache, I got lumps and itching in my skin, stomachaches, and cough.”

Joaquin, farmworker in Wilson County, North Carolina

While no workers reported being physically forced to work, many reported exploitative working conditions, including threats, intimidation, and other types of coercion. Entering the country with a large amount of debt often leaves workers vulnerable to unscrupulous contractors and desperate for whatever work they can find, no matter how abusive the conditions. Many workers said that they were unhappy with certain conditions of their work in tobacco but that they needed money and had to keep working. Contractors often use this vulnerability to control workers and ensure they don’t complain about pay or conditions.

Workers in one-third (29) of the interviews said that they had felt forced to work when they didn’t want to, either at their current camp or a previous one. Many workers said contractors often pressured them to work harder or faster, and 32 said they had been told they could be fired if they didn’t. Two workers said their employer had threatened to call immigration if they didn’t continue working. One worker told interviewers he had had difficulty with payments from his contractor, but wasn’t sure what he could do because he was undocumented. “I need a form of identification or a document that shows I am a worker,” he said. “When you try to talk to the contractor, he won’t come out [to talk to you], or he will come out and will humiliate you and make you feel bad. On top of the fact they won’t pay you, they’ll call the police and say they are going to deport you.”

Six workers said they were not allowed to miss work to go to the doctor, and four said they could only leave with their employer’s permission. According to Gilberto, who is 27, he had to continue working while sick when he was threatened with firing if he stopped working.

Several workers also talked about contractors luring workers by deceiving them about what the work, wages, and housing would be like. Francisco told interviewers, “The majority of people are misled. They are told one thing so they come here to work, that everything is good here, and when you get here you realize things are different.”

The research team spoke with Caitlin Ryland, an attorney for Legal Aid of North Carolina and a representative from NCCAHT, a statewide coalition of organizations that works to raise awareness about human trafficking across North Carolina, support efforts to prosecute traffickers, and identify and assist victims. Ryland said that although she knows there are many exploitative situations in agriculture, few actual trafficking cases are reported

and identified, mainly because workers are afraid. “It exists, it’s out there. I am aware of one situation in which workers were trying to leave a camp where they were being held against their will. ... They were in the middle of the road arguing with the crew leader. The crew leader called the local law enforcement agency, but the officer that arrived at the camp did not speak Spanish, so the crew leader acted as the interpreter. With the crew leader creatively interpreting, the workers understood the officer to tell them they couldn’t leave until they settled their debts with the crew leader. The workers thought that they would get arrested if they did try to leave. We think that there are more cases of trafficking in which workers are controlled or manipulated by their trafficker into not speaking up, and they continue to go unidentified here in North Carolina,” Ryland said.

Most workers the team interviewed said they felt they were free to leave the labor camp if they wanted, but that the lack of transportation and the fact that contractors often live at or near the labor camp and sometimes require workers to ask permission to leave often made it difficult to leave to do basic things like grocery shopping and laundry. In about one-third (28) of the interviews, workers said they depend on their employer for transportation, seven said they depend on friends with cars, two said they use taxis, and six said they had their own car. One worker told interviewers, “To leave the labor camp on foot is very far. And there are no cars. Even if there were, there would be no way because you cannot get a license.”<sup>65</sup>

Roberto and Graciela, a young couple with a 1-year-old daughter, paid \$1,500 each to a “coyote” to cross the border. The contractor they worked for also worked with the coyote who transported them across the border. Each week they paid about \$300 to the coyote and were left with \$100-200 to support their family. “They wouldn’t give us our check, they would give it to him [the coyote],” said Roberto, “He would cash our check and take his part and only left us with \$100. It didn’t matter to him if you had enough money for lunch or not.”

Later in the interview, Roberto described an argument with his contractor over whether he had to go to work in a torrential rainstorm, an argument that the contractor escalated into a physical confrontation: “This one time it was raining a lot. He [the contractor] was going to pick us up at 4 a.m., and we did not want to go. But he kept knocking. [I told him], ‘It’s raining, I’m not going to work,’ and he did not like that, and he opened the door forcefully and started to pull me [off the bed] by my legs. ... I tried to fight back, and he didn’t like that so he punched me. ... According to him I had to go to work, and I told him I’m not your slave, I work when I want to. ... After that time I didn’t work, he told me to leave, that other people were going to be staying in my room, since the trailer is in his name. We were paying rent and he wanted to kick us out. We didn’t stick around for much longer, about two weeks, and then we left.”





Housing conditions for farmworkers are often inadequate. In this tobacco labor camp, there are fewer than 10 showerheads—and no dividers between them—for more than 100 workers. *Steve Liss / Oxfam America*

## Adequate housing

The ICESCR establishes a right to housing in Article 11.1, where it states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The UN Committee on Economic, Social and Cultural Rights comments expound on the right to housing in Comment 4 by stating:

In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace, and dignity.

It further states:

As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure, and adequate location with regard to work and basic facilities—all at a reasonable cost."<sup>66</sup>

North Carolina's Migrant Housing Act lays out a complex and specific set of standards for migrant housing. It requires all growers to register each housing site, which must be inspected and certified before workers can live there.

The research team found that many of the camps visited throughout the interview process violate one or more parts of the housing law. Of the 34 camps where people participated in the study, two had been inspected but never certified, two were never inspected, one was never registered, and two were cited by the state's department of labor for failing to register as migrant housing. There were also a few camps that registered early in the season, in March or April, and were not certified until June or July, after workers had already been living in the camp; one camp was inspected in May but was not certified until November. All these incidents involved non-H-2A camps.

Other stakeholders criticized NCDOL's lack of timely and effective enforcement of housing laws, as well as what some saw as disparate treatment of the H-2A and non-H-2A camps. Erica Peterson from the NCAg said, "We still have a problem with housing that's not inspected, and that's what is disappointing. ... Basically, if you get your housing inspected it's for one of two reasons. Number one, you're with H-2A, so you have to get it inspected. Or, you just raised your hand and said, 'Hey, I need to get my housing inspected,' because you're a good guy."

"We are charged for everything ... \$20 per week for rent. It's robbery. ... There are no beds, we are on top of mattresses [on the floor]. ... The bathrooms do not work. It is disgusting."

Santiago, farmworker in Wayne County, North Carolina





At a labor camp housing more than 100 farmworkers, bathroom facilities provide no privacy. *Steve Liss / Oxfam America*

The NCGA expressed frustration that its members are often held to a higher standard than growers using non-H-2A workers. An NCGA representative said, “I think it all goes back to—just enforce the law uniformly on everybody.” The representative added, “Before you want to try to make me do more, spend more, on my housing, then make everybody meet the same level the H-2A growers are meeting and the existing statutory, regulatory language. Enforce what we got, and then we can talk about moving on. ... You can’t keep laying more and more and more on the guys who are trying to do it right and never enforce it on the guys who never try to do it right. It won’t work. You are going to put the guys who try to do it right out of business.”<sup>67</sup>

Unfortunately, NCDOL refused to be interviewed for this project. However, the agency’s 2009 report says that the Agricultural Safety and Health Bureau conducted 1,367 preoccupancy inspections and issued 1,285 site certificates for 14,442 beds.<sup>68</sup> While H-2A workers represented less than 9 percent of the estimated total farmworkers in North Carolina in 2009, more than two-thirds of the beds inspected were H-2A beds.<sup>69</sup>

When asked if they were comfortable in their housing, only 25 of the farmworkers interviewed said that they were, and many compared it with conditions in Mexico or said it was good enough because they had no other options. Nineteen workers said they were not comfortable. “No, I don’t feel comfortable living here; I have to do it out of necessity,” said Ernesto, living in a camp in Wilson County. “There is only one window. ... We don’t have air, and I wake up sweating and have to get up and shower because of the heat. ... There are three showers for men, but for 40 men that is very few. For me this is bad. ... I feel shame when I have to shower with one or two other men.” The workers’ most common complaints were regarding

inadequate or nonfunctional bathroom and shower facilities and infestations of insects and rodents. Other complaints included lack of security (locks), overcrowding, leaky roofs, lack of heat, lack of ventilation, inadequate or no laundry facilities, inadequate cooking facilities, and old, worn-out mattresses or no mattresses at all.

Another worker, interviewed in Nash County, described similar conditions and said that he is unsure of whom to contact about housing problems. “The housing is in very bad condition. ... The bathrooms are in bad conditions, only three or four work. The last time it rained, some men were bailing water out of their rooms. The grower knows, but I think he doesn’t care. ... There are no washing machines; we have to go to the laundromat in town. ... They take \$7 out of our check each week [for rent],” he said.

Lack of adequate laundry facilities is another common problem that many workers mentioned. “Sometimes there is no washing machine at the labor camp and everyone has to wash clothes by hand, which is a lot of work. In some camps, you only have one washing machine for 40 people and having only one machine is difficult,” said Marcelo. Without adequate laundry facilities, workers said it was difficult to wash nicotine and pesticides out of their clothes every day, and finding transportation to a local laundromat often posed challenges.

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## FARMWORKER PROFILE

# Gonzalo

Gonzalo was just a toddler when he made the dangerous trek across the desert into the US from his home in Mexico following the murder of his father. His grandmother carried him. That was two decades ago. Now 23, Gonzalo has known hard work since the age of 9, when he started laboring in the fields that feed America. Gonzalo is not his real name; we have withheld it so he can speak candidly, without fear of retaliation, about that work and the often miserable living conditions he and countless others endure.

Two words sum up the camp where Gonzalo lives. “It’s nasty,” he said, ticking off a litany of problems that make a mockery of a worker’s right to adequate housing. “There are toilets, but not the type you flush. They are the old kind with a hole in the ground and that’s it,” said Gonzalo. “The toilets are made

out of wood. The only thing they have changed is when they paint them over. Never been cleaned.”

Sleeping is another problem. At the height of the season, as many as eight people can be packed into one room. “There’s no privacy,” said Gonzalo. “All you have is a string to put your things on. That’s it. And your bed.” But the beds hardly offer comfort: the mattresses—decades old—are riddled with bedbugs, he said. “At night, you are scratching and scratching,” Gonzalo added. “They told us to do our best to take out the mattresses and clean them, to buy something.” Even when the owners had the camp sprayed, it didn’t work. “It just got worse.”

Many of the windows at the camp are broken. Workers can’t open them, so they rely on their fans to circulate the air

and provide ventilation. And when the refrigerator breaks—as it has twice—all their food has spoiled, forcing workers to use their meager earnings to replace what was lost. “If something needs repair, we got to pay for it,” said Gonzalo. “If they repair the window, or the door breaks, or something, you got to pay.” That’s the harsh truth behind a good deal of field labor: migrant workers pay—with long separations from their families, with exposure to pesticides that compromise their health, with housing that borders on squalid. “I have worked with everything,” said Gonzalo, listing potatoes, chilies, cucumbers, eggplants, squash, and eight seasons’ worth of tobacco. “The truth is, I haven’t liked it. I get sick every time. ... If I had a wish for someone to hear me. ... [I] would tell them to work for a week, or a month—put yourself in my shoes.”





Beds with worn-out mattresses—or none at all—are among the problems workers often confront in employer-provided housing. *Briana Connors / FLOC*

Mattresses that were worn out or infested with bedbugs were a constant problem in many of the camps. While only nine workers reported having bedbugs, one worker having them usually means many others in the camp have them as well. Bedbugs are difficult to eliminate without fumigation, and in several camps where bedbugs were a problem, workers said they were told to use chemical products such as Clorox to treat them. “Right now we have bedbugs. I told the contractor about it and he advised [us to] buy Clorox, so we all bought Clorox, ... but we kill some and more come out,” said Alejandro from Wilson County.

As with other issues, most workers were afraid to report housing problems. Because employers often provide both employment and housing, losing the former usually means losing the latter. “One day I told [the contractor] I wasn’t going to work a Sunday. I didn’t go. And he told me if I wasn’t going to work then I should leave [the housing],” said Aurelio. H-2A regulations require growers to provide free housing, and many non-H-2A growers also provide free housing. Workers who were not being charged rent often said they felt they couldn’t complain about housing conditions because the housing was free. In several camps, workers were paying rent, ranging from \$5 to \$60 per week. Lack of transportation, high housing costs, and an inability to find other housing often keep workers in the camps, despite the poor living conditions there. One worker commented, “It’s not very good but I still have to live here. It’s free.”

Interviews with the various stakeholders revealed an alarming amount of non-compliance with both government regulations as well as international human rights norms regarding housing. Although some housing was up to standard, this study showed that enforcement of housing regulations was extremely lax

and uneven, while the laws being enforced often do not require basic things, such as adequate washing facilities, dividers between toilets, or toilets with plumbing. The right to adequate housing speaks not only to shelter but to “adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure,” and the housing conditions discovered during the interview process failed to comply with the requirement to afford farmworkers with housing that provides “security, peace, and dignity.”

Abel, a 52-year-old farmworker from Chiapas, Mexico, told interviewers he had moved his mattress outside and had been sleeping on the floor because he couldn't stand the fleas. The workers reported the problem to the grower, who gave them a can of Raid, a poison meant to kill roaches, and told them to spray it on their mattresses. He then gave them a can of bug spray and told them to spray it on themselves before bed to keep the bedbugs from biting them at night. In August, 2010, a housing complaint was filed with the NCDOL.

Hector, another worker at the camp whose mattress had fleas, spoke to the NCDOL inspectors when they visited the camp. Hector said that every year NCDOL inspectors come to inspect, but conditions never change. A month after the report was filed, Hector said there were still fleas at the camp. Hector told the interview team that he feels the NCDOL investigator will not respect the confidentiality of the report. “The grower was mad at me. ... He grabbed me by my hands [and] ... he told me, ‘You are the only one who doesn't like working here.’” Hector said he felt uncomfortable while the inspector was interviewing him about the housing because the grower was across the street working in the tobacco barns. “The grower was looking at me. ... He looked angry. At the end of the interview, the grower was walking around. ... He could see me because he was checking the barns.” Hector now worries whether he will have a job next season at that farm. “What I have told [the NCDOL inspector], she is going to tell the grower,” he said. “If it is really confidential, she shouldn't be telling the grower what I told her. ... The truth is we are afraid. The season is five to six months, and we want to take advantage of it and continue to come to this farm every year. ... The grower is going to be mad because of the complaint. ... I think that with what I have said to the inspector, the grower will not hire me again.”

## Child labor

Under the ILO Minimum Age Convention (C138), Article 3 discusses the need to reduce child labor in certain types of work:

The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety, or morals of young persons shall not be less than 18 years.

An ILO recommendation in 1999 further defined what conditions should be considered hazardous to children, including “work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health.”

US law permits children to work longer hours at a younger age in agriculture than in any other occupation. Children can work unlimited hours at the age of 12 if they are with their parents and it is outside of school hours, and a 14-year-old child can work alone for unlimited hours outside of school hours. In any other industry, children under the age of 14 are not permitted to work, and at 14 they are limited to three hours of work a day in certain conditions. At the age of 16, there are no restrictions for children working in agriculture.<sup>70</sup> This law is inconsistent with the law that requires people to be 18 years or older to purchase tobacco products when harvesting tobacco can also be dangerous to one's health as a result of nicotine absorption. A 2010 Human Rights Watch study conducted in the US found that "in agriculture, children typically start working adult hours during the summers, weekends, or after school at age 11 or 12."<sup>71</sup> The Human Rights Watch report also noted an alarmingly high rate of death and injury for young workers. "From 2005 to 2008, 43 children under age 18 died from occupational injuries in crop production—27 percent of all children who were fatally injured at work during this period."<sup>72</sup>

Based on the testimonies from young workers, US law does not adequately protect children from an unhealthy work environment as defined by the ILO. Alexander, in Wayne County, who started working when he was 12, explained

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## FARMWORKER PROFILE

# Gustavo

He won't go back to picking tobacco in the fields of North Carolina, he said. Ever. Barely 18, Gustavo already knows the punishing consequences migrant field laborers endure.

Gustavo was about 11 when he first joined farmworkers under the hot sun between rows of pesticide-soaked plants. "I wanted to have my own money," he said, "and I saw that we needed money around the house, so I needed to ... help out with a couple of bills." Gustavo is not his real name. Fear of retribution silences many farmworkers; to protect him, we have changed his name.

No one asked how old he was the day he called a number—provided by friends—and told the person on the other end of the line he wanted to work. That detail would have gone against the Fair Labor Standards Act, which regulates the use of child labor. School was

in session and the act says kids under the age of 12 can work farm jobs with their parents' consent, but not during school hours. Gustavo was simply told that he would be picked up in a van and ferried to the field. Pay would be weekly. At first, the work wasn't that hard, he said—though it paid only \$2 per hour, minus the deductions the boss took to cover water, transportation, and gas, which amounted to about 2 percent of his earnings. Gustavo's job was to take water to the other workers and to pick up scattered leaves. "But after a time," he said, "it turned into hell." Gustavo was not the youngest child in the fields: he remembers a team of 8-year-olds working the rows with him.

Within weeks of starting, he was laboring at the same grueling task as everybody else—snapping off the new growth to preserve the body of

the tobacco stalks. The days stretched interminably, from 6 a.m. to 7 p.m. "Sometimes my nails ... would be cut. I have bruises all on my ... knees from bending down all day. My skin started—I don't know how to explain it—but it got really itchy and my skin started peeling off," Gustavo said. Aggravated by the field chemicals, cuts would get infected. Two discs in his lower back moved out of alignment. But worse is his breathing: Every time Gustavo exercises now he needs to use an inhaler.

"They said it's something like asthma, but not asthma," said Gustavo, recalling the doctor's diagnosis. "They said it was from some kind of chemical that did that." After a year and a half, Gustavo, who was born in San Antonio, Texas, quit the tobacco fields. A few years later, he was lured back for another six months, but now, he said, he's done for good.

how working in tobacco made him sick. “I thought I was going to faint, it was too hot ... it hurt my stomach and I had a headache. I felt like, when I was walking. ... I would kind of fall. ... It was too hot. And I didn’t drink any water,” he said. While the child labor laws include a long list of the “hazardous conditions” in which children under 18 cannot work, exposure to high heat, pesticides, and nicotine are not on that list. Ironically, an NCDOL publication on housing and field sanitation requirement notes, “A recognized hazard likely to cause death or serious injury or serious physical harm that has become more prevalent in recent years is heat stress. By the very nature of their job, migrants are often exposed to working in extreme temperatures.”

Many of those interviewed who were under age 18 or started working in tobacco before 18 said they had no choice but to start working at a young age to support their family. Although only three workers who participated were younger than 18 at the time of the project, two said they had started working at the age of 12, the other at 14. When asked the age of the youngest worker in the camp, many workers were not sure of the exact ages of young people they worked with, but various camp workers said that they knew of children as young as 14 working in tobacco. Twenty-two people said they knew that they were working with youth under the age of 18.

Many of the youth the team spoke to at the camp talked about their hope to one day be able to continue studying. “More than anything to pay the bills ... you come to get ahead a little. If I had the opportunity to study. ... Yes, I want to go to school,” said Lorenzo, 18, who gave up his dream of studying in his hometown in Guatemala to travel to the US to work to support his family. Human Rights Watch noted that the farmworker dropout rate is four times higher than the national rate.<sup>73</sup> Consistent education is especially difficult for children of migrant families, who travel during the school year and may be trying to balance work and studying. Emily Drakage of the Association of Farmworker Opportunity Programs (AFOP) in North Carolina also told the research team she had seen similar situations. Drakage works with a farmworker youth council and said many of its members are between the ages 13 and 15 and work full time in tobacco. “We’re seeing a huge dropout rate, well over 50 percent,” Drakage said. “We estimate somewhere around 65 percent of farmworker youth never graduate high school. They drop out to be able to help their family, because the income that their parents earn is not enough for the family to survive. So they have to choose between school and work, and your family has to eat and has to pay the bills.”

In interviews, some workers said that they were never asked for any type of identification, including age verification, when they began work. Maria, now 16, started working in tobacco two years ago. Her younger brother, Alexander, is 15 now but has worked in tobacco since he was 12. Maria said it’s easy for children to work because they aren’t asked for identification. “They just look and see if you look old enough to work out there. For example,” she says pointing at her younger cousin, “he’s 12 ... but they’re going to take him out there because he looks old enough to be working.” Interviewers did not find anyone under the age of 18 in any of the H-2A camps visited. Drakage noted that her experience indicated the same.

“[I work] because there are no resources. If you live in Mexico in a situation where you don’t have any resources you come here. Even though you are a minor, you have to work because you want to help your family. Two hundred dollars there, at least it’s something. So even though you’re young, you’d rather work than go back.”

Hugo, farmworker in Nash County, North Carolina

## Freedom of association

The ICCPR, under Article 22, establishes the right to freedom of association wherein it states:

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

In addition, the ILO Convention 98 on the Right to Organize and Collective Bargaining, states in Article 4:

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

“For the first few years, we didn’t have any break besides lunch at noon. But afterwards, with the help of the union, they gave us a break in the morning, the lunch hour, and a break at 3 p.m.”

Miguel, an H-2A worker and union member in Nash County, North Carolina

Although farmworkers are excluded from the US national law that protects the right to organize and collectively petition their employer,<sup>74</sup> international law recognizes this as a right of all workers, regardless of their occupation or legal status. Despite the lack of explicit legal protections of the right to organize, farmworkers in North Carolina can legally unionize and collectively bargain. In 2004 FLOC, NCGA, and Mt. Olive Pickle Company negotiated the first and only collective bargaining agreement (CBA) covering agricultural workers in the southern US; this agreement granted historic labor rights to the majority of the H-2A workers in the state.<sup>75</sup> The contract provides workers with a grievance procedure and protects them from reprisals by employers. It also established a seniority-based bid system, which allows the union to assist workers in the process of recruitment. In 2010, FLOC processed more than 700 complaints and inquiries, ranging from questions regarding wages to concerns about workplace safety.

An NCGA representative said that the union contract has made it easier for workers to solve problems when they arise: “We have a CBA-based grievance system in place so that workers can bring up any issue and have it addressed immediately—if not immediately, not later than seven days after they raise it initially—which is much faster than the legal process in our court systems. I know farmers and farmworkers want to solve disagreements or misunderstandings quickly so that everyone can go back to work with a good feeling and a positive attitude. I believe the NCGA/FLOC grievance procedure is a real-world solution for finding quick resolutions to farmworker problems.” The H-2A members interviewed who are covered by the FLOC union contract say they have also seen conditions improve and problems solved quickly and efficiently because of the contract. When asked how he would deal with a workplace issue, Agustin, a union member since the beginning of the contract, said, “[I would] call the association [NCGA], and if they don’t solve it, the union. One of the two will respond. But since I’m a union member, I always call the union for more information.”



Although more than 6,000 farmworkers in North Carolina have the benefits of the FLOC/NCGA contract, that number represents a small percentage (approximately 6 percent) of the total farmworker population in North Carolina, and farmworkers outside of this agreement continue to face obstacles in organizing and collective bargaining. The team found that general knowledge about unions and their function was low among workers not covered by the FLOC/NCGA agreement. When workers not covered by the CBA were asked whether they had ever heard of a farmworkers' union, only 12 responded yes; four of those were union members. Several workers mentioned that they had heard of or had been a part of a union in their home country.

Undocumented workers interviewed often said their lack of legal status inhibited them from forming or joining a union. "We are undocumented. My immediate need is to work. If we try to organize, they would fire us or deport us. ... They [employers] say if you don't want to work like that, just quit and go away. We only want to make some money and to work." Others said that lack of transportation and few free hours outside of work would prevent them from joining a union or attending union meetings. "I think it's possible for me to become part of a union, I think the only obstacle is transportation and time. ... In Guatemala, I was part of a labor union and I attended meetings. ... We alone

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## FARMWORKER PROFILE

# Luis

The worst part of the eight days it took Luis, 27, to walk through the desert from Mexico back into the US wasn't the hunger he faced, but the thirst. He got lost, and after two days had only enough water to quench his parched throat once a day. For Luis, whose name we have changed to protect his identity, the trek was a reminder of the hardship he had endured as a migrant worker in the sweltering tobacco fields of North Carolina.

"They didn't give us water," he recalled of the two seasons he spent with the tobacco. "You had to be there for many hours without drinking in the middle of all that heat, and then the spraying, plus the smell of tobacco."

Lack of water was just one of the privations Luis and others faced. Except for the half hour allotted at lunch, the workers had no chance to rest during

the long day, which could stretch for 11 or 12 hours. Everyone was expected to work on Saturdays, and overtime pay was unheard of. "A lot of times, many of us were tired and didn't want to go on Saturdays," said Luis. "However, they would tell us, if you don't go to work, don't come back. So one is really forced to work against one's will."

But even in the face of these challenges, the right to join a union to protect their interests is not one farmworkers feel they can easily embrace. "One is not free to do what one wants to do in the United States," said Luis, anticipating how farm bosses might treat him if he were to join a union. "I think they would not give me work, or they would treat me differently because they would know that I'm realizing how badly they are treating me and the rest of the people like me.

They know that one arrives ignorant of all information, and they take advantage of that and exploit us while they can."

Learning his rights and arming himself with information could expose him to another ugly reality: losing his job. "They would fire you ...," said Luis of the retaliation farm bosses could take. Still, when he finally had a chance to meet someone who knew a good deal about a union that represents tobacco farmworkers, his relief was palpable. "I heard that the union defended the workers, that you can talk with them, that they help you defend your rights," said Luis to the union expert. "But I never knew where you were or seen anybody who would tell me about my rights. So I am very glad you have come here to help the community."

cannot negotiate effectively with the [grower] or the contractor. We need the support of a union,” said one worker. Overall, workers in only 40 of the interviews—less than half—said they felt free to join a union.

Apart from H-2A workers covered by the union contract, only six workers said they thought they could collectively bargain. Those who said they did not think they could identified their legal status and fear of being fired or punished as barriers. “I would say [that] because we don’t have papers, he would fire us. He probably wouldn’t give us a chance to negotiate, he would just fire us,” said Severo, a worker from Nash County. Tomas from Johnston County commented, “Since the people here are not here legally, they cannot stand up. ... They will take away our jobs and we will leave the camp.” When asked if they felt they have the right to strike, 34 workers said they knew what a strike was, and 21 of those workers said they felt that they have the right to strike. Still, many expressed fear of reprisals. When asked what would happen if workers went on strike, one worker not covered by the union contract replied, “For him [the boss], it’s very easy to say, ‘If they don’t want to work for this wage, leave them, there are more people that want to do it.’”

Both legislatively and in practice, North Carolina farmworkers’ right to organize and collectively bargain is not protected. Agricultural workers are excluded from legislation that protects them when they collaborate to petition their employer, and lack of legal status, high turnover, and low job security creates a fear of speaking up about workplace conditions. These factors have led to a labor system where negotiation over working conditions and collective agreements are unheard of for the majority of the work force.



## 8. Access to rights and legal remedies

Throughout the interviews, the research team found that workers did not have adequate information about their rights or where to obtain legal resources. For example, although laws are in place to protect workers from nicotine and pesticide exposure, ensure adequate field sanitation facilities, and prevent injuries, most workers are uninformed about their rights under these laws or how and where to find this type of information. According to workers, there is also a lack of enforcement of these laws, and in general the workers do not have adequate access to legal remedies and are often too afraid to use them. Not a single worker interviewed knew how to file a wage complaint with the USDOL or a pesticide complaint with the NCDOA. Rather than contacting government agencies, many workers said their only resource if there is a problem is the labor contractor or grower.

When asked whom they contact about a work-related problem, 29 said the contractor or field manager, 12 said the grower, and three said the NCGA. Two workers said they would contact the police, five said they would call a lawyer, seven said they would call FLOC, five said they would leave the camp and not complain, one worker said he did not feel he could complain, and 21 said they were unsure of who to call. While most workers said they would talk to their employer about problems, several also noted that problems often go unresolved. “If there is a problem with a grower or contractor, it’s better to just leave the camp,” said Domingo, a worker in Nash County.

When asked who they talk to about housing problems, 33—or about 38 percent—said the grower or the contractor, three said they would call the police, and 15 said they were not sure who to call. One worker said the grower charges them when he makes repairs. Several workers noted that they tell the grower or contractor about problems, but that they rarely or never make any repairs; some noted they see more results when they talk to the grower rather than the contractor.

“We don’t have access to information about our rights.”

Francisco, farmworker in Wilson County, North Carolina

The H-2A workers interviewed had more access to these types of resources but were often still afraid to voice complaints about conditions out of fear that the grower would not offer them employment the following year.<sup>76</sup> All three H-2A workers covered under the FLOC/NCGA union contract expressed greater confidence that they could speak openly about complaints without fear of retaliation. Marcos from Sampson County, who has been a union member since the contract was signed, in 2004, said, “The union, the Growers Association [NCGA], and others have told us that if the grower does not protect us, we have to talk to the association. The union also supports us. They give us fliers and tell us who to call and when to call to find out about our rights. We aren’t afraid anymore. Before we were afraid of everything.”

## US Department of Labor

One of the team’s interviewers met with Richard Blaylock and Mark Lara from the USDOL Wage and Hour Division (WHD), which is responsible mainly for investigating complaints regarding the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act—such as wages, overtime pay, recordkeeping, child labor laws, and labor contractor registration. WHD also works jointly with the NCDOL on complaints regarding housing violations. Investigations are based on complaints received as well as special directed programs aimed at identifying problems in industries where there are particular concerns with compliance. Lara commented that a directed program was implemented in the tobacco industry seven or eight years ago but said that the results of the program are confidential internal information.

Blaylock told interviewers that when investigators visit farms during an investigation, they do not ask about the workers’ legal status, and he was unsure of how many undocumented workers versus H-2A workers there are in the state. He said status does not matter when it comes to workers’ rights regarding wages. “The fact that you are here and the fact that you worked [means] you are due the same labor law privileges as anybody else.”

Blaylock said that he has seen that although most agricultural employers want to comply with the law, WHD has “a bit of a struggle with farm labor crew leaders.” WHD stresses to growers the importance of checking a crew leaders’ registration and reminds them that they, too, are responsible for making sure the crew leader is following the law. “I tell them that ‘You’re responsible. When you hire a person that’s going to provide you with recruiting, furnishing, soliciting, hiring ... housing for a fee, then you must ask for that certification card,’” he said. Blaylock also noted that cracking down on unlicensed contractors is one of WHD’s focuses, mainly because when WHD receives complaints from workers, “there’s usually an FLC (farm labor contractor) in the mix, if not causing the problem, then contributing to it.”

Regarding child labor, Lara said it is the employer's responsibility to verify and maintain identification for anyone under the age of 18, and that WHD checks these records during investigations. Blaylock said that he has not seen a single case of child labor in tobacco in the four years he has been in his current position.

The team found that a language barrier, fear of reprisals, and lack of access to the complaint procedure prevented workers from filing complaints. None of the workers reported knowing how to contact the NCDOL with housing complaints. Representatives from Legal Aid of North Carolina and the NCJC, which often help workers through the complaint process, both noted the logistical barriers workers faced in filing a complaint on their own. "There is Spanish-speaking capacity at the NCDOL division that deals with migrant housing, but I don't think their number is very well publicized and there is nobody there after hours," commented Carol Brooke of the NCJC. "And if a farmworker didn't have a cell phone where they could call back, or if they didn't have a phone at their camp where they could call back, yes, I think it would be difficult without either legal representation or an advocate."

"The fact that you are here and the fact that you worked [means] you are due the same labor law privileges as anybody else."

Richard Blaylock, district director,  
USDOL Wage and Hour Division

## North Carolina Department of Agriculture

In a written response to the research team's interview questions, the NCDOA noted that the Structural Pest Control and Pesticides Division is continually working in several ways to educate workers and growers on the WPS and pesticide dangers. These approaches include distributing information through other advocacy groups and outreach workers, health centers, the NCGA, local media, and faith-based organizations. Pesticide complaints can be made by mail, phone, or email, and the department is currently working to expand assistance to callers after hours. NCDOA noted that the most common WPS violations reported are lack of pesticide safety training, possible exposure to pesticides, and failure to follow personal protective equipment requirements.

While the Pesticides Division is making efforts to increase worker access to the complaint procedure, several barriers remain that prevent workers from filing complaints. As noted earlier, many workers say they will not complain to any person or agency for fear of retaliation. The North Carolina Public Records Act allows all information gathered during an investigation to be made public after the investigation is completed. Workers' lack of access to telephones is also an obstacle to filing a complaint, and no workers that the team spoke with had any knowledge of a phone number for contacting the NCDOA. While NCDOA noted that it is working to increase its bilingual staff, the Pesticides Division currently employs just two staff who are bilingual, and only one inspector is fluent in Spanish (two others are "conversational").

Carol Brooke from the NCJC said she has found the complaint procedure to be very unusable for farmworkers and largely ineffective. "They won't interview a worker who won't give his or her name. So you can call and report something, but you can't be interviewed and have all of your knowledge included in what

they are doing. One of the huge problems [is] the fact that the pesticide section is within the Department of Agriculture, because the bias is going to be toward agriculture and growers. The fines are low, and they're not much of a deterrent." The ineffectiveness of the current complaint system is evidenced by the small number of investigations carried out each year. According to the NCDOA, between 2007 and 2010, only 18 investigations were done for WPS complaints.

While government agencies interviewed have made efforts to reach out to the farmworker community, their efforts often take place without a real understanding of the challenges many farmworkers, particularly undocumented farmworkers, are facing. Government enforcement may catch a handful of bad actors each season, but it has not had much success in engaging and educating workers or creating widespread compliance. As a result, workers are still facing many of the same violations of employment rights they have in the past.

## 9. Grower interviews and perspectives

The research team spoke with three tobacco growers and three of the largest organizations representing North Carolina growers about their views on the tobacco industry and the situation of tobacco farmers in North Carolina. For many growers, tobacco harvesting has been part of their family for several generations and their livelihood depends on the success of their crop. “I’ve been farming for 30 years,” one Wilson County grower told the research team. Unfortunately, changes in the industry in the past decade have made it impossible for many growers to survive on the income from their tobacco. One grower said he had been growing tobacco since 1970, but the 2010 season would be his last. “I’m not making enough money,” he said. “Why am I going to keep working if I’m not going to make any money?”

Several growers described a decrease in prices paid per pound of tobacco as one of the main challenges to keeping the farm going. Growers noted the 2004 buyout (see section 4 for more detail) as the time when prices began to fall. “A buyout is started by a company, and they’re going to get their money back. Just to give you an example, [in] 2010 our crop is going to bring us half a million dollars less than it did in 2009,” said a grower who sells strictly to Universal. “The same bale, where in ’09 it brought, let’s say \$1.75 or \$1.80, will bring \$1.65 or \$1.70 this year. Same tobacco.”

Growers described an economic situation in which the profit is no longer enough to cover the rising production costs.<sup>77</sup> A grower’s input costs include everything from land, fertilizer, and chemicals to labor and machinery for the harvest. Some said the 2010 season was more expensive than normal because of bad weather. “Our input costs have gone up. ... It costs a lot more to grow this crop than it did last year, because weather conditions were dry. We irrigated, and it costs a lot of money to irrigate. A lot more hand labor [is] involved because it was an erratic crop. So our input costs were more, and what we got was less,” commented one grower. Growers also noted that large farms have been better able than small farms to survive the changes and absorb cost increases. The North Carolina Farm Bureau estimates that approximately 50 percent of tobacco growers stopped growing after the buyout; smaller growers were forced out, and the 2,000 to 3,000 remaining farms got larger.<sup>78</sup>

“My daddy farms, my granddaddy, we’re basically a third-generation, maybe fourth-generation [farm]. We’ve been growing tobacco all our lives, it’s always been the bread and butter, you might say. We’ve been able to diversify into other crops ... but basically tobacco is what [allows us to survive].”

Grower, Wilson County, North Carolina



Laboring in tobacco fields can be grueling and dangerous, yet many workers report being paid less than the federal minimum wage of \$7.25 an hour. *Briana Connors / FLOC*



Growing tobacco is an extremely risky investment. Growers said that weather, prices, quality, and contracts all change from year to year and make tobacco an unpredictable and often nerve-wracking crop to grow. For a family who depends on tobacco, each season is a gamble, and one bad season can put a serious strain on the farm. “The risk-to-reward ratio is badly out of balance. ... The grower is taking all the risk,” said one grower who has been growing tobacco for more than three decades. He said many growers risk a great deal on each year’s crop, and transitioning to another crop can be very difficult. “It costs a tremendous amount of money to grow an acre of tobacco, \$4,000 to \$5,000 if you have a great year production-wise. ... Growers are mortgaging their farms to ... try to keep going because that’s all they know.” Many growers feel they are not being paid a fair price for their tobacco.<sup>79</sup> One grower told interviewers, “Growers are not being paid enough to sustain themselves. ... We are living on the equity of our farms and our equipment, and that is not sustainable. At some point you’ve got to repair the tractor or go buy or replace the tractor, go buy a used one or a new one.”

“The risk-to-reward ratio is badly out of balance. ... The grower is taking all the risk.”

Grower, Sampson County, North Carolina

Weather is a key factor in the amount and quality of tobacco a grower can produce, and growers expressed frustration that, apart from government crop insurance—which only covers catastrophic damage owing to severe weather—there is little support from companies or the government if weather affects their crop. Because tobacco prices are based on the grade (quality) of tobacco, even if weather doesn’t wipe out the entire crop, it can affect the grade of tobacco growers are able to grow. Growers said it is often difficult to produce tobacco that meets the standards of their grades.

An educational book that RAFI-USA designed to help growers evaluate company contracts states that “[a] relatively small shift in leaf grade can produce a significant decrease (or increase) in final pay. ... Many farmers believe that any grower who raises a grievance [about grading] is likely not to get their contract renewed.”<sup>80</sup>

The unpredictability of contracts with companies also frustrates many growers and makes it difficult to plan ahead for each year’s crop.<sup>81</sup> Growers said that in the past few years many contracts have been cut or offered at a lower price. One grower talked about how difficult it is to plan his crop when he’s not sure whether he will have a contract or what the prices will be until it’s almost time to begin planting. “If you want to plant your tobacco in a reasonable window to be successful, that means late April. ... You’ve got to seed grain houses in mid-February, and so if you don’t get contracts until late to mid-January or February it puts you under a tremendous amount of pressure. You already have to buy a bag of seed, fill up the propane tank at the grain house, and you’ve got to be spending money before you even know whether you’re going to be growing tobacco or not,” the grower said.

As many companies were cutting grower contracts, some were offering “secondary contracts” as a way to buy tobacco at a lower price. “A lot of growers weren’t able to get contracts,” one grower told the interviewer. “It was the beginning of the year and ... a lot of [contracts] were cut way back. So companies came out with these so-called secondary contracts at a reduced price. Well, it costs just as much to produce that tobacco that’s sold in the [secondary] contract as it does the original contract. ... People were desperate.”

The research team asked growers if they felt they had any ability to influence the prices they were paid for tobacco and whether they had any interaction with the company in this regard. North Carolina Farm Bureau President Larry Wooten said, “It’s not a seller’s market, it’s a buyer’s market. If you say, ‘I want higher prices,’ they will say, ‘We don’t need you anymore, you don’t get a contract.’” Other growers also expressed fear of complaining to the company about prices. A grower in Johnston County said the companies know growers will sell their tobacco at whatever price is offered because they have no other option and nowhere else to sell it. “They’re going to say, ‘Well, what are you going to do with [the tobacco]?,’” said the grower. When asked what would happen if growers came together collectively to negotiate better prices with the tobacco companies, he replied, “Big companies will say, ‘Well, keep it. We’ll just go overseas and buy it. ...’ They’d probably tell you to ‘keep it and smoke it. We’ll go to South America and buy all we want.’”

The RAFI-USA report confirms Wooten’s statements, stating that “many farmers [interviewed] fear contracting companies will retaliate if growers join together to negotiate contracts or grievance procedures.” The RAFI-USA report notes that the “Agricultural Fair Practices Act addresses this issue in a limited way. ... Federal law gives the growers the right to organize and join associations to negotiate contract terms. On the other [hand], the law does not require the companies to negotiate with such farmer associations.”<sup>82</sup>



## Labor challenges

Using a largely undocumented work force often poses many challenges for growers.<sup>83</sup> Wooten said that outside of the H-2A program, one of the biggest challenges growers face with labor is “having workers show up with fraudulent documentation that you can’t challenge.” He says the whole federal system is frustrating for the employer, and many growers “are tired of looking over their shoulder all the time, whether there will be Immigration and Customs Enforcement officials on their farm or terrorizing them for hiring undocumented workers.”

Growers interviewed also expressed concern that an undocumented work force is less reliable, as they travel between jobs and harvests and are not tied to a visa or contract. “I make the point frequently that everything that a grower does all year, 90 percent of it goes to somebody else,” said one grower. “The last 10 percent of the crop is the grower’s part. He wants to know he’s going to have a work force there to help him get out that last 10 percent because that’s his. That’s what he’s going to live on, that’s what he’s going to start farming again next year on—and so you want to know if you are going to pour all this money into these crops, that if you do everything you are supposed to, you are going to have the labor there till the end of the year to get that crop out of the field. ... When you hire, you know, a crew leader, an undocumented worker, you are running the risk they are going to leave you before you finish, you run the risk they’re going to leave when you need them the most.”

The two non-H-2A growers interviewed were both using crew leaders to manage the labor, but the H-2A grower said he would never use one. “We stay away from them,” he said. “If a man works he needs to get a check. You don’t need to give the contractor \$35,000 and think that he’s going to give the money to his workers. Because he will not do it. He’ll charge them transportation, anything he can get by with.”

While using an undocumented work force is risky and has many challenges, it is often easier and cheaper for growers than using the H-2A program. The NCGA, the largest H-2A user in the country, said cost is the leading factor that keeps growers from using the program. Higher wages, transportation costs, mandatory inspection and approval for housing, and workers’ compensation are all high costs of the program. “[Some] figure if they can hire and get by at a lower cost, that’s more money in their pocket. ... It’s about survival, and we don’t have a level playing field between the two sources of labor.”

The NCGA and NCAg both noted that enforcement of laws regarding housing or working conditions for migrant workers is too heavily focused on H-2A growers, putting higher demands on H-2A growers than those using other sources of labor. “[As] an H-2A [grower], there is a high level of government scrutiny; you are on the radar screen. You have to get your housing inspected ... [and] you are more likely to have a visit from a Wage and Hour

investigator to see if you are doing your recordkeeping and issuing wage statements and [if] you are paying minimum wages,” an NCGA representative said.

Erica Peterson from NCAg noted that an extensive and complicated maze of paperwork and lack of assistance from the government prevents many growers from using H-2A. “It’s very adversarial to the farmer,” said Peterson. She also noted that the H-2A wage rate is constantly changing, making it difficult for growers to plan ahead for labor costs. At a certain point, she said, the wage demand is too high, and growers will not be able to afford to use H-2A.

## Housing and working conditions

Growers and representatives had a wide array of perspectives on living and working conditions of farmworkers and how to improve them. One grower told interviewers he feels like growers are often targeted by the media and that bad housing conditions are exaggerated: “The *News & Observer* and WRAL<sup>84</sup> want to take a picture of a slummy migrant camp, and there probably are a couple slummy ones, but they were not slummy when people moved in there, because it was inspected and passed.” He said he feels that workers often don’t properly take care of the housing, and he would rather pay them more and have them be responsible for their own housing.

Another grower interviewed said he delegates most responsibility regarding housing and managing workers to a contractor. “We’ve had the same crew leader for 15 years, and he comes back every year,” he said. He said the crew leader is responsible for hiring and firing, paying, housing, and overseeing all fieldwork, as well as training workers on health and safety issues. He told the interviewer that workers are provided with protective equipment, are trained on safety issues, and haven’t had any serious health issues, and that housing is inspected and kept up to code. The interview team surveyed the conditions of the camp and interviewed many of the workers and found that the actual situation was very different from the grower’s description, indicating a discrepancy between the information the grower is getting from the contractor and what is happening at the camp and in the fields. The housing was overcrowded, at least six workers had no mattresses, and several workers at the camp described abusive working conditions in the field. The team asked the grower how much the workers were being paid and he was unsure. He told interviewers that workers on the farm talk to the contractor if there are problems, and that he felt the housing was adequate. “All you have to do is go to Mexico. I mean, our work camp is probably average to above-average for anyone you see. But it’s five stars compared to what they live in in Mexico,” he said.

One H-2A grower said he has had the same group of workers for approximately 25 years. He pays the workers who live at the labor camp to handle cleaning and upkeep. Although the minimum wage was only \$7.25 in this particular county, the grower said he pays all his workers more. “Seven

dollars and 25 cents I felt was too low,” he said. “We’re not going to work anyone for \$7.25. We feel like somewhere around \$8.00 or \$8.25 is fair.” When asked about substandard living and working conditions on other farms, he replied, “There are always bad apples. ... They [contractors] need to be prosecuted. They don’t need to be slapped on the wrist and then let them go in another state.” He noted that although he doesn’t know of any non-H-2A growers in the area, he thought non-H-2A housing was generally in worse condition. “I guess sometimes I see camps that are a little bit ... they need cleaning up a little bit,” he said.

The NCGA said improving housing conditions requires equal enforcement but added that statutory language is inadequate. Both NCAG and NCGA noted that grower education is key in improving housing conditions. “It’s not necessarily that they’re evading compliance, they don’t know,” said an NCGA representative. “We’ve got great resources through North Carolina State [University], the Cooperative Extension Service, but they don’t do training programs on housing inspections and labor laws. ... The key to it is education and enforcement.” Peterson noted that complicated housing laws, such as specifications for window measurements, make it difficult for growers to know whether they are in compliance.

Although many disagree over how to best ensure that labor rights are respected throughout the tobacco industry, it remains clear that growers face an increasingly volatile and unpredictable economic situation, which impacts their ability to provide what is necessary for workers.

# 10. Tobacco product manufacturers' perspectives

The concept of corporate social responsibility has prompted many companies, including those that produce tobacco products, to adopt codes of conduct or standards. These standards generally articulate broad principles and practices that companies espouse to adhere to in dealing with the range of stakeholders, including employees and suppliers, who are interconnected with and affected by the conduct of their business. Many tobacco companies have standards to which their suppliers must adhere. As part of this study, the research team requested interviews with 10 large tobacco companies that purchase tobacco grown in North Carolina. Out of those 10, Philip Morris USA (PM USA) and Philip Morris International (PMI, a separate company) agreed to be interviewed.

In their interviews, representatives of PM USA and PMI spoke about how their policies were developed and are being enforced. Both companies have well-developed GAP standards and reported that they interact directly with growers to educate them regarding compliance with their standards as well as with state and federal laws.

## Altria Client Services on behalf of PM USA

PM USA developed its GAP program in 2004. "Our evolution has been toward what we hope is a total farm management approach that encompasses environment practices, labor management, and tobacco production," said Paige Magness, director of corporate responsibility for Altria Client Services. The company brought together growers, extension agents, and tobacco specialists to develop its GAP policy, which lays out standards on a variety of labor issues, including housing, worker protection, and child labor. Farmworkers, however, were not included in the development of these standards. According to Magness, PM USA works with growers through the

"We recognize that human rights within our supply chain are an area of increasing focus for stakeholders."

Spokesperson for Philip Morris USA

distribution of a GAP handbook and other informational materials, annual growers meetings, farm visits, and community-based grower representatives to ensure that all growers understand and follow the GAP principles.

In 2010, PM USA began requiring all domestic contracted growers to certify in writing that their tobacco is being produced in accordance with specific GAP standards. To evaluate compliance with contractual requirements and GAP standards, PM USA is conducting an in-house assessment of all contract farms it purchases from and has also contracted with an independent social responsibility audit firm to conduct a similar assessment. The company expects to have evaluated all contract farms by mid-2011; results from the assessment were not available at the time of the company's interview.

PM USA's assessment includes questions on work force characteristics, farmworker health and safety, child labor, forced labor, and housing. Categories are evaluated through a series of 53 questions, some of which require visual inspection.

Unfortunately, the assessment does not include the input of any workers on the farm. Although all important areas of concern regarding farmworkers are included, and many important questions are asked, the assessment fails to identify problems from the workers' perspective. PM USA also noted that it does not include labor contractors in the process unless they are considered a farm manager. Without these two key players providing input, it can be very difficult to evaluate the actual working conditions on a farm. For example, a visual inspection to assess whether workers appear to be free to leave their job would not reveal situations in which a contractor has threatened or intimidated workers. The presence of safety posters, training materials, and protective equipment does not mean that all workers have been properly trained or are being provided with required protective clothing, especially when these duties may be delegated to a contractor. Moreover, growers, whose primary interest is in securing renewal of their contracts with the tobacco companies, have a vested interest in painting the most favorable picture to the company's inspectors.

Working conditions in the field are particularly difficult to document unless workers are asked to comment. Things like breaks, working hours, consistently available water, bathrooms, hand-washing facilities, and workers' treatment in the fields simply cannot be accurately evaluated through a grower interview and inspections done with advance notice. The housing inspection only requires that the grower provide as proof that housing was inspected and certified by the NCDOL in the past 12 months. A company representative said that PM USA relies on the NCDOL to ensure that growers are in compliance with housing laws.

PM USA representatives said they have not assessed whether or not workers on their contract farms in North Carolina are undocumented. They pointed to the GAP assessment tool, which asks growers to disclose to what extent they use each source of labor noted, and said that is all the information they gather. They also noted that they do not encourage growers to use the H-2A program, but said, "We expect that they're using legal labor."

With respect to child labor, the grower's documents may be reviewed, but there is, again, no verification with workers as to whether or not minors are working on the farm. In its contracts with growers, PM USA specifies that children younger than 18 should not be performing hazardous work, an improvement on US law, which sets the limit at age 16. However, the company uses the USDOL's too-narrow definition of "hazardous work," which fails to include exposures to the extreme heat, nicotine, and pesticides that produce illness and fatalities among tobacco workers. Under this definition of hazards, children as young as 12 can still legally work on the farm.

While the GAP does not specifically mention the right to organize, PM USA's Supplier Code of Conduct, put into place in late 2010, states, "We encourage Suppliers to respect legal rights of employees to join or not to join any lawful association without fear of reprisal or intimidation." When asked why suppliers are only "encouraged" to comply with this legal right rather than "required," PM USA said it is a new issue that is being raised with suppliers and is meant to be something suppliers should gradually work toward. Magness also noted that PM USA is aware of the FLOC/NCGA contract in North Carolina, though the company is unaware of how many farms under direct contract are members of NCGA. The company has been in dialogue with FLOC to better understand conditions on farms.

When asked why farmworkers were not included in the assessment process, the company responded that the process is new and that it made a decision to start it by opening up a dialogue with the growers. "Our approach here is to understand what are the actual conditions as it relates to compliance with those standards. We feel the first step in this whole process is to really get the facts," said Jeanette Hubbard, vice president, Leaf for Altria Client Services. The company said it is looking at new ways to more carefully monitor the situation with labor contractors. Instead of simply relying on government enforcement of contractor regulations, the company said, "We have added a term in our contract that requires our growers to ensure, if they choose to use a labor contractor, that that labor contractor is certified in their state, meaning has a license to operate in the state."

Finally, on the question of pricing of tobacco, PM USA declined to comment, noting that pricing is highly competitive. Hubbard did say, however, that many growers have said that tobacco is the "most profitable crop they grow in their portfolio."

## Philip Morris International

PMI has a GAP program and code of conduct similar to PM USA's. PMI said the company launched its GAP in 2002 as an expansion of other programs it already had in place regarding farm operations. Like Altria, PMI did not include farmworkers in the development of its GAP program. While PMI's GAP and code of conduct standards are less detailed than Altria's regard-



ing housing and field conditions, they lay out strict guidelines prohibiting child and forced labor. The contract also requires growers to comply with all federal and state laws regarding immigration and labor.

PMI, unlike Altria, does not have a yearly auditing program to monitor compliance with its standards. However, PMI Director of Agricultural Programs Lee Ryan noted that PMI does visit farms each year for inspection of certain portions of GAP requirements. “For example, we’d be looking specifically at the technical things, like the curing barn structure. When we do an assessment, it’s primarily just a random, let’s have a look at where the farms are, and if we happen to be in Raleigh we’re going to choose farms that are within a two- to three-hour drive.” The company also uses agricultural technicians, who have a direct relationship with farmers, to provide feedback and help monitor compliance. There is also a system for self-assessments by suppliers, as well as formal assessments done by a team from PMI.

PMI relies on the government to enforce legal standards regarding housing, but as stronger policies are being developed, housing is one issue the company said it will take into consideration. On the right to organize, PMI said that it is not currently noted as a standard in the GAP program. PMI was unaware if any workers on its North Carolina contract farms were currently under a union contract. “The company’s position [is] that we respect freedom of association and that we would expect people in our supply chain to do likewise,” said PMI Vice President of Regulatory Policy Till Olbrich.

Ryan acknowledged that current standards are not enough. The company is working with Verité, an independent labor rights training and auditing firm, to evaluate and improve its GAP standards. Olbrich said, “They [are working] with us to develop a new addition to the GAP, which would cover elements like forced labor, treatment of migrant labor, work hours, freedom of association, [and] certain fair labor principles. But then, importantly, also the training materials that would have to go with it, so that those new components of GAP would not just be some paper exercise, but we can actually then educate our own internal people, our suppliers, the farmer, and reach out to the workers to make change happen. ... [Verité is] a critical partner in developing the external monitoring system.”

As with Altria at PM USA, PMI’s inspectors do not consult with farmworkers during farm visits and assessments, though the company said that the Verite assessment process does. PMI said this is one area it is committed to improving. “To be frank with you,” Ryan told the team’s interviewer, “that’s one of the areas that we’ve realized, probably too late, but recently, that our focus has for the most part been with the farmers.” Olbrich added: “Because our contracts are with the farmers or in many cases even just the supplier who then, in turn, has to contract with the farmers, traditionally we have not had the practice of systematically reaching out to the labor on the farm. That has to change.” The company also said it realizes that speaking to labor contractors is an important part of evaluating a farm’s conditions, though PMI doesn’t currently do that.

Olbrich spoke openly in the interview about challenges that PMI has had with labor practices on contract farms in the past, particularly with child labor. In 2010 serious violations of child labor laws occurring on PMI contract farms in Kazakhstan were publicly brought to the company's attention. This experience, along with a similar one in Malawi, has led the company to take a hard look at its external labor practices and the need to include wages and working and living conditions as part of any company standards. Olbrich stressed the importance of having a process accessible to and realistic for workers to use when there are problems. "I believe that if you have a grievance mechanism that allows workers to voice their concerns, someplace that they go to, issues are going to surface ... and will allow us to address them."

When asked about pricing, Ryan said PMI develops a price that it considers to be fair based on a cost calculation of input costs, labor costs, machinery, and profit, and also consults with some growers to get an idea of their production costs. PMI acknowledged that prices did decrease after the buyout, but said that the company makes adjustments as needed.

Ryan noted that PMI does not specifically encourage growers to use H-2A, but that many already do. He said that PMI does not have much information on the makeup of the work force outside of H-2A, but said, "We need to improve our understanding of the situation, the mechanism, and process around farm labor."

### Lack of worker participation

Although both companies have made commendable efforts in developing their standards and in building procedures for evaluating and enforcing compliance, troubling omissions remain. The main problem with the current standards and enforcement methods of both PM USA and PMI is the lack of worker participation. There is a gap between the way companies perceive and monitor what is happening on many farms and what the reality is for workers. All participants in the supply chain, such as farmworkers and labor contractors, need to be included in any assessment process and in developing a grievance mechanism if the companies are to have an accurate view of the conditions. Nevertheless, both companies' inclination to talk with stakeholders and share information about how their current efforts are evolving shows that both are willing to admit shortcomings in current policies and to work toward improving labor issues throughout the supply chain. For these reasons, one of the major recommendations of this report is that all tobacco companies take steps to address and rectify the lack of outreach to a key stakeholder in the tobacco supply chain: the farmworkers.

# 11. Conclusions and recommendations

The tobacco agricultural system in North Carolina subjects thousands of farmworkers to conditions that no human being should have to endure, depriving these workers of some of the most basic human rights—including the right to use their voices to protest their abuses and the right to participate in determining the conditions of their own lives. The silence of these workers is enforced not by guns, but by fear. The time has come for all stakeholders in the tobacco supply chain to come together to address these abuses and take the lead in solving the most serious problems in the agriculture system.

Earlier strategies for improving migrant workers' conditions focused on creating a better legal framework to be enforced by federal and state agencies. However, two fundamental problems limit the effectiveness of government action as the primary means of bringing about the broad industry reforms that are needed now. First, the overwhelming majority of farmworkers are undocumented foreign nationals who fear seeking assistance because of their status, even if they know that help is available to them through government agencies. Second, regulations focus on the relationship between employer and worker, which ignores the complicity and responsibility of the drivers of the conditions in the industry, namely the tobacco product manufacturers, who are located at the top of the value chain. Legislation, regulation, and enforcement clearly have responsibility in eradicating the violations, but the state of fear in the fields will be rectified only when the broad structural imbalance in the industry is addressed and when those who have the power to make changes are held accountable for their complicity in the abuses.

Rather than shedding responsibility to other parties, tobacco companies must take a lead role in ending the human rights abuses in the industry. To ensure a fair and equitable system throughout the tobacco supply chain in North Carolina, FLOC and Oxfam America make the following recommendations to tobacco product manufacturers, the US federal government, and the North Carolina state government.

## Tobacco product manufacturers

- **Guarantee that supply chains, from top to bottom, comply with international labor and human rights standards** by creating mechanisms to ensure compliance. Manufacturers should **include farmworkers as full stakeholders and give them the ability to fully and freely participate in the decisions that affect their work and lives**. To make this participation possible, manufacturers must guarantee these workers the right to freedom of association and the right to collectively bargain with their employers.
- **Create an industry council comprising growers, tobacco product manufacturing company representatives, and workers and their representatives** empowered to set, review, assess, and enforce standards, based on best practices, that meet or exceed current government regulations, as necessary, to protect farmworkers' ability to earn a living wage, protect them from industrial and chemical hazards associated with farm labor, and guarantee decent farm labor camp living conditions. This industry council must include a dispute resolution mechanism allowing farmworkers redress for violations of the policies and procedures adopted by the council. *Importantly, small producers and growers will realize an advantage from the formation of a council and should not look at this as a restrictive or punitive effort to squeeze their profits simply for the benefit of their farm laborers; growers' participation in a council will give them the voice and the means to negotiate prices with manufacturers that adequately cover the costs of providing decent and safe working and living conditions.*
- **Be as strict with growers' compliance with codes prohibiting the exploitation of workers as with product quality standards.**
- **Encourage growers to employ foreign workers through the H-2A visa program.** There are many problems within the H-2A visa program, and simply increasing its use will not eliminate abuses. However, in combination with other recommendations, such as protecting the right to freedom of association and encouraging collective bargaining within the H-2A program, increased participation in the program will reduce the use of undocumented workers and ensure a level playing field in the industry while reducing the vulnerability of farmworkers.
- **Agree to reimburse growers for the costs associated with employing legally authorized workers.** Workers with valid H-2A visas represent, conservatively, less than 9 percent of North Carolina's fieldworkers. This low percentage reflects the fact that the growers — who admit they cannot fill these jobs either with American citizens or with properly documented workers, and who then apply to the federal government for the right to bring in workers with H-2A visas — are at a serious competitive disadvantage.
- **Invest in the supply chain.** Where serious improvements and investments are needed, tobacco product manufacturers must act to create greater stability in the industry. In addition to higher prices for tobacco, such stability can be achieved **through:**

- » Making multiyear contracts with growers
- » Setting contracts earlier in the season
- » Creating fair pricing formulas with more input from growers
- **Build policies collaboratively with farmworkers through their own organizations.** GAP program standards and other similar policies developed by various tobacco companies did not allow for input from farmworkers; this omission has created a discrepancy between policies on paper and realities on the ground. Sending a company representative to a camp periodically is not sufficient for finding and rooting out problems. Manufacturers must work closely with local worker-based organizations to identify and correct problems.

## US federal government

- **Pass the Agricultural Job Opportunities, Benefits, and Security Act (AgJOBS),** which would give eligible undocumented farmworkers the chance to earn legal immigration status, granting them the economic and democratic freedoms that most Americans enjoy and allowing them to play a critical role in reducing the abuses in agriculture. Immigration enforcement should be designed to reinforce labor law protections; special sanctions should apply to employers that exploit undocumented workers.
- **Act to bring the industry's hiring practices into the H-2A program.** Under the current system, the majority of growers and contractors are bypassing the federal H-2A visa system to illegally secure their foreign workers through recruiters and "coyotes," who are often part of criminal enterprises. Government should provide assistance to growers in their application for H-2A workers and create other incentives to encourage growers to use the program.
- **Provide legal protections for the right of association in agriculture.** History demonstrates that collective bargaining is one of the most effective ways to improve workers' conditions and end abuses. It enables workers to make their voices heard and gives growers a more productive and stable work force while at the same time producing changes that address the problems and realities that confront both parties. Thus, government should reform labor laws to provide legal protections for union organizing and should enact policies that encourage collective bargaining.

## North Carolina state government

- **Concentrate on the most serious problem areas: non-H-2A farms, farms with a history of problems, and farms that have not yet been inspected.** The current emphasis on H-2A farms is not a wise use of limited enforcement resources because these farms generally have fewer violations owing to other protections that exist under H-2A and collective bargaining agreements.



# Appendix I:

## National and state legal protections for farmworkers

### Federal law

#### **Migrant and Seasonal Agricultural Worker Protection Act**

Enacted by Congress in 1983 and enforced by the Wage and Hour Division (WHD) of the US Department of Labor (USDOL), the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) applies exclusively to migrant and seasonal farmworkers and provides broad protections for these workers' rights. It establishes detailed requirements for entities, including agricultural employers and farm labor contractors, who employ agricultural workers.<sup>85</sup> In keeping with its intent to maximize coverage and to stem unscrupulous activity, the AWPA provides a broad definition of employers.<sup>86</sup>

AWPA creates a number of responsibilities for labor contractors, requiring them to register regularly with the USDOL and to be licensed, not only as a contractor but also to drive vehicles, operate housing, and provide transportation for workers.<sup>87</sup> AWPA holds most agricultural employers jointly liable for any violations by the contractor and gives growers an affirmative duty to require the contractor to follow its requirements.

The AWPA prohibits all parties covered by the act from giving any false information to a worker and requires them to abide by any verbal or written agreement with a worker regarding employment conditions.<sup>88</sup> Anyone who recruits or hires a migrant farmworker must disclose all details regarding the location and nature of the work and housing before that worker is recruited, and this disclosure must be written in that worker's native language.<sup>89</sup> All parties that employ farmworkers must keep and preserve detailed and accurate payroll information, which must comply with all applicable wage regulations.<sup>90</sup>

If a grower does not pay the workers directly but instead pays them through a labor contractor, the grower can still be liable for the payment to the workers if the contractor does not pay them the full amount owed.<sup>91</sup> Finally, any person who provides housing for migrant workers must comply with all federal and state housing regulations.

Enforcement of the AWP is carried out either by USDOL directly or through a private lawsuit. The USDOL may fine violators up to \$1,000 per violation, per worker, while a private attorney can sue for \$500 for each violation plus any actual damages caused by the violation.<sup>92</sup> Finally, the act prohibits any retaliation against a worker for exercising his rights under AWP.

### **Other federal laws and regulations**

Some other federal statutes that protect the general work force also apply, to at least some degree, to farmworkers. One such example is the Fair Labor Standards Act (FLSA), which guarantees a minimum wage of \$7.25 per hour for most workers in the country, requires most employers to pay overtime once an employee has worked more than 40 hours in a week, and regulates the use of child labor.<sup>93</sup> Again, with the special exemption for small agricultural employers, most farmworkers are granted the right to a minimum wage. However, all workers in agriculture are excluded completely from the overtime provisions, and children in agricultural work receive different treatment under the bill.<sup>94</sup> While the bill bans the use of children under 18 for hazardous employment, children in agriculture are allowed to work in hazardous conditions at the age of 16, and the law's agricultural exemptions allow children as young as 12 to work unlimited hours in the fields without overtime, as long as their work hours do not conflict with school hours.<sup>95</sup> Hazardous employment generally includes use of heavy machinery, use of explosives, application of dangerous chemicals, and other similar jobs. Although fieldwork entails physically strenuous repetitive motions in high temperatures and exposure to toxic pesticides and other chemicals, it is not considered hazardous under the statute.<sup>96</sup>

The US Environmental Protection Agency (EPA) has also implemented various pieces of legislation and regulations that place certain requirements on users of pesticides to protect consumers and farmworkers. However, the EPA delegates enforcement responsibilities to states that have their own regulations, provided that they meet certain requirements, which North Carolina has opted to do.<sup>97</sup>

Finally, farmworkers are protected under traditional federal employment legislation that prohibits discrimination based on race, sex, national origin, age, and other immutable characteristics.<sup>98</sup> Farmworkers and agricultural employers also have additional obligations under federal laws governing immigration status and work authorization. Agricultural employers and farm labor contractors must verify that the farmworkers they employ are authorized to work in the US by requiring them to produce a Social Security number and filling out and retaining an I-9 form.<sup>99</sup>

## Rules and protections under the H-2A visa program

A very small percentage of the agricultural work force in North Carolina travels from Mexico under the federal H-2A guest-worker program, which allows foreign workers to receive a temporary visa for certain types of employment in the US.<sup>100</sup> This program currently covers less than 7 percent of the US agricultural work force. Employers who choose to participate in the program must reapply each season, showing that they do not have access to a sufficient labor pool of domestic workers.<sup>101</sup> The employer petitions USDOL to certify a job order; USDOL approval triggers a process whereby the selected workers can be recruited from their home country and provided with a visa for the upcoming growing season.<sup>102</sup> These workers are not covered by the AWP, but the H-2A program includes a wide range of protections against abuses.<sup>103</sup>

These regulations are enforced primarily by WHD of USDOL, but state agencies share responsibilities for certain protection, such as housing and pesticide protections, as many state regulations overlap with the H-2A regulations.<sup>104</sup> These regulations have been at the center of controversy since early 2009, when former President George W. Bush promulgated “midnight regulations” just days before leaving office that slashed wages and reduced employers’ responsibilities and the corresponding rights for workers.<sup>105</sup> However, after much debate and legal battles between growers and worker organizations, in 2010 President Barack Obama largely reversed the changes made by the Bush DOL.<sup>106</sup> The new regulations will cover all H-2A workers in 2011<sup>107</sup> and provide for a broad range of protections, which include a guaranteed minimum wage for H-2A workers of more than \$9 per hour in North Carolina, compared with \$7.25 for non-H-2A workers; full reimbursement for the workers’ transportation costs from their country of origin; free housing; workers’ compensation insurance; disclosure of a comprehensive set of employment details at time of recruitment; and a general requirement that employers comply with all applicable laws.<sup>108</sup>

## Housing protections: The Migrant Housing Act of North Carolina and Occupational Safety and Health Administration regulations

Housing regulations, which were modestly improved in 2007,<sup>109</sup> govern the location, size, and capacity of housing, as well as ventilation, lighting, and locations of fire detectors and extinguishers. They require employers to provide beds with mattresses “in good repair”; minimal kitchen, bathroom, and showering facilities; and basic laundry and garbage facilities. The NCDOL, which enforces these housing standards, also has enforcement authority over certain field and safety provisions, including requirements that employers provide and allow reasonable access to drinking water and toilet and hand-washing facilities.<sup>110</sup>

# Notes

- 1 Philip Morris International and Philip Morris USA are separate companies in the tobacco buying market. Altria Client Services is responsible for procurement on behalf of Altria Group and its companies, which include Philip Morris USA.
- 2 Examples of these reports can be found at [www.fwjjustice.org/resources-publications/articles-and-reports/weeding-out-abuses](http://www.fwjjustice.org/resources-publications/articles-and-reports/weeding-out-abuses); [www.ers.usda.gov/Publications/ERR60/err60\\_reportsummary.pdf](http://www.ers.usda.gov/Publications/ERR60/err60_reportsummary.pdf); [www.ncfh.org/docs/fs-Occ%20Health.pdf](http://www.ncfh.org/docs/fs-Occ%20Health.pdf); [www.ncfh.org/docs/fs-Facts%20about%20Farmworkers.pdf](http://www.ncfh.org/docs/fs-Facts%20about%20Farmworkers.pdf); <http://saf-unite.org/pdfs/SAF%20NC%20rev.pdf>; [www.verite.org/Reports/HelpWanted](http://www.verite.org/Reports/HelpWanted); and [www.ncfan.org/storage/HOUSING%20CONDITIONS%20PB%20101122%20nodraft%20copy.pdf](http://www.ncfan.org/storage/HOUSING%20CONDITIONS%20PB%20101122%20nodraft%20copy.pdf).
- 3 The number of workers employed by the NCGA each year varies slightly, depending on the number of workers requested by growers.
- 4 See [www.dd-rd.ca/site/\\_PDF/publications/COBHRA\\_Report\\_en.pdf](http://www.dd-rd.ca/site/_PDF/publications/COBHRA_Report_en.pdf).
- 5 See [www.dd-rd.ca/site/\\_PDF/publications/COBHRA\\_Report\\_en.pdf](http://www.dd-rd.ca/site/_PDF/publications/COBHRA_Report_en.pdf).
- 6 Rights & Democracy tested this emerging methodology in five case studies: Argentina, the Democratic Republic of the Congo, Peru, the Philippines, and Tibet/China: See [www.ichrdd.ca/site/\\_PDF/publications/globalization/hria/full%20report\\_may\\_2007.pdf](http://www.ichrdd.ca/site/_PDF/publications/globalization/hria/full%20report_may_2007.pdf).
- 7 It is estimated that there are approximately 100,000 farmworkers in North Carolina: [www.ncfh.org/enumeration/PDF7%20North%20Carolina.pdf](http://www.ncfh.org/enumeration/PDF7%20North%20Carolina.pdf). In 2010 there were about 8,905 H-2A workers (report from North Carolina Employment Security Commission sent by email).
- 8 The term “undocumented” refers to a foreign-born worker without legal authorization for employment in the US.
- 9 See [www.ncagr.gov/stats/2010AgStat/Page057\\_082.pdf](http://www.ncagr.gov/stats/2010AgStat/Page057_082.pdf).
- 10 See note 7.
- 11 See note 2 (list of reports).
- 12 All workers in each of the camps visited were given the option to participate in an interview. Interviews were conducted through a structured survey.
- 13 In the eight group interviews, one worker generally took the lead in responding to the interviewer’s questions, with the additional one to three participants sometimes adding comments but not responding individually to every question. For that reason, calculations showing the share of workers who responded to a question in a particular way are expressed as a percentage or share of the total number of interviews (86).
- 14 In Wayne County there were 19 participants, including 16 complete interviews from four different camps, one hotel, and three non-camp sites where workers lived with their families. In Johnston County 20 workers from seven camps and one non-camp site participated, with 14 giving complete interviews. In Wilson County 17 workers from five camps participated, 16 with full interviews. In Nash County 33 individuals from 11 camps participated and 26 gave full interviews. In Sampson County 14 individuals from seven camps participated, all giving full interviews.
- 15 These numbers reflect the opinion of many other stakeholders interviewed, who have also found that most farmworkers in North Carolina are undocumented.
- 16 See [www.ncfh.org/docs/fs-Migrant%20Demographics.pdf](http://www.ncfh.org/docs/fs-Migrant%20Demographics.pdf).
- 17 The remaining 11 percent did not give their ages.
- 18 Altria was sent a separate letter but responded on behalf of PM USA.
- 19 The Regulatory Impact Analysis (RIA) is often used by Organization for Economic Cooperation and Development (OECD) countries to evaluate the impact and effectiveness of current and proposed government regulatory policies. An OECD report on best practices of the RIA states that it is “best used as a guide to improve the quality of political and administrative decision making, while also serving important political values of openness, public involvement, and accountability.” The goal of the FLOC/Oxfam HRIA goes far beyond evaluating government regulations and includes assessing how the structure of a private industry impacts human rights throughout its supply chain. For this reason, the OECD/RIA methodology was not appropriate for this study.
- 20 The one grower who responded said he no longer grows tobacco.
- 21 North Carolina State University, “Flue-Cured Tobacco Guide” (2010), p. 5. North Carolina cash receipts from tobacco in 2008 were \$687 million, while Kentucky’s were \$383 million.
- 22 See [www.netstate.com/economy/nc\\_economy.htm](http://www.netstate.com/economy/nc_economy.htm).
- 23 Tobacco manufacturers that were parties to the settlement included Philip Morris Inc., RJ Reynolds Tobacco Co., Brown and Williamson Tobacco Corp., Lorillard Tobacco Co., Ligett Group Inc., and Commonwealth Brands Inc. See the first URL in note 24 for the Tobacco Master Settlement Agreement pdf.
- 24 See <http://ag.ca.gov/tobacco/pdf/1msa.pdf> and <http://oag.ca.gov/tobacco/msa>.
- 25 See <http://www.gao.gov/new.items/d03262r.pdf>.
- 26 See [www.ncruralcenter.org/images/PDFs/Publications/tobacco\\_04\\_02\\_08\\_b.pdf](http://www.ncruralcenter.org/images/PDFs/Publications/tobacco_04_02_08_b.pdf), p. 12.
- 27 See [www.nationalaglawcenter.org/assets/crs/RS22046.pdf](http://www.nationalaglawcenter.org/assets/crs/RS22046.pdf), p. 1.
- 28 See [www.nationalaglawcenter.org/assets/crs/RS20802.pdf](http://www.nationalaglawcenter.org/assets/crs/RS20802.pdf).
- 29 Interview with Altria spokesperson.
- 30 Issues to consider related to tobacco contracts, RAFI-USA: [www.rafiusa.org/pubs/tobaccocontracts\\_eval.pdf](http://www.rafiusa.org/pubs/tobaccocontracts_eval.pdf).
- 31 See [www.tobaccogrowerresearch.org/stat4.html](http://www.tobaccogrowerresearch.org/stat4.html).
- 32 David Griffith, “The Impact of Economic and Political Developments on North Carolina’s Tobacco Farm Workers,” March 2008, p. 7.
- 33 Blake Brown and Will Snell, “US Tobacco Situation and Outlook.” The US produced 805 million pounds of tobacco in 2009, while Brazil produced 1.316 billion pounds and China produced 5.18 billion pounds.
- 34 See [www.soc.duke.edu/NC\\_GlobalEconomy/tobacco/corporations.shtml](http://www.soc.duke.edu/NC_GlobalEconomy/tobacco/corporations.shtml).
- 35 See <http://files.shareholder.com/downloads/RAI/1085179343x0x279938/72d29a9b-b75a-42e7-ae2-ff3eb6beb239/279938.pdf>.
- 36 See [www.doleta.gov/agworker/report9/summary.cfm](http://www.doleta.gov/agworker/report9/summary.cfm).

- 37 Phillip Martin, "AgJOBS: Provisions, Eligibility," *Rural Migration News* (July 2009), 15:13.
- 38 The number of H-2A positions certified rose from 41,827 in 1999 ([www.ilw.com/immigrationdaily/news/2006,0531-crs.pdf](http://www.ilw.com/immigrationdaily/news/2006,0531-crs.pdf)) to 86,014 in 2009, according to the latest data available at the time of this report ([www.foreignlaborcert.doleta.gov/pdf/2009\\_Annual\\_Report.pdf](http://www.foreignlaborcert.doleta.gov/pdf/2009_Annual_Report.pdf)). This total still represents less than 7 percent of the total estimated agriculture work force in the US.
- 39 The NCESC estimates that there were about 8,905 H-2A workers in North Carolina in 2010.
- 40 See <http://law.justia.com/us/cfr/title29/29-3.1.1.2.48.html>.
- 41 USDOL, "The National Agricultural Workers Survey, 2001-2002: [www.doleta.gov/agworker/report9/summary.cfm](http://www.doleta.gov/agworker/report9/summary.cfm)."
- 42 The US has ratified the Convention on the Elimination of All Forms of Racial Discrimination, in 1994; the International Convention on Civil and Political Rights, in 1992; the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, in 1994; the Convention on the Prevention and Punishment of the Crime of Genocide, in 1988; Optional Protocol (to the Convention on the Rights of the Child) on the Involvement of Children in Armed Conflict, in 2002; and the Optional Protocol (to the Convention on the Rights of the Child) on the Sale of Children, Child Prostitution, and Child Pornography, in 2002. While the US has signed and ratified several of the core UN treaties, it has not ratified the ICESCR and has not signed the International Convention on the Protection of the rights of All Migrant Workers and Members of Their Families, among others.
- 43 See [www.state.gov/documents/organization/137292.pdf](http://www.state.gov/documents/organization/137292.pdf).
- 44 See [www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html](http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html).
- 45 See [www.reynoldsamerican.com/humanRights.cfm](http://www.reynoldsamerican.com/humanRights.cfm).
- 46 Altria GAP Handbook (2010), p. R11.
- 47 See [www.eclt.org/about-us/structure](http://www.eclt.org/about-us/structure).
- 48 "The 2005 Business and Human Rights Seminar Report: Exploring Responsibility and Complicity," p. 12: [www.bhrseminar.org/BusinessHumanRightsSeminarReport2005.pdf](http://www.bhrseminar.org/BusinessHumanRightsSeminarReport2005.pdf).
- 49 *Patel v. Quality Inn South*, 846 F.2d 700 (11th Cir. 1988).
- 50 All 103 workers involved in the interviews were asked how much they were paid per hour. Nine other workers responded that they were unsure how they were paid per hour, one responded that he was sometimes paid more than minimum wage and sometimes less, and nine did not respond. Assessment of whether or not workers were being paid minimum wage was made based on the legal minimum wage in the county where they were working.
- 51 See [www.scribd.com/doc/36174469/National-Census-of-Fatal-Occupational-Injuries-in-2009](http://www.scribd.com/doc/36174469/National-Census-of-Fatal-Occupational-Injuries-in-2009).
- 52 See [www.cdc.gov/mmwr/preview/mmwrhtml/mm5724a1.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5724a1.htm).
- 53 See [www.nclabor.com/ash/publications/Heat\\_Stress\\_Broch.pdf](http://www.nclabor.com/ash/publications/Heat_Stress_Broch.pdf).
- 54 See [www.nclabor.com/ash/ASHGuide.pdf](http://www.nclabor.com/ash/ASHGuide.pdf) and [http://emergency.cdc.gov/disasters/extremeheat/heat\\_guide.asp](http://emergency.cdc.gov/disasters/extremeheat/heat_guide.asp).
- 55 See [www.nclabor.com/ash/ASHGuide.pdf](http://www.nclabor.com/ash/ASHGuide.pdf).
- 56 See [www.nasdonline.org/static\\_content/documents/1189/d001025.pdf](http://www.nasdonline.org/static_content/documents/1189/d001025.pdf).
- 57 See [www.ncbi.nlm.nih.gov/pmc/articles/PMC1497768/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1497768/).
- 58 See [www.nasdonline.org/static\\_content/documents/1189/d001025.pdf](http://www.nasdonline.org/static_content/documents/1189/d001025.pdf).
- 59 More info on specific types of pesticides is available at [www.toxicfreenc.org/informed/pdfs/Tobacco\\_chems.pdf](http://www.toxicfreenc.org/informed/pdfs/Tobacco_chems.pdf) and [www.pesticide.org/get-the-facts/pesticide-factsheets/](http://www.pesticide.org/get-the-facts/pesticide-factsheets/).
- 60 Facts on the effects of specific pesticides are available at <http://web.doh.state.nj.us/rthksfs/qrlist.aspx>.
- 61 Info from FLOC attorney Robert Willis and interview with Mary Lee Hall of Legal Aid of North Carolina.
- 62 See [www.kff.org/uninsured/upload/Migrant-and-Seasonal-Farmworkers-Health-Insurance-Coverage-and-Access-to-Care-Report.pdf](http://www.kff.org/uninsured/upload/Migrant-and-Seasonal-Farmworkers-Health-Insurance-Coverage-and-Access-to-Care-Report.pdf).
- 63 See [www.ncfhp.org/sites.asp](http://www.ncfhp.org/sites.asp).
- 64 Carolina Family Health Centers interview.
- 65 In 2006, state law changed to require a Social Security number to get a driver's license. Even those who previously had licenses cannot renew them.
- 66 See [www.unhchr.ch/tbs/doc.nsf/0/469fd91a9378221c12563ed0053547e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/0/469fd91a9378221c12563ed0053547e?Opendocument).
- 67 The NCGA requested that names of representatives who participated in the interview be kept confidential.
- 68 See [www.nclabor.com/news/2009\\_Annual\\_Report.pdf](http://www.nclabor.com/news/2009_Annual_Report.pdf).
- 69 In 2009 there were about 9,900 H-2A workers in North Carolina, and H-2A regulations require that housing be inspected and certified. Assuming that all H-2A housing was certified, that means that of the 14,442 beds certified, only about 4,542 were non-H-2A. Although it is nearly impossible to say exactly how many of the approximately 100,000 farmworkers in North Carolina are living in a labor camp, our outreach shows that the large majority do. In just the five counties included in this study, there were 3,870 beds registered for non-H-2A camps and 1,702 registered for H-2A camps, according to the NCDOL housing registry.
- 70 See [www.dol.gov/whd/regs/compliance/childlabor102.pdf](http://www.dol.gov/whd/regs/compliance/childlabor102.pdf).
- 71 See [www.hrw.org/node/90126](http://www.hrw.org/node/90126), summary and key recommendations.
- 72 See [www.hrw.org/node/90126](http://www.hrw.org/node/90126), p. 38.
- 73 See [www.hrw.org/node/90126](http://www.hrw.org/node/90126), summary and key recommendations.
- 74 National Labor Relations Act (NLRA) agriculture exclusion provision.
- 75 See [www.nccusa.org/news/04pickleboyboycottends.html](http://www.nccusa.org/news/04pickleboyboycottends.html).
- 76 Foreign workers cannot apply for an H-2A visa; instead, a grower in the US must recruit him from his home country, usually through a recruiting company based in the sending country.
- 77 Interviews and <http://tobaccogrowerresearch.org/surveys/2010/2010PhoneSummary.pdf>.
- 78 Interview with Larry Wooten, president, North Carolina Farm Bureau.



- 79 Interviews and <http://tobaccogrowerresearch.org/surveys/2010/2010PhoneSummary.pdf>.
- 80 "Issues to Consider Related to Tobacco Contracts," from RAFI-USA: [www.rafiusa.org/pubs/tobaccocontracts\\_eval.pdf](http://www.rafiusa.org/pubs/tobaccocontracts_eval.pdf).
- 81 Interviews and <http://tobaccogrowerresearch.org/surveys/2010/2010PhoneSummary.pdf>.
- 82 "Issues to Consider Related to Tobacco Contracts," from RAFI-USA: [www.rafiusa.org/pubs/tobaccocontracts\\_eval.pdf](http://www.rafiusa.org/pubs/tobaccocontracts_eval.pdf).
- 83 See [www.nationalaglawcenter.org/assets/crs/RL30395.pdf](http://www.nationalaglawcenter.org/assets/crs/RL30395.pdf).
- 84 *The News and Observer* is a regional paper in Raleigh, North Carolina, and WRAL is a television station based in Raleigh, North Carolina.
- 85 29 USC §§1801 et seq.
- 86 29 USC §1802.
- 87 29 USC §1811, §1812.
- 88 29 USC §1821, 29 USC §1821 (c).
- 89 29 USC §1821(a), (g).
- 90 29 USC §1821 (d), (a).
- 91 *Maldonado v. Lucca*, 629 F. Supp. 483 (D.N.J. 1986). However, Bermudez's (FLC) potential liability does not diminish Lucca and Errera's (AG ER) liability under the joint employer doctrine of FLSA and MSPA. (See Slip op.) As in other civil actions, these defendants may well have a cause of action for contribution or indemnification against Bermudez. That possibility does not affect their liability to these plaintiffs.
- 92 29 USC § 1853, §1854, 29 USC § 1854(c)(1).
- 93 29 USC § 206, 207.
- 94 29 USC § 213(b)(12), 29 CFR 570.2(b), 123.
- 95 29 CFR 570.2(b), 123.
- 96 29 CFR 570.2(b), 123.
- 97 See [www.ncagr.gov/SPCAP/pesticides/Authorit.htm](http://www.ncagr.gov/SPCAP/pesticides/Authorit.htm).
- 98 42 USC § 2000 et seq, 29 USC §§ 621–634.
- 99 See [www.uscis.gov/files/form/i-9.pdf](http://www.uscis.gov/files/form/i-9.pdf).
- 100 See [www.foreignlaborcert.doleta.gov/h-2a.cfm](http://www.foreignlaborcert.doleta.gov/h-2a.cfm). The H-2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the US to perform agricultural labor or services of a temporary or seasonal nature.
- 101 8 USC § 1188 (a)(1)(A).
- 102 See [www.foreignlaborcert.doleta.gov/h-2a.cfm](http://www.foreignlaborcert.doleta.gov/h-2a.cfm), filing process.
- 103 29 USC § 1802(8)(B)(ii), 20 CFR 655 Subpart B.
- 104 See [www.foreignlaborcert.doleta.gov/h-2a.cfm](http://www.foreignlaborcert.doleta.gov/h-2a.cfm). The USDOL WHD has a primary role in investigating and enforcing the terms and conditions of employment. WHD is responsible for enforcing the contractual obligations employers have toward employees and may assess civil money penalties and recover unpaid wages. Administrative proceedings and/or injunctive actions through federal courts may be instituted to compel compliance with an employer's contractual obligations to employees.
- 105 20 CFR 655 (2009 through March 15, 2010).
- 106 *UFW v. Chao*, *NCGA v. Solis I*, *NCGA v. Solis II*.
- 107 Although the Solis Regulations took effect on March 15, 2010, most applications that year had already been submitted and most North Carolina H-2A farmworkers were covered by the Chao Regulations in the 2010 season.
- 108 New H-2A regs, [www.nclabor.com/ash/ash\\_blue\\_book.pdf](http://www.nclabor.com/ash/ash_blue_book.pdf).
- 109 "In 2007, the General Assembly amended the Migrant Housing Act to require that owners and operators of migrant housing provide workers with a bed and a 'mattress in good repair with a clean cover' and to add additional regulatory and reporting requirements for the DOL. "NCDOL, Introduction to Migrant Housing Inspections in North Carolina," [www.nclabor.com/ash/ash\\_blue\\_book.pdf](http://www.nclabor.com/ash/ash_blue_book.pdf).
- 110 29 CFR 1928, 110.





**COVER:** In the tobacco fields, sun and heat can take a serious toll on workers, especially if they don't get sufficient breaks or clean water. *Briana Connors / FLOC*



#### Oxfam America

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#### Farm Labor Organizing Committee (FLOC)

FLOC is a labor union committed to securing better wages and working conditions for migrant farmworkers. Affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), FLOC works to ensure that all migrant workers in agriculture have a voice in the workplace and enjoy equal protection of basic human rights.

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