

ARE LAWS ENOUGH? A LOOK INTO THE PROTECTION OF MEXICO'S FARM WORKERS

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Background

An estimated fifty-three million people live in a multidimensional state of poverty in Mexico (SEDESOL, 2014). Multidimensional poverty includes poor health, lack of education, disempowerment, and inadequate living conditions, among other factors (OPHI, 2016). Migrant farm workers compose a large part of the poorest economic strata in the country. According to data from the Encuesta Nacional de Ocupación y Empleo (ENOE), in 2013, there were an estimated 1.5 - 2 million migrant farm workers coming from some of the poorest, most rural, marginalized, and underserved places in Mexico (Inegi.org.mx, 2014). This, coupled with the unique Mexican sociopolitical and economic climate, results in migrant farm workers being one of the most vulnerable sub-populations in the country. (Palacios-Nava & Moreno-Tetlacuilo, 2004; Alvarez, 2012; SEDESOL, 2014). Currently, there are over seventy agricultural zones that require a large influx of seasonal migrant labor. The demand calls for an annual movement of over 400,000 migrant workers to help produce crops that are sold in the United States and European markets (SEDESOL, 2006), a number that is expanding along with growing business. Depending on seasonal weather and agricultural market demand, the need for workers fluctuates throughout the year and rests heavily on the agricultural labor process phases: sowing, planting, weeding, pruning, harvesting, packaging, and agrochemical application (Palacios et al, 2000). The type of work is diverse and often highly specialized.

Hazards

Migrant farm workers are exposed to a multitude of hazards throughout the workday. For example, agricultural work places employees at risk for inhaling, ingesting, or having dermal contact with pesticides; musculoskeletal disorders; infectious disease; dermal contact with dangerous plants; hazardous equipment; unsanitary conditions; and extreme weather (OSHA, 2015a). Several of these hazards are detailed more thoroughly below:

Pesticides: The nature of farm work places workers at risk for inhaling, ingesting, or making dermal contact with a range of pesticides. Pesticides are chemicals that are intended to kill any pests that may interfere with crop production, including insects, plants, fungi, and rodents (Arcrury et al, 2002). Many of these pesticides can have detrimental effects on human health (Reigart & Roberts, 1999). The immediate effects of pesticide exposure can range from eye and skin irritation to respiratory failure and death in extreme cases. Long-term exposure to pesticides has been associated with

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cancer, neurologic effects, and reproductive problems (Reigart & Roberts, 1999; Arcrury et al, 2002). More than twenty percent of seasonal farm workers in northwest Mexico have experienced acute pesticide poisoning at least once in a season (Chaín-Castro, Barrón-Aragón & Haro-García, 1998). Agrochemical use in Mexico has more than doubled in the last few years, making the country the second largest consumer of agrochemicals in Latin America (Palacios-Nava & Moreno-Tetlacuilo, 2004).

Heat: Warm regions are perfect for agricultural production, but greatly increase worker's risk for heat illness. High humidity and air temperatures coupled with heavy labor and low fluid consumption place individuals at risk for heat stress, a serious and commonly underreported hazard in the agricultural industry (Hyatt et al. 2010, Jackson and Rosenberg 2010). Excessive heat exposure can cause a range of adverse health effects including damage to major organs and even death, if the core temperature of the body goes above 42°C (Kjellstrom 2009, Hyatt et al. 2010). Heat stress can be prevented with adequate fluid intake, sufficient resting periods in shaded areas, appropriate clothing, and the introduction of increased convective and evaporative cooling, (Jackson and Rosenberg 2010). Between 2002 and 2010, Mexico recorded 393 heat-related deaths, mainly in the northwestern region of the country that includes Sonora (Caravantes et al. 2014). Over a third of these deaths included farm workers who migrated from southeastern Mexico whose education and socioeconomic status would be considered low (SEDESOL 2014).

Musculoskeletal Disorders: The agricultural industry relies heavily on manual labor for the production of crops, especially the harvesting of fresh fruits and vegetables in developing countries (Fathallah, F., 2010). Musculoskeletal disorders (MSDs) are caused by repetitive, forceful, or prolonged exertions of the arms and hands, often by clipping and cutting; frequently lifting objects or maneuvering heavy objects like containers of produce; and prolonged awkward postures, such as stooping, associated with picking fruits and vegetables. The addition of vibration, from tractors or other motorized tools, and extreme cold may exacerbate these conditions (OSHA, 2015a). MSDs can be categorized into three sections: traumatic injuries, irritation of joints and surrounding tissue, and accelerated joint degeneration (Hansen & Donohoe, 2003). MSDs are the most common non-fatal occupational injuries among farm workers encounter (Fathallah, F., 2010).

Housing: Living conditions for an Agricultural migrant family can range anywhere from sleeping in makeshift shelters in the agricultural fields to the more common arrangements that consist of farm owned labor camps located near the rural farms in which they work. During high demand seasons labor camps are overcrowded and lack the basic necessities including access to potable water, sewage systems, bedding, and electricity (Palacios-Nava & Moreno Tetlacuilo, 2004). The shelter provided by farm owners is often times segregated by race/ethnicity and gender. The monolingual

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indigenous are subject to the lowest living condition strata and are thus most vulnerable to risk exposure (Palacios-Nava & Moreno Tetlacuilo, 2004). Farm-provided living quarters is often composed of large, dormitory-style rooms that can have up to 90 beds. Access to bathrooms, washrooms, electricity, and other basic services is often lacking (Palacios-Nava & Moreno Tetlacuilo, 2004). When farms are near an urban center, housing is most commonly in the perimeter of the populated center in makeshift homes that are constructed of cardboard, tin, or corrugated steel, and most commonly have a dirt floor (Palacios-Nava & Moreno Tetlacuilo, 2004).

UA Project: During the summer of 2015, a student-led team from the University of Arizona College of Public Health completed a housing assessment at two commercial farms located in Sonora, Mexico. The owner of the farms, known throughout the region for his interest in farm worker health, asked the team to conduct the assessments after the Los Angeles Times published a series documenting the harsh living and working conditions of Mexican farm workers. He explained that Mexico did not have clear housing standards for farms to follow and desired advice on how to improve his worker's living conditions. The students completed the housing assessment using standards developed by the State of California Department of Housing and Community Development Division of Codes and Standards and the U.S. Department of Labor, Wages and Hour Division for Employee and Migrant Housing. The dormitories at the farm lacked adequate insect-proof doors and windows, did not have enough space per person occupying the room, had too many beds in each bunk, and had pests present.

Mexico Laws

As it is expressed in the Mexican General Labor Act, the Mexican government should be in charge of protecting the rights of all workers (Diario Oficial de la Federacion, 2013). The General Labor Act has also been ratified through international agreements such as the Universal Declaration of Human Rights of 1945; the International Covenant on Economic, Social and Cultural Rights; subscription to the International Convention for the Protection of All Migrant Workers and Their Families; the Convention on the Worst Forms of Child Labor, ; and additional regulatory agreements (numbers 11, 12, 87, 110, 141, and the latest, Convention 169) signed and ratified by the Mexican government with the International Labor Organization (ILO). These laws are meant to protect workers from hazards commonly encountered in the workplace, such as heat, pesticides, falls, and injuries.

However, numerous studies analyzing the working conditions of migrant farm workers in Mexico indicate these international conventions have not yet come to fruition, and the regulations are not completely being followed by the employers (Arroyo, 2001; Arroyo and Hernández, 2001; Canabal, 2000; Castañeda de la Mora, 2006; Guerra, 2001; Nemecio, 2005; Ortiz, 2009; Rojas, 2013; Sánchez, 2002). This occurs

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in part because political, legal, and judicial intervention of the Mexican state favor the employers rather than solving the labor and social problems of the farmworkers (Posadas, 2009). There is no functional federal system that regulates or enforces the contracts and working conditions of migrant farmworkers (Ortiz, 2009).

Instead of acting as a regulator or protector that applies sanctions and penalties to employers who fail to carry out their mandated obligations, the Mexican government acts as a certifying agency where the employers regulate themselves based on basic Mexican standards. These standards predominantly benefit transnational corporations. It is known that large farm owners have always been indulged by the state, that strives toward corporate stability and not farmworkers conditions (Guerra, 2007). Thus, the employers constantly fail to provide workers with safe working environments, or comfortable and hygienic housing during the worker's stay. (Echeverría, 2009). Although about fifteen percent of farm owners consistently try to improve their workers' living and working conditions, these initiatives are not motivated by the state; they are motivated by competition of the international market. It has been positive that this occurs because most of the farm owners do not care to comply with the labor regulations (Rojas, 2010). Accordingly, we can say that in Mexico, there is a disregard for compliance with the rights of seasonal agricultural workers, and the majority of employers in this area continue to violate laborers' rights.

Due to the lack of a comprehensive policy, the "Proyecto de Norma Oficial Mexicana NOM-255-SSA1/STPS", the Secretariat of Health has submitted a thorough regulatory project for health surveillance of workers several times for revision to the Secretariat of Labor and Social Welfare. The objective of this policy was to establish homogenous criteria for monitoring the health of workers exposed to different risk factors during their working activities in order to prevent adverse health affects. The regulatory project made employers responsible for providing adequate safety training, personal protective equipment, medical exams for workers, follow-up with permissible heat and pesticide levels, and many other specific regulations that protect farm workers.

Even though the Secretariat of Health considered this regulatory project to be extremely urgent, as a way to monitor and prevent accidents and illness on farmworkers, the project has been rejected several times by the Secretariat of Labor and Social Welfare. The Secretariat of Labor and Social Welfare claims that the introduction of such a policy may cause an economic burden on the agricultural producers and the Mexican state, and that some of the regulatory articles are already covered in the General Labor Act.

In addition, since there is not a comprehensive policy and the government has not acted as a true regulator, the Department of Social Development, or "Secretaria de

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Desarrollo Social (SEDESOL)", has been assigned to help improve the living and working conditions of migrant farm workers by creating social programs that promote and encourage the active participation of the federal government, local governmental institutions and the farm owners (Funcionpublica.gob.mx, 2013). For example, the farm owners who contract with large numbers of migrant workers are responsible for building dormitories and housing structures. SEDESOL provides twenty percent of the total cost of the dormitories. However, there are no housing structure standards established yet, and there is no regulation of the number of workers allowed per dormitory. Although SEDSOL attempts to improve the living and working conditions of migrant farm workers, it does not have the power to ensure that workers are living and working with dignity.

U.S. Laws

The United States has several agencies that deal with the protection of workers from hazards encountered in the fields:

Pesticides: The United States Environmental Protection Agency (US EPA) is responsible for regulating pesticides and pesticide use in the United States. The Federal Insecticide, Fungicide, and Rodenticide Act gives the EPA this authority. The recently updated Worker Protection Standard includes many new requirements, including mandatory pesticide training for workers, the prohibition of minors' use of pesticides, and mandatory record-keeping. Additionally, the EPA is charged with enforcing regulations involving pesticides (EPA, 2015).

Heat and Ergonomics: The Occupational Safety and Health Act (1970) is administered by the Occupational Safety and Health Administration (OSHA), a branch of the U.S. Department of Labor. OSHA is responsible for setting and enforcing standards that protect the U.S. workforce. Under the General Duty Clause, OSHA requires that employers,

- (1) shall furnish to each of his employee's employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

- (2) shall comply with occupational safety and health standards promulgated under this Act.

This blanket clause is designed to protect employees from hazards that do not have individual standards, such as heat and ergonomics (OSHA, 2015b). In the U.S., health and safety professionals frequently refer to research and professional organizations, such as the American Conference of Governmental Industrial Hygienists or National

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Institute of Occupational Safety and Health, for up-to-date scientific information on hazards and how to control them (ACGIH, 2015).

Housing: The Department of Labor's Wage and Hour Division carries out the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The MSPA sets standards designed to protect migrant and seasonal agricultural workers to ensure fair and equitable wages, sanitary housing requirements, transportation safety, disclosures and recordkeeping. The MSPA utilizes the OSHA Housing Standard on Temporary Labor Camps for migrant and seasonal agricultural employees housing requirements (DOL, 2015; 29 C.F.R 1910.142).

The Reality

On paper, the laws and agencies in the U.S. and Mexico designed to protect agricultural workers from a multitude of hazards and social injustices have made progress. However, investigative journalism and frequent worker protests have shown there is still work to be done. In December 2014, the Los Angeles Times released the eye-opening series, "Product of Mexico", which detailed the harsh working and living conditions that migrant farmworkers in Mexico face while producing foods that eventually end up on American dinner tables. The series explains how workers are packed onto buses in southern Mexico and driven to the searing desert region of the north for the harvest seasons, where they are promised comfortable housing and good pay. At \$8-12 a day, scraps of cardboard to sleep on, minimal attention to safety, heavily inflated prices at company stores, few breaks from the hard labor, and withheld wages, the promises fall quite short. The shanty living quarters stand in stark comparison to the air-conditioned, spotless facilities that the crops are processed in. The meticulous washing and handling programs designed by agro-engineers to keep the product unblemished and sanitary take place just feet from the irrigation canals where the workers' children bath (Marosi, 2014). Occasionally, farm workers join forces with workers' rights coalitions to protest living and working conditions. Berry workers in Baja, California stood shoulder to shoulder along a main highway during the summer of 2015, demanding better pay and living and working conditions. This protest came at the height of the berry harvest, threatening a major portion of the farm's exports (Marosi, 2015). In San Luis, Arizona, workers at citrus-producing companies gathered for strike starting in mid-December. The workers called for better pay and working conditions (Bajo el Sol, 2015).

Improvements

When the enforcement of laws fall short, how is it possible to protect the health of migrant and seasonal agricultural workers? There have been innovative and promising solutions to the issue in recent years, from various groups and regions:

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The Government: Several recent studies have found that lack of governmental oversight and regulations increase worker abuse and exploitation (Aguilar, 2006; Malden, 2004; Aguiar, 2011). Thus, the involvement of the government is vital in protecting the rights of migrant farm workers. For example, governmental programs such as the Canadian Seasonal Agricultural Workers Programme (SAWP) has been recognized as one of the best government programs to manage farm workers migration. Under SAWP, the workers are selected by Mexican authorities and the Canadian government is in charge of protecting their rights and solving possible conflicts with their employers (Svensson. 2013). The program is considered to be better than the 1942-1964 U.S Bracero program and the current H2A U.S program (Svensson. 2013). While the importance and international recognition of SAWP appears promising at first, a deeper look at the issue reveals that migrant farm workers are still being abused by their employers. For example, workers are allowed to work in Canada for eight months, but they are required to work only for a single employer, which deprives them of bargaining rights and limits opportunities to move to more attractive work sites (Preibisch, 2005).

Coalitions and Others: Non-governmental organizations, social coalitions, universities and research groups have developed programs and suggested the use of self-protective behaviors to reduce the health risks associated with working on the farms (Van Maele-Fabry, 2004; Braaten, 1996). These programs are based on the use of community health promoters, and train-the-trainer techniques (Weinger, 1992). However, since some the majority of the workers are employed temporally, and these programs require longer involvement to change subjects' behavior, some of these models have failed to reduce farm workers' risky behaviors (Cabrera, 2009; May, 2009). An example of consumer and coalition-driven change is the tomato fields in Florida. The Coalition of Imokalee Workers (CIW), a group founded by farm workers in Florida's tomato fields, led a boycott of Taco Bell, in 2005. After four years of boycotting, Taco Bell and its parent company, Yum Foods, agreed to abide by CIW's demands to improve working conditions and wages for Florida's tomato field workers. The agreement includes an increase of one penny per pound of tomatoes purchased by Taco Bell (CIW, 2015). The money is required to go directly towards the worker's wages and is part of the Fair Foods Program. Subsequently, Whole Foods, Trader Joe's, Chipotle, and Subway have followed suit (Greenhouse, 2014).

The development of international standards and regulations is not enough to keep migrant farm workers safe from the abuse their employers bestow upon them. Enforcing agencies, such as OSHA, lack the funding and manpower to ensure the basic safety of farmworkers. Workers in countries that lack enforcing agencies are at an even more extreme disadvantage. For real change to come about, it will take the

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commitment of international governmental programs, institutions of research, coalitions, and consumers working together in the name of workers' health and well-being.

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