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**AFRICAN CENTRE
FOR BIODIVERSITY**

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5 July 2024

Submission regarding the Draft Regulations for Hazardous Chemical Agents (HCA), made in terms of the Occupational Health and Safety Act, No 85 of 1993, published on 5 April 2024 for public comment

Summary

- a. The administrative action taken by the Minister of Employment and Labour by issuing these draft Regulations impacts the fundamental human rights of farmworkers and other farm dwellers, who are routinely exposed to high levels of toxic pesticides, particularly on wine and fruit farms.
- b. We reject the notice and comment procedure, including the requirement that we submit comments in the prescribed format, as being procedurally unfair in terms of the Promotion of Administrative Justice Act No. 3 of 2000 (“PAJA”) and the Minister and her Department are required to hold open and transparent public consultations with farm workers and other people working and living on farms, as well as other impacted/adjacent communities, and hear and take into consideration their oral inputs, comments, and concerns vis-à-vis the draft Regulations. Public consultation with farm workers including seasonal workers and farm dwellers is thus indispensable and will go a long way towards recognising and acknowledging not only the technical nature of these Regulations but, more importantly, the widespread non-compliance with South African occupational health and safety legislation and chronic lack of enforcement.
- c. The scientific evidence and the lived experience of farm workers illustrate that the regulations in South Africa on pesticides are woefully inadequate in protecting human life and the environment. Indeed, employees have and will continue to flout the compulsory regulations to provide a farm worker and other people working and living on farms exposed to hazardous chemicals and pesticides with the appropriate protective clothing and information. This situation will not change due to the tremendous economic power and influence the agriculture industry holds in South Africa, including the agrochemical industry, which is allowed to to act with impunity. Radically asymmetrical power relations on South Africa’s farms have, historically and still today, left farm workers vulnerable and exploited, a disadvantage exacerbated by

their isolated living conditions in rural areas and on private property, where human rights violations easily go “unseen, unreported, and unpunished”.

At the barest minimum, we are demanding that the Minister of Agriculture ban the 67 highly hazardous pesticides (HHPs) that are already banned in the European Union (EU) with immediate effect.

Background

1.1 The Occupational Health and Safety Act, the GHS, and Regulations made in 2021

The Minister of Employment and Labour and her or his department are obliged to ensure that the Occupational Health and Safety Act Act, 85 of 1993, provides legal measures to protect the health and safety of farm workers, their families and other farm dwellers against the health effects arising from hazardous agrochemicals, including by way of Regulations. In particular, the Act requires the employer to bring about and maintain, as far as reasonably practicable (as defined in the Act), a safe work environment without risk to the health of the workers.

On 3 March 2021, the Minister of Employment and Labour issued Regulations for Hazardous Chemical Agents (HCA), to align with the global practice in terms of the UN Globally Harmonised System (GHS) and replace the previously dated Regulations of 1995. Labels and safety data sheets of pesticides must follow a standardised approach in communicating the hazards of the chemical. Hazards associated with a particular chemical/pesticide, their nature, and severity, are communicated through several mediums, including hazard statements, pictograms, and signal words on both the label and the safety data sheet of the product.

In a nutshell, these Regulations provide for new safety obligations, chemical prohibitions, and classification and labelling requirements, and were meant to come into effect and be implementable in September 2022. They require employers/farmers to assess the risk of any chemical agent used at a place of work, to put in place measures to control the risks associated with those chemicals, and to provide information and training to workers who are handling chemicals.

The Regulations introduced the following changes:

- The inclusion of new definitions (“Carcinogen” or “CARC”; “CAS Number” or “chemical identity”; “chemical agent”; “consumer product”; “container”; “cut-off value” or “GHS cut-off value” or “GHS concentration limit”, “Hazardous Chemical Agent” or “HCA”, etc.)
- More comprehensive training requirements on HCA.
- Specific requirements relating to HCA are to be included in mandatory agreements made in terms of section 37(2) of the Occupational Health and Safety Act.
- The prohibition of the manufacturing, procurement, use, handling, or storage in the workplace of HCA, ozone-depleting substances, and persistent organic pollutants.
- Classification of chemical agents as HCA by the manufacturer or importer of such chemical before it is supplied in the workplace.
- Preparation of Safety Data Sheet by the importer or manufacturer before manufacture, and if it is not reasonably practicable, immediately after manufacture, but before import.
- More detailed labelling requirements for hazardous chemical agents.
- More detailed packaging requirements for hazardous chemical agents.

1.2 NEW REGULATIONS PUBLISHED APRIL 2024

Now, 18 months after the entire set of Regulations came into effect¹, the Department of Employment and Labour, on 5 April 2024, published draft Regulations for HCA in terms of the Occupational Health and Safety Act for public comment. The intention is that they should repeal the Regulation of Hazardous Chemical Agents of March 29, 2021, and its amendment of April 29, 2022, as well as the Occupational Exposure for Silica published through Government Notice No. 32930 of February 5, 2010. This would occur 18 months after the date of enforcement.

¹ Regulation 18 provides that certain regulations as contained in the 2021 Regulations would only come into effect *18 months after promulgation* (i.e. on 29 September 2022). These are Regulations 13(d), 14, 14A, 14B, 14C, 14D; Annexure 1, Tables 1, 2, 3, 4 and 5; and Annexure 2, Tables 1, 2, 3 and 4. This was to allow for a transition period for chemicals that were already imported or manufactured before the date when the Regulations came into effect.

The 2024 draft regulations comprise 22 pages of proposed new provisions, three annexures comprise 46 pages of tables containing highly technical information relating to countless chemicals, and annexure 4 which provides a link to draft Hazardous Chemical Agent guidelines, comprising a further 27 pages. We have thus been required to comment on 95 pages within 90 days by way of a notice and comment procedure and then too, only in a prescribed format and in writing.

The South African Institute for Occupational Safety and Health has compared the provisions and annexures of the 2021 Regulations with those of the 2024 draft Regulations in a table format and has noted several comments.² These include an erroneous definition of 'biological exposure index'; concerns regarding obligations about the labelling and packaging of HCA; risk assessment; maintenance of control areas; extensive comments relating to exposure monitoring of HCA, personal protective equipment and facilities; and extensive comments in respect of Annex 3, Table 2: dealing with occupational exposure limits: maximum limits for HCA; and Table 3: Occupational exposure limits-restricted limits for HCA.

The administrative action taken by the Minister of Employment and Labour by issuing these draft Regulations impacts the fundamental human rights of farmworkers who are routinely exposed to high levels of toxic pesticides, particularly on wine and fruit farms. These rights include the right to fair administrative decision-making, the right to democratic participation, and the right to a safe and healthy environment. We believe that the notice and comment procedure is procedurally unfair in terms of the Promotion of Administrative Justice Act No. 3 of 2000 ("PAJA") and that the Minister and her/his Department are required to hold open and transparent public consultations with farm workers and farm dwellers, as well as other impacted/adjacent communities to farms, and take into consideration their oral inputs, comments, and concerns. The purpose of PAJA is plainly to give effect to the Constitutionally entrenched rights to just administrative action. The Constitution is not neutral on fundamental values as it contains a vision for the transformation of society. Public consultation with farm workers, including seasonal workers and farm dwellers, is thus indispensable and will go a long

² [https://cdn.ymaws.com/www.saiosh.co.za/resource/resmgr/docs/2024_folder_4/saiosh - comments_draft_regu.pdf](https://cdn.ymaws.com/www.saiosh.co.za/resource/resmgr/docs/2024_folder_4/saiosh_-_comments_draft_regu.pdf)

way towards recognising and acknowledging not only the technical nature of these Regulations, but more importantly, the widespread non-compliance with South African occupational health and safety legislation and the persistent lack of enforcement.

Limitations of the Occupational Health and Safety Act and its Regulations

Any regulations that make it compulsory for an employer to provide an employee who is exposed to hazardous chemicals and pesticides with the appropriate protective clothing and information, will continue to be flouted by employers. Further, the state will continue to turn a blind eye and fail to ensure compliance and enforcement.

*A **Women on Farms Project** study in 2017 showed that while 75% of farmworkers are exposed to pesticides, only 27% were informed about the health hazards posed, while 66% of workers indicated that they did not receive protective clothing as required. This situation will not change due to the tremendous economic power and influence the agriculture industry holds in South Africa, including the agrochemical industry which are allowed to **act with impunity**.*

The Department of Labour will continue to cite the lack of inspectors to visit workplaces on South Africa's farms. Most farmworkers, whose working conditions are more precarious than ever, have little chance of their complaints being investigated by labour inspectors.

Farmworkers and pesticide exposure

South Africa is the largest consumer of pesticides in Africa, including many chemicals that are categorised as HHPs, as well as chemicals that are already banned in the EU. Farmworkers and their families – among the most vulnerable, exploited, and marginalised groups in South Africa – are routinely exposed to high levels of toxic pesticides where they work. Exposure to pesticides occurs in multiple ways, including during the application of pesticides, working in a vineyard while or soon after pesticides have been sprayed, working in vineyards just adjacent to those being sprayed, by pesticide drift, and through residues on crops. Migrant and female seasonal workers are particularly vulnerable to pesticide exposure within an hour of application.

Workers commonly suffer from chest and respiratory problems, skin and eye irritations, headaches, nausea, and diarrhoea, – symptoms that result from pesticide exposure.

Farm workers are not provided with washing facilities at the workplace to deal with pesticide residues on their bodies and clothing, thus taking home such residues to their families. Studies have proven the elevated risks of chronic diseases linked to pesticides, including cancer, birth defects, and learning disabilities within farming communities.

South Africa has more than 9,000 different herbicide, insecticide, and fungicide products registered for use. Several studies conducted in South Africa have shown that current-use pesticides frequently enter water sources and affect both human health and the environment. More recently, several pesticides have been identified as endocrine disruptors, causing cancerous tumours, birth defects, and developmental disorders in children. The vast number of new pesticides has increased over the years, with scientific evaluation not able to keep up, resulting in limited data on the toxicity of these new agents. The South African pesticide registration system does not show that these agents are safe, only that there is no evidence yet that they cause harm.

More than 50 active substances still legal and used on citrus and grape farms in South Africa are banned in the EU; these include paraquat, azinphos-methyl, and carbendazim. Further, 201 products with active ingredients that are either banned or have restricted use within the EU are also still legal and used on South Africa's farms.

Radically asymmetrical power relations on South Africa's farms have, historically and still today, left farm workers vulnerable and exploited; a disadvantage exacerbated by their isolated living conditions in rural areas and on private property, where human rights violations easily go "unseen, unreported, and unpunished". Harsh and precarious working conditions on citrus farms contribute hugely to making farmworkers vulnerable to pesticide exposure and poisonings. Research conducted on citrus farms in the Eastern Cape found active ingredients that are used have either been banned or severely restricted in the EU.

The scientific evidence and the lived experience of farm workers illustrate that the regulations in South Africa on pesticides are woefully inadequate in protecting human life and the

environment. In August 2023, the United Nations Special Rapporteur on Toxics and Human Rights, Dr Marcos Orellana, visited South Africa. In his report, he severely chastised the South African government for their negligence in this regard, advising that South Africa's severely outdated legislation be updated and that existing legislation protecting human and environmental rights be enforced.

Ban highly hazardous pesticides

South Africa must embark upon a pesticide-free future and get off the pesticide treadmill. As a start, and at the barest minimum, we are demanding that the Minister of Agriculture ban those 67 highly hazardous pesticides that are already banned in the EU.

Some of these pesticides include Roundup, Dursban, and Paraquat, which have been banned in the EU since 2007. Pesticides persist in the environment for decades and pose a huge threat to the entire ecological system upon which food production and human existence depend. Pesticides result in contamination of surrounding soil and water sources, causing loss of biodiversity, destroying beneficial insect populations that act as natural enemies of pests, and reducing the nutritional value of food. Pesticides are inherently hazardous, and HHPs that cause harm to the environment and human health, including severe environmental hazards and highly acute and chronic toxicity, should immediately be banned.

This is a joint submission prepared by the following organisations:

- African Centre for Biodiversity (ACBIO)
- Commercial, Stevedoring, Agricultural and Allied Workers Union (CSAAWU)
- Women on Farms Project
- Ubuntu Rural Women and Youth
- Sovereign Agroecology and Food Empowerment (SAFE)
- Surplus People's Project (SPP)
- Trust for Community Outreach and Education (TCOE)
- South African People's Tribunal on Agrottoxins
- UCT School of Public Health