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## ¡PELIGRO! Si Usted No Entiende La Etiqueta, Busque a Alguien Para Que se la Explique a Usted en Detalle: The Need for International and Domestic Implementation of Bilingual Pesticide Labeling to Enhance Protection of Migrant Farmworkers in Florida

Vanessa Calcano Thomas

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*¡PELIGRO! SI USTED NO ENTIENDE LA  
 ETIQUETA, BUSQUE A ALGUIEN PARA  
 QUE SE LA EXPLIQUE A USTED EN  
 DETALLE:*<sup>1</sup> THE NEED FOR  
 INTERNATIONAL AND DOMESTIC  
 IMPLEMENTATION OF BILINGUAL PESTICIDE  
 LABELING TO ENHANCE PROTECTION OF  
 MIGRANT FARMWORKERS IN FLORIDA

*Vanessa Calcaño Thomas<sup>A</sup>*

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1. Env'tl. Prot. Agency, Module 2: Parts of the Label, EPA.gov, <http://www.epa.gov/pesticides/regulating/labels/pest-label-training/module2/page3.html> (last updated Feb. 4, 2014). Pesticide products subject to the Worker Protection Standard that are classified as Toxicity Category I or II must bear the corresponding Spanish signal word, "Danger" or "Warning," followed by this Spanish statement, "If you do not understand the label, find someone to explain it to you in detail."

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#### INTRODUCTION

The first thing that comes to mind when a person in a developed country hears the word “food” is the thought of going to the grocery store or a restaurant. However, a new public awareness campaign has produced bumper stickers that read, “Got Food? Thank a Farmworker.” In our Western industrialized society, individuals tend to equate food more with being an easy-to-obtain commodity and less with the migrant farmworkers working hard in the fields to ensure food is grown and delivered to the marketplace. For example, the reality of the health sacrifices a migrant farmworker makes is illustrated in the following story involving pesticide use:

A Plant City produce company will pay for the lifelong care of 3-year-old Carlos Herrera Candelario, born with no arms or legs to migrant workers who picked tomatoes in fields [. . .] that pesticides were sprayed on repeated occasions in adjacent Ag-Mart fields and drifted to where she worked. Forced to work in freshly sprayed fields, she had suffered a sore throat, burning eyes and headaches.<sup>2</sup>

International law defines “migrant worker” as a “person who is to be engaged, is engaged, or has been engaged in a remunerated activ-

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2. Colleen Jenkins, *Lifelong Care for Limbless Boy*, 3, *Approved*, TAMPA BAY TIMES, Apr. 16, 2008, <http://www.tampabay.com/news/courts/civil/lifelong-care-for-limbless-boy-3-approved/460186>.

ity in a State of which he or she is not a national.”<sup>3</sup> The term “farmworkers” includes agricultural workers involved in the production of agricultural plants, and pesticide handlers who mix, load, or apply pesticides.<sup>4</sup> The United Nations defines pesticides as “any substance or mixture of substances intended for preventing, destroying or controlling any pest, including vectors of human or animal disease, unwanted species of plants or animals causing harm during or otherwise interfering with the production, processing, storage, transport or marketing of food, [and] agricultural commodities.”<sup>5</sup> Thus, a migrant farmworker is someone who works in the production of agricultural plants, is exposed to pesticides, and is not a national in the State where the work activity takes place.

Furthermore, the United States Bureau of Labor Statistics ranked agriculture as one of the most dangerous industries in the nation.<sup>6</sup> In the United States, about 72% of the farmworkers are foreign born, 68% are from Mexico, and 42% are migrating.<sup>7</sup> Consequently, as a result of this “international society,”<sup>8</sup> a significant portion of migrant farmworkers in the United States only fully comprehend Spanish.

Despite the fact that the Spanish language is ranked second in the world with 406 million speakers while English is ranked third, there are no required bilingual pesticide labels.<sup>9</sup> The lack of bilingual pesticide labels does not allow migrant farmworkers the opportunity to understand and consent to the exposure to pesticides because they are not able to read the description of the severe health effects or dangers from the label. International law is explicitly invoked in the context of migrant farmworkers because they are from a different country. Mi-

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3. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, 2220 U.N.T.S. 93, 95 (entered into force July, 1 2003), available at <http://treaties.un.org/doc/publication/UNTS/Volume%202220/v2220.pdf> [hereinafter Convention on Migrant Workers].

4. *Worker Safety and Training*, EPA.GOV, <http://www.epa.gov/pesticides/health/worker.htm> (last updated May 15, 2014).

5. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, THE INTERNATIONAL CODE OF CONDUCT ON THE DISTRIBUTION AND USE OF PESTICIDES (2005), available at <http://www.fao.org/docrep/018/a0220e/a0220e00.pdf> [hereinafter THE CODE].

6. See generally BUREAU OF LABOR STATISTICS, CENSUS OF FATAL OCCUPATIONAL INJURIES, available at <http://www.bls.gov/news.release/cfoi.toc.htm> (last modified Aug. 22, 2013).

7. NATIONAL CENTER FOR FARMWORKER HEALTH, FACTS ABOUT FARMWORKERS (2012), available at <http://www.ncfh.org/docs/fs-Facts%20about%20Farmworkers.pdf>.

8. Linda S. Bosniak, *Part II: Interpreting the Convention, Human Rights, State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers Convention*, 25 INT’L MIGRATION REV. 737, 737-738 (1991).

9. *Statistical Summaries: Summary by Language Size*, ETHNOLOGUE, <http://www.ethnologue.com/statistics/size> (last visited July 21, 2014).

grant farmworkers' human rights are being violated, and it is an environmental injustice when they only read in Spanish and did not give their free, prior and informed consent to the life-threatening health risks of working with pesticides. Therefore, pesticide labels must be made available in English and Spanish.

Part I of this Article examines the history of migrant farmworkers' exposure to pesticides through three Florida case studies in Lake Apopka, Immokalee, and Homestead. Part II addresses the international regulatory scheme governing pesticides, migrant workers, and free, prior and informed consent. It also discusses domestic law implementation by focusing on the United States' federal regulatory scheme of pesticide registration under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). Part III reviews a recent decision of the Permanent Peoples' Tribunal that addresses farmworkers' human rights, the environment, and indigenous peoples. Part IV proposes substantive and procedural solutions to this issue. First, it proposes an amendment to the existing international convention on The Protection of the Rights of All Migrant Workers and Members of Their Families to include human rights protections comparable to indigenous peoples' free, prior and informed consent in the form of bilingual labeling on pesticide products. Second, to enforce this international obligation at the domestic level, the section also proposes an amendment to FIFRA regulations. These amendments will ensure that migrant farmworkers are able to read pesticide labels in Spanish prior to being exposed to the life-threatening health effects.

## I. FLORIDA MIGRANT FARMWORKERS' EXPOSURE TO PESTICIDES

Historically, farmworkers have been regularly exposed to hazardous pesticides in the course of their employment. It was not until the 1980s when the international community formally recognized pesticide exposure as a human health issue requiring environmental and human rights protection.<sup>10</sup> The majority of farmworkers are foreign-born and work in abnormally dangerous conditions.<sup>11</sup> The migrant farmworkers are largely viewed as the "invisible" labor force.<sup>12</sup> How-

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10. THE CODE, *supra* note 5.

11. Matthew Webster, *Jobs Americans Won't Do: Our Farming Heritage, Hazardous Harvests, and a Legislative Fix*, 29 LAW & INEQUALITY 249, 254 (2011); see also Joan Flocks, *The Environmental and Social Injustice of Farmworker Pesticide Exposure*, 19 GEO. J. ON POVERTY L. & POL'Y 255, 255-56 (2012), available at <http://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1277&context=facultypub>.

12. Jose A. Gaytan, *Mexican Migrant Farmworkers' Impact on South Florida: A Case Study in the Context of US-Mexican Relations* (Feb 7, 2013) (unpublished Ph.D.

ever, without this invisible class it would not be possible to harvest the crops and vegetables that are planted and continue to support a multibillion-dollar agricultural industry.<sup>13</sup> Moreover, “farmworkers have had little success in addressing harmful occupational pesticide exposure,” despite pesticide exposure resulting in acute health effects resulting in nausea, dizziness, vomiting, headaches, stomach pain, rashes, harm to the respiratory system, and harm to the reproductive system.<sup>14</sup> Furthermore, the majority of farmworkers “begin their careers when they are thirteen to fifteen years old,” and “children as young as five years old accompany their parents into the fields.”<sup>15</sup> The discussion below examines the past environmental injustices involving migrant farmworkers in Florida by discussing real-life scenarios, which include the Lake Apopka farmworkers, Immokalee farmworkers, and Homestead farmworkers.

Lake Apopka is north of Orlando and is one of the largest lakes in Florida.<sup>16</sup> During World War II, the United States Army Corps Engineers determined that the ecosystem of Lake Apopka would be ideal land for agriculture.<sup>17</sup> These engineers created lands for farming by draining 20,000 acres of marshland on the north shore of Lake Apopka.<sup>18</sup> The draining was necessary to expose the “rich, organic, muck soil.”<sup>19</sup> From the 1950s to 1998, Lake Apopka and the marshland produced an abundance of a wide range of vegetables and bass fishing.<sup>20</sup> Lake Apopka farmland was “among the most successful in the world,” generating more than \$40 million in sales annually.<sup>21</sup>

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dissertation, University of Miami), *available at* [http://scholarlyrepository.miami.edu/oa\\_dissertations/968](http://scholarlyrepository.miami.edu/oa_dissertations/968).

13. *Id.*

14. Flocks, *supra* note 11, at 258; Summy Lau, *An Unfair Food Fight: Lowering the Human Cost of Food in Immokalee, Florida* (Apr. 28, 2011) (unpublished manuscript, Vanderbilt University), *available at* <http://cft.vanderbilt.edu/files/Immokalee-Debate-SUMMY-LAU-11-copy.pdf>.

15. Keith Cunningham-Parmeter, *A Poisoned Field: Farmworkers, Pesticide Exposure, and Tort Recovery in an Era of Regulatory Failure*, 28 N.Y.U. REV. L. & SOC. CHANGE 431, 431-32 (2004), *available at* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=963666](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=963666).

16. Jeannie Economos, *The History of a Lake and a People Intertwined Social and Environmental Injustice*, EARTH FIRST! J.34, 34 (2012).

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* See generally Barry Estabrook, *A Life Engulfed by Pesticides*, THE ATLANTIC (June 10, 2010), <http://www.theatlantic.com/health/archive/2010/06/a-life-engulfed-by-pesticides/57949/> [hereinafter *A Life Engulfed by Pesticides*].

21. Jason Garcia, *Safety Net Fails Farmworker*, ORLANDO SENTINEL (Oct. 5, 2003), [http://articles.orlandosentinel.com/2003-10-05/news/0310050211\\_1\\_lake-apopka-farmworker-association-muck; see also Economos, supra note 16, at 35](http://articles.orlandosentinel.com/2003-10-05/news/0310050211_1_lake-apopka-farmworker-association-muck; see also Economos, supra note 16, at 35).

Unfortunately, the farming caused fertilizers and pesticides to seep into the lake, and Lake Apopka soon became a severely polluted body of water.<sup>22</sup> There were early signs in the 1960s of Lake Apopka's ecosystem being in crisis such as the water turning pea-green.<sup>23</sup> In the mid-1980s, Dr. Louis Guillette conducted seminal research on the alligators of Lake Apopka.<sup>24</sup> The alligators' "reproductive rates were unusually low, male alligators had shortened penises and elevated estrogen levels, female alligators had elevated testosterone levels," and baby alligators were born with birth defects.<sup>25</sup> After conducting extensive lab studies, Dr. Guillette concluded the alligator abnormalities were linked to a spill of the pesticide DDT that occurred in 1979 at the head waters of Lake Apopka.<sup>26</sup>

Moreover, in 1998, after farming operations had completely ceased, Lake Apopka made national news because "one of the most significant bird counts turned into one the nation's largest bird mortality incidents."<sup>27</sup> The United States Fish and Wildlife Service released a report two years after the significant number of wildlife deaths stating DDT "had bio-accumulated up the food chain from the fish in the affixation canals of the former farmlands to the birds that fed upon them."<sup>28</sup>

The farmworkers of Lake Apopka consisted of thousands of individuals and most of these people were poor, minorities, and uneducated.<sup>29</sup> In 1998, the farming had to be shut down due to the substantial damage by the pesticides, and the Florida government agreed to pay the fourteen landowners \$103 million for their property and equipment.<sup>30</sup> However, the 2,500 farmworkers with "families that lived with them on the land, got nothing other than orders to clear out."<sup>31</sup> Furthermore, the retraining programs through which the Florida government intended to help the farmworkers find new employment were not established until nearly two years after the farmland was sold to the government.<sup>32</sup> After the long period of wait-

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22. Garcia, *supra* note 21, at A17; *see also* Economos, *supra* note 16, at 35.

23. Economos, *supra* note 16, at 35.

24. *Id.*

25. *Id.*

26. *Id.*; *Justice Never Too Late for Lake Apopka Farmworkers*, PESTICIDE ACTION NETWORK (Nov. 26, 2011), <http://www.panap.net/en/ap/post/about-pan-ap/834>.

27. Economos, *supra* note 16, at 35.

28. *Id.*

29. *See id.* at 36; Garcia, *supra* note 21, at A16.

30. *See generally* *A Life Engulfed by Pesticide*, *supra* note 20.

31. *Id.*

32. *See id.*; Garcia, *supra* note 21, at A16.

ing for assistance, most of the farmworkers were forced to relocate because “they had to feed themselves and their families,” and they did not have unemployment insurance, severance pay, or retirement.<sup>33</sup>

In 2006, the Farmworker Association of Florida conducted a survey of 148 former farmworkers of Lake Apopka.<sup>34</sup> The results of the survey concluded “92 percent of the respondents had been exposed to pesticides through a combination of aerial spraying, wind drift, touching plants still wet with pesticides, or inhaling pesticides.”<sup>35</sup> Moreover, 83% of the Lake Apopka farmworkers characterized their current state of health as fair or poor.<sup>36</sup> Every farmworker reported a medical condition: 70% reported they had arthritis, 60% experienced frequent sinus problems and throat problems, and nearly 50% had diabetes.<sup>37</sup>

Similar examples of environmental injustice involving Florida farmworkers have occurred in Immokalee. In Immokalee, there is a labor camp called Tower Cabins, which consists of “about thirty drab wooden shacks and a few deteriorating trailers crammed together behind an unpainted wooden fence just south of Immokalee, a city in the heart of southwest Florida’s tomato-growing region.”<sup>38</sup> This area, known as “tomatoland,” is Florida’s most productive agricultural center, and holds the largest farmworker community in the state.<sup>39</sup> Immokalee is a community made up of poor migrant farmworkers. In 1990, a report by the U.S. Department of Health estimated there were “182,790 migrant farmworkers and 252,583 seasonal farmworkers, and in the past two decades this figure has not changed significantly.”<sup>40</sup> Furthermore, 75% of the farmworkers are Hispanic.<sup>41</sup>

33. Garcia, *supra* note 21, at A16; *see also* Economos, *supra* note 16, at 36.

34. FARMWORKER ASSOCIATION OF FLORIDA, LAKE APOPKA FARMWORKERS ENVIRONMENTAL HEALTH PROJECT, REPORT ON COMMUNITY HEALTH SURVEY (2006), available at [http://www.floridafarmworkers.org/images/my\\_images/pdf/lakeapopkareport.pdf](http://www.floridafarmworkers.org/images/my_images/pdf/lakeapopkareport.pdf) [hereinafter FARMWORKER REPORT].

35. *Id.*; *see also* *A Life Engulfed by Pesticides*, *supra* note 20.

36. FARMWORKER REPORT, *supra* note 34.

37. *Id.*

38. Barry Estabrook, *Chemical Warfare: The Horrific Birth Defects Linked to Tomato Pesticides*, THE ECOLOGIST (Sept. 1, 2011), [http://www.theecologist.org/News/news\\_analysis/1033178/chemical\\_warfare\\_the\\_horrible\\_birthdefects\\_linked\\_to\\_tomato\\_pesticides.html](http://www.theecologist.org/News/news_analysis/1033178/chemical_warfare_the_horrible_birthdefects_linked_to_tomato_pesticides.html) [hereinafter *Chemical Warfare*].

39. Lau, *supra* note 14.

40. *Id.*; *see also* *Immokalee, Florida Census Data & Community Profile*, AMERICAN TOWNS.COM, <http://www.americantowns.com/fl/immokalee/info> (last updated July 22, 2014).

41. Lau, *supra* note 14; *see also* *Flocks*, *supra* note 11, at 258.



In 2004, there were three pregnant women living in the Tower Cabins.<sup>42</sup> The scheduled birth of their babies was within weeks of each other.<sup>43</sup> The three women were also migrant farmworkers who “worked for the same company, Ag-Mart Produce, Inc., and in the same vast tomato field.”<sup>44</sup> This tomato field in which the women worked throughout their pregnancies had been sprayed with at least thirty-one different pesticides during the growing season.<sup>45</sup>

On December 17, 2004, Francisca Herrera gave birth to Carlitos Candelario. Carlitos was born with a rare medical condition called Tetra-Amelia syndrome.<sup>46</sup> Tetra-Amelia syndrome is “characterized by the [complete] absence of all four limbs,” and anomalies involving the face, eyes, urogenital system, anus, heart, lungs, skeleton, and central nervous system.<sup>47</sup> Furthermore, infants affected with this condition “are often stillborn or die shortly after birth.”<sup>48</sup> Carlitos was born limbless.<sup>49</sup> Herrera had filed suit against Ag-mart for damages from the pesticide exposure that she experienced during her pregnancy with Carlitos. She was represented by an attorney willing to risk not getting paid.<sup>50</sup> Three years later when the trial date was set, Ag-mart decided it would instead propose a settlement agreement.<sup>51</sup> Although Ag-mart did not admit responsibility for the damages, it agreed to pay a significant amount of money to settle the claims for damages of Carlitos’ physical disabilities.<sup>52</sup>

In January 2005, Sostenes Maceda gave birth to Jesus Navarrete.<sup>53</sup> Jesus was born with Pierre Robin Sequence which in plain terms means “a deformity of the lower jaw.”<sup>54</sup> As a result of this condi-

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42. *Chemical Warfare*, *supra* note 38.

43. *Id.*

44. *Id.*

45. *Id.* See generally Jeannie Economos, *Bilingual Pesticide Labels: Farmworkers Deserve No Less*, PHYSICIANS FOR SOCIAL RESPONSIBILITY, <http://www.psr.org/environment-and-health/environmental-health-policy-institute/responses/bilingual-pesticide-labels.html> (last visited July 28, 2014).

46. *Chemical Warfare*, *supra* note 38.

47. Stephan Niemann, *Tetra-Amelia Syndrome*, GENEREVIEWS (last updated Aug. 2, 2012), available at <http://www.ncbi.nlm.nih.gov/books/NBK1276/>.

48. *Id.*

49. *Chemical Warfare*, *supra* note 38.

50. Thomas W. Krause, *Farmworker Family’s Ag-Mart Settlement Amount Significant*, THE TAMPA TRIBUNE, (Apr. 16, 2008), <http://tbo.com/apps/pbcs.dll/article?avis=TB&date=20080416&category=ARTICLE&lopenr=304169832&Ref=AR&profile=1096>.

51. *Id.*

52. *Id.*

53. *Chemical Warfare*, *supra* note 38.

54. *Id.*

tion, the “tongue was in constant danger of falling back into his throat, putting him at risk of choking to death.”<sup>55</sup> The most common aspect of the Pierre Robin Sequence “is a connective tissue disorder,” with characteristics such as risk of retinal detachment, depressed nasal bridge, auditory loss, and joint hypermobility.<sup>56</sup> This medical condition required that baby Jesus be fed through a plastic feeding tube.<sup>57</sup>

Within two days of Jesus’ birth, Maria Meza gave birth to Jorge.<sup>58</sup> Jorge had “one ear, no nose, a cleft palate, one kidney, no anus, and no visible sexual organs.”<sup>59</sup> However, within two hours, doctors concluded Jorge was in fact a girl and the parents renamed the baby Violeta.<sup>60</sup> Nonetheless, baby Violeta’s birth defects were so severe that she died after only three days of being alive.<sup>61</sup> All three farmworkers were not aware of the severity of the health impacts of the pesticide exposure and believe the exposure to the pesticide is what caused the birth defects.<sup>62</sup>

Homestead is a third area in Florida where farmworkers have been harmed by pesticide exposure. Homestead’s population is nearly 64% Hispanic, and is “one of the major agricultural centers in the United States, sometimes referred as “The Nation’s Winter Vegetable Garden.”<sup>63</sup> Homestead is located in Florida’s Miami-Dade County, and the agricultural business represents nearly \$1 billion annually.<sup>64</sup>

In 2009, Jovita Alfau, a migrant farmworker from Mexico working in an open-air plant nursery in Homestead, became dizzy and weak, with numbness in her mouth, and vomited.<sup>65</sup> Alfau had been advised “to tend to hibiscus plants at the Homestead nursery within 24 hours after they had been sprayed with the pesticide endosulfan,” and

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55. *Id.*

56. Kelly N. Evans et al., *Robin Sequence: From Diagnosis to Development of an Effective Management Plan*, AM. ACADEMY OF PEDIATRICS 936, 938 (2011), available at <http://pediatrics.aappublications.org/content/127/5/936.full.pdfhtml>.

57. *Chemical Warfare*, *supra* note 38.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *See id.*

63. Gaytan, *supra* note 12, at 1.

64. *Our Community*, CHAMBER OF COMMERCE, CITY OF HOMESTEAD, <http://www.chamberinaction.com/pages/OurCommunity/> (last visited July 12, 2014).

65. Ronnie Greene, *Farmworkers Plagued by Pesticides, Red Tape*, PUBLIC INTEGRITY, <http://www.publicintegrity.org/2012/06/25/9159/farmworkers-plagued-pesticides-red-tape> (last updated May 19, 2014); *see also* Christopher Ryan, *Pesticides Causing Sickness Among Farm Workers*, AMERICANBLOG NEWS (June 26, 2012), <http://americablog.com/2012/06/pesticides-causing-sickness-among-farm-workers.html>.

by doing so, the grower sent workers out too soon after the spraying without explaining to them when the pesticides had been applied and without advising them to wear protective gear or otherwise protect themselves.<sup>66</sup> The endosulfan pesticide, used when Alfau experienced acute health effects, was banned by the U.S. Environmental Protection Agency in 2010 because its use “poses unacceptable risks to agricultural workers.”<sup>67</sup> Alfau has been unable to work regularly since the adverse health effects from the pesticide exposure.<sup>68</sup>

Pesticide exposure also affected Marta Cruz, a migrant farmworker from Mexico who has been working in the fields of Homestead, Florida, picking lemons and tomatoes for over ten years.<sup>69</sup> Two years ago, Cruz began experiencing headaches, but she figured it was from the long hours working under the sun.<sup>70</sup> However, after falling to the ground with convulsions and being rushed to the hospital, the farmworker learned she had a brain tumor that had developed from cancer.<sup>71</sup> Cruz had her tumor removed only to learn a year later that her 17-year-old son also had cancer.<sup>72</sup> “By the time he received medical attention, it had already spread to his stomach, chest and lungs.”<sup>73</sup> Moreover, Cruz’s family does not have a history of cancer; therefore, she believes the cancer developed from exposure to pesticides while she worked at the nursery.<sup>74</sup> Cruz stated that in many nurseries the growers “would spray in the morning while [the farmworkers] were arriving to work instead of spraying in the evenings.”<sup>75</sup> As a migrant farmworker, Cruz did not have knowledge of the health hazards associated with her pesticide exposure, and she permitted her son at the age of nine to go work in the fields with his father.<sup>76</sup>

The impacts of pesticide exposure on farmworkers can be redressed through international and domestic law amendments. International law regulates procedural requirements for pesticide distribution as well as substantive human rights protections. Domestic

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66. Greene, *supra* note 65.

67. *Id.*

68. *Id.*

69. Carmen Sesin, *Florida Farm Workers Allege Pesticide Exposure Is Giving Them Cancer*, FOX NEWS LATINO, (Aug. 31, 2013), <http://latino.foxnews.com/latino/news/2013/08/31/florida-farm-workers-think-allege-pesticide-exposure-is-giving-them-cancer/>.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. Sesin, *supra* note 69.

75. *Id.*

76. *Id.*

law regulates the procedures to permit the sale of pesticide products in the United States. Thus, to address the farmworkers' harmful effects from pesticides there must be an evaluation of the state of the international and domestic law.

## II. INTERNATIONAL AND DOMESTIC LAW REGULATING PESTICIDES, MIGRANT WORKERS, AND FREE, PRIOR AND INFORMED CONSENT

The existing international law framework provides substantive and procedural protections regarding pesticides, migrant workers, and free, prior and informed consent. Substantive law is best described as principles set out to achieve outcomes that do not violate a person's fundamental rights and are "reasonable."<sup>77</sup> Procedural law involves principles of public participation and access to justice to help ensure a person's fundamental rights are not violated.<sup>78</sup> Furthermore, procedural and substantive protections are often intertwined because "procedural inadequacies also give rise to substantive unfairness."<sup>79</sup> For example, a procedure implementing an individual's right to bring a claim in court can also ensure the individual's substantive rights to due process and equal protection. Therefore, it is important to discuss both aspects of the international law to properly address the issues that migrant farmworkers face and the need for bilingual labeling of pesticides.

In the following discussion, the international substantive law regulating migrant workers and pesticide products will be examined first, followed by the international procedural law of free, prior and informed consent in the context of indigenous peoples. This section will conclude with a discussion of FIFRA, the domestic law regulating the requirements for pesticide product labels before the product can be made available for purchase and used by farmworkers.

### A. *Substantive International Law Protections*

The international substantive law regulating migrant workers human rights is the International Convention on the Protection of the

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77. Mattias Kumm, *The Legitimacy of International Law: A Constitutionalist Framework Analysis*, 15 EUROPEAN J. OF INT'L L. 907, 917 (2004), available at <http://ejil.oxfordjournals.org/content/15/5/907.full.pdf>.

78. *Id.*

79. Anthea Elizabeth Roberts, *Traditional and Modern Approaches to Customary International Law: A Reconciliation*, 95 AMER. J. INT'L L. 757, 768 (2001).

Rights of All Migrant Workers and Members of Their Families.<sup>80</sup> The Convention on Migrant Workers applies to all migrant workers without distinction.<sup>81</sup> The international substantive law regulating the required information on pesticide product labels to protect human health and the environment is the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC).<sup>82</sup> The parties to PIC have to meet certain labeling requirements before the import of a pesticide product is permitted into another nation-state.<sup>83</sup> These two international conventions are important in the context of farmworker exposure to pesticides because they have direct impact on migrant workers' rights and the language pesticide labels are required to have to be distributed internationally.

### 1. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Prior to the adoption of the Convention on Migrant Workers' in 1990, the International Labor Organization (ILO) Convention No. 143 required the protection of basic human rights for all migrant workers.<sup>84</sup> The ILO did not, however, define the protected human rights. Thus, the Convention on Migrant Workers was necessary to establish the broad range of explicit human rights protections for migrant workers and their families because of migrant workers' "potential vulnerability to discrimination, exploitation and abuse, especially in marginal, low status and inadequately regulated sectors of employment."<sup>85</sup> In Article 4, the Convention defines "members of the family" as persons married to a migrant worker, dependent children, and other dependent persons who are recognized by legislation or international agreements between States concerned.<sup>86</sup>

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80. Convention on Migrant Workers, *supra* note 3.

81. *Id.*

82. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Sept. 10, 1998, 2244 U.N.T.S. 337 (entered into force 2004), *available at* <http://treaties.un.org/doc/publication/UNTS/Volume%202244/v2244.pdf> [hereinafter PIC Convention].

83. *Id.*

84. Migrant Workers, art. I, ILO Convention No. 143, June 24, 1975 (entered into force Dec. 9, 1978), *available at* [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C143](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C143) (last visited July 12, 2014).

85. Bosniak, *supra* note 8, at 738; *see also* Organization of Security and Co-operation in Europe, International Legal Framework for the Protection of Migrant Workers, *available at* <http://www.osce.org/eea/19246> (last visited July 12, 2014).

86. Convention on Migrant Workers, *supra* note 3, at 96.

The Preamble of the Convention expressly embodies the principles in the basic instruments of the United Nations concerning human rights, which includes the “Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women.”<sup>87</sup> The Convention also incorporated the ILO’s Convention on Migration for Employment No. 197 and Migrations in Abusive Conditions No.143.<sup>88</sup> Lastly, the Preamble “recalled” the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>89</sup> The Convention has seventy-seven provisions on the substantive protections that States are required to grant to migrant workers. The provisions seek to provide protection to migrant workers and their families because of the “importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community.”<sup>90</sup> The Convention establishes the basic norms that can be applied universally.<sup>91</sup>

Some of the most significant protections include Articles 9, 10, 12, 13, 16, 33, and 25. First, Article 9 of the Convention on Migrant Workers explicitly protects the substantive right to life,<sup>92</sup> and Article 10 states no migrant worker or their family shall be “subjected to torture or to cruel, inhuman or degrading treatment.”<sup>93</sup> Second, the Convention also guarantees the right to freedom of thought and conscience under Article 12 by ensuring that the migrant workers and their families have the freedom to adopt and pursue their beliefs.<sup>94</sup> Third, Article 13 states migrant workers and their families shall have the procedural right to receive information through any media of their choice and this right is only subject to restriction as provided by State law to protect public order or health.<sup>95</sup> Lastly, Article 16 provides that migrant workers and their families shall be protected by the State

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87. *Id.* at 93 (citations omitted).

88. *Id.*

89. *Id.*

90. *Id.* at 94.

91. *Id.*

92. Convention on Migrant Workers, *supra* note 3, at 97.

93. *Id.* at 98.

94. *Id.*

95. *Id.* at 99.

from “violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups, or institutions.”<sup>96</sup>

Furthermore, the Convention on Migrant Workers makes express references multiple times to communication in the language the migrant workers and their families understand.<sup>97</sup> Specifically, under Article 33, the employer shall disseminate to the migrant workers their rights under the Convention in a language the migrant workers and their families understand.<sup>98</sup> Another important substantive provision under Article 25 for migrant workers in their employment setting is the right to enjoy equal treatment to the nationals, which includes work conditions that equally protect safety and health under national law and practice.<sup>99</sup>

One significant limitation to these protections is that the Convention on Migrant Workers as of September 2013 only has thirty-five signatories and forty-five parties.<sup>100</sup> The majority of the parties to the treaty, with the exception of Mexico, Morocco, and Turkey, are not considered to be major countries of employment for migrant workers.<sup>101</sup> The State representatives to the United Nations working group “argued about whether the Convention would represent a codification of customary international law or whether it would only be binding the signing parties.”<sup>102</sup> This debate seems to be at the core of the interpretation of the human rights instruments and territorial nation-state sovereignty. However, the basic fundamental human rights treaties and the ILO framework were incorporated as the basis for the Convention on Migrant Workers; therefore, these rights should not be diminished by territorial sovereignty.<sup>103</sup>

Territorial sovereignty refers to a “state’s power to exercise exclusive control over its physical domain.”<sup>104</sup> This sovereignty is not absolute, and international law imposes limitations, such as the major

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96. *Id.*

97. Convention on Migrant Workers, *supra* note 3, at 100-106.

98. *Id.* at 106.

99. *Id.* at 104.

100. U.N. Treaty Collection, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-13&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-13&chapter=4&lang=en) (last visited July 12, 2014) (status as of Dec. 7, 2014: the numbers are 37 signatories and 47 parties).

101. Beth Lyon, *The Unsigned United Nations Migrant Worker Rights Convention: An Overlooked Opportunity to Change The “Brown Collar” Migration Paradigm*, 42 N.Y.U. J. INT’L L. & POL. 389, 399 (2010).

102. Bosniak, *supra* note 8, at 752.

103. Convention on Migrant Workers, *supra* note 3, at 93.

104. Bosniak, *supra* note 8, at 742-743.

human rights instruments place procedural restrictions on states.<sup>105</sup> Therefore, the Convention on Migrant Workers is at minimum customary international law that is binding because the foundational instruments for the Convention are considered to be international law.<sup>106</sup> As such, “customary law does appear to place limits on the type and degree of differential treatment permitted,” but the “proper inquiry is ‘whether alienage is, in the circumstances, a relevant difference justifying differential treatment . . . objective justification and proportionality’ must be demonstrated.”<sup>107</sup> Thus, territorial sovereignty does not prevent a state from being held liable for violations of human rights unless there is a justification that is of proportionate importance.

## 2. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

In 2004, PIC entered into force and is the international law regulating the substantive right to human health and a healthy environment through proper procedures of the distribution of pesticide products.<sup>108</sup> PIC currently has 153 parties and 72 signatories.<sup>109</sup> PIC is a binding set of standards that regulates hazardous chemicals and pesticides similar to the United Nations Food and Agricultural Organization’s International Code of Conduct on the Distribution and Use of Pesticides that was adopted in 1985.<sup>110</sup> However, the Code was a voluntary set of standards of conduct for all public and private entities engaged in the distribution and use of pesticides.<sup>111</sup>

Moreover, PIC is a multilateral treaty that recalled the “pertinent provisions” of the Rio Declaration on Environment and Development on environmentally sound management of toxic chemi-

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105. *Id.* at 743.

106. *Id.* at 752-754; Organization of Security and Co-operation in Europe, International Legal Framework for the Protection of Migrant Workers, *available at* [http://www.ilo.org/migrant/publications/training-tools/WCMS\\_203851/lang=en/index.htm](http://www.ilo.org/migrant/publications/training-tools/WCMS_203851/lang=en/index.htm).

107. Bosniak, *supra* note 8, at 754 (quoting Goodwin-Gill, 1978:87).

108. PIC Convention, *supra* note 82, at 393.

109. U.N. Treaty Collection, Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-14&chapter=27&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-14&chapter=27&lang=en) (last visited Sept. 22, 2013).

110. Charlotte Uram, *International Regulation of the Sale and Use of Pesticides*, 10 *Nw. J. INT’L L. & BUS.* 460, 469 (1990); *see also* THE CODE, *supra* note 5.

111. *Id.*



icals.<sup>112</sup> PIC was promulgated and ultimately adopted because of the desire to ensure that hazardous chemicals that are exported are “packaged and labeled in a manner that is adequately protective of human health and the environment,” consistent with the principles of the Code.<sup>113</sup> This Convention was necessary due to the rise in global trade because toxic chemicals such as pesticides are intended to kill by being “formulated to destroy living organisms, vital cells, and ravage nerve, respiratory, and digestive systems.”<sup>114</sup> PIC is significant in protecting farmworker exposure to pesticides because it regulates the international import and export of pesticide products, which ultimately are distributed for use by farmworkers in nation-states.

In particular, under Article 3, PIC defines the scope of the Convention as applying to banned or severely restricted chemicals, and severely hazardous pesticide formulations.<sup>115</sup> “Severely hazardous pesticide formulations,” listed under Annex III of the Convention, means “a chemical formulated for pesticide use that produces severe health or environmental effects observable within a short period of time after single or multiple exposure, under conditions of use.”<sup>116</sup> Under Articles 10 and 11, the parties to PIC are obligated to implement appropriate legislative or administrative measures to make decisions about the import or export of the chemicals listed on Annex III.<sup>117</sup>

Article 13 addresses the information that must accompany exported chemicals. The requirements, taking into account international standards, include chemicals listed in Annex III and banned or severely restricted in its territory to be subject to labeling requirements that ensure adequate availability of information with regard to risks and hazard to human health or the environment.<sup>118</sup> The information on the label “should be given in one or more of the official languages of the importing party.”<sup>119</sup> This may also be required to any chemicals in general that impact human health and the environment.<sup>120</sup> PIC is significant in protecting farmworker exposure to pesticides because it

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112. PIC Convention, *supra* note 82, at 393; *see also* EARTHJUSTICE, ENVIRONMENTAL JUSTICE RIGHTS REPORT (2007), available at <http://earthjustice.org/sites/default/files/library/references/2007-environmental-rights-report.pdf>.

113. PIC Convention, *supra* note 82, at 393.

114. John Carlucci, Note, *Reforming the Law on Pesticides*, 14 VA. ENVTL. L.J. 189, 189-90 (1994).

115. *Id.* at 395.

116. *Id.* at 394.

117. *Id.* at 398-99.

118. *Id.* at 400-01.

119. *Id.* at 401.

120. *See* PIC Convention, *supra* note 82, at 401.

regulates the international import and export of pesticide products, which ultimately are distributed for use by farmworkers in nation-states.

### B. *Procedural International Law*

Free, prior and informed consent is incorporated into the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>121</sup> The international instrument regulating the required language on pesticide product labels is the International Code of Conduct on the Distribution and Use of Pesticides (the Code). Both of these international laws are not binding; however, they represent persuasive authority and potentially customary international law because the United Nations has incorporated the Code into PIC, and UNDRIP is founded on established human rights treaties.<sup>122</sup> Free, prior and informed consent is important in providing farmworkers an informed choice when deciding to work with pesticide products, and the Code provides the best procedures for the international community to apply when packaging and labeling pesticide products.

#### 1. International Code of Conduct: Bilingual Pesticide Labeling

The Code was one of the first voluntary codes to support food security by protecting human health and the environment.<sup>123</sup> The Food and Agriculture Organization of the United Nations adopted the Code in 1985.<sup>124</sup> The Code established “voluntary standards of conduct for all public and private entities engaged in, or associated with, the distribution and use of pesticides, and since its adoption has served as the globally accepted standard for pesticide management.”<sup>125</sup> The Code was revised in 2005 with the addition of Annex I that incorporates all international policy instruments in the field of chemical management, environmental protection, sustainable development, and international trade.<sup>126</sup> Annex I explicitly lists the international policy instruments

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121. United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 295, U.N. Doc.A/RES/61/295, Oct. 2, 2007, available at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) [hereinafter UNDRIP].

122. See PIC Convention, *supra* note 82, at 393; see also THE CODE, *supra* note 5.

123. THE CODE, *supra* note 5.

124. *Id.*

125. *Id.*; see also Uram, *supra* note 110, at 469.

126. THE CODE, *supra* note 5.

that indicate pesticide product labeling, human health, and protecting the environment are of significant importance.<sup>127</sup>

The management of pesticides is addressed under Article 3 of the Code. This applies to the pesticide industry in general, and it is the responsibility of the government to implement.<sup>128</sup> Article 3 expressly requires those in the pesticide industry to ensure adequate quality, packaging, and labeling as appropriate for each specific market.<sup>129</sup> The pesticides suppliers, distributors, and companies must “pay special attention to the choice of pesticide formulations and to presentation, packaging, and labeling to reduce risks to users and minimize adverse effects on the environment.”<sup>130</sup> As part of the reduction of risk to the pesticide handlers, each package of pesticides must have information and instructions in a language adequate to ensure effective use and reduce risks during handling.<sup>131</sup>

Notably, Article 10 states labeling must comply with national or international labeling requirements for dangerous goods in international trade.<sup>132</sup> The labels must meet “registration requirements and include recommendations consistent with those of the recognized research and advisory agencies in the country of sale; and include appropriate symbols and pictograms whenever possible, in addition to written instructions, warnings and precautions in the appropriate language or languages.”<sup>133</sup>

## 2. United Nations Declaration on the Rights of Indigenous Peoples

The Annex of UNDRIP states the Declaration was guided by purposes and principles of the Charter of the United Nations in affirming “all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of human kind.”<sup>134</sup> UNDRIP was signed by 143 states in favor of the Dec-

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127. International Labour Organization, *Convention Concerning Safety in the use of Chemicals at Work*, No. 170 (1993), available at [http://www.ilo.org/dyn/normlex/en/f?pN°RMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C170](http://www.ilo.org/dyn/normlex/en/f?pN°RMLEXPUB:12100:0::NO::P12100_ILO_CODE:C170); World Health Organization, *Declaration on occupational health for all* (1994), [http://www.who.int/occupational\\_health/publications/declaration/en/](http://www.who.int/occupational_health/publications/declaration/en/) (last visited Sept. 22, 2013); see also PIC Convention, *supra* note 82, at 401.

128. THE CODE, *supra* note 5.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*; see also Uram, *supra* note 110, at 470.

134. UNDRIP, *supra* note 121.

laration.<sup>135</sup> UNDRIP was considered to be necessary because there was a concern that indigenous peoples had suffered from historic injustices as a result of colonization.<sup>136</sup> Therefore, this created an “urgent need” to respect and promote the rights of indigenous peoples affirmed in treaties and bring an end to all forms of discrimination.

UNDRIP makes it clear that the rights affirmed in treaties, agreements, and other constructive arrangements between States and indigenous peoples are matters of international concern because international agreements should be a basis for a “strengthened partnership.”<sup>137</sup> UNDRIP was intended to enhance the harmonious and cooperative relations based on principles of justice, democracy, and respect for human rights.<sup>138</sup> UNDRIP establishes “a universal framework of minimum standards for the survival, dignity, well-being and rights of the world’s indigenous peoples,” by addressing “individual and collective rights; cultural rights and identity; rights to education, health, employment, [and] language.”<sup>139</sup> These substantive rights are inextricably linked to the importance of having the procedural right to free, prior and informed consent.

Specifically, Articles 19 and 32 require consultation and cooperation by the State in good faith with “indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”<sup>140</sup> Article 27 holds States must work in conjunction with indigenous peoples to ensure their right to participate in the process of a fair, impartial, and transparent process of adjudicating their rights.<sup>141</sup> These rights recognized in UNDRIP, under Article 43, “constitute the minimum standards for survival, dignity, and well-being of the indigenous peoples of the world.”<sup>142</sup> Lastly, Article 46 ensures that the right to free, prior and informed consent is protected by concluding that any limita-

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135. Office of the U.N. High Commissioner for Human Rights, *Declaration on the Rights of Indigenous Peoples*, <http://www2.ohchr.org/english/issues/indigenous/declaration.htm> (last visited Sept. 22, 2013).

136. UNDRIP, *supra* note 121.

137. *Id.*

138. *Id.*

139. *Declaration on the Rights of Indigenous Peoples*, *supra* note 135; see also Audio Visual Library of Int’l Law: Lecture Series, *The Rights and Status of Indigenous Peoples*, UNITED NATIONS: OFFICE OF LEGAL AFFAIRS (2008), [http://legal.un.org/avl/ls/Wiessner\\_HR\\_video\\_1.html](http://legal.un.org/avl/ls/Wiessner_HR_video_1.html).

140. UNDRIP, *supra* note 121.

141. *Id.*

142. *Id.*

tions have to be nondiscriminatory and strictly necessary to secure the recognition and respect for the right and freedoms of others and meet the just and compelling requirements of a democratic society.<sup>143</sup>

In *Saramaka People v. Suriname*, the Inter-American Court on Human Rights applied Article 32 of UNDRIP.<sup>144</sup> The court held that a process of “fully informed consent” requires “at a minimum, that all of the members of the community are fully and accurately informed of the nature and consequences of the process and provided with an effective opportunity to participate individually or as collectives.”<sup>145</sup> Moreover, in ensuring the effective participation of members of the Saramaka people in development, the State has a duty to always actively consult with the community according to their customs and traditions.<sup>146</sup> “These consultations must be in good faith, through culturally appropriate procedures,” traditional methods of decision-making, and with the objective of reaching an agreement.<sup>147</sup> Through these good faith consultations, the State must have ensured the members of the Saramaka people are aware of possible environmental and health risks, “in order for the proposed development or investment plan to be accepted knowingly and voluntarily.”<sup>148</sup>

Furthermore, when the circumstances involve “large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramaka people, but also to obtain their free, prior, and informed consent.”<sup>149</sup> The procedure of free, prior and informed consent is “essential for the protection of human rights of indigenous peoples in relation to major development projects.”<sup>150</sup> Thus, requiring free, prior and informed consent in the farmworkers context would be to implement the existing voluntary Code that requires each package of pesticide to have information and instructions in a language adequate to ensure effective use and reduce risks during handling.<sup>151</sup>

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143. *Id.*; see also *The Rights and Status of Indigenous Peoples*, *supra* note 139.

144. *Saramaka People v. Suriname*, 172 Inter-Am. Ct. H.R. 1, 32 (Int'l Peoples' Tribunal 2007), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_172\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf).

145. *Id.* at 40 (quoting the holding in *Maya Indigenous Communities of the Toledo District v. Belize*, Case 12.053, Case 12.053, Report No. 40/04, Inter-Am. C.H.R., OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 727 (2004), available at <http://www1.umn.edu/humanrts/cases/40-04.html>).

146. *Id.* at 39.

147. *Id.* at 40.

148. *Id.*

149. *Id.*

150. *Id.* at 41 (quoting the U.N. Special Rapporteur).

151. See THE CODE, *supra* note 5.

### C. Domestic Law: FIFRA

FIFRA was enacted in the United States in 1947 with the intent of governing the sale and use of pesticides.<sup>152</sup> The Act was amended in 1972 to incorporate measures to protect public health and safety.<sup>153</sup> FIFRA established an “overall risk [and] benefit standard for pesticide registration, requiring that pesticides perform their intended function, when used according to labeling directions, without posing unreasonable risks of adverse effects on human health or the environment.”<sup>154</sup>

FIFRA defines the environment as “water, air, land, and all plants, and man and other animals therein, and the interrelationships which exist among these.”<sup>155</sup> The registered pesticide product labels contain information on personal protection and protection of others.<sup>156</sup> Furthermore, the Administrator registers the pesticide product when the Administrator is satisfied with the labeling, with the information submitted, and that the pesticide will not cause unreasonable adverse effects on the environment.<sup>157</sup> If EPA, the agency that administers FIFRA, determines the pesticide product presents an “imminent hazard to human health it may suspend registration.”<sup>158</sup> Therefore, the FIFRA registration regulatory scheme of pesticide products directly affects farmworkers because when a pesticide can be distributed or sold for agricultural purposes, the manufacturer must first register it.<sup>159</sup>

FIFRA is flexible, however, regarding the information required because the registration process includes exemptions, exceptions, and other discretionary requirements in its provisions.<sup>160</sup> The Administrator can rely on studies conducted by the manufacturers, rather than an independent study of the pesticide product and the label to establish that it does not cause unreasonable adverse effects.<sup>161</sup> This is in part due to the Administrator being able to “consider the economic factors of potential national volume of use, extent of distribution, and the impact

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152. ENVTL. PROT. AGENCY, EPA HISTORY: FIFRA AMENDMENTS OF 1988 (2013), available at <http://www2.epa.gov/aboutepa/epa-history-fifra-amendments-1988> [hereinafter EPA HISTORY].

153. Uram, *supra* note 110, at 463. See generally Flocks, *supra* note 11, at 255.

154. See EPA HISTORY, *supra* note 152.

155. 7 U.S.C. § 136(j) (2006); see also Flocks, *supra* note 11, at 266.

156. See 7 U.S.C. § 136a(c)(1)(C); NEBGUIDE, PESTICIDE LAWS AND REGULATIONS (2013), available at <http://www.ianrpubs.unl.edu/public/live/g479/build/g479.pdf>.

157. 7 U.S.C. § 136a(c)(5)(D) (2006).

158. Uram, *supra* note 110, at 463.

159. Flocks, *supra* note 11, at 256.

160. *Id.* at 266.

161. *Id.*

of the cost of meeting the requirements on the incentives for any potential registrant to undertake the development of the required data.”<sup>162</sup> Thus, the cost-benefit analysis weighs the unreasonable risk to humans or the environment against the beneficial commercial use of the pesticide product.<sup>163</sup>

Moreover, FIFRA requires adequate labeling for export and import of all pesticides internationally. First, in order for the United States to import the pesticide product, it must: (1) comply with U.S. pesticide law, (2) be registered with EPA, except where exempted by regulation or statute, and (3) be properly labeled.<sup>164</sup> The only time pesticide labels require the Spanish language is when the product’s toxicity category is I or II. These toxic pesticides require Spanish signal words “Aviso” or “Peligro,” and the statement “si usted no entiende la etiqueta, busque a alguien para que se la explique a usted en detalle.”<sup>165</sup> However, the manufacturer may use a foreign language in addition to the full English language, in part or in its entirety on the product, so long as it is a true and accurate translation.<sup>166</sup> Second, a pesticide product does not have to be registered to be exported, but the following labeling information must be multilingual: (1) the warning and caution statements, (2) the statement “Not Registered for Use in the United States of America,” (3) the ingredient statement, (4) the word “Poison,” and (5) the statement of practical treatment in case of poisoning.<sup>167</sup> English is required on all labeling, and either the language which is used to “conduct official government business, or the predominantly spoken or written language of the country of import must appear on the labeling.”<sup>168</sup>

Thus, the international law of the Convention on Migrant Workers and PIC does not explicitly require bilingual labeling for pesticide products to protect farmworkers from the harmful effects of pesticide exposure. The domestic law of FIFRA in the United States

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162. 7 U.S.C. § 136c(c)(2)(A).

163. Flocks, *supra* note 11, at 267.

164. ENVTL. PROT. AGENCY, FIFRA IMPORTING AND EXPORTING PESTICIDES, *available at* <http://www.epa.gov/compliance/monitoring/programs/fifra/importexport.html> (last visited July 13, 2014).

165. See 40 C.F.R. § 156.206(e), *available at* <http://www.epa.gov/oppfead1/labeling/lrm/chap-18.pdf> (last visited July 13, 2014) (Spanish warning phrase means if you do not understand the label, find someone to explain it to you in detail).

166. ENVTL. PROT. AGENCY, LABEL REVIEW MANUAL: UNIQUE PRODUCT LABELING, *available at* <http://www.epa.gov/oppfead1/labeling/lrm/chap-18.pdf> (last visited July 13, 2014).

167. *Id.*; 40 C.F.R. § 168.65, *available at* <http://www.gpo.gov/fdsys/pkg/CFR-2011-title40-vol24/xml/CFR-2011-title40-vol24-sec168-65.xml> (last visited Jul. 13, 2014).

168. 40 C.F.R. § 168.65.

also does not have procedures requiring bilingual pesticide labeling. However, the existing international law of the Code and UNDRIP do require such protections. The Code and UNDRIP provide the framework for international and domestic law to extend substantially better protection to farmworkers against the adverse effects of pesticide exposure through bilingual labeling in English and Spanish.

### III. AN INTERNATIONAL CASE STUDY: THE PERMANENT PEOPLES' TRIBUNAL

The Permanent Peoples' Tribunal (PPT) was established in 1979 in Bologna, Italy.<sup>169</sup> The purpose of the PPT is to “make visible and juridically qualify all of those situations where the massive violation of fundamental human rights find no recognition or institutional redress, either at a national or international level.”<sup>170</sup> The PPT is an international opinion tribunal that has over thirty years of experience in the assessment of the risk of industrial activities on human and environmental rights.<sup>171</sup> The PPT has a conventional court format, and is rooted in existing international frameworks, including the UN Declaration on Human Rights and UNDRIP.<sup>172</sup> Moreover, the Universal Declaration on the Rights of Peoples is considered the governing statute of the PPT.<sup>173</sup> This declaration was based on the findings of the world's development heading toward a few hundred powerful individuals that leave the “majority of people no option but to be slaves, to be eliminated or excluded.”<sup>174</sup> Thus, the PPT was created “out of people's struggles against exploitation and oppression and has become a vital part of these struggles.”<sup>175</sup>

The discussion that follows will focus on a recent judicial decision by the PPT. Section A will address the globalization of the

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169. *Permanent People's Tribunal on European Multinationals In Latin America – Union Fenosa*, TRANSNATIONAL INSTITUTE (Nov. 23, 2007), <http://www.tni.org/article/permanent-people%E2%80%99s-tribunal-european-multinationals-latin-america-%E2%80%93-union-fenosa>.

170. *Id.*

171. Permanent Peoples' Tribunal, *Session on Agrochemical Transnational Corporations* (2011), available at [http://agricorporateaccountability.net/sites/default/files/tpp\\_bangalore3dec2011.pdf](http://agricorporateaccountability.net/sites/default/files/tpp_bangalore3dec2011.pdf) [hereinafter Peoples' Tribunal].

172. *Id.*

173. *Id.*

174. *Id.*

175. *The Permanent People's Tribunal Session on Agrochemical Transnational Corporations Case Summary: The People's Call for Justice*, PESTICIDE ACTION NETWORK INT'L, <http://www.agricorporateaccountability.net/en/page/general/20> (last visited July 13, 2014).



pesticide industry and the impact of such development on human rights and the environment, and section B will evaluate the PPT's holding and recommendations to resolve these issues.

A. *The Pesticide Industry, Human Rights, and the Environment*

In 2009, the "Big 6"<sup>176</sup> made up 72% of the global pesticide market worth \$44 billion.<sup>177</sup> The power and influence of these corporations involved abuses including bribery; threats; harassment; producing misleading, erroneous or even false data; and labeling of data as "confidential" as a means of hiding information from the public.<sup>178</sup> As a consequence, highly toxic pesticides are produced, marketed, and used, resulting in great suffering and the violations of rights, which largely affect small farmers, farm laborers, and the poor.<sup>179</sup> According to the World Health Bank, there are 355,000 people that die annually from poisoning caused by exposure to pesticides.<sup>180</sup>

For example, there were thousands of people who died in the case of Bhopal in which "the widespread consensus that it was the worst disaster ever did not lead to concrete actions in favor of the victims by private and public actors."<sup>181</sup> In contrast, the PPT is a forum that takes the approach of being centered on the victims rather than exclusively on seeking legal remedy within the rigid boundaries of existing international law.<sup>182</sup> The PPT's approach is best described as requiring that "international standards of human rights . . . be approved and applied in a binding and effective way, whilst rules of investment and trade . . . be made subject to international human rights."<sup>183</sup>

In December 2011, the PPT held the Session on Agrochemical Transnational Corporations to hear claims brought by farmers, farmworkers, mothers, scientists, and consumers against the Big Six transnational pesticide corporations for violations of basic human

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176. The six transnational pesticide corporations or the "Big 6," of which the allegations were brought against were Monsanto, Syngenta, Bayer, BASF, Dow, and Dupont.

177. Peoples' Tribunal, *supra* note 171.

178. *Id.*

179. *Id.*

180. *Id.*; see also The World Bank, World Development Report (2008), available at <http://siteresources.worldbank.org/INTWDR2008/Resources/2795087-1192111580172/WDRover2008-ENG.pdf>.

181. Peoples' Tribunal, *supra* note 171.

182. *Id.*

183. *Id.* (quoting the analysis summarized in the terms formulated in the 1994 Session of Madrid).

rights and the environment.<sup>184</sup> The session completed a long investigation that began in July 2008 when representatives of Pesticide Action Network International requested an intervention.<sup>185</sup> Due to the inability of the victims and survivors to secure adequate justice, compensation, and remediation, the PPT decided to hold the session.<sup>186</sup> The jurors were diverse and consisted of a legal scholar from India, an economist from Germany, a professor and researcher from Senegal, a professor of public policy from Italy, a biologist and geneticist from the United Kingdom, and a medical doctor from Italy.<sup>187</sup>

### *B. Unchecked Pesticide Corporations Have Undermined Fundamental Human Rights*

The PPT found there were several severe violations of human rights and the environment by “the Big 6.”<sup>188</sup> First, the right to health and life had been violated due to the chronic and irreversible disease, injury, and death from pesticide exposure.<sup>189</sup> Second, the right to livelihood had been violated because farmers were no longer able to complement their food with non-cash-crop plants such as fish that were previously part of their farming system.<sup>190</sup> Furthermore, in the United States, Monsanto had filed over 136 cases involving farmers and small farm companies in which the sum awarded to Monsanto in 70 recorded judgments totaled nearly \$23,350,000 billion.<sup>191</sup> Third, the court found the right to a safe and healthy environment had been violated because of the loss of biodiversity and degradation of ecosystems.<sup>192</sup> Fourth, the rights of indigenous peoples had been violated because their survival was threatened by the exposure to pesticides from the lack of free, prior and informed consent.<sup>193</sup> Fifth, the rights of children and women had been violated because women

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184. Peoples’ Tribunal, *supra* note 171; *The Permanent Peoples’ Tribunal*, PESTICIDE ACTION NETWORK N. AM., available at <http://www.panna.org/sites/default/files/PPT%20Executive%20Summary-2.pdf> (last visited July 13, 2014); see also *Preparations Begin for “Big 6” on Trial*, PESTICIDE ACTION NETWORK N. AM., Nov. 17, 2011, available at <http://www.panna.org/press-release/preparations-begin-big-6-trial>.

185. Peoples’ Tribunal, *supra* note 171.

186. *Id.*

187. *Id.*

188. *Id.*; see also *People’s Tribunal Session on Agrochemical Transnational Corporations Case Study: The People’s Call for Justice*, *supra* note 175.

189. Peoples’ Tribunal, *supra* note 171.

190. *Id.*; see also *The Permanent People’s Tribunal*, *supra* note 184.

191. Peoples’ Tribunal, *supra* note 171.

192. *Id.*

193. *Id.*

typically are the laborers used for pesticide spraying as men are employed for other work on farm.<sup>194</sup> Lastly, the court held civil and political rights, right to self-determination of peoples, and right to participation and information had been violated because of threats, intimidation, and discrediting of medical doctors and scientists that reported adverse effects of pesticides and other hazardous chemicals.<sup>195</sup>

As a result of these human rights violations, the PPT held the precautionary principle must be adopted to protect human rights, in addition to the environment.<sup>196</sup> The precautionary principle provides that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”<sup>197</sup> Moreover, the inequality in the world has grown at the rapid rate of development, and this has increased the political intolerance and conflict within and between nations and classes.<sup>198</sup>

This finding was supported by “the generation of social costs in the shifting of the corporations’ private costs onto individuals, communities or humanity as whole.”<sup>199</sup> The private costs, such as acquiring the appropriate technology to avoid adverse health effects of the use of pesticides on people and fostering independent research to prevent harmful effects, are shifted onto individuals when corporations decide not to pursue such preventive measures.<sup>200</sup> The result of this shift in private costs onto individuals results in social costs that include: (1) undermining the health of individuals who live near or work in the fields where pesticides are used, (2) children born with birth defects because their parents live in such conditions, and (3) employment disruption due to health issues.<sup>201</sup> Furthermore, the corporations are endorsing the view that people are expendable and their lives are mere commodities when they try to avoid consequences for their harmful actions by paying out sums of money for law suits resulting from these social costs.<sup>202</sup> Thus, the PPT made it clear, “the loss of health and the

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194. *Id.*

195. *Id.*

196. *Id.*

197. U.N. Environment Programme, Rio Declaration on Environment and Development, principle 15, <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163> (last visited July 13, 2014).

198. Peoples’ Tribunal, *supra* note 171.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

disruption of social environment are costs that in no way can be monetized.”<sup>203</sup>

Next, the court held access to information is the root of an economically relevant choice and a “prerequisite for the freedom to choose how to conduct one’s life.”<sup>204</sup> The lack of access to information, without the application of the precautionary principle, leads to those taking action against a pesticide company to have to prove the harmful effects with nearly absolute certainty.<sup>205</sup> Moreover, the social cost of corporations withholding information results in the difficulty of assessing the negative effects of pesticide products.<sup>206</sup> The available data provided by corporations cannot be considered sufficient to provide a precise documentation of the causal relationship between exposures to pesticides and the fatal and nonfatal effects.<sup>207</sup> However, the existence of “violations of human rights to health and life does [sic] not depend on quantitative criteria,” and the systematic nature of the dramatic effect of the overall toxicity of the pesticide should be considered as evidence.<sup>208</sup>

The PPT concluded that host states were not honoring obligations arising from the ILO Conventions, especially concerning unfair labor practices regarding decent and safe conditions of work, and yet do not deny having obligations arising from the Child Rights Convention.<sup>209</sup> The court stated the policies of the FAO and ILO “are not fully responsive to the urgency of regulation and redress as articulated by suffering peoples, and human rights and social movement activist groups.”<sup>210</sup>

#### IV. PROPOSED AMENDMENTS TO PROTECT MIGRANT FARMWORKERS

This part will address a proposed amendment to the Migrant Workers Convention that would adjust the Convention both substantively and procedurally to ensure international human rights protections for migrant farmworkers and their families to avoid environmental injustices. Next, it will propose an amendment to FIFRA because the United States is a major importer and exporter of pesticide

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203. *Id.*

204. Peoples’ Tribunal, *supra* note 171.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. Peoples’ Tribunal, *supra* note 171.

210. *Id.*

products and the majority of farmworkers are Hispanic and can only read Spanish.

A. *Proposed Amendment to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*

When the issue of migrant farmworkers and violation of their human rights due to pesticide exposure arises again, the international courts and nation-states will have to apply the current Conventions that do not specify bilingual labeling as a required method to protect farmworkers. As will be explained below, these courts and nation-states should not have to apply an unworkable standard to the protection of migrant farmworkers, which has led to adverse effects on farmworkers' health, families, and employment, and has even resulted in death. A significantly better approach is to apply the precautionary principle by amending the Convention on Migrant Workers to include the substantive and procedural rights involving bilingual pesticide labeling in English and Spanish.

1. Substantive Changes

To be consistent with the precautionary principle, and to protect migrant farmworkers from harmful pesticide exposure, an amendment to the existing Convention on Migrant Workers is necessary to expressly state that substantive human rights protections include the right to hazardous chemical labeling in the language the migrant worker understands.<sup>211</sup> Implementing the precautionary principle is the best way to prevent pesticide exposure to migrant farmworkers because it will remove the threat of serious or irreversible damage by not postponing cost-effective measures to prevent environmental degradation and human rights violations.<sup>212</sup> The international community does not need full scientific certainty to take precautionary measures when there is evidence of pesticide exposure leading to birth defects, health complications, and death.<sup>213</sup> Thus, this solution would be ideal because the Convention on Migrant Workers already expressly protects the substantive right to life, the right not to be subjected to

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211. See Flocks, *supra* note 11, at 266-67.

212. Peoples' Tribunal, *supra* note 171.

213. *Id.*; see *Chemical Warfare*, *supra* note 38; Greene, *supra* note 65; Sestin, *supra* note 69; FARMWORKER REPORT, *supra* note 34.

inhumane treatment, the right to adopt the belief of their choice, and the right to have work conditions equivalent to those of nationals.<sup>214</sup>

The current Article 25 states migrant workers are only entitled to equally protected safety and health under national law without reference to the language the migrant worker understands.<sup>215</sup> However, the Convention on Migrant Workers is clear that crucial information must be communicated in the language the migrant worker understands such as in criminal proceedings, arrest, and their rights under the Convention.<sup>216</sup> Therefore, the only way the Convention will continue to establish the basic norms is to implement the precautionary principle for the protection of migrant workers and their families by stating that work conditions must be safe and healthy under international law through pesticide products having labels in the language the migrant worker understands. As such, the current Article 25 undermines the precautionary principle and human rights protection in host countries that fall below international human rights standards.<sup>217</sup>

Furthermore, this amendment would complement PIC's substantive regulations because the amendment implementing the precautionary principle is intended to protect human health and a healthy environment by ensuring migrant workers understand the hazards of pesticide exposure prior to working with such products.<sup>218</sup> The amendment would also ensure the label is provided to the importing party in English and Spanish, in addition to the official language of the importing party.<sup>219</sup> Consequently, this amendment would guarantee substantive language requirements for pesticide labels under PIC because that convention is required to take into consideration all international standards.<sup>220</sup>

On the other hand, nation-states might contend that the Convention on Migrant Workers is sufficient protection for migrant workers even though it does not explicitly require bilingual pesticide labels. However, the PPT expressly stated its concern about unfair labor practices regarding decent and safe conditions of work for farmworkers.<sup>221</sup> Implementing the precautionary principle through bilingual pesticide labeling in a language a migrant farmworker can

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214. Convention on Migrant Workers, *supra* note 3, at 97-104.

215. *Id.* at 104.

216. *Id.* at 100-07.

217. *Id.*; *see also* Peoples' Tribunal, *supra* note 171.

218. *See* PIC Convention, *supra* note 82, at 393.

219. *See id.* at 401.

220. *Id.*

221. Peoples' Tribunal, *supra* note 171.

understand prior to using hazardous chemicals is the only way to ensure fair labor practices and provide safe work conditions for migrant farmworkers.<sup>222</sup> Thus, without bilingual pesticide labeling, the nation-states would continue to perpetuate the human rights violations by encroaching on the right to health and life by causing chronic and irreversible disease, injury, and death through pesticide exposure.<sup>223</sup>

## 2. Procedural Changes

The Convention on Migrant Workers should be amended to include an article stating migrant workers have to give their free, prior and informed consent in their language before working in conditions that could adversely affect their health such as pesticide exposure.<sup>224</sup> This amendment is essential because it would strengthen the partnership between the migrant farmworkers and the host country by requiring the employers to conduct good faith consultations to ensure the migrant farmworkers knowingly and voluntarily accept the health risks associated with pesticide exposure.<sup>225</sup> Furthermore, when there is large scale development that will have a major impact on migrant farmworkers, such as global use of pesticides, the nation-states should be required to first get fully informed consent.<sup>226</sup> At a minimum, this procedural amendment would ensure a fair, impartial, and transparent process through the participation of the nation-states working in conjunction with the migrant workers.<sup>227</sup>

Moreover, requiring free, prior and informed consent would simply implement the existing voluntary Code that requires each package of pesticide to have information and instructions in a language adequate to ensure effective use and reduce risks during handling.<sup>228</sup> The amendment requiring fully informed consent would also address the procedure required by the Code under Article 10 to ensure precautions in the appropriate language.<sup>229</sup> Therefore, the amendment would embody an existing set of procedural requirements by requiring nation-state employers to get free, prior and informed consent from

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222. *Id.*

223. *Id.*; Flocks, *supra* note 11, at 257-59; Greene, *supra* note 65; Sesin, *supra* note 69; *Chemical Warfare*, *supra* note 38; FARMWORKER REPORT, *supra* note 34.

224. See UNDRIP, *supra* note 121. See generally Peoples' Tribunal, *supra* note 171; *Saramaka People v. Suriname*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 106-07.

225. See *Saramaka People*, Inter-Am. Ct. H.R. (ser. C) No. 172 at ¶ 106.

226. *Id.*

227. See *id.*; UNDRIP, *supra* note 121.

228. See THE CODE, *supra* note 5.

229. *Id.*

migrant farmworkers in their language before they work on farms involving pesticide exposure.

Nation-states might contend there is no need for such an amendment because migrant workers do not need to be given information prior to working with pesticides when the nation-states have given their consent to the use of the pesticide product within that state. This argument of state sovereignty is limited by the major human rights instruments and the fact that the right to free, prior and informed consent for migrant workers is consistent with existing human rights international law.<sup>230</sup> For example, a situation where human rights protections serve as a limit on sovereign prerogatives of nation-states includes the Prevention and Punishment of the Crime of Genocide.<sup>231</sup> Furthermore, in order to put into effect the precautionary principle by protecting the procedural human right to free, prior and informed consent, the nation-states must be required under international law to not only give their consent but have migrant farmworkers each give their own consent in their language.<sup>232</sup> Therefore, the amendment to require the free, prior and informed consent of migrant farmworkers to work in farms with pesticide exposure is a basic human right that the nation-states cannot deny.

### B. *Proposed Procedural Amendments to FIFRA*

In the United States, and in states such as Florida, FIFRA does not properly address the situation of migrant farmworkers and human rights violations from pesticide exposure because the regulatory registration scheme does not require bilingual pesticide labeling to protect farmworkers. FIFRA needs to be amended to apply the precautionary principle because pesticide labels only in English have led to farmworkers experiencing severe effects on their health, families, and employment, and have even resulted in death. Therefore, FIFRA should be amended to include the procedural requirement of pesticide labeling in English and Spanish before the product can be registered for sale and distribution throughout the country, particularly in states with major agricultural industries such as Florida.

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230. See UNDRIP, *supra* note 121. See generally Bosniak, *supra* note 8, at 742.

231. Convention on the Prevention and Punishment of the Crime of Genocide, *adopted by the General Assembly*, Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/v78.pdf>.

232. See Peoples' Tribunal, *supra* note 171; *Saramaka People*, Inter-Am. Ct. H.R. (ser. C) No. 172 at ¶ 106; UNDRIP, *supra* note 121.



FIFRA must be amended to require all pesticide products to have English and Spanish labeling because it ensures the procedural right of access to information and free, prior and informed consent.<sup>233</sup> This change is necessary and would apply the precautionary principle because a prerequisite for the freedom to choose how to conduct one's life is access to information.<sup>234</sup> FIFRA's procedural requirements for registration have led to an environmental injustice between those who can read English and the farmworkers who can only read Spanish,<sup>235</sup> especially when 60 to 80% of farmworkers in the United States are Hispanic and can only read Spanish.<sup>236</sup> The social costs of not requiring fully informed consent has resulted in farmworkers living near and working on the field where pesticides are used to give birth to children with physical handicaps, develop cancer, and suffer other severe health issues.<sup>237</sup>

FIFRA already states that a manufacturer may use a foreign language in addition to the full English language, and requires Spanish signal words and a statement advising those who read Spanish to seek advice from someone who can read English.<sup>238</sup> These provisions must be expanded to state the pesticide label warnings must be conveyed in English and Spanish to protect the farmworkers' right to be fully and accurately informed of the consequences of pesticide exposure.<sup>239</sup> Furthermore, the existing options to have fully bilingual pesticide labels indicate that all pesticide products are highly toxic, particularly in the amount of exposure farmworkers in Florida and in other states throughout the country that are involved in major agricultural production. Therefore, it is necessary for FIFRA to require both Spanish and English pesticide labeling.

The government may argue there are no unreasonable risks of adverse effects on human health or the environment that have been proven with scientific certainty. However, the PPT rejected such a requirement before the government of a nation-state has to take action to

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233. Peoples' Tribunal, *supra* note 171; *see also* UNDRIP, *supra* note 121.

234. Peoples' Tribunal, *supra* note 171.

235. *Id.*

236. *Facts about Farmworkers*, NATIONAL CENTER FOR FARMWORKER HEALTH (last updated Aug. 2012), available at <http://www.ncfh.org/docs/fs-Facts%20about%20Farmworkers.pdf>.

237. Sesin, *supra* note 69; *Chemical Warfare*, *supra* note 38; FARMWORKER REPORT, *supra* note 34.

238. *See* Spanish Warning Statements, 40 C.F.R. § 156.206(e) (2011); ENVTL. PROT. AGENCY, LABEL REVIEW MANUAL: UNIQUE PRODUCT LABELING, available at <http://www.epa.gov/oppfead1/labeling/lrm/chap-18.pdf> (last visited July 13, 2014).

239. UNDRIP, *supra* note 121.

protect farmworkers.<sup>240</sup> Specifically, the court adopted the precautionary principle in which the lack of full scientific certainty does not postpone cost-effective measures to prevent environmental degradation and human rights violations.<sup>241</sup>

Here, any lack of scientific certainty should not prevent EPA from regulating potential human health and environmental issues because there is evidence of a strong correlation between pesticide exposure and health problems.<sup>242</sup> In these circumstances, EPA has the means to acquire the appropriate technology to avoid adverse health effects through the use of pesticides.<sup>243</sup> For example, EPA has applied the precautionary principle and used such technology for the protection of endangered species.<sup>244</sup> The Endangered Species Protection Act requires monitoring of all petitioned species that are candidates for listing and specifies emergency listing authority, development and review of recovery plans for listed species, a recovery plan criteria for listed species, a status report to Congress on recovery plans, every two years as well as five-year monitoring for species that have recovered and been delisted.<sup>245</sup> Thus, EPA can employ cost-effective measures to implement the precautionary principle in the context of human health through bilingual pesticide labeling, and the lack of scientific certainty should not stop the government from taking action when such measures are available.

## CONCLUSION

Migrant farmworkers like those in the state of Florida have had to endure a long history of environmental injustice. The Spanish-speaking migrant farmworkers across the United States comprise 60% or more of the labor force, and as in Florida, the farmworkers are mostly poor, uneducated minorities.<sup>246</sup> In particular, the Lake Apopka farmworkers' agricultural production had to be shut down due to the substantial damage caused by the pesticides on farm land that led to

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240. Peoples' Tribunal, *supra* note 171.

241. *Id.*

242. *Id.*; *Chemical Warfare*, *supra* note 38. *See generally* Flocks, *supra* note 11, at 257-59; Greene, *supra* note 65; Sesin, *supra* note 69; FARMWORKER REPORT, *supra* note 34.

243. Peoples' Tribunal, *supra* note 171.

244. 16 U.S.C. § 1533(a)(1) (2012).

245. § 1531; *Summary of the Endangered Species Act*, EPA.GOV, <http://www2.epa.gov/laws-regulations/summary-endangered-species-act> (last updated July 8, 2014).

246. Economos, *supra* note 16, at 36; *see also* Flocks, *supra* note 11, at 258; Gaytan, *supra* note 12; Lau, *supra* note 14; NATIONAL CENTER FOR FARMWORKER HEALTH, *supra* note 236.

abnormalities in alligators' reproductive system, one of the nation's largest bird mortality incidents, and 83% of the farmworkers characterizing their current state of health as poor.<sup>247</sup> Additionally, the Immokalee farmworkers in Florida's most productive agricultural center have experienced birth defects. The Homestead farmworkers and their families in Florida have also been affected by pesticide exposure in the form of developing cancer.<sup>248</sup> None of these farmworkers were aware of the harmful effects of pesticides.<sup>249</sup>

First, the substantive law governing the harmful effects of pesticides internationally includes the Convention on Migrant Workers and PIC.<sup>250</sup> The Convention makes express references to communication in the language the migrant worker and their family understands,<sup>251</sup> protects the substantive right to life under Article 9, and protects the right to freedom of thought and conscience under Article 12.<sup>252</sup> PIC regulates the substantive right to human health and a healthy environment through proper procedures of the distribution of pesticide products.<sup>253</sup> Second, the international procedural law that can be applied to the farmworkers situation to ensure they are aware of the consequences of pesticide exposure is the free, prior and informed consent in the context of indigenous peoples.<sup>254</sup> The Inter-American Court's application of Article 32 of UNDRIP requires that all of the members of the community are fully and accurately informed of the nature and consequences of the process and provided with an effective opportunity to participate individually.<sup>255</sup> This would be possible by implementing the Code which provides the proper voluntary procedures for international pesticide packaging and labeling for the pesticide handlers, with information and instructions in a language adequate to ensure effective use and reduce risks during handling.<sup>256</sup> Lastly, FIFRA is the domestic law regulating the requirements for pesticide product labels before the product can be made available for purchase and used by farmworkers in the United States in major agricultural production states such as Florida.<sup>257</sup> Currently, the only time

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247. Economos, *supra* note 16, at 35.

248. Sesin, *supra* note 69.

249. *Id.*

250. Convention on Migrant Workers, *supra* note 3; PIC Convention, *supra* note 82.

251. Convention on Migrant Workers, *supra* note 3, at 100-106.

252. *Id.* at 97-98.

253. PIC Convention, *supra* note 82, at 393.

254. UNDRIP, *supra* note 121.

255. *Saramaka People*, Inter-Am. Ct. H.R. (ser. C) No. 172 at ¶ 106.

256. THE CODE, *supra* note 5.

257. 7 U.S.C. § 136(a)(2)(A) (2012).

pesticide labels are required to use the Spanish language is when the product's toxicity category is I or II, then a Spanish signal word is required with a statement advising the person to find someone who understands English to explain the pesticide label to the pesticide handler.<sup>258</sup>

The PPT found the six largest pesticide corporations and distributors had violated the human rights to health, life, healthy environment, participation and information, and the rights of children and women.<sup>259</sup> The PPT held the precautionary principle must be adopted when there are threats of serious or irreversible damage, and lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation and human rights violations.<sup>260</sup> Thus, an amendment to the existing Convention on Migrant Workers to expressly state that substantive human rights protections include the right to hazardous chemical labeling in the language the migrant worker understands is essential to implementing the precautionary principle. Furthermore, the Convention should be amended to include the procedural right of free, prior and informed consent so that migrant workers can be informed in their language before working with pesticides that could adversely affect their health. Lastly, FIFRA must be amended to require all pesticide products to have English and Spanish labeling because it ensures the procedural right of access to information and free, prior and informed consent.<sup>261</sup>

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258. 40 C.F.R. § 156.206(e).

259. Peoples' Tribunal, *supra* note 171.

260. *Id.*

261. Peoples' Tribunal, *supra* note 171; *see also* UNDRIP, *supra* note 121.

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