

**Lidl**

**Human Rights  
Impact Assessment  
Spanish (Huelva) Berry  
Supply Chain**

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# Introduction



As a major retailer, Lidl is committed to respecting human rights throughout its business and global supply chains. Through its annual risk assessment, Lidl identified human rights risks in its Spanish fruit and vegetable supply chain, which highlighted berries as a key risk commodity. The Andalusian province of Huelva in Spain is of strategic importance to Lidl due to the volume of berries purchased and the longevity of trading relationships. In March 2020, Lidl commissioned Löning-Human Rights & Responsible Business to conduct a Human Rights Impact Assessment (HRIA) with the following key aims:

- To understand where and how people are being adversely impacted in the supply chain;
- gather information on structural human rights risks;
- capture perspectives from relevant stakeholders and rightsholders; and
- identify measures to address the risks.

This report provides an overview of the HRIA approach, the wider sectoral context, key findings, actions and next steps.

## Overview of HRIA Approach

### Methodology

To ensure a systematic and credible approach to this HRIA, the Löning team followed a methodology based on recognised international guidelines, including the UN Guiding Principles on Business and Human Rights<sup>1</sup> and principles from the Danish Institute for Human Rights.<sup>2</sup> The methodology and timelines are summarised below:

1. Preparation	2. Data collection	3. Analysis	4. Recommendations
<ul style="list-style-type: none"><li>• Kick-off meeting</li><li>• Stakeholder analysis and engagement plan</li><li>• Baseline analysis of human rights impacts in the Huelva berry sector</li><li>• Development of framework for analysis</li></ul>	<ul style="list-style-type: none"><li>• Desk-based research</li><li>• Interview with internal and external stakeholders connected to Lidl</li><li>• Survey sent to producers in Huelva</li></ul>	<ul style="list-style-type: none"><li>• Analysis of all data collected</li><li>• Mapping of human rights impacts</li></ul>	<ul style="list-style-type: none"><li>• Development of recommendations</li><li>• Summary of the HRIA Report</li></ul>
<b>March 2020</b>	<b>April/May/June 2020</b>	<b>July/August 2020</b>	<b>September/October 2020</b>

<sup>1</sup> See UN Guiding Principles on Business and Human Rights

<sup>2</sup> See Danish Institute for Human Rights, *The HRIA Guide and Toolbox*

## Legal framework

This HRIA aligns with key international human rights principles and guidelines<sup>3</sup>, including the core standards of the International Labour Organization (ILO)<sup>4</sup> and Section 1 of the Spanish Constitution. Its interpretation is in accordance with the Universal Declaration on Human Rights, as well as international treaties and agreements ratified by Spain.<sup>5</sup> While complying with the EU Charter of Fundamental Rights, Spain also adopts all major international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights<sup>6</sup> and the the ILO conventions.<sup>7</sup>

Within Spain, the *Estatuto de los Trabajadores* is the most important national law regulating employment, including employment rights and working conditions<sup>8</sup>. It includes a Collective Agreement (2018-2020) for Huelva (*Convenio Colectivo del Campo de Huelva*) as a binding legal instrument with defined working conditions, wages, overtime and labour regulation.<sup>9</sup>

## Stakeholders engaged

Understanding the experiences of people working in the supply was central to this HRIA, particularly the perspectives of women and migrant workers. The assessment adopted a human rights based approach with a gender lens<sup>10</sup>. In total, the Löning team interviewed 87 stakeholders along the supply chain, including Lidl employees, the sourcing agent, suppliers, growers, berry pickers, union representatives, civil society organisations and local authorities, as well as the UN Special Rapporteur on extreme poverty and human rights.

### Stakeholders engaged



<sup>3</sup> See [the basic international human rights instruments](#).

<sup>4</sup> See [Basic ILO Conventions](#)

<sup>5</sup> Art. 10 [Spanish Constitution](#)

<sup>6</sup> Spain has ratified all major international human rights instruments, with one exception the International Convention for the Protection of the Rights of All Migrant Workers and their dependents (CMW). See [Ratification status – Spain](#)

<sup>7</sup> See [Ratification status – Spain](#)

<sup>8</sup> See [Ley del Estatuto de los Trabajadores](#)

<sup>9</sup> See [Convenio del Campo de Huelva](#). The new Collective Agreement was concluded between ASAJA (Asociación Agraria de Jóvenes Agricultura), the most important farmers association in Spain, and the CCOO (Comisiones Obreras), one of the most important unions in the country. The UGT (Unión General de Trabajadores), another union, doubted this and agreed to a further agreement with COAG (Coordinadora de Organizaciones de Agricultores y Ganaderos) and the UPA (Unión de Pequeños Agricultores y Ganaderos), which only applies to companies that are members of these agricultural employers associations. However, this has not proven itself in practice.

<sup>10</sup> According to the guidance of The Danish Institute for Human Rights, [Human Rights Impact Assessment: Guidance and Toolbox](#), P. 45.

For context, the sourcing agent engaged in the HRIA supplies 95% of Lidl's Spanish berries by volume. For Lidl employees, agents and suppliers, a survey was conducted virtually via semi-structured interviews. A total of 42 representatives from the selected berry growers were engaged via an online questionnaire, with 16 answering all of the questions.<sup>11</sup> In addition, trade associations were surveyed.

Field workers were trained to conduct 25 individual and group interviews both virtually and in person, the latter being delivered and recorded by independent female interviewers under guidance from the Löning team.<sup>12</sup> Interviews recorded nationality (Spanish, Moroccan, Romanian, Bulgarian, Polish, Malian, Gambian, Yemeni and Senegalese), gender, age, province in Huelva (Aroche, Lepe, Cartaya, Gibraleón, Palos de la Frontera, Moguer, Lucena del Puerto, Almonte, Bonares and Rociana del Condado) and employment status.

## Limitations

This HRIA aimed to identify key human rights impacts in Lidl's Spanish berry supply chain. It is important to note that this assessment focused only on the harvest stage where migrant labour is most predominant. It would therefore not be credible to directly extrapolate findings to the whole supply chain such as the planting, packaging and transport stages.

There were two further notable research limitations:

1. Following the COVID-19 pandemic emergency announcement by the World Health Organisation in March, lockdowns in Germany and Spain meant the project team was not able to travel to Huelva and therefore the project design was adapted as follows:
  - the survey period was extended;
  - a local team of social researchers in Huelva was commissioned to conduct personal interviews with field workers; and
  - other relevant stakeholders were engaged by phone and video.
2. A lack of transparency in contract conditions for field workers meant that Löning had to work with local partners to access the necessary information. Many workers themselves did not understand the conditions of their employment contract or rights.

<sup>11</sup> The questionnaire was sent online to 41 producers randomly selected from a database provided by the supplier; 16 responses were received with a completion rate of 100%.

<sup>12</sup> The interview methodology was developed using the guidelines of *The Danish Institute for Human Rights*. All respondents were informed about the aim of the survey, the handling of data and the name of the client.

# Context

## The berry sector in Huelva

Spain is the leading producer of berries in Europe and Huelva delivers a production share of 97%.<sup>13</sup> For the 2019 harvest year, approximately 350,000 tons of berries were produced, representing a total value of around a billion euros<sup>14</sup> by turnover. From this total, strawberries represented the majority value share, worth around 466 million euros, with raspberries, blueberries and blackberries worth around 651 million euros<sup>15</sup>. The economic importance of berries to the region cannot be underestimated: according to the Freshuelva business association, the sector generates approximately 11% of GDP<sup>16</sup> for Andalucía and employs 100,000 workers a year in Huelva, a region that otherwise has one of the highest unemployment rates in Spain<sup>17</sup>.

Berries are picked primarily for export, with approximately 80% destined for Germany, the UK and France.<sup>18</sup> During the harvest season (March to May)<sup>19</sup>, the sector is dependent on intensive agricultural farming methods. This reliance increased significantly when Spain joined the European Union in 1986<sup>20</sup>.

Harvesting berries is physically demanding, involving repetitive stooping, working in high temperatures and exposure to chemicals. It requires not only picking ripe fruit (at ground level for strawberries and sometimes in greenhouses for raspberries or blueberries), but also packing them into containers and carrying or transporting them by cart to the roadside or onto a pallet.

The Collective Agreement for berry workers applies some of the lowest standards in Spain, adding to the uncertain conditions among mainly female, migrant workers.<sup>21</sup> Uncertainty was exacerbated during the COVID-19 pandemic when the government recognised that berry workers needed to be able to access unemployment benefits to supplement their income.

<sup>13</sup> INE (2019) *Official Population Figures – Huelva 2019*

<sup>14</sup> The calculations are based on information provided by the government and relate to the approx. 547 companies that are registered with GECCO (*Gestión Colectiva de Contrataciones en Origen*) and, according to their own statements, make up a large proportion of the companies in the Huelva berry sector.

<sup>15</sup> FEPEX (2020) *Exportación / Importación españolas de frutas y hortalizas*

<sup>16</sup> Freshuelva (2020) *Los berries resisten al COVID-19 pese al descenso en su producción* P. 26

<sup>17</sup> In 2018, the employment rate in Huelva was 22.9%, compared with 15.3 % for the whole of Spain. See INE (2019) *España en cifras 2019* P. 53.

<sup>18</sup> Agrodario Huelva (2020) *La presencia femenina in the sector de los frutos rojos de Huelva ronda el 80% y va en aumento en cargos intermedios*

<sup>19</sup> Junta de Andalucía (2019) *Datos básicos de fresa*.

<sup>20</sup> Heinrich Böll Foundation (2017) *Migrant crop pickers in Italy and Spain*

<sup>21</sup> Women's Link Worldwide (2019) *Resúmenes ejecutivo. Temporeras Marroquíes en la agricultura onubense: condiciones de trabajo y estancia de las trabajadoras contratadas en origen* P. 5.

## The impact of COVID-19

In Huelva province, the pandemic exacerbated existing challenges in the fresh produce sector, with more precarious working conditions and unemployed Spanish workers replacing the migrant workforce:

- There was a reduced workforce availability. Of approximately 20,000 Moroccan women gaining the *Contratación en Origen*,<sup>22</sup> only 7,200 were able to travel to Spain before border closures on 13 March 2020.<sup>23</sup>
- Women who had arrived before the border closure could not return to their home country after completing their contracts in May/June and were forced to wait for weeks until borders reopened in July.<sup>24</sup>
- The Spanish government limited the availability of migrant worker permits by enabling unemployed Spanish residents to combine their state unemployment benefits with income from agricultural work. Residence permits for migrants already living in Spain were extended.<sup>25</sup>
- Some (mainly smaller) producers indicated that they were forced to give up some of their crops due to labour shortages.<sup>26</sup>
- The demand for strawberries collapsed. As a result, many producers had to sell their produce directly to manufacturers, resulting in lower incomes.<sup>27</sup>
- According to media reports, hygiene and social distancing were not sufficiently implemented within the sector.
- According to one supplier however, the 2020 berry harvest was financially successful, despite the challenges, due to higher prices.

<sup>22</sup> This is the main tool for recruiting seasonal workers in agriculture. In 2005, the AENEAS project was launched in Cartaya to recruit workers from Morocco. The berry sector has become the main user of this specific recruitment framework, which was responsible for 40,000 (mainly female) contracts during the 2007/2008 harvest campaign. See also ODHE (2019) *Desmontando la "inmigración ordenada": el trabajo de las temporeras de los frutos rojos* P. 9-12; Institut de Govern i Polítiques Públiques (IGOP) (2015) *Voluntary, involvement and programmed circular migration in Spain: the case of Moroccan workers in the berry-producing region of Huelva*

<sup>23</sup> OpenGlobalRights (2020) *Protecting migrant women workers in food supply chains during COVID-19*

<sup>24</sup> El País (2020) *Las temporeras atrapadas en Huelva: "Se nos acaba el dinero y necesitamos volver a Marruecos"*; El País (2020) *Comienza el regreso de las temporeras marroquíes atrapadas en Huelva*; CNN (2020) *"Please help us, we are abandoned here." Thousands of Moroccan seasonal workers stranded in Spain*

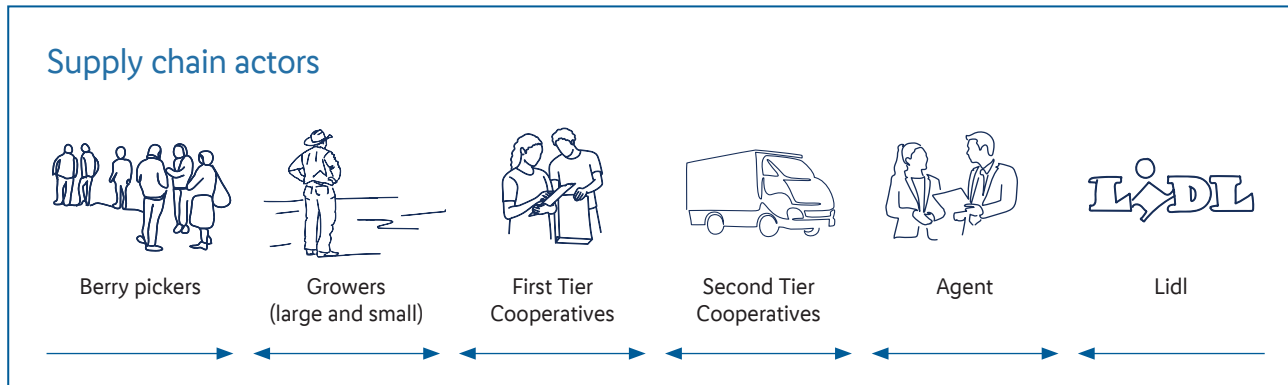
<sup>25</sup> El Mundo (2020) *El Gobierno movilizará parados por decreto para recoger las cosechas del campo*

<sup>26</sup> Hortidaily (2020) *Spanish berry producers have started abandoning their crops*

<sup>27</sup> Agrodario Huelva (2020) *Freshuelva reconoce que el sector fresero planifica la próxima campaña con cierta incertidumbre y con miedo*

## Lidl's supply chain overview

- The final grower, or end producer, employs seasonal workers for harvesting.
- Large and small growers, including first tier cooperatives, are responsible for sorting, packing and transport.
- Second tier cooperatives focus on marketing, quality assurance, research and development. Tier 1 cooperatives sell their entire production to tier 2 cooperatives.
- A sourcing agent connects suppliers to the retailer (Lidl).



## Seasonal workers in Huelva's berry sector

The berry sector is labour intensive, employing approximately 100,000 seasonal workers<sup>28</sup>. Around 53% are migrant workers, with 22% comprising EU residents and 25% non-EU residents<sup>29</sup>. Among the migrant workforce:

- the majority are from Eastern Europe (e.g. Bulgaria, Poland or Romania) and Africa, with 15% being Moroccan women arriving under the framework of the *Contratación en Origen* agreement for the berry sector<sup>30</sup>;
- there are also those under the Crop Aid programme, primarily from African countries and without legal residence in Spain. These workers make up the unofficial berry settlements in Huelva.<sup>31</sup>

<sup>28</sup> For comparison: The province of Huelva has about 521,870 inhabitants: internal. INE (2019) *Official Population Figures – Huelva 2019*.

<sup>29</sup> The figures are based on statements by the government (*Subdelegación del Gobierno en Huelva*), which are based on the data on social security for 2019.

<sup>30</sup> This is the main tool for recruiting seasonal workers in agriculture. First, it was used to recruit workers from Poland, Bulgaria and Romania. With the accession of these countries to the EU, a new recruitment approach for Morocco was developed. In 2005, the AENEAS project was launched in Cartaya to recruit workers from Morocco. The first contingent of Moroccan women arrived in 2006 and from the following year they became the main group of workers recruited for the berry harvest. The berries sector has become the main user of this specific recruitment framework, which for example was 40,000 contracts during the 2007/2008 harvest campaign. See also ODHE (2019). *Desmontando la "inmigración ordenada": el trabajo de las temporeras de los frutos rojos* S. 9 -12; Institut de Govern i Polítiques Públiques (IGOP) (2015) *Voluntary, involvement and programmed circular migration in Spain: the case of Moroccan workers in the berry-producing region of Huelva*

<sup>31</sup> Huelva Information (2020) *Coronavirus Huelva: Los ayuntamientos de Lucena y Lepe actúan en los asentamientos*



## Lidl's existing business practices

Following Löning's desk-based research and engagement with Lidl employees, the sourcing agent, the producer and tier 1 cooperatives, it was found that:

- 95% of the berries that Lidl buys from Huelva are sourced through an agent that Lidl has had a stable business relationship with for over 30 years. The agency itself maintains long-term relationships with its grower base.
- Lidl has no direct contact with producers, including tier 1 cooperatives, and only has limited contact with its direct supplier.
- The business relationship between Lidl and the agent is regulated by a framework agreement. There are no fixed quantities or prices and trade is based on trust, with no further formal written agreements. The same applies between suppliers and the agent.
- Lidl guarantees the purchase of a basic quantity of berries, planned a year in advance. There are, however, daily adjustments to the exact quantities based on supply and demand. Such adjustments are normal within the sector.
- Producers cultivate based on estimated orders. If demand fails, within a specific Lidl market, for example due to consumer preferences, Lidl tries to enable producers to divert their berries to non-affected Lidl markets, whilst absorbing the impact financially.
- Prices are negotiated weekly between the supplier and the agent, and between the agent and Lidl. The price is based on supply and demand and Lidl has no sight of production costs.
- Lidl's Code of Conduct<sup>32</sup> is part of the framework contract with the agency and applies to both producers and their own suppliers. Compliance by suppliers beyond tier 1 has not been systematically monitored to date.

### How Lidl currently manages human rights risks

Since 2019, Lidl has formally required its direct suppliers to comply with GlobalG.A.P GRASP, a certification standard that assesses the social risks within sourcing countries, focussing on growers, plantations and farms. As a member of the GRASP Technical Committee, Lidl expects the sourcing agent to communicate expectations to suppliers and, in turn, for end producers to have a valid GRASP certificate or equivalent<sup>33</sup>. It also expects suppliers to work together with growers to address sustainability issues. The GlobalG.A.P GRASP assessment is valid for one year.

In Huelva, all 473 GRASP assessments from producers were fully compliant. However, it is important to note that the assessment did not cover: discrimination and harassment; housing; and health and safety at work.

<sup>32</sup> Lidl Code of Conduct

<sup>33</sup> GlobalG.A.P GRASP Retailer Recommendation – Lidl

# Impact Assessment Findings

Based on the assessment of primary and secondary data, the HRIA highlighted human rights impacts in the supply chain. The findings are summarised below:

## 1. The right to just and favourable working conditions



- The legal minimum wage is not paid and the Collective Agreement is generally not complied with (including overtime and working hours).
- There are insufficient protective measures against COVID-19.
- The working environment is characterised by a pressure to harvest quickly and a fear of being dismissed.

### Working hours

Harvesting is physically demanding and often carried out under difficult conditions, including intense sun and heat. The Collective Agreement states working hours and rest periods, as well as the right to just and favourable working conditions. Working hours are set at 39 hours per week (six working days, one rest day, 6.5 hours per working day) but these can be extended by up to 10 hours per week, without exceeding nine hours per day. Every working day there is a 30-minute break.<sup>34</sup> In reality the assessment found that:

- of the berry pickers surveyed, no one was paid overtime rates specified in the Collective Agreement (75% in addition to the regular hourly rate)<sup>35</sup>;
- whilst sundays are identified as official rest days, in high season (February 15 to June 1) this could fall on any day and in some cases, no weekly rest days were granted;
- in a quarter of the interviews, there was a discrepancy between agreed and actual working hours, as well as excessive overtime;
- in almost half of the interviews, irregularities in daily break times were reported;
- there were discrepancies between the number of days worked and the number of days entered into the payroll;
- in a quarter of the interviews, it was reported that workers were informed about changes to the work schedule or rest days on that same day (e.g. receiving a message two hours before work) or on the previous day;
- civil society organisations reported a violation of Article 3 of the ministerial decree, which requires a minimum number of working days under the *Contratación en Origen*. For instance, Moroccan workers may travel to Spain and be given only a few days' work.

<sup>34</sup> Article 7 of the Collective Agreement

<sup>35</sup> Article 8 of the Collective Agreement

## Examples

During the high season, some pickers surveyed were only informed of their rest day the day before (making planning work and private life more difficult). Two indicated that they had to ask for a rest day after 11 consecutive working days.

One worker stated that she worked for 24 days but was only listed on the payroll for 21. An employee representative and former picker reported cases in which the company would not register the working day until the picker had collected the required amount of fruit.

Pickers reported that they only had a five minute break, no break at all, or that the approval of breaks depended on the mood of the supervisor. Another worker said that breaks were not allowed in his field unless workers did overtime. Some said that taking breaks was left to the workers. This meant that some did not take breaks as they felt under pressure. Some feared that they would be dismissed if they did not collect the expected number of boxes. One worker indicated that for this reason, he would eat his sandwich while collecting blueberries.

The pickers noted that, although their contract stated 39 hours per week, in practice they would work up to 42 hours (seven hours a day with a five minute break) and more than eight hours without a break during the high season (even if this was not originally agreed), or even up to 12 hours in one day.

## Employment contracts

In order to ensure the right to just and favourable working conditions, it is critical that pickers understand their work and employment conditions. The assessment found that:

- Most of the field workers surveyed had signed contracts in Spain, with eight female workers from Morocco having a contract under the *Contratación en Origen*. Three people had no contract as they did not have a legal place of residence in Spain.
- In more than half of the interviews with those that had an employment contract, workers were not sure about the terms of the contract or the detailed content of the contract.
- The majority who had been picking berries for years still had no fixed-term contract. This created insecurity as they had no entitlement to unemployment benefits and could not be sure if they would be reinstated the following season.
- The *Contratación en Origen* is formulated in such a way that a migrant worker is heavily dependent on their employer, exposing them to exploitative practices. This was raised by the civil society organisations engaged in the HRIA. Workers may be dissuaded from raising grievances with their employers as this could reduce the likelihood of being reselected by the employer the following year through a process called *Oferta Nominativa*. This means that, after arriving in Spain, workers generally accept the given working conditions and do not renegotiate or complain, for fear of losing their job. Language barriers and living in isolated rural areas further hinder the worker's ability to raise grievances.
- Civil society organisations and pickers reported unethical hiring practices by temporary employment agencies, such as daily deductions of fees from wages or non-timely payment of wages.

## Examples

Union representatives, civil society organisations and workers report that the use of ‘temporary contracts’ is a widespread practice, although the contract is an ‘open-ended seasonal contract’ (*contrato fijo discontinuo*).

One picker signed the contract on site during the break. She had had no time to read it (in addition, her limited knowledge of Spanish made it difficult to understand). Some explained that they signed the contract after they had already worked several days or when they were almost at the end of their working period. One said that he had to insist that the superiors let him read the contract before signing. The pay was also not included, simply stating ‘according to the Collective Agreement’. In addition, some pickers reported that they were entitled to be paid for the number of hours specified in the contract but were not aware of what was stipulated in the Collective Agreement.

## Adequate payment

In Spain, a minimum wage is paid to ensure wellbeing for workers and their families, as described in Article 35 of the Spanish Constitution. In 2020, the minimum wage for seasonal workers was set at 44.99 euros (gross) per working day.<sup>36</sup> This increased to 48.54 euros if proportional holiday share was added<sup>37</sup>. The actual amount paid out after deduction of taxes and social security contributions was therefore set at around 44.46 euros per day.<sup>38</sup>

- Wages in the berry sector in Huelva are below the legal minimum wage in Spain, as stipulated in the Collective Agreement. In 2019, wages increased to 42.02 euros<sup>39</sup> (for 2020 the official wage at the time of the HRIA was not publicly accessible). Where wages stipulated in a Collective Agreement are lower than the minimum wage, the adjustment must be made automatically by the employer.<sup>40</sup>
- None of the pickers surveyed received the legal minimum wage.
- The labour inspectorate in Huelva pays the holiday portion at the end of the contractual relationship, instead of including it in the daily rate.<sup>41</sup> This would bring the amount closer to wages indicated by some field workers (41 - 42 euros per day). However, it could not be determined as to whether holiday pay was actually paid at the end of these contracts.

## Examples

Many of the berry pickers surveyed received a net amount of between 37 and 39 euros a day. Some received a net amount between 41 and 42 euros and one picker received 32 euros. There was a case of a picker being promised 39 euros (net) but when he calculated it during the interview, it only came to 33.33 euros per working day.

In some cases, the pickers paid for their accommodation and / or wage deductions were made without explanation. The majority surveyed did not receive the allowance for travel costs (to and from the workplace) specified in the Collective Agreement.

<sup>36</sup> Article 4 *Real Decreto 231/2020* to regulate the minimum wage.

<sup>37</sup> The decree stipulates that employees receive the proportional portion of the statutory minimum vacation, provided that the period in which the vacation entitlement exists does not coincide with the duration of the contract. This is often the case for seasonal workers. Article 9 of the Collective Agreement also specifies that this portion should be included in the daily wage rate.

<sup>38</sup> According to the unions surveyed, the net amount after deduction is 2% IRPF (income tax), 4.7% social security, 1.6% unemployment insurance and 0.1% further training.

<sup>39</sup> See *Tabla salarial para el año 2019 del Convenio Colectivo del Campo de la Provincia de Huelva*

<sup>40</sup> See Article 27 of the *Ley del Estatuto de los Trabajadores* (Statute for Workers' Rights).

<sup>41</sup> For example, the reason for the labor inspection at Tinto News (2019) *The Inspección de Trabajo da la razón a los trabajadores de Riotinto Fruit*

## Anti-discrimination and harassment

Another essential element within the right to work is anti-discrimination. Harassment and bullying create a hostile working environment where employees feel uncomfortable and do not have the same opportunities to progress. Key findings included:

- in a quarter of the interviews with pickers, cases of discrimination based on nationality were reported;
- some pickers experienced a hostile working environment, rooted in the pressure to collect the most berries. This was exacerbated following labour shortages caused by COVID-19;
- the media and NGOs report cases of discrimination and sexual harassment, particularly among migrant workers.<sup>42</sup> The Collective Agreement includes a protocol on equal treatment and equal opportunities (Article 35) and a protocol on the prevention of sexual and gender-based harassment (Article 36 Collective Agreement). However, according to interviews with union representatives and NGOs, these protocols have not yet been implemented;
- Arabic-speaking, cultural mediators should be allowed weekly visits to report on the situation of workers. However, this was limited due to a lack of resources and access to the *Fincas* (rural farming accommodation) depended on agreements with producers.

### Examples

One worker said that they were on different lists (green, red or black), depending on the number of buckets they collected. There was a fear of being dismissed if they did not collect enough. Two workers reported that the lists were publicly available in some *fincas*, showing all workers the groupings of their colleagues, creating a stressful environment. Workers reported that although they are allowed to go to the bathroom, they often do not, as this would mean less berries being collected: “If I go to the bathroom, the worker next to me will collect more berries than me. Then I could be kicked out...”

One raspberry picker described a tense workplace. He worked in a *cuadrilla* (a group of berry pickers under the supervision of a manager) where the manager put pressure on them to harvest faster and threatened to dismiss them if they stopped. The group complained about verbal abuse and mistreatment, but there was no response. The picker remains unclear as to what an ‘appropriate’ amount of berries is.

<sup>42</sup> For example, FIDH (2012) *Importing workers, exporting strawberries: Working conditions on the Strawberry Farms in the Huelva Province* P. 25.; ODHE (2019) *Desmontando la “inmigración ordenada”: el trabajo de las temporeras de los frutos rojos* P. 6. See also, Women’s Link Worldwide (2019) *Resúmenes Ejecutivo: Temporeras Marroquíes: Condiciones de Trabajo y Estancia de las Trabajadoras Contratadas en Origen*; MZC (2012) *These must be migrated to the human and campus headquarters of Huelva*; Revista CCOO (2017) Pastora Cordero Zorrilla *Las trabajadoras del “oro rojo* (2017) p. 11; Corrective (2018) Stefania Prandi and Pascale Müller, *Rape in the fields*. The Committee on Women’s Rights and Gender Equality of the European Parliament (2018) *The vulnerability to exploitation of migrant workers in agriculture in the EU: the need for a human rights and gender based approach*

## Examples

The HRIA team had access to a written disciplinary penalty imposed on a berry picker for having collected '10% less than the average [of the *cuadrilla*].' According to the document, 15% was considered 'serious misconduct'. It also described that such misconduct is committed voluntarily by the pickers (referring to Article 33g of the Collective Agreement). However, the pickers explained in the interviews that in many cases productivity depended on factors beyond their control, such as the availability or quality of berries. The sanction for 'serious misconduct' could be the suspension of employment or salary deductions of three to 15 days. Some workers reported that their colleagues had been sent home for three days without payment.

A report cited the 'alarming working conditions' in the strawberry fields of Huelva, including the discriminatory conditions of the Recruitment Agreement<sup>43</sup>. Reports continue into this issue.<sup>44</sup> Those recruited are women from rural areas between 20 and 45 years old, healthy, married (or widowed) and with underage children in their home country (which should guarantee their return).<sup>45</sup> This goes against equal opportunity legislation in Article 14 of the Spanish Constitution.

In recent years, civil society organisations and the media have reported on the working situation of migrant women in Huelva, citing cases of sexual abuse,<sup>46</sup> some of which were reported to the authorities.<sup>47</sup> In the interviews as part of this HRIA, some workers implied examples of sexual harassment.

## Health and safety

A critical aspect of the right to fair and equitable work is the right to healthy and safe working conditions, as defined in Article 7 of ICESCR. This may range from preventing accidents and ensuring access to clean drinking water and sanitation (including the hygiene needs of women), to providing materials and information to promote good hygiene. These have become even more important in the context of COVID-19.<sup>48</sup> In addition, employees are entitled to paid sick leave.

The agricultural sector is considered one of the most dangerous sectors. The causes of work accidents and occupational disease include working with machines, tools and animals; exposure to dust, organic substances and chemicals; musculoskeletal disorders from repetitive movements, bending or heavy lifting; and exposure to extreme temperatures.<sup>49</sup> This HRIA found that:

- the majority of pickers reported effects from severe working conditions, such as back pain, as well as high temperatures and exposure to chemicals;
- less than half of respondents indicated that they had received COVID-19 protective equipment such as masks and sanitiser, while others reported irregularities in this context;
- there were fears of increased infection risk, particularly in light of COVID-19;
- in a third of interviews, workers stated that they did not have access to clean drinking water and / or clean sanitary facilities. With long working hours and a lack of breaks, there were concerns of short and long-term negative health effects.

<sup>43</sup> FIDH (2012) *Importing workers, exporting strawberries: Working conditions on the Strawberry Farms in the Huelva Province* Pg. 25

<sup>44</sup> ODHE (2019) *Desmontando la "inmigración ordenada": el trabajo de las temporeras de los frutos rojos* See p. 6. See also, Women's Link Worldwide (2019) *Resúmenes Ejecutivos: Temporeras Marroquíes: Condiciones de Trabajo y Estancia de las Trabajadoras Contratadas en Origen*. The topic was also raised in discussions with civil society organisations.

<sup>45</sup> ODHE (2019) *Desmontando la "inmigración ordenada": el trabajo de las temporeras de los frutos rojos* Pg. 12.

<sup>46</sup> For example, MZC (2012) *These must be migrated to the human and campus headquarters of Huelva*; Revista CCOO (2017) Pastora Cordero Zorrilla *Las trabajadoras del "oro rojo"* (2017) p. 11; Corrective (2018) Stefania Prandi and Pascale Müller, *Rape in the fields*. The Committee on Women's Rights and Gender Equality of the European Parliament (2018) *The vulnerability to exploitation of migrant workers in agriculture in the EU: the need for a human rights and gender-based approach*

<sup>47</sup> For example, El País (2019) *El precio de denunciar los abusos en la fresa*; The New York Times (2019) *Trabajadoras de los campos de fresas de España denuncian abusos* El Diario (2018) *Only the temporary marroqués denuncian abusos laborales y sexuales en una finca de Almonte*

<sup>48</sup> ILO (2020) *COVID-19 and the impact on agriculture and food security*

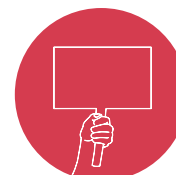
<sup>49</sup> ILO (2011) *Safety and Health in Agriculture, Code of Practice* Paragraph 2.1.3

## Examples

Some workers reported that if they asked for sick days, they feared being dismissed so they would go to work sick. Some workers were also warned that the insurance (*la Mutua*) would not cover certain work-related pain.

## 2. The right to freedom of association

- Workers are insufficiently informed about their employment contracts and rights.
- The presence of unions is low.



The right to start and join a workplace organisation is integral to a free and open society and serves to protect and promote the right to work (Article 22 of the ICCPR). This is a central human right in the workplace and a prerequisite for collective bargaining, through which employers and unions can establish fair working conditions and wages.

The two main unions in Spain, *Comisiones Obrera* and *Unión General de Trabajadores*, are active in the agricultural sector in Huelva and are also represented in collective bargaining. *Sindicato Andaluz de Trabajadores* is a minority union that also operates in the area. However, in this HRIA, low levels of unionisation were found. When combined with the lack of understanding from pickers about their rights and the fear of workers to file complaints, it can be inferred that the right to freedom of association is being restricted.

## Examples

In conversation with one of the union representatives, concern was expressed about an ‘under-representation of workers’ in the berry sector. The representative stressed that employee representation should be the ‘normal channel’ for solving work-related problems and indicated a lack of resources and access to pickers. The insufficient understanding of rights among workers was also highlighted by employee representatives and NGOs.

In interviews with pickers, few knew about unions or any employee representative. Of those surveyed, only one worker (who had worked in the field for 16 years) was a member of a union.

### 3. The right to an adequate standard of living: housing



- Free accommodation stated in the Collective Agreement for workers on the *fincas* is not guaranteed.
- Many workers continue to live in informal settlements.

The right to a decent standard of living means that ‘everyone should be able to meet their basic needs under decent conditions.’<sup>50</sup> According to Article 11 of ICESCR, an adequate standard of living includes the right to housing. This is more than just accommodation - an adequate home must meet certain requirements, including habitability, the availability of services, facilities and infrastructure, as well as location.<sup>51</sup> The right to housing in the agricultural sector in Huelva should be in accordance with Article 13 of the Collective Agreement and identified between *fincas* and the informal settlements (*asentamientos*).

#### Accommodation inside the *fincas*

- Almost all pickers surveyed were not paid sufficiently to cover accommodation.
- Civil society organisations have often reported the precarious living conditions of seasonal workers<sup>52</sup> Our investigation also involved berry pickers highlighting poor conditions.
- The remote location of the *fincas* and associated lack of transport gave some workers and civil society organisations cause for concern. Isolation makes it more difficult to make complaints to authorities, integrate into the wider community or gain access to infrastructure or social facilities.<sup>53</sup>

#### Examples

Workers described cramped living conditions that led to conflict and stress, including a lack of access to drinking water, rain leaking into living spaces, unbearable heat and outdoor toilets.

A group of seven Moroccan pickers paid 70 euros for accommodation in 2020, whereas in previous years they paid 50 euros. Another picker paid 2 euros per day. Only two pickers of 12 surveyed did not pay for their accommodation or associated expenses.

#### Informal settlements

In Huelva, approximately 2,500 people live in informal settlements, the majority of whom work in agriculture.<sup>54</sup> This is a local issue that has existed for almost 20 years<sup>55</sup> and authorities have not yet found an appropriate solution.<sup>56</sup> Studies have shown:

- a lack of sanitary facilities, water, electricity and waste disposal in settlements;<sup>57</sup>
- the pandemic has further exacerbated extreme socio-sanitary conditions;<sup>58</sup> and
- several fires occurred in settlements in summer 2020.<sup>59</sup>

<sup>50</sup> Moeckli Daniel et al., *International Human Rights Law* (Oxford University Press 2010) 235.

<sup>51</sup> UN Committee on Economic, Social, and Cultural Rights *General Comment No. 4* on the right to adequate accommodation, paragraph 8

<sup>52</sup> For example, Women’s Link Worldwide (2019) *Resúmenes ejecutivo. Temporeras Marroquíes en la agricultura onubense: condiciones de trabajo y estancia de las trabajadoras contratadas en origen*; Mujeres 24H (2019) *La situación de las temporeras en los campos de Huelva*; FIDH (2012) *Importing workers, export Importing Workers, Exporting Strawberries: Working Conditions on the Strawberry Farms in the Huelva Province (Spain) in the Huelva Province*; MZC (2012) *These must be migrated to the human and campus headquarters of Huelva*

<sup>53</sup> Interviews with civil society organizations and see also APDH et. Al (2018) *Realidad de los Asentamientos en la provincia de Huelva* P.40

<sup>54</sup> HuelvaInformation (2020) *Coronavirus Huelva: Los ayuntamientos de Lucena y Lepe actúan en los asentamientos*

<sup>55</sup> Defensor del Pueblo Andaluz (2016) *La pobreza de los asentamientos de inmigrantes en Huelva*

<sup>56</sup> For example, the recent statement by the Spanish Ombudsperson of July 2020, in which he calls on all administrations, agricultural employers and agricultural organisations to search “in a coordinated and urgent manner” for a solution to the situation of degradation in which seasonal agricultural workers live. under El Defensor del Pueblo (2020) *The defensor pide que se garantice the derechos laborales y unas condiciones de habitabilidad dignas para los temporeros agrícolas*

<sup>57</sup> For example, Defensor del Pueblo Español (2016) Complaint No. 14022565

<sup>58</sup> For example, Cáritas (2020) *Coronavirus: Cáritas alerta sobre la extrema precariedad social en la que están miles de personas en infraviviendas y asentamientos* *The Guardian* (2020) *No food, water, tasks or gloves: migrant farm workers in Spain at crisis point*

<sup>59</sup> For example, Niusdiario (2020) *Dos incendios en 24 hours arrasan and centenar de chabolas en asentamientos de Huelva*



## Examples

One worker surveyed lived in a settlement in Lepe, where, with the help of a union, water is distributed to residents in old chemical canisters. Two workers in other settlements stated that there was neither water nor electricity.

The UN special rapporteur on extreme poverty and human rights, Philip Alston, visited the settlements in early 2020 and publicly denounced the terrifying living conditions of the workers, stating “They are miles away from water and live without electricity and adequate sanitation.”<sup>60</sup>

## 4. Access to remedy



- There are no effective complaint mechanisms in place.

Every person whose rights and freedoms are violated should have equal access to effective remedy (Article 2 and 14 of the ICCPR). Despite the role of the state through courts or national ombudspersons, companies are expected to apply their own complaint mechanisms.<sup>61</sup> The reality in Huelva region is as follows:

- Complaint mechanisms are limited to a suggestion and / or complaint box (usually based on the requirements of the GlobalG.A.P GRASP assessment) and mediation by a local NGO for Moroccan workers (as included within the framework of the *Plan de Responsabilidad Etica, Laboral y Social de Interfresa – PRELSI*<sup>62</sup>).
- Surveyed pickers suggest that the formal systems do not work effectively in practice.
- Officially, workers are free to join PRELSI, but the employer determines access. Additionally, mediators are hired by the employer, which civil society organisations, unions and seasonal workers have expressed concerns around as it means they are not truly neutral. Employee representatives are rarely involved in these procedures.
- As already stated, due to a lack of resources and access to *fincas*, mediation is limited and depends on agreements with the producers.
- Informal complaint routes via civil society organisations and self-organised trade union movements have had some effect and have raised awareness.

<sup>60</sup> UN, statement by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights *Report on his mission in Spain, January 27-7. February 2020*

<sup>61</sup> Principle 29 of the UNGPs

<sup>62</sup> See Interfresa (2018) *Plan de Responsabilidad Etica, Laboral y Social (PRELSI)*

## Structural factors

In order to further understand human rights impacts and to develop possible solutions, it is important to consider the underlying structures within the berry supply chain in Huelva, including market dynamics and wider factors.

### Market dynamics

- Competitive retail sector
- Fluctuations in demand
- Concentration of power in supermarkets
- Short-term price and quantity negotiations
- Producers competing in a globalised market

The food retail sector is characterised by a high level of competition. Low-price strategies, driven by customer demand, have proven to be a successful business model for supermarkets. This is reflected in the berry sector, where fluctuations in production and demand directly influence purchase quantity and price. Since only four supermarkets control German retail,<sup>63</sup> they have a significant influence on quality and purchasing conditions and are able to put considerable pressure on the supply chain.<sup>64</sup> Producers in Huelva must simultaneously assert themselves in the globalised market, where they fear that they will be replaced by competitors in Morocco and Egypt if they do not accept the conditions of supermarkets.

### Wider factors

- Lack of information exchange
- Fluctuations in prices and revenue
- Perishability and labour intensity
- Local context

In Huelva's berry supply chain, a direct exchange of information is limited to one level up or down the supply chain. As a result, whilst producers may understand the challenges, they may not have an appropriate say in pricing. Weather and the perishability of berries also drive price fluctuation, producer income and product availability. The labour-intensive nature of the sector also impacts production costs.

Finally, stakeholders such as producers, associations, unions and politicians in Huelva are highly networked, which can impact the handling of sensitive topics such as the protection of labour rights by Spanish authorities.

## Results

- Reduced margins and uncertain outlook for producers
- Lack of labour
- Lack of presence of unions

<sup>63</sup> Oxfam *Supermarkets*

<sup>64</sup> European Parliament, Committee on Internal Market and Consumer Protection (2016), *Report on Unfair Trading Practices in the Food Supply Chain*. See also Oxfam (2018) *Report: Ripe for change*

The market dynamics in Huelva not only impact producers, but also their seasonal workers. With producers under pressure to deliver high quality produce and packaging standards for the lowest possible price, costs are often cut at worker level. Although the Huelva region has a high unemployment rate, working conditions (including a lack of unionisation and protection) in berry picking are unattractive and even migrant workers are not staying.

### Summary of berry sector conditions in Huelva

- Weak enforcement of labour and social standards
- Dependency on potentially vulnerable workers (migrant workers, women, low-income)
- Uncertainty for workers and producers
- Tension between seasonal worker wellbeing and profit

### Lidl's sphere of influence

The HRIA identified that the main adverse human rights impacts are upstream in the supply chain, among seasonal workers. Lidl does not have direct contact with producers and contact with lower-tier suppliers is extremely limited, with the exception of bespoke projects, such as this HRIA. However, Lidl has taken steps to leverage its influence, including applying the UN Guiding Principles on Business and Human Rights to address unlawful practices alongside relevant stakeholders. The analysis identified the following areas in which Lidl might exert influence further:

- **Forecasting, terms & conditions:** short-notice changes in order quantities or packaging formats create pressure on both product and packaging suppliers – these may even occur on the day of collection. The growing diversification of packaging formats makes it difficult for suppliers to respond to changes with little notice. This was cited by all cooperatives and almost half of the producers interviewed as a factor in not meeting responsibilities to seasonal workers with regard to hours and breaks.
- **Pricing:** this was identified as a factor in ensuring good working conditions and accommodation. Lidl negotiates prices weekly with the sourcing agent without taking into account production costs. 94% of producers said that production costs were higher than the price paid for their berries at certain times. Fluctuations in production costs may be due to the increase in minimum wage, certifications or changing cultivation methods.
- **Standards and monitoring:** communicating and monitoring retailer expectations can be a way to improve social standards. The Lidl Code of Conduct applies to all indirect and direct business partners. In addition, producers in the berry supply chain must meet the requirements of GlobalG.A.P GRASP. Most producers interviewed agreed that GRASP helped them improve social standards and become more competitive. However, they complained that the costs of certification was not sufficiently reflected in prices paid, particularly for smaller producers. Overall, it was noted that GlobalG.A.P GRASP alone, was not sufficient to adequately mitigate adverse human rights impacts. Lidl should implement an audit and monitoring system to track compliance through the supply chain.

## Recommendations and action plan

Lidl is one of the most important buyers of fruit and vegetables from the Huelva region and therefore has the ability to influence positive change. In order to mitigate the adverse human rights impacts identified in this HRIA <sup>65</sup>, it has developed a time-bound action plan based on Löning's recommendations and four strategic approaches.

Strategic Approach	Objective	Action	Timeline	Stakeholders
<b>Dialogue</b>	Engage all stakeholders in the supply chain	Dialogue on HRIA results with stakeholders in the supply chain	Q2 2021	Agency Suppliers Cooperatives Producers & Growers
		Industry-wide dialogue on-site	Q2 2021	Retailer NGOs Associations
		Approval of action plan with suppliers	Q3 2021	Supplier
<b>Compliance and Engagement with Standards</b>	Strengthen and review requirements	Review and adjust guidelines for producers	Q3 2021	Agencies Suppliers Producers
		Review GlobalG.A.P GRASP assessment	Q4 2021	GlobalG.A.P technical board
		Review approach to social auditing	Q4 2021	Audit companies Producers
	Improve access to remedy	Improve grievance mechanisms in the supply chain	Q4 2021	NGOs Unions
		Strengthen freedom of association at producer level	Q1 2022	Unions
	Address discrimination	Publish a position paper on gender equality	Q3 2021	NGOs

<sup>65</sup> See Lidl's Human Rights & Environmental Due Diligence policy

<b>Strengthen Purchasing Practices</b>	Increase price transparency	Ensure greater transparency on pricing to protect wage costs	Q1 2022	Agency Suppliers Producer
	Respond appropriately to risks	Emphasise human rights risks as part of supplier evaluation and development	Q1 2022	Agency Suppliers Lidl Buying department
<b>Influence Systemic Change</b>	Communicate transparently	Communicate progress and update action plan	Q2 2022	Agencies Suppliers NGOs
	Address improvements together	Dialogue with government agencies, NGOs, unions and food retailers	Q2 2022	Governmental authorities NGOs Unions Retail associations Multi-stakeholder initiatives

# Appendix

## Impact Assessment

The UN Guiding Principles (UNGPs) stipulate that all identified adverse human rights impacts should be addressed. In practice, prioritisation is often necessary.

In order to develop a time-bound action plan, based on the findings of the HRIA, Lidl should assess the severity of the impacts identified. In line with the UN Guiding Principles, the human rights impacts identified through the HRIA were assessed in conjunction with the following considerations:

- Scale (i.e. severity of impact)
- Scope (i.e. number of people who are affected or who could be affected)
- Remediation potential

