

**Mandates of the Special Rapporteur on extreme poverty and human rights; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on violence against women, its causes and consequences; and the Special Rapporteur on the human rights to safe drinking water and sanitation**

REFERENCE:  
AL OTH 49/2020

23 June 2020

Dear Mr. Porter,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on violence against women, its causes and consequences; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 35/19, 35/7, 32/8, 42/16, 34/9, 34/21, 42/10, 41/17 and 42/5.

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 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 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 communication 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 context, we write to bring to your attention the information we have received regarding the alleged human rights violations suffered by temporary migrant

Angus Soft Fruits LTD

workers, and in particular women seasonal migrant workers from Morocco, employed to help during the harvest season in strawberry farms in the province of Huelva, in southern Spain.

The company employing the migrant women who participated in the past campaigns is Agrícola El Bosque, S.L. This company is part of the Plus Berries business group and, among the companies that apparently distribute Agrícola el Bosque, S.L. products in Europe is your company Angus Soft Fruits Ltd., with branches in the United Kingdom and the Netherlands.

According to the information received:

### **Context**

The strawberry industry, including in Huelva, the Andalusian province where the largest red fruit crop in Spain is concentrated, is dominated by large transnational companies that provide the agricultural inputs (patented strawberry varieties, greenhouse plastics, agrochemicals) and control the marketing of the fruit in European markets, capturing most of the value of the supply chain.<sup>1</sup>

The recruitment procedure in the countries of origin has allowed employers to hire seasonal workers outside Spain for strawberry picking in Huelva, under bilateral agreements with other countries, including Morocco. Workers are hired for the duration of the harvest before returning to their country at the end of the seasonal contract, in accordance with a signed repatriation agreement. Some migrant workers remain in Huelva throughout the year.

Local agricultural producers are dependent on global players. In order to ensure the profitability of the sector, a fundamental strategy for local producers is to keep the cost of labour low. The workers, many of whom are women, are employed under circular migration schemes that allow them to remain in Spain only during the harvesting season. These workers are completely dependent on the company for which they work and are deprived of the option to escape exploitative conditions and abusive practices.

The strawberry industry is dependent on migrant workers and is characterized by complex recruitment and subcontracting schemes as well as intensive agriculture. Competition to produce at the lowest cost increases the risk of subjecting migrant workers to forced labour or contemporary forms of slavery.<sup>2</sup>

### **The reality of informal migrant settlements in Huelva**

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<sup>1</sup> According to data from the Spanish Federation of Associations of Fruit and Vegetable Producers and Exporters (FEDEX), 227,849 tonnes of strawberries were exported from the province of Huelva, in 2018, representing 93.55% of the total national quota. See: [www.fepex.es/datos-del-sector/exportacion-importacion-espa%C3%B1ola-frutas-hortalizas](http://www.fepex.es/datos-del-sector/exportacion-importacion-espa%C3%B1ola-frutas-hortalizas)

<sup>2</sup> Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, 8 July 2015, A/HRC/30/35, para. 23; available at <https://undocs.org/es/A/HRC/30/35>.

Migrants in both regular and irregular situations in the informal settlements of Huelva are in highly vulnerable conditions that are conducive to the violation of their rights by both state and non-state actors.<sup>3</sup> Migrant workers represent around 3,000 people in five municipalities in the province where agricultural plantations are concentrated: Lepe, Lucena del Puerto, Mazagón, Moguer and Palos de la Frontera.

As documented in the report prepared following the visit to Spain in February 2020 by the former Special Rapporteur on extreme poverty and human rights, Mr. Philip Alston,<sup>4</sup> thousands of migrant workers live in unsafe conditions, in dilapidated shelters and bungalows built with used agricultural materials and metal sheets, many kilometres from piped water, and without electricity or adequate sanitation. They are often located far from urban centres, with no means of transportation available, resulting in effective isolation. Many workers have lived in these areas for years and are able to pay rent, but landlords and housing providers do not accept them as tenants. They can earn as little as 30 euros a day, and have almost no access to any form of government support. These conditions are widespread and well known, even to government officials.

Workers in this sector are protected by the “Convenio Colectivo de la Provincia de Huelva”, a 2018 collective bargaining agreement between the Huelva Business Association and worker representatives from the Confederación Sindical de Comisiones Obreras. The Huelva Collective Bargaining Agreement establishes comprehensive standards for working hours and rest time, minimum wage, housing, and for preventing and reporting harassment and sexual abuse. It also provides for free housing, stipulating that workers must be able to live with dignity. However, these components of the Collective Bargaining Agreement are routinely ignored in practice.

### **Vulnerable situation of women seasonal migrant workers**

The recruitment of women seasonal workers from outside Spain is justified by the lack of available workforce within national and/or foreign resident workers. The strawberry business in the province of Huelva needs about 90,000 workers at the peak of the season.<sup>5</sup> One of the most vulnerable groups of migrant workers are

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<sup>3</sup> Mesa de la integración, Asociación Pro Derechos Humanos de Andalucía, Asociación de Nuevos Ciudadanos por la Interculturalidad (ASNUCI), Cáritas, Cooperación y Desarrollo con el Norte de África (CODENAF), Fundación Europea para la Cooperación Norte-Sur (FECONS), Huelva Acoge and Mujeres en Zona de Conflicto (MZC), "La realidad de los asentamientos en la provincia de Huelva", 2018, available at: [www.apdha.org/media/Informe-Asentamientos-Mesa-Integracion-Huelva.pdf](http://www.apdha.org/media/Informe-Asentamientos-Mesa-Integracion-Huelva.pdf)

<sup>4</sup> Statement by the UN Special Rapporteur on extreme poverty and human rights, Philip Alston, on the conclusion of his official visit to Spain, 27 January - 7 February 2020, Madrid 7 February 2020; available here: [www.ohchr.org/sp/NewsEvents/Pages/DisplayNews.aspx?NewsID=25524&LangID=s](http://www.ohchr.org/sp/NewsEvents/Pages/DisplayNews.aspx?NewsID=25524&LangID=s)

<sup>5</sup> The data show that in the 2019 campaign there were 53,572 Spaniards, 21,894 from other parts of the European Union, most of them from Romania, and 26,418 from outside the EU (most of them from Mali and Senegal and a group

women from Morocco. Despite being a minority group in the Huelva countryside, Moroccan women seasonal workers are in the majority when it comes to picking the fruit and are reportedly facing discriminatory, exploitative and abusive working conditions.

In 2001, Spain and Morocco have concluded a bilateral recruitment agreement that has allowed Moroccan workers, mainly women, to be posted to Spain to work in agriculture in Huelva.<sup>6</sup> According to the information received, the hiring model of the strawberry and other red fruits industry in southern Spain, designed by the States and companies involved, takes advantage of the labour of Moroccan women who are hired seasonally to work in the harvesting of these fruits, but also of the vulnerability of the migrants who participate in the whole productive model. The working and housing conditions of all migrants involved in this industry increase their situation of vulnerability.

#### **a. Discrimination**

The situation of discrimination and violation of the rights of seasonal workers is favoured by the situation of vulnerability and economic precariousness in which they find themselves in their country of origin. It is reinforced when they arrive in Spain where they do not know anyone, do not speak the language, are on a production unit far from any urban centre and are immediately put to work upon arrival, without being informed about their working conditions.

The recruitment system is based on the age and family status of women. The selection is almost exclusively of women between 25 and 45 years of age with minor children in their care. This is intended to ensure the return of these migrant women to their country of origin at the end of the harvesting period to care of their young children and/or families. This guarantee of return is consolidated by the signing of a commitment document that guarantees their eligibility for employment in the following years. In turn however, this importantly limits their ability to report abusive and/or exploitative situations.

Furthermore, although the regulations stipulate that participation in the process is free of charge, in practice women have to bear a number of costs in order to qualify for contracts (including the processing of medical certificates, passports and visas). This makes the poorest women less likely to be selected. Similarly, women living in rural areas in Morocco have to pay for the cost of travelling to urban centres to complete administrative procedures (including at least three

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from Morocco). See: [www.elconfidencial.com/espana/andalucia/2020-01-19/ni-los-andaluces-son-vagos-ni-la-fresa-la-cogen-solo-extranjeros-el-52-es-espanol-156\\_2417863/](http://www.elconfidencial.com/espana/andalucia/2020-01-19/ni-los-andaluces-son-vagos-ni-la-fresa-la-cogen-solo-extranjeros-el-52-es-espanol-156_2417863/)

<sup>6</sup> Labour Agreement between the Kingdom of Spain and the Kingdom of Morocco, Madrid 25 July 2001, BOE 20 September 2001; available at: [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2001-17764](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2001-17764). The competent authorities are, for Spain, the Ministries of Foreign Affairs, the Interior, Labour and Social Affairs. On the Moroccan side, the competence lies with the Ministry of Employment.

appointments at the Moroccan National Employment Agency (ANAPEC) for registration, selection and the signing of contracts).

**b. Deception at source**

At the time of hiring, ANAPEC provides written information on the duration of the employment contract, the existence of a 15-days trial period, the approximate level of the wage, the daily and weekly working hours, as well as the provision of accommodation and transportation by the employer. However, the illiteracy rate is still extremely high in rural Morocco, so the information that women workers receive is generally that which is given orally. According to our sources, the information provided orally corresponds neither to the reality that they encounter upon arrival, nor to the contracts that they sign once in Spain.

**c. Abusive and exploitative working conditions and lack of safety measures at work**

Not all migrant workers in Huelva have an employment contract. People whose administrative situation is not regularized continue to be employed without formalising employment contracts and without them being registered with the social security system, thus preventing them from obtaining work permits. When migrants do not have a contract, it is extremely difficult to claim their rights and obtain compensation in case of violations.<sup>7</sup>

As for the women workers of Moroccan origin, the contract signed in Morocco establishes an employment relationship with an employers' organization, but not directly with the company under the supervision of which they then work. Once in Spain, the following abusive hiring practices have been identified: (i) seasonal workers do not know when the work will start or end, as contracts are generally for "specific work and service" instead of being categorised as "temporary" or "eventual" as required by the applicable regulations,<sup>8</sup> and in practice the working relationship ends with the declaration of the end of the harvesting season by the employer; (ii) the temporary nature of their contracts limits their right to join a trade union<sup>9</sup>; (iii) contracts include a probationary period during which employers

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<sup>7</sup> A/HRC/26/35 Report of the Special Rapporteur on the human rights of migrants, François Crépeau, on the exploitation of migrants in the workplace, 3 April 2014, para. 35.

Available at: <https://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>

<sup>8</sup> In accordance with the rules applicable to recruitment at origin, all female seasonal workers from Morocco should be offered a temporary contract of at least three months' duration. For more information. <http://revista.lamardeonuba.es/contratacion-en-origen-de-trabajadoras-marroquies-fraude-masivo-o-caos-administrativo/>

<sup>9</sup> In accordance with the provisions of the sixth and last paragraph of article 6 of the Collective Bargaining Agreement, temporary women repeaters in the same company may become permanent employees after eleven months of uninterrupted work, provided that there is no interruption of more than 15 consecutive days. Seasonal workers do not meet any of these conditions, since the maximum duration of their contracts is set by state regulations at 9 months. These circumstances result in their de facto exclusion from the right to join a trade union, since the rules on trade union representation contained in the Workers' Statute require at least 6 months' seniority to stand for election to a trade union.

may terminate the employee's employment without notice, even if the woman has already worked with the same company in previous years; (iv) women workers do not usually receive a copy of the contracts they sign and, as indicated above, the contracts sometimes do not contain the same conditions as those explained to them in Morocco; (v) women seasonal workers do not have the right to change jobs except with the authorization of the authorities. If they are dismissed or discharged before their visa expires, they are left unprotected and it is practically impossible for them to find another job. This situation further increases their vulnerability and precariousness. It may be exploited by trafficking networks<sup>10</sup> or lead to forms of abuse constitutive of contemporary forms of slavery.<sup>11</sup>

According to the information received, the applicable regulations are not being complied with and the following violations of the rights of seasonal migrant women have been identified, which can be extended to other workers in the agricultural sector<sup>12</sup>:

- i) Salary compensation below the legal limit: whereas the Collective Bargaining Agreement establishes a daily salary of 42.95 euros for planting work and 41.20 euros for harvesting work, payments have frequently been reported as being below the legal limit.<sup>13</sup>
- ii) Working hours in excess of the legal limit: whereas the Collective Bargaining Agreement establishes a working week of 39 hours distributed over six days, which may be extended by a maximum of 10 hours in certain periods, without the daily workday exceeding 9 hours, frequent cases of non-compliance with these restrictions have also been reported.
- iii) Non-payment of salaries: non-payment of salaries frequently occurs, due to a failure to record hours worked, to the non-payment of overtime at the corresponding rate, to unjustified discounts for supply costs, to the omission of days worked, among others.
- iv) Lack of safety and protection measures at work: the employer is only obliged to provide a pair of boots and coveralls to the workforce with a permanent contract, which excludes seasonal workers<sup>14</sup>; the Collective Agreement however also obliges the employer to provide workers with the corresponding individual

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<sup>10</sup> Women's Link Worldwide, (2011) "*Los Derechos de las Mujeres Migrantes- Almería: la historia que nadie cuenta*") page 50. Available at: [www.womenslinkworldwide.org/files/1348/almeria-la-historia-que-nadie-cuenta.pdf](http://www.womenslinkworldwide.org/files/1348/almeria-la-historia-que-nadie-cuenta.pdf)

<sup>11</sup> Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, 25 July 2019, A/HRC/42/44, para. 7-10; available at <https://undocs.org/en/A/HRC/42/44>

<sup>12</sup> In accordance with the assistance provided by the organizations co-authors of this communication, Abogadas and ASISTI to the seasonal workers in the 2019/2020 campaign and the information published.

<sup>13</sup> In the case of the women represented by WLW, they were paid less than what was stipulated in the Collective Agreement.

<sup>14</sup> Law 31/1995, of 8 November, on the prevention of occupational hazards. BOE No. 269 of November 10, 1999; available at: [www.boe.es/buscar/act.php?id=BOE-A-1995-24292](http://www.boe.es/buscar/act.php?id=BOE-A-1995-24292)

protection equipment, in accordance with the provisions of the current legislation on Occupational Risk Prevention.

- v) Situations have also been identified where performance controls are imposed whereby a minimum number of boxes of fruit to be picked per day is set, sometimes requiring the workers to work more than the legally established hours. If they are unable to meet the required yield, the migrant worker may be returned to Morocco.
- vi) The reported working conditions may amount to forced labour, according to the indicators of forced labour established by the International Labour Organization. Forced labour is a contemporary form of slavery.

#### **d. Living conditions**

At the time of selection, the Moroccan workers are informed that the companies will take over the housing in which they will reside and, consequently, the corresponding rental costs. However, the reality is that when they arrive in Spain, the housing provided does not meet minimum living conditions.

In many cases, companies provide low-cost living conditions, at the same time increasing their capacity to supervise and control the mobility and private life of female employees. To this is added overcrowding, poor access to adequate food and unhealthy food preparation, personal hygiene and consumption, lack of drinking water, sewage next to the houses, isolation and lack of care.

#### **e. Access to healthcare**

The working and living conditions faced by seasonal workers already gave rise, before the COVID-19 crisis, to a series of situations that could harm their health. Precarious living conditions, lack of rest, difficulties in obtaining food supplies, as well as lack of access to basic resources can affect the health status of workers.<sup>15</sup> The combination of these circumstances, in the event of falling ill, must be added to the difficulties of accessing adequate medical care.

According to the information received, in the case of seasonal workers, different obstacles have been detected when it comes to exercising the right to health: lack of knowledge of how the health system works, physical distance from health centres, difficulties in travelling or problems in processing their health cards, and language barriers, among others. The right to health of Moroccan workers hired in their country of origin is in principle comparable to that of any foreigner legally residing in Spain. However, health centres reportedly require people seeking access to non-urgent medical care to present their national identity card or

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<sup>15</sup> Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, on the impact of migration on migrant women and girls: a gender perspective, 15 April 2019, A/HRC/41/38, para. 60; available: <https://undocs.org/es/A/HRC/41/38>.

foreigner's identity card, and proof of residence by means of a census certificate. Seasonal workers do not have any of these documents, as they are exempt from receiving the foreigner's identity card and are not registered on the census either. Nor do undocumented migrants living in settlements have these documents.

Most undocumented persons in Spain do not usually access health centres, but are attended through the emergency services in a serious or extreme situation. In addition, they bear a high degree of social stigma. In a context of saturation of health resources in Spain to deal with the COVID-19 epidemic, the social rejection suffered by these groups may make access to the health care they require even more difficult.<sup>16</sup>

#### **f. Workplace and sexual harassment**

Job instability puts temporary women in a very vulnerable position with regard to sexual violence.<sup>17</sup> Their lack of knowledge of the local language and their total dependence on the company to continue working and to secure housing make them vulnerable to the abusive use of power by employers and decision makers. This has allowed situations of sexual harassment and/or abuse and even forced prostitution to occur.<sup>18</sup>

#### **The impact of the COVID-19 pandemic on migrant workers**

The COVID-19 crisis has only served to exacerbate this situation of human rights violations and has only increased the situation of extreme vulnerability in which these women find themselves.

The situation of temporary migrant workers has been exacerbated by the pandemic. Thousands of migrant labourers survive in inhuman conditions in settlements during confinement and work to meet their basic needs. They sometimes lack access to basic hygiene measures, protective materials and security. The conditions of extreme vulnerability and neglect that are being experienced in the settlements during the pandemic have been reported to the relevant authorities without an adequate institutional response.

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<sup>16</sup> Escuela Andaluza de Salud Pública, Impact of the coronavirus on socially vulnerable populations: migrants and ethnic minorities. Available at: <https://www.easp.es/web/coronavirusysaludpublica/repercusiones-del-coronavirus-en-poblaciones-en-situación-de-vulnerabilidad-social-personas-migrantes-y-minorías-étnicas/>

<sup>17</sup> Report of the Special Rapporteur on the Human Rights of Migrants on Recruitment Practices, 11 August 2015, *Op. Cit.*, para. 28: "Violence and intimidation are also perpetrated against migrants by recruiters and employers (' ) In turn, regardless of the sector in which they work, migrant women are at risk of being subjected to sexual harassment and sexual violence".

<sup>18</sup> In the report on the visit to Spain by the Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (2013), special mention is made of the trip to Almería (southern Spain), where the situation of particular vulnerability of migrant women living and working in greenhouses exposed to violence, including sexual violence and prostitution, was noted. And she referred to how this situation was illustrative of a systematic practice in other regions with intensive agriculture in Spain such as Huelva. *Op. cit.*, para 39.



Likewise, the dire living conditions and lack of access to basic services in the informal settlements of migrants in Huelva are of great concern. In the current context, the situation is particularly alarming given the overcrowding where the measures of needed physical distancing are impossible to implement.

Agricultural workers have been one of the groups considered essential by the Spanish government during the state of alarm declared to face the pandemic. They have been working even in the most restrictive two weeks of the confinement. Despite their priority status, protection measures to prevent COVID-19 infections have not reached all farms in Huelva. In particular, in the 2019/2020 harvest season, the following non-compliances have been identified and brought to the attention of the relevant authorities: (i) work and breaks have not been organised in such a way as to reduce the number of workers exposed, establishing rules to avoid and reduce the frequency and type of person-to-person contact; (ii) no specific measures have been taken, where appropriate, for workers particularly at risk of developing serious symptoms if contaminated by COVID-19; (iii) hygiene measures, such as frequent hand washing, not sharing objects, ventilation of the work space, and cleaning of surfaces and objects, have not been facilitated.

Moreover, conditions in these settlements prevent access to preventive measures such as access to water, soap and disinfectants. Hand washing is now one of the vital measures against the virus and limited access to these resources makes them more vulnerable to the possibility of contracting and spreading the disease. Lack of access to safe water and sanitation is also a violation of their human rights.<sup>19</sup>

While we do not wish to prejudge the accuracy of the above-mentioned information, we would like to draw the attention of Angus Soft Fruits LTD to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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. While we have also conveyed our concerns to the governments of Spain and of Morocco, we emphasize in particular that a failure by an employer to respect the rights of its employees cannot be justified by the failure of State authorities to effectively enforce domestic legislation or to comply with international human rights norms binding on the State. As noted in the commentary to the Guiding Principles on Business and Human Rights, unanimously endorsed by the Human Rights Council in June 2011, "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. And it

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<sup>19</sup> A/73/174, Report of the Special Rapporteur on the right to food, Hilal Elver, 16 July 2018, paras. 25 and 33; available at <https://undocs.org/es/A/73/164>.

exists over and above compliance with national laws and regulations protecting human rights" (A/HRC/17/31, Principle 11).

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 additional information, data or other comments regarding the above claims.
2. What steps is Angus Soft Fruits LTD taking to ensure that the workers in its supply chain have safe and adequate housing, and what results have been achieved?
3. What steps is Angus Soft Fruits LTD taking to ensure that the workers in its supply chain have access to water and sanitation? What results have been achieved?
4. What is the minimum salary for workers in Angus Soft Fruits LTD supply chain in Spain?
  - a. What steps is your company taking to ensure that the workers in the supply chain are paid a living wage which allows for decent work and an adequate standard of living for the workers and their families?
  - b. What actions has your company taken in response to reports of underpayment, delayed payment, and non-payment of wages?
  - c. What measures has your company adopted to ensure that the terms under which workers are recruited in their home countries, in the information provided to them verbally, are consistent with the reality of the employment conditions in Spain?
  - d. What progress has been achieved on this issue?
5. Does the Labour and Social Security Inspectorate access agricultural plantations in Huelva to inspect the working conditions of migrants working there? If so, how often are visits undertaken and what have been the findings of the inspections?
6. What steps has Angus Soft Fruits LTD taken to enforce the provisions of the collective agreement concerning maximum working hours?
7. How does Angus Soft Fruits LTD ensure that all migrant workers obtain an employment contract in a language which they understand?

8. Please explain what human rights due diligence steps – in line with the above-cited UN Guiding Principles on Business and Human Rights – were undertaken by Angus Soft Fruits LTD companies to identify, prevent, mitigate and account for its adverse human rights impacts, particularly with regards to migrant agricultural workers.
9. What steps is Angus Soft Fruits LTD taking to prevent gender-based violence, labour exploitation, and sexual abuse within the workforce?
  - a. What steps has your company taken in response to reports of widespread abuses of strawberry workers in Huelva and what progress has been achieved?
  - b. How many cases is your company aware of and what action has been taken in response?
10. In light of the COVID-19 pandemic and a reported increase in the number of migrant agricultural workers being recruited to work in Spain this season, what steps is Angus Soft Fruits LTD taking to ensure that these workers have adequate accommodation, work their agreed hours, are fairly compensated for their work, have access to health services and protective equipment and are protected from harassment, discrimination, abuse and exploitation?
11. Please explain what measures Angus Soft Fruits LTD has taken, or is considering taking, to ensure that the individuals affected by allegations raised in this letter have access to complaint mechanisms without retaliation.

This communication and any response received from your company will be made public via the communications reporting website within 60 days. 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 and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your company, and the governments of Spain and Morocco to clarify the issue/s in question.

Please be informed that a letter on the same subject has also been sent to the Governments of Spain and Morocco, as well as to other companies involved in the abovementioned allegations.

Please accept the assurances of our highest consideration.

Olivier De Schutter  
Special Rapporteur on extreme poverty and human rights

Githu Muigai  
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Michael Fakhri  
Special Rapporteur on the right to food

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Balakrishnan Rajagopal  
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Felipe González Morales  
Special Rapporteur on the human rights of migrants

Tomoya Obokata  
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Dubravka Šimonovic  
Special Rapporteur on violence against women, its causes and consequences

Léo Heller  
Special Rapporteur on the human rights to safe drinking water and sanitation

**Annex**  
**Reference to international human rights law**

In connection with the above-mentioned allegations, we would like to draw the attention of your Excellency's Government to the provisions regarding various human rights obligations enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Spain in 1977.

**Human Rights and Business**

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.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

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.

The 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 the 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 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”.

We would like to recall the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the General Assembly (ref. A/73/163). In the abovementioned report, the working Group noted that “The Guiding Principles clarify that business enterprises have an independent responsibility to respect human rights and that in order to do so they are required to exercise human rights due diligence. Human rights due diligence refers to the processes that all business enterprises should undertake to identify, prevent, mitigate and account for how they address potential and actual impacts on human rights caused by or contributed to through their own activities, or directly linked to their operations, products or services by their business relationships”.<sup>20</sup> Effective due diligence involves identifying and assessing actual or potential adverse human rights impacts that the enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; (b) Integrating findings from impact assessments across relevant company processes and taking appropriate action according to its involvement in the impact; (c) Tracking the effectiveness of measures and processes to address adverse human rights impacts in order to know if they are working; (d) Communicating on how impacts are being addressed and showing stakeholders – in particular affected stakeholders – that there are adequate policies and processes in place.<sup>21</sup>

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<sup>20</sup> United Nations Guiding Principles on Business and Human Rights, Principles 17-19, available at [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>21</sup> Summary of the report of the Working Group on Business and Human Rights to the General Assembly, October 2018 (A/73/163), available at [https://www.ohchr.org/Documents/Issues/Business/A\\_73\\_163\\_ExecutiveSummary\\_EN.pdf](https://www.ohchr.org/Documents/Issues/Business/A_73_163_ExecutiveSummary_EN.pdf)

## **Human rights of migrants**

International human rights standards and core labour standards apply to all migrants. In addition, the core international human rights conventions contain non-discrimination clauses that ensure that each of these instruments applies to non-citizens.

Under the International Covenant on Economic, Social and Cultural Rights, Spain has undertaken to respect, protect and fulfil the rights to a fair wage and equal remuneration for work of equal value, without distinction of any kind, with equal pay for equal work; to a decent life for themselves and their families; to safe and healthy working conditions; and to rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. The information provided, if true, would suggest that these rights are not being applied when it comes to migrant agricultural workers in Huelva.

We would also like to refer to several International Labour Organization (ILO) conventions that Spain has ratified, protecting workers' rights, including those relating to freedom of association (Nos. 87 and 98), the prohibition of forced labour (Nos. 29 and 105) and non-discrimination (Nos. 100 and 111). In particular:

- ILO Convention No. 97 on migrant workers (revised), ratified by Spain on 21 March 1967, stipulates that States must "accord to immigrants lawfully within their territory treatment not less favourable than that which they accord to their own nationals", in particular with regard to remuneration, working hours, overtime, paid holidays, membership of trade unions and entitlement to the benefits provided by collective agreements, housing and social security.
- ILO Convention No. 100, ratified by Spain on 6 November 1967, establishes equal remuneration between men and women for work of equal value.
- ILO Convention No. 129, ratified by Spain on 5 May 1971, requires States parties to maintain a system of labour inspection in the agricultural sector, regardless of the type, form or duration of the corresponding contracts. Inspections must cover working hours, wages, weekly rest and holidays, safety, health and welfare, and employment of women, children and young people, in order to identify violations and abuses.
- ILO Convention No. 141 on rural workers' organizations, ratified by Spain on 28 April 1978, establishes the right of such workers to join organizations of their choice without prior authorization.

## **Rights of women migrant workers**

Spain is also a State party to the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. These establish the rights to work, to free choice of

employment, to just and favourable conditions of work, to equal pay for equal work and to just and favourable remuneration.

With regard to women's rights, States have an obligation to ensure that women can exercise economic and social rights equally and without discrimination. The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) has drawn attention, in its General Recommendation No. 26, to the violation of the human rights of women migrant workers in both countries of origin and countries of transit and destination. The Committee recalls the obligation of States to protect women migrant workers against discrimination on the basis of CEDAW, which requires States parties to take, without delay, all appropriate measures to eliminate all forms of discrimination against women and to ensure that women can exercise and enjoy their rights in all fields on an equal basis with men.

### **Right to health**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) establishes international human rights standards, relevant for this case. In particular, the Committee on Economic, Social and Cultural Rights states that corporate activities can adversely affect the enjoyment of Covenant rights, including through harmful impacts on the right to health, standard of living, the natural environment. In this connection, the Committee reiterates the obligation to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and that rights holders are adequately protected in the context of corporate activities (E/C.12/2011/1, para. 1). Particularly, business enterprises are required to respect the right of everyone to the enjoyment of the highest attainable standard of physical and mental health enshrined in Article 12 of the ICESCR. The Committee describes the normative content of Article 12 of ICESCR in General Comment No. 14, noting that the private business sector has responsibilities regarding the realization of the right to health (para. 42).

In addition, article 7 of the ICESCR enshrines the right of everyone to the enjoyment of just and favorable conditions of work, including safe and healthy working conditions. General Comment No.14 of the provides that the improvement of all aspects of environmental and industrial hygiene comprises, inter alia, “preventive measures in respect of occupational accidents and diseases [and] the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health”.

### **Right to water**

We would like to recall that both the United Nations General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9) have explicitly recognized the human right to drinking water, which derives from the right to an adequate standard of living, protected, inter alia, by article 25 of the Universal Declaration of Human Rights and article 11 of the ICESCR. In its General Comment No.15, the CESCR



indicates that the right to water means that everyone has the right to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses, and to an even greater extent with the current COVID-19 pandemic.

### **Right to food**

We would like to highlight that article 11 of the International Covenant on Economic Social and Cultural provides for the right to an adequate standard of living for the person, including adequate food, clothing and housing, and to the continuous improvement of living conditions. As explained by the Committee on Economic Social and Cultural Rights in its General Comment 12, the right to food includes “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights”.<sup>22</sup> We would also like to highlight the Guiding principles on human rights impact assessments of trade and investment agreements, which were presented to the Human Rights Council in 2012.<sup>23</sup>

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<sup>22</sup> CESCR, General Comment no. 12, para. 8.

<sup>23</sup> A/HRC/19/59/Add.5