Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food and the Special Rapporteur on the human rights to safe drinking water and sanitation

Ref.: AL OTH 113/2023
(Please use this reference in your reply)

25 September 2023

Dear Mr. Mark Newman,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right to food and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 45/17, 53/3, 46/7, 49/13 and 51/19.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 59 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your company information we have received concerning **alleged human rights violations and abuses against residents along the lower Cape Fear River in North Carolina**. This is in relation to the residents' chronic exposure to dangerous quantities of per- and polyfluoroalkyl substances (PFAS), chemicals that are released from the Fayetteville Works facility, which is a manufacturing plant of the Chemours Company LLC (Chemours) previously owned by E.I DuPont de Nemours (DuPont), which later merged with Dow Chemical Company and split into three separate companies: Dow,

DuPont, and Corteva Agriscience. Chemours and DuPont are companies domiciled in the United States of America, with operations also abroad. Alarmingly, reports indicate that Chemours intends to expand its PFAS production and has applied to North Carolina's Department of Environmental Quality for an air permit to do so. Reports also indicate that the Fayetteville Works facility has received PFAS waste from a facility in the Netherlands.

According to the information received:

Contaminating the environment with PFAS:

Fayetteville Works is a manufacturing plant located along the lower Cape Fear River in Bladen County, North Carolina. It was previously owned by DuPont and is now owned by its spinoff Chemours. For more than forty years, Fayetteville Works has been releasing a variety of toxic PFAS into the local environment, contaminating the air, soil, and water sources. PFAS are a class of thousands of synthetic organofluorine chemicals, and exposure to them jeopardizes residents' rights to life, health, drinking water and sanitation, and a healthy, clean, and sustainable environment.[1]

In a petition filed to the Environmental Protection Agency (EPA) in October 2020, 54 known PFAS chemicals have been identified and attributed to Chemours based on data from a wide range of testing and studies conducted by different actors, including Chemours, the Food and Drug Administration (FDA), Brunswick County authorities, academics, and community members.[2] An analysis of Chemours wastewater and stormwater discharge was required by a Consent Order that was entered in Bladen County Superior Court in 2019.[3] Unidentified PFAS chemicals were detected in this analysis in addition to the 54 already known PFAS.

Many of the PFAS chemicals detected in the wastewater and stormwater discharge from Fayetteville Works are known to be toxic, such as GenX, which is currently produced at the facility, and Perfluorooctanoic acid (PFOA), which was historically produced in the facility.[4] The toxicity of many other PFAS chemicals found is unknown but likely similar to known PFAS due to their structural similarity.[5]

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1 Nix v. Chemours Co. FC LLC, No. 7:17-cv-00189-D (E.D. N.C. S. Div., May 18, 2022), Ex. 8, § 171

2 Center for Environmental Health, et al., *Petition to Require Health and Environmental Testing Under the Toxic Substances Control Act on Certain PFAS Manufactured by Chemours in Fayetteville, North Carolina* (Oct. 13, 2020). https://www.epa.gov/sites/default/files/2020-10/documents/chemours_pfas_testing_petition_final.pdf - Please see p.46-49 for information on the tests and studies petitioners identified the 54 PFAS from.

3 The Chemours Company LLC, *PFAS Non-targeted Analysis and Methods Interim Report: Process and Non-Process Wastewater and Stormwater* (June 30, 2020), at 4. https://www.chemours.com/en/-/media/files/corporate/fayetteville-works/pfas-nontargeted-analysis-and-methods--interim-report-20200630.pdf?rev=a135664f18664881af0e129aa54e456d&hash=34E2052584B485833656C69B141DCA94 "The compounds are considered to be unknown because the analytical method has not been calibrated for them (for example, because authentic standards do not exist)."

4 https://www.chemours.com/en/about-chemours/genx
https://www.epa.gov/chemical-research/human-health-toxicity-assessments-genx-chemicals
Questions and Answers: Drinking Water Health Advisories for PFOA, PFOS, GenX Chemicals & PFBS, U.S. EPA (Mar. 14, 2023), https://www.epa.gov/sdwa/questions-and-answers-drinking-water-health-advisories-pfoa-pfos-genx-chemicals-and-pfbs (regarding toxicity of PFOA)

5 https://www.deq.nc.gov/news/key-issues/genx-investigation - The Chemours facility was found to be responsible for the release of GenX into the Cape Fear River. DEQ began investigating this in June 2017.

In addition to their toxicity, one of the key characteristics of PFAS chemicals is their persistence. In fact, they are commonly known as "forever chemicals" because they do not degrade in the environment.[6]

Over the course of over 40 years, Fayetteville Works has been dumping its wastewater in the Cape Fear River. This has made the river water unsafe to drink for 100 river miles.[7] Unbeknownst to them, public water authorities have been supplying contaminated water from the river to local residents, including residents of Brunswick County, Pender County, Bladen County, Cumberland County, and New Hanover County. Residents have also been using this water to grow their crops, for personal use, and to fill up their swimming pools. In addition to contamination from the wastewater dumped in the river, PFAS air emissions are also polluting water sources. As the air PFAS emissions land on soil, they infiltrate and contaminate groundwater.

In addition to dumping the wastewater in the Cape Fear River, the Fayetteville Works facility has received hazardous PFAS waste from The Netherlands since 2014.[8] This waste is from the production of the toxic chemical GenX.

GenX, the 6-Carbon PFAS compound that Fayetteville Works continues to produce, is especially mobile and rapidly reaches groundwater.[9] It is also more difficult to filter GenX out of water than other longer-chain PFAS compounds. PFAS chemicals have been discovered in private wells in over a 10-mile radius of the Fayetteville Works plant.[10]

PFAS pollution from Fayetteville Works has spread through aquatic and terrestrial ecosystems in the area, affecting the fish, livestock, and crops. This means that residents' food sources are also contaminated with PFAS. According to data published by the EPA, the total level of PFAS found in a fish sample taken from the Cape Fear River in 2013 was 17,200 parts per trillion (ppt). In particular, the level of PFOS, one type of PFAS, in that sample was 4,700 ppt.[11] This level surpassed the EPA's health advisory for PFOS in drinking water, which recommends that levels should not surpass 0.02 ppt.[12]

Biomonitoring studies, which measure chemicals in biological organisms, highlight the high exposure to PFAS in the lower Cape Fear River watershed. In one study, certain types of PFAS were found in 97% of local residents

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https://www.epa.gov/system/files/documents/2021-10/pfas-natl-test-strategy.pdf

6 Marcos A. Orellana, *Visit to Italy,* HRC, A/HRC/51/35/Add. 2 (July 13, 2022), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/405/46/PDF/G2240546.pdf?OpenElement

7 Nix v. Chemours Co. FC LLC, No. 7:17-cv-00189-D (E.D. N.C. S. Div., May 18, 2022), Ex. 8, § 171

8 Chemours Is Importing Toxic GenX Waste to the U.S. (theintercept.com)

9 *Draft for Public Comment: Human Health Toxicity Values for Hexafluoropropylene Oxide (HFPO) Dimer Acid and Its Ammonium Salt (CASRN 13252-13-6 and CASRN 62037-80-3): Also Known as "GenX Chemicals"* at 6-9, U.S. EPA (Nov. 2018), https://www.epa.gov/sites/production/files/2018-11/documents/genx_public_comment_draft_toxicity_assessment_nov2018-508.pdf

10 Nix v. Chemours Co. FC LLC, supra n.10, Ex. 8, § 8

11 https://www.ewg.org/interactive-maps/pfas_in_US_fish/map/

12 Liz McLaughlin, "This is heartbreaking": Study finds dangerous chemicals in freshwater fish, WRAL NEWS, https://www.wral.com/this-is-heartbreaking-study-finds-dangerous-chemicals-in-freshwater-fish/20679753/

tested.[13] Another study showed that PFAS stay in the human body for a long period of time; months after the facility stopped releasing certain PFAS chemicals, the blood of 99% of adults and 100% of children who were tested still contained these PFAS chemicals.[14] This information is concerning, especially considering the existing scientific evidence linking PFAS exposure to infertility, miscarriages, lung diseases, and different forms of cancer, among other adverse health impacts.

Since the Cape Fear River flows into the Atlantic Ocean, and given the persistence of PFAS, the dangers of PFAS contamination not only affect the local environment, but likely threaten wildlife and people beyond the local area.

Regarding the persistence of PFAS, DuPont and Chemours facilities have significantly contributed to the widespread contamination of the planet with toxic, synthetic PFAS chemicals that will not easily degrade. In addition to facilities in the United States of America including in North Carolina, West Virginia, and New Jersey, DuPont and Chemours have operations in several countries around the world that contributed to the global toxic PFAS pollution. Scientists have found PFOA anywhere in the world they have tested for it.[15]

Evading Liability and Insufficient Remediation Efforts

DuPont and Chemours have done little to assume responsibility and redress the immense human rights impacts as well as the health, pollution, and financial burdens they have placed on affected communities.

In July 2015, DuPont transferred its "Performance Chemicals" business activities, which included PFAS activities, to Chemours, a new publicly traded company. With this spin-off, Chemours took on a portion of the environmental liability and litigation that was pending against DuPont.[16] Moreover, in 2017, E.I DuPont de Nemours and Company merged with the Dow Chemical Company, resulting in the formation of a new company called DowDuPont, which later split into three separate companies: Dow, DuPont, and Corteva Agriscience. The series of corporate restructuring activities led to disagreements around liability between some of the companies involved and added a substantial layer of difficulty for those seeking remediation and compensation. Accordingly, concerns have been raised behind DuPont's creation of Chemours, specifically whether the spin-off is to evade liability for the PFAS contamination it has caused.

In 2021, DuPont and Chemours, together with Corteva Agriscience, announced a cost-sharing agreement worth $4 billion to settle lawsuits involving the use of

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13 Dylan J. Wallis et. Al, *Source apportionment of serum PFASs in two highly exposed communities*, SCIENCE OF THE TOTAL ENVIRONMENT, https://www.sciencedirect.com/science/article/pii/S0048969722059411 (Jan. 10, 2023).

14 *Nix v. Chemours Co. FC LLC*, No. 7:17-cv-00189-D (E.D. N.C. S. Div., May 18, 2022), Ex. 2 at Fig. 36, ECF No. 336-2.

15 Nathaniel Rich, *The Lawyer Who Became DuPont's Worst Nightmare*, New York Times Magazine (2016).

16 Verified Compl. ¶ 9, Cape Fear Pub. Util. Auth. v. EIDP, Inc., No. 2023-0363 (Del. Ch. Mar. 24, 2023).

PFAS.[17] The arrangement includes establishing a $1 billion maximum escrow account to address potential future liabilities linked to PFAS.[18]

Yet, when juxtaposed with the actual costs and damages local residents continue to endure as a result of these companies' business activities, the amount contemplated in the cost-sharing agreement remains low. Financial analysts estimate that Chemours' financial exposure could be as high as a $5.5 to $6 billion in litigation filed by the company's shareholders. [19]

In June of 2023, an offer by the chemical manufacturer 3M for settlement of claims by public water utilities in about 300 communities in the United States contemplates payments to address PFAS contamination of at least $10.3 and up to $12.5 billion.[20] If this settlement is concluded, the case could set an important precedent, and water providers in North Carolina could receive benefits.

By contrast, in July 2023 DuPont, Chemours and Corteva offered almost $1.2 billion to settle the claims of certain water providers in a class action.[21] The Cape Fear Public Utility Authority is not involved in this class action. Its director has explained that DuPont's proposed settlement would be insufficient to meet the needs of the community.[22] Some estimate that $400 billion will be needed to clean and protect the nation's drinking water.[23]

The public and private-party lawsuits brought against DuPont and Chemours indicate that local residents and other actors have had to bear the vast majority of costs associated with the PFAS pollution the two companies caused.

DuPont and Chemours have been subject of administrative enforcement actions and court orders in several States, in respect of their PFAS contamination.[24] For example, following a delayed corrective action issued by EPA. DuPont completed the construction of an engineered cap system in its Washington Works site in West Virginia.[25] Also, a 2009 consent order required DuPont to implement further remedial measures for people on public or private water systems due to PFAS contamination from its facility.[26]

DuPont and Chemours have not taken serious measures to apply lessons learned in PFAS pollution prevention, exercise human rights due diligence, and take the necessary actions to prevent or protect local residents from PFAS exposure resulting from operations at Fayetteville Works.

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17 Jef Feeley, et al., DuPont, Chemours in $4 Billion "Forever Chemicals" Cost Pact (2), Jan. 22, 2021, Bloomberg Law, https://news.bloomberglaw.com/environment-and-energy/dupont-and-chemours-in-4-billion-forever-chemicals-cost-pact.

18 https://www.dupont.com/news/dupont-corteva-chemours-announce-resolution-legacy-pfas-claims.html

19 Lee v. Brown, No. 1:20-cv-00989-UNA (D. Del. Jul. 27, 2020)

20 3M reaches $10.3 billion settlement over contamination of water systems : NPR

21 Chemours, DuPont, and Corteva Reach Comprehensive PFAS Settlement with U.S. Water Systems | DuPont

22 https://www.dupont.com/news/chemours-dupont-and-corteva-reach-comprehensive-pfas-settlement-with-us-water-systems.html

23 Id.

24 Hardwick v. 3M Co., No. 2:18-CV-1185 (S.D. Ohio), First Amended Class Action Complaint and Jury Demand, (filed Apr. 16, 2019).

25 https://www.enr.com/articles/56368-epa-orders-west-virginia-chemical-plant-to-treat-discharges-for-pfas

26 EPA, Order on Consent, In the matter of E.I. du Pont de Nemours and Company, Docket Nos. SDWA-03-2009-0127 DS, SDWA-05-20090001 (Mar. 10, 2009).

According to the information received, DuPont and Chemours did not implement adequate measures to reduce PFAS air emissions polluting water wells in North Carolina. DuPont failed to install thermal oxidizer technology to control PFAS air emissions at Fayetteville until a 2019 Consent Order compelled the company to do so, following litigation by the North Carolina Department of Environmental Quality and Cape Fear River Watch (a local NGO based in Wilmington, North Carolina) against the company.[27]

In 2017, the Cape Fear Public Utility Authority sued DuPont and Chemours and claimed past, present, and future costs necessary to address and treat its public drinking water supply from PFAS. It also sought punitive damages for the companies' "conscious disregard and indifference to the rights and safety of others." This lawsuit is still pending.

In 2023, the Cape Fear Public Utility Authority filed a subsequent lawsuit to prevent the financial restructuring of the companies responsible for the PFAS pollution from Fayetteville Works to avoid liability. This lawsuit claimed that the Cape Fear Public Utility Authority had to pay over $64 million for PFAS treatment technology and to institute an operation system to protect members of the community from toxic exposure.[28] This lawsuit is also pending.

According to the information received, as of February 2023, the Cape Fear Public Utility Authority is the only public water facility with PFAS treatment systems in place in North Carolina, effectively meaning that residents of affected areas supplied by other utilities still receive PFAS-contaminated water.[29] This places the burden of remediation on the victims themselves. To combat the water contamination caused by the two companies, public water utilities have to pay millions of dollars for PFAS treatment technologies. In the meantime, affected community members are forced to install their own private filters. Only specialized filters using reverse osmosis can adequately treat PFAS-contaminated water. Reports suggest that these filters typically cost over $200 dollars, and certain parts should be replaced every 6-24 months. If residents do not replace these parts and the filter becomes saturated, the levels of PFAS in the filtered water can be even higher than the tap water.[30] Many residents in the area cannot afford the cost and maintenance of these filters, hampering their access to safe drinking water and impacting their rights to safe drinking water, health, and a clean, healthy and sustainable environment.

Impeding Access to Information and Spreading Disinformation

While DuPont has been aware of the health risks of PFAS for several decades, relevant information has only been available as a result of the pre-trial discovery

[27] Consent Order, N.C. v. Chemours Co. FC, LLC (Bladen Cnty. Feb. 25, 2019).
[28] Cape Fear Pub. Util. Auth. v. EIDP, Inc., No. 2023-0363 (Del. Ch. Mar. 24, 2023).
[29] Mara McJilton, Construction complete for new filters at water treatment plant in Wilmington, WECT NEWS 6 (Feb. 10, 2023), https://www.wect.com/2023/02/10/construction-complete-new-filters-are-water-treatment-plant-wilmington/.
[30] https://edition.cnn.com/2023/03/14/health/pfas-water-filters-wellness/index.html

procedure in litigation for DuPont's toxic contamination.[31] Despite knowing about the toxic character of PFAS, DuPont withheld the information from the public and continued to deny the toxic harms caused by PFAS.[32] All the while, DuPont and later Chemours continued to produce and profit from the marketing of products containing PFAS, imposing harms and externalizing costs on affected communities and ecosystems.

In the 1950s, a Stanford University study showed that PFAS binds to proteins in human blood.[33] By the 1960s and 1970s, both DuPont and 3M conducted studies that demonstrated that PFAS chemicals have "toxic effects" and pose health risks, including liver damage. In 1975, DuPont even warns 3M about "toxic effects" of PFAS in food packaging.[34]

In 1981, DuPont removed pregnant employees from the Teflon division due to evidence from animal studies that exposure could cause birth defects. Internal records showed that two out of seven babies born to a group of women working in the Teflon plant had birth defects. DuPont still failed to alert EPA of this.[35]

DuPont, and later Chemours, continued to discharge PFAS from Fayetteville Works, polluting the local environment and jeopardizing the health and lives of the local communities.[36] According to the information received, DuPont and Chemours have refused to disclose to the public the volumes of their discharges of PFAS to the environment.

Furthermore, DuPont and Chemours reportedly failed to provide complete and accurate information to the North Carolina Department of Environmental Quality as required by the Clean Air Act and state rules, stymieing relevant authorities' ability to properly evaluate and act on the serious risks posed by PFAS.[37]

According to the information received, relevant public authorities failed to offer Cape Fear River watershed residents the information necessary for them to fully understand the impacts of their exposure to the range of PFAS released from the Fayetteville Works facility and for them to seek redress.

In October of 2020, a group of non-profit organizations concerned with public and environmental health in North Carolina (petitioners) filed a petition requesting that EPA require Chemours to fund health and environmental effects testing and studies on a range of PFAS chemicals manufactured at Fayetteville

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31 See Robert Bilott, *Exposure: Poisoned Water, Corporate Greed, and One Lawyer's Twenty-Year Battle Against DuPont* (2019).

32 Nadia Gaber et.al., The Devil they Knew: Chemical Documents Analysis of Industry Influence on PFAS Science, 89(1) *Annals of Global Health* (2023).

33 https://www.ewg.org/research/decades-polluters-knew-pfas-chemicals-were-dangerous-hid-risks-public

34 Ibid.

35 https://www.ewg.org/news-insights/news-release/ewg-tsca-8e-petition-epa-probes-dupont-birth-defect-study

36 David Andrews and Bill Walker, Poisoned Legacy: Ten years later, chemical safety and justice for DuPont's Teflon victims remain elusive (Environmental Working Group report, 2015)

37 Ex. 8, *Nix v. Chemours Co. FC LLC*, No. 7:17-cv-00189-D (E.D. N.C. S. Div., May 18, 2022), ECF 336-8.

Works.[38] The petitioners filed their request under the authority of Section 4 of the Toxic Substances Control Act. In December of 2021, the EPA issued a response and denied many of the informational requests made by petitioners.[39]

In their response, EPA states that it plans to address some of the 54 PFAS chemicals indicated in the petition through a national testing strategy. The National PFAS Testing Strategy will require PFAS manufacturers to provide toxicity data on categories of PFAS chemicals to inform future regulatory efforts. EPA has selected PFAS to be tested by grouping PFAS with similar features.[40]

However, reports suggest that the way toxicity is evaluated in this testing strategy does not provide adequate information to determine the toxicity of the particular PFAS specified in the filed petition. The EPA adopted a "categorization approach" where chemical substances are grouped in "categories" based on similarities in characteristics. EPA deems that testing of a chemical substance in a category would provide scientifically valid and useful information on other chemical substances in the category.

Furthermore, the EPA denied testing for 15 of the 54 chemicals listed by petitioners on the grounds that they do not fit the definition of PFAS the Agency is using in the testing strategy. According to the information received, there are inconsistencies in the definition of PFAS used by different offices within EPA as well as concerns with the adoption of a narrow definition of PFAS for the testing strategy.

Petitioners also requested EPA to conduct epidemiological human studies. In their response, EPA referred petitioners to a multi-site study that the Agency for Toxic Substances and Disease Registry is conducting. However, this study does not include North Carolina. The study seeks to enroll at least 2,100 children and 7,000 adults. Concerns were raised that this minimum sample size is not large enough to establish human causal links. Furthermore, the endpoints (the biological effects measured) listed in the description of the study on the official website by the Agency overlook cancer.[41]

Petitioners also requested that EPA compel Chemours to conduct biomonitoring studies for their workers. In their response, EPA denied this request and cited the fact that Chemours has "already completed such a study for GenX and submitted the results to EPA."

Reports indicate that there have been delays in EPA's National PFAS Testing Strategy. Adding to the impacts of delays, EPA deferred any actions to further characterize half-lives of PFAS in humans until animal studies are concluded. EPA argued in favor of this sequence, so that the animal studies can inform the

[38] Center for Environmental Health, et al., *Petition to Require Health and Environmental Testing Under the Toxic Substances Control Act on Certain PFAS Manufactured by Chemours in Fayetteville, North Carolina* (Oct. 13, 2020),

[39] https://ceh.org/latest/press-releases/breaking-biden-epa-fails-to-protect-north-carolina-communities-and-hold-chemours-accountable-for-massive-pfas-pollution/

[40] https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/national-pfas-testing-strategy

[41] https://www.atsdr.cdc.gov/pfas/activities/studies/multi-site.html#outcomes

design of human studies. However, the urgency for information raises questions about whether human studies should be conducted in parallel with animal studies.

It is crucial for the aforementioned testing and studies conducted by EPA and the Agency for Toxic Substances and Disease Registry to be carried out in a timely manner in order to protect people's right to information and their right to an effective remedy. By establishing the toxicity of these chemicals and their impacts on human health, community members can seek the necessary relevant medical tests, treatments, and prevention measures. This information can also enable community members to seek access to justice and obtain remedies for harm suffered.

Delaying Necessary Regulatory Protections

The information received suggests that DuPont and Chemours have impermissibly captured the EPA and delayed its efforts to properly regulate PFAS chemicals.

Though EPA seems to be making progress in 2023 by pursuing hazardous-substance designation for seven PFAS, there is also a pressing need for the designation and evaluation of PFAS as a class. It is important to recall that PFAS is a class of chemicals that contains thousands of distinct compounds. In a similar vein, while the EPA proposed enforceable federal drinking water standards for six PFAS in March of 2023, the proposed standards leave out dozens of PFAS produced at Fayetteville, including the newer ultra-short-chain PFAS. These newer PFAS are also not included in EPA's most recent monitoring rule concerning unregulated chemicals.[42]

The slow action in regulating PFAS, including establishing standards for water quality and classifying PFAS as hazardous substances, creates confusion and reinforces misinformation campaigns on the safety of exposure to these chemicals. Chemicals without a hazardous-substance designation are not necessarily safe. Many consumers rely on designation and classification by public authorities as a measure of the safety of a certain chemical and base their choices on such designation or the lack thereof. Companies often take advantage of these informational gaps to promote their products, and consumers are left unaware of the true hazard level of a chemical.

Without prejudging the accuracy of these allegations, we express our most serious concern regarding the human rights and environmental impacts of Dupont and Chemours' activities in the Fayetteville Works, particularly the discharge of toxic PFAS into the local environment. We are especially concerned about Dupont and Chemours' apparent disregard for the wellbeing of community members, who have been denied access to clean and safe water for decades. This is particularly apparent by their purposeful suppression and concealment of information on the toxic character of PFAS. We are also concerned about DuPont and Chemours' failure to fully assume responsibility and adequately address the negative impacts of their activities on the

[42] Half of PFAS in drinking water not monitored by EPA: Study | Coastal Review

communities of the lower Cape Fear River watershed. We remain preoccupied that these actions infringe on community members' right to life, right to health, right to a healthy, clean and sustainable environment, and the right to clean water, among others.

Furthermore, we are concerned that health and environmental regulators have fallen short in their duty to provide the public, particularly the affected communities in North Carolina, with the type and amount of information necessary to prevent harm and seek reparation. We are also concerned that in the cases where legal action has been taken against the two companies, enforcement and remediation measures have been inadequate. These shortcomings by EPA, the North Carolina Department of Environmental Quality, and the courts undermine community members' right to information and their right to an effective remedy.

We are further alarmed by the companies' blatant disregard for human rights and environmental protections. Even as DuPont and Chemours had information about the toxic impacts of PFAS on human health, the companies continued to spread disinformation about PFAS. Even as DuPont and Chemours knew their discharges of PFAS to the environment were poisoning local drinking water sources and making people ill, at times fatally, the companies continued to produce, market and profit from PFAS.

We are also extremely concerned that due to the persistence of these toxic, synthetic chemicals, DuPont and Chemours have caused a global PFAS contamination problem.

Taking these concerns into consideration, we are shocked by reports that Chemours has applied to the North Carolina Department of Environmental Quality for an air permit to expand its PFAS production. Chemours is promoting PFAS as critical to achieving energy transition goals, particularly with respect to the development of semiconductor chips. We are preoccupied that this narrative dismisses the significant negative health and environmental impacts of PFAS. Furthermore, it promotes disinformation campaigns with respect to the adverse human rights and environmental impacts of some climate change mitigation technologies which exacerbate toxic pollution. In this effort, Chemours seeks to retain and grow its market share at the expense of the people and their right to science. With this in mind, we stress the important role the government should play in protecting environmental and social safeguards.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please indicate measures taken to ensure that your company complies with the United States', North Carolina's, and international environmental laws and human rights standards.

3. Please advise about the steps taken to ensure that your company respects human rights in line with the UN Guiding Principles on Business and Human Rights, including by conducting human rights due diligence to prevent, mitigate and remediate adverse impacts.

4. Please indicate what actions have been taken by your company to ensure a proper investigation will be conducted with regards to damages that resulted from the contamination with PFAS released from your facility and to ensure accountability and access to an effective remedy for the human rights violations related to your company's activities, including the allegations of environmental harm, misinformation, and the reluctance to adequately remediate and compensate damages. This includes guarantees of non-repetition regarding the operations of your company.

5. Please indicate the steps that your company has taken, or is considering to take, to ensure that it establishes or participates in effective operational-level grievance mechanisms in line with the UNGPs, or cooperates with legitimate remedial processes, to address adverse human rights impacts that it has caused or contributed to.

6. Please elaborate on how your company arrived at the valuation of the cost of remediation with respect to PFAS pollution known to have been caused by your company, particularly in the case of Cape Fear River watershed.

7. Please provide information on the total production volume of GenX at the Fayetteville works facility from inception to present.

8. Please provide updated and comprehensive information on the impacts and damages of PFAS contamination in the lower Cape Fear River watershed, in particular concerning the health of the local communities and the availability of safe drinking water and food.

9. Please indicate what measures have been taken to ensure health care services to affected communities.

10. Please provide information on any measures planned to prevent negative human rights impacts from PFAS contamination, including mechanisms for just and fair redress, and indicate which measures have been taken to mitigate adverse environmental, health, economic, social, or cultural impacts on the affected communities.

11. Please indicate the steps that your company has taken, or is intending to take, to ensure the environmentally sound management and disposal of hazardous substances and wastes.

12. Please explain the steps your company has taken to ensure thorough evaluations of the safety of the chemicals produced by your company are conducted and that any evidence of risks and negative impacts is promptly publicized.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your company will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence.

We may publicly express our concerns in the near future, as we believe that the information received is sufficiently reliable to indicate that there is a matter that warrants immediate attention. In addition, we believe that the public needs to be informed of the potential implications related to the above allegations. The press release will indicate that we have been in contact with company to clarify the relevant issues.

Please be informed that a letter on this subject matter has been also sent to the United States, the Netherlands, and other business enterprises that are involved in the allegations above, namely DuPont de Nemours INC and Corteva Agriscience.

Please accept, Mr. Mark Newman, the assurances of our highest consideration.

Marcos A. Orellana
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Damilola S. Olawuyi
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Michael Fakhri
Special Rapporteur on the right to food

Pedro Arrojo-Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation

Annex

Reference to international human rights law

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

a. "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;

b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;

c. The need for rights and obligations to be matched to appropriate and effective remedies when breached."

Furthermore, we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

Principles 11 to 24 and principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have cause or contributed to adverse impacts. Moreover, the commentary of principle 11 states that "business enterprises should not undermine States 'abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes". The commentary of guiding principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. (…) Business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services".

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that "business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts" (guiding principle 13).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when "business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes"

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to guiding principle 25).