

IMPORTING WORKERS, EXPORTING STRAWBERRIES

Working Conditions on Strawberry Farms in the Huelva Province (Spain)

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security



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Summary

In the province of Huelva, located in the south-western part of the autonomous region of Andalusia, intensive farming of strawberries, destined to supply European markets early in the season, calls for a large temporary work force for a period of several months. Some 50,000 seasonal workers, mainly foreign migrant workers, are employed on the farms each year.

To meet labour needs and regulate migratory flows, the Spanish government has created a system whereby workers are recruited in their countries of origin (*contratación en origen*). Thousands of workers are recruited in their countries of origin and transported to the farms where they work until the end of the strawberry season. Workers commit to returning to their respective countries at the end of their contracts. With the entry of Poland, Bulgaria and Romania to the European Union, hiring in countries of origin is now limited to Moroccan female workers. This system has been presented as exemplary of the advantages of circular migration, a model promoted by European Union institutions as way of meeting European labour needs, while ensuring that migrants do not remain to reside in the EU.

Hiring in countries of origin, when added to a legal framework that provides little protection for seasonal farm workers in Andalusia, has led to the violation of workers' rights.

Workers are not guaranteed a minimum income as non worked days are not paid for, which can be high in number due to the fact that strawberry picking is dependent on appropriate weather conditions and that disproportionately large numbers of workers are hired to meet needs over the whole season. Current rules for trade union representation completely exclude seasonal workers because the latter are unable to fulfil seniority requirements.

The FIDH fact-finding mission also brought to light highly variable accommodation conditions (usually reserved for migrant workers), a recurrent problem being that most living facilities are located relatively far from urban centres and there is no transport system available. FIDH has specific concerns about the working and living conditions of Moroccan women who are hired on the basis of discriminatory selection criteria, do not generally speak Spanish and are consequently entirely dependent on their employer, on whom they rely for the possibility to return for another season of work in Spain. Moreover, as employment contracts do not specify termination dates, they can be cancelled at any time, resulting in workers risking being sent back to their home countries since their rights of residence are tied to their employment.

In this report, FIDH addresses a series of recommendations to the Spanish authorities with the aim of strengthening protection for seasonal farm workers, increasing and reinforcing workplace inspections, and providing better social support for migrants. FIDH also calls upon Spanish authorities to ratify the International Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families. In recommendations addressed to the Moroccan government, FIDH recommends including trade unions in the tripartite commission that oversees recruitment in Morocco and calls for the elimination of discriminatory recruitment criteria.

Finally FIDH addresses some recommendations to businesses, both the farmers themselves and buyers, in particular mass retailers who should ensure that their suppliers comply with human rights standards.

Introduction

The development of intensive farming in Spain corresponds roughly to the time of Spain's entry in the European Union (1985-1986) and with its passage from being a country of emigration to one of immigration. After a long period as a country of emigration, Spain has now become the leading European destination for immigrants. Because of its geographic location Spain plays a major role, in particular as a border guard, in EU migration policy.

In 2008, Spain was the second largest country in the EU in terms of usable farm area (25.6 million hectares), behind France (28.3 million hectares), and fourth in terms of the number of farms (1.2 million). Spain wants to be a major agricultural power on the common European market and strives to remain competitive. Immigrant labour,¹ in particular seasonal or temporary labour and increasingly female labour, is one way of remaining competitive.

One of the pillars of Spanish agriculture is strawberry production. Strawberries are mainly farmed in the province of Huelva (Andalusia), where they represent 50% of final agricultural production.² Strawberry farming is labour intensive for several months every year. Today, the vast majority of these farm workers are migrants.

In order to provide the necessary labour force and regulate migrant flows within its borders – in other words to stem irregular immigration – Spain promotes the use of temporary migrant labour through a mechanism referred to as *contratación en origen*. We have translated this as “hiring in country of origin” for the purposes of this report. This model for circular migration is promoted by the EU. It is described as a triple gain, providing satisfaction to all parties: the host country benefits from the migrants it needs, when and where they are needed, without having to worry about their social integration in the long term. The country of origin benefits from the employment opportunities provided to their nationals and from their remittances. The migrant worker receives employment, an income, and is allowed to work legally in the host country. The aim of the model is to encourage migrants to move continuously back and forth between host and home country. The promotion of this model goes hand in hand with an increase in the restrictions on movement and permanent residency within the destination country. Since 2007, the European Commission “suggests setting up mobility partnerships and organising circular migration to facilitate the movement of third-country nationals between their countries and the European Union (EU). The mechanisms would alleviate the labour shortage in the EU, check the phenomenon of illegal immigration and allow the countries of origin to benefit from the positive impacts of emigration”.³ Aside from the clear advantages for businesses and States, what human rights guarantees does this model provide to seasonal workers?

1. In 2000, the percentage of foreign-born residents in Spain stood at 4.9%. In 2008, that number stood at 14.1 % (OCDE, *International migration outlook* 2010, p. 240); 48% of this segment of the population were women. Most of them work as domestic helpers, care providers, or in the hospitality or garment industry, and in agriculture. (see *Anuario de estadísticas del Ministerio de trabajo e inmigración*, 2010, in particular *Trabajadores extranjeros afiliados a la Seguridad Social en alta laboral, según sexo, por sector y división de actividad*).

2. See, “*La fresa de Huelva*” (“The Huelva Strawberry”), *Horticom News*, 02/04/2008, available from: <http://www.horticom.com/pd/article.php?sid=70113>

3. Commission Communication of 16 May 2007, the European Parliament, the Council, the Economic and Social Committee of the Regions on circular migration and mobility partnerships between the EU and third countries COM (2007) 248 final (not published in the Official Journal), available from: http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/114564_fr.htm; also see, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, “The Dialogue for Migration, Mobility and Security with the Southern Mediterranean Countries”, 24 May 2011, COM(2011) 292 final.

The FIDH fact-finding mission

The International Federation of Human Rights (FIDH) commissioned a fact-finding mission to the southern Spanish province of Huelva in Andalusia between 2 and 6 May 2011. The mission objective was to assess working conditions on strawberry farms in the region and specifically respect for the rights of seasonal migrant workers who constitute the vast majority of the agricultural workforce.

The environmental problems caused by intensive strawberry farming in the Huelva region, including the depletion of water resources, poor water quality in the industrial area, the use of pesticides and related health risks are issues which fall outside the current report.

The following persons carried out the mission:

- Ouafae Ben Abdennebi, project officer, the Committee of the Moroccan Community Abroad (*Conseil de la Communauté Marocaine à l'Etranger*)
- Alain Morice, Research Director at the French National Center for Scientific Research (CNRS) (Université Paris-Diderot).
- Elin Wrzoncki, head of the Globalisation and Human Rights Desk at FIDH's International Secretariat.

The fact-finding mission was, in part, carried out in the framework of the collaborative endeavour between FIDH and the French mass retailer, Carrefour. The Carrefour Group and FIDH have been collaborating⁴ on issues related to respect for human rights in their supply chain since 2000. Within this framework, FIDH has carried out various fact-finding missions specifically related to human rights in the workplace in garment factories in Southeast Asia. Under this arrangement, which allows FIDH to visit the premises of Carrefour's suppliers, FIDH was able to visit the production sites of the members of various cooperatives that supply Carrefour and other buyers. FIDH also visited other farms in Spain located in Palos de la Frontera, Moguer, and Cartaya; and interviewed farmers and workers from different countries, both within and outside their workplaces and living facilities. FIDH met with the principal Spanish trade unions: *La Confederación Sindical de Comisiones Obreras (CCOO)*, *La Unión General de Trabajadores (UGT)*. FIDH also met with *El Sindicato de los Obreros del Campo (SOC)*, which has become part of *Sindicato Andaluz de Trabajadores (SAT)*. FIDH met with the members of NGOs and the social services of various municipalities located in the province of Huelva, as well as the Guardia civil brigade in charge of providing assistance to migrants (EDATI). FIDH also met a Professor of economics at Huelva University and a Ph.D student working on labour migration.

The FIDH supplemented the information obtained in the field with further research. An exhaustive list of persons met by FIDH has been annexed to this report. FIDH was not able to meet with the following:

- the main employers associations (Freshuelva, ASAJA, and COAG)⁵
- the Sub-delegation for the Government of the Autonomous Community of Andalusia (*Subdelegación del gobierno, Junta de Andalucía*), and
- the labour inspectorate (*Inspección del trabajo*).

Whilst members of the mission were able to obtain detailed information from Freshuelva, no response was given to the questions addressed to the *Junta de Andalucía* and the occupational labour inspectorate.

4. In particular through the joint association between FIDH and Carrefour, called INFANS.

5. ASAJA: Asociación Agraria de Jóvenes Agricultores ; Freshuelva : Asociación Onubense de Productores y Exportadores de Fresas; COAG: Coordinadora de Organizaciones de Agricultores y Ganaderos.

Part I: General context: The development of strawberry farming in Huelva

The intensive farming in southern Spain, also known as the “California Model”, exposes farmers to the simultaneous effects of intensified production processes, increased competition between units of production and the transformation of distribution systems. The model leads to spatial and temporal market expansion and a reduction in prices paid to producers – a phenomenon that French farmers have termed, “the dictum of mass retail”.

A significant, but unpredictable, need for workers

Intensive farming, in particular, requires a much larger labour force than that locally available, especially during the relatively short period set aside for picking. This labour force must be mobilised almost instantaneously as picking periods can vary according to the whims of nature and the market. The size of the workforce required is equally difficult to predict before picking time. The Spanish government has stated that it wishes to call exclusively upon national workers, and regional authorities confirm that workers are only recruited from abroad if the Spanish employment market is not able to provide. According to Manuel Bago, the central government deputy-delegate for Huelva: “It is a reserve contingent so that farmers do not find themselves with a shortage of labour during key periods of increased production and can continue their normal activity.”⁶ However, even during a period of high unemployment, as was the case in Spain in 2009, the introduction of seasonal foreign workers remained high. Indeed, a number of farmers consider that these workers work better than Spaniards.

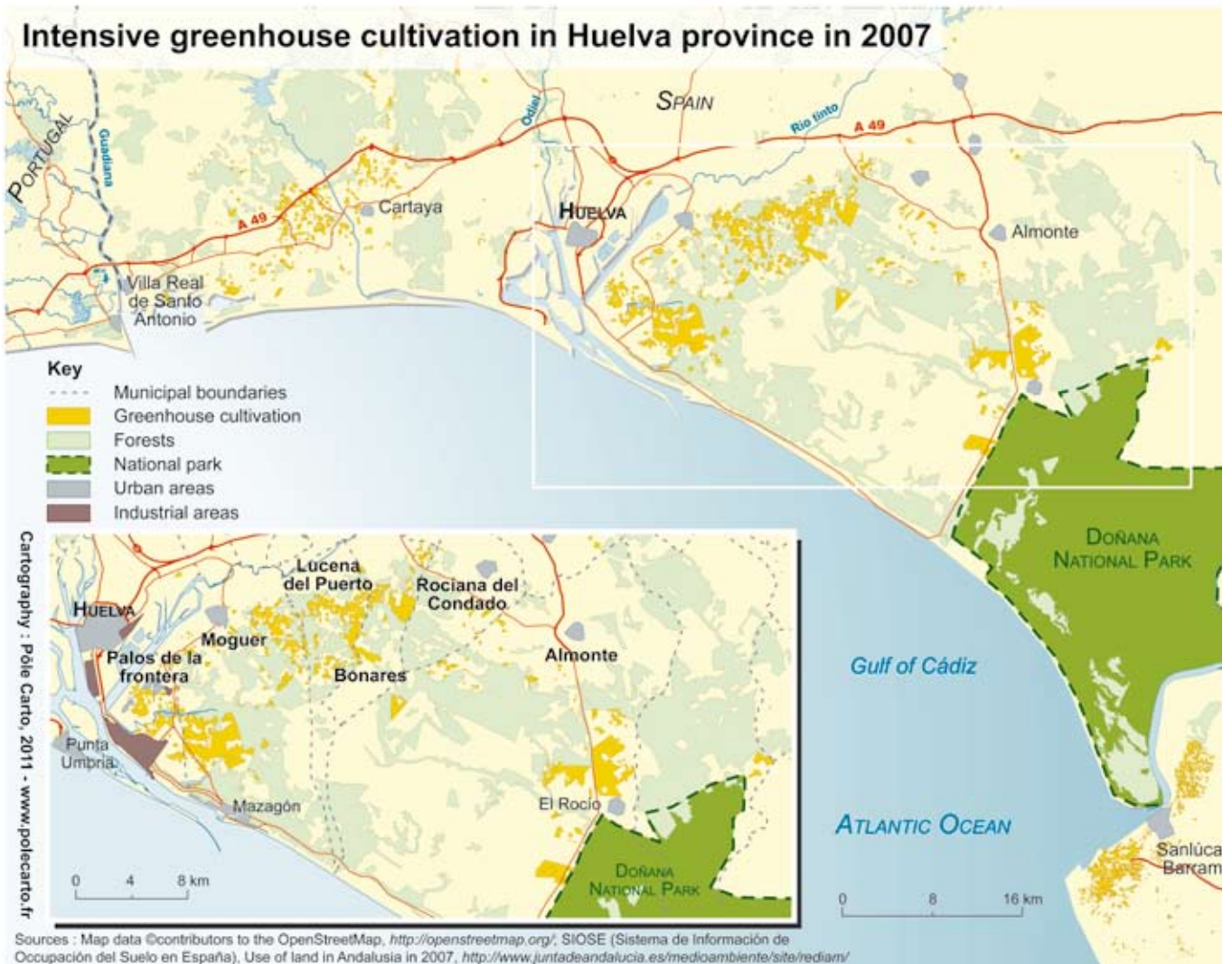
Difficulties in planning labour needs in terms of numbers and timing, encourage groups of producers to establish a reserve of surplus foreign workers. This practice i maintains foreign workers in an irregular status and contributes to the development of hidden and precarious forms of employment.

Since the mid 1980s, Andalusia has seen the massive development of market gardening in particular in the province of Almeria, notorious for the race riots targeting agricultural labourers from Morocco in February 2000. The spread of greenhouses (called “tunnels”) earned that province the nickname, “the plastic sea” and several reports have revealed the poor working and living conditions of populations employed in this sector. These workers have fallen prey to the hostility of residents and often work without being declared. They are often clandestine arrivals from Morocco which has been the source of a windfall for unscrupulous employers for a long time. After the riots in the winter of 2000, several fact-finding missions were conducted on site, including by purchasers. Less than a year later, a vehicle carrying undocumented workers collided with a train on a level crossing near Murcia. The vehicle was designed to carry eight people; the press revealed that its fourteen passengers (twelve of whom died) were Ecuadorian workers, all without papers or contracts, except for the driver. In defence of the victims’

6. Interview with Manuel Bago, in the Freshuelva Bulletin N°15, July 2011.

employer, farmers associations argued that long and rigorous bureaucratic legal procedures concerning the recruitment of foreign workers forced them to resort to illegal employment. This tragedy, the riots of 2000, and the protests of foreign workers calling for regularisation marked the beginning of the 21st century. They are not alien to the development of the bilateral contractual system which has marked the next decade.

Strawberry farming in Huelva



In the West of the autonomous community of Andalusia, part of the province of Huelva, an old mining and industrial zone at the Portuguese border, specialises in strawberry farming. Here, a robust Californian strawberry variety, the Camarosa, was replanted, chosen less for its quality of taste than for its early cycle, and its resistance. Cropping choices are largely determined by farmers' desires to be the first on the European market i.e. before spring starts, thus benefiting from a comparative advantage vis-a-vis producers further north. Today, other strawberry varieties are being developed, such as the Candonga, a tastier indigenous (hybrid) creation. Strawberries are grown on over 6,000 hectares, and production is between 240 and 270 thousand tonnes per year.⁷ 85% of the strawberries grown in Huelva are exported to other European countries, in

7. Junta de Andalucía, *Estadísticas agrarias « superficies y producción »* ["Areas and Production" Agrarian Statistics], June 2011.

particular, to France (30%), Germany (33%) and increasingly to countries further afield. Spain is therefore the world's number one exporter of strawberries, and the world's second largest producer of strawberries behind the US.⁸

To ensure an early cycle, plants are created *in vitro* and placed in fridges before being replanted on sandy mounds. These mounds were treated with methyl bromide until 2007 (when this practice was banned), covered with black plastic and irrigated, using water, fertilizers, pesticides and fungicides. At the end of maturation and in hot periods, substantial quantities of water are required, and pickers must wear boots. Ventilation is manual (by winding side skirts), but under the plastic in the early hours of the afternoon heat is excessive. Just south of Palos de la Frontera, greenhouses for hydroponic farming are being tested next to the tunnels. In principle, this method allows for year round farming. Strawberry growers from Huelva boast that over 70% of their strawberries are produced in an integrated manner (integrated agriculture). This standard, promoted by the Junta de Andalucía, unlike intensive farming, allegedly encourages the use of organic, rather than chemical, farming methods. Moreover, as nearly 90% of the strawberries are exported to Europe, quality and environmental standards are relatively strict.

Many farms have begun to diversify by growing (or shift to exclusively growing) raspberries and blueberry shrubs – Canadian blueberries are grown for the North American market. In municipalities west of Huelva (Cartaya, Lepe), these crops are often combined with the tree and vine growing; to the east, from Palos in Lucena and Mazagón, cultivation is dominated by greenhouse crops. During our visit in early May 2011, the market for strawberries was on the verge of saturation through over-production; the crop year was to be completed before the possible collapse of producer prices, which had hitherto remained very favourable.

Some small (4 or 5 ha) and larger (25 to 30 ha) farms are grouped into cooperatives. Agricultural cooperatives usually pool the functions of sorting, packing and transporting strawberries. The cooperatives themselves are grouped into producer associations of which the most important are Freshuelva (75 associate businesses of which 67 are in the strawberry sector), ASAJA, COAG, and UPA.

The economic benefits of growing strawberries, also called “red gold”, are very important to the Huelva region, especially during acute economic crisis such as that experienced in Spain since 2009. This crisis has particularly affected the region. Following the collapse of the construction sector, agriculture is seen as one of the only sectors generating jobs and resources. It is estimated that between 50,000 to 80,000 people are employed in this sector in a crop year,⁹ and the revenues generated by strawberry farming in the region amounts to approximately 240 to 250 million Euros a year.¹⁰ Indeed, the strawberry is everywhere in Huelva – it is visible on huge billboards extolling its virtues as you enter every municipality. This partly explains the nervousness of players when faced with criticism of the practices of Huelvan farmers. Thus, this FIDH mission has been interpreted by some as an attempt to undermine the image of the strawberry in the region. Several of those met by the FIDH mission recounted the disastrous effect of a French TV documentary, entitled ‘The price of strawberries’. It led to the launch of a PR campaign by Spanish strawberry producers, aimed specifically at the French media to restore a positive image of the Huelva strawberry.¹¹

8. See Consejería de Agricultura, Junta de Andalucía, *Cadena de valor de la fresa. Campaña 2008/09*, October 2010, available at: http://www.juntadeandalucia.es/agriculturaypesca/portal/export/sites/default/comun/galerias/galeriaDescargas/cap/servicio-estadisticas/Estudios-e-informes/agricultura/cultivos-hortícolas/fresa/EMYC_FRESA_0809_def.pdf.

9. Freshuelva estimate approximately 50,000 people. Other sources indicate approximately 80,000 people.

10. See Junta de Andalucía, *Análisis de los ingresos del sector fretero de Huelva en la campaña 2006/2007*, (Analysis of Revenue from Strawberry Farming in Huelva for the 2006/2007 crop year) For the 2009/2010 crop year, see *Análisis de la Campaña del sector Hortofrutícola de Huelva 2009/10* (Analysis of Revenue from the Huelva Horticultural Sector for the 2009/10 Crop Year), reported by Fundación Cajamar.

11. See Junta de Andalucía, *Agricultura muestra en París los “verdaderos” métodos de producción de la fresa onubense*, (Agriculture shows the “true” methods of production of the Huelva strawberry) 30/03/2010.



The development of Moroccan affiliates

Andalusian farmers will increasingly be called upon to complain about “unfair competition” from Moroccan exports, destined almost entirely for European countries (including Spain, Germany, France and the United Kingdom). The wage differential between Morocco and Spain is significant: an entire day’s work pays approximately 38 euros in Huelva (in theory, at least), and less than five euros (5.5 Dirhams) in Morocco. However, some Andalusian farmers are the very instigators of this competition. In fact, as the cost of labour is considered to be the only adjustable factor, capital for agriculture tends to be invested in parallel into Moroccan plantations, more hidden from view, and shielded from strict regulatory requirements and labour laws. This relocation goes back over ten years, and today it has become significantly broader: according to figures from the Spanish Ministry for Agriculture, at the end of 2009, 61 Andalusian companies were operating in Morocco, and producing 80% of their strawberries in this country.¹² This movement South also corresponds to the objective of early availability on the European market. Strawberries produced in Morocco (or even Egypt) arrive on European markets as early as January. One might question the very future of the Andalusian affiliate; there is certainly concern that the existence of a dumping system at the gates of Europe does not create very favourable conditions for a strict observance of the texts governing farm work.

The introduction of foreign workers

Law 7/1985 on the rights and freedoms of foreigners, passed when the Iberian Peninsula joined the European Union, was in fact only a “policing” law hastily prepared to inform Member States that Spain intended to get tough on border issues. In agriculture, at that time a relative shortage of labour existed, due to poor conditions of pay and work in this sector. Workers from Morocco made up the bulk of this deficit, but since the mid-1990s, farmers also began to look toward Eastern Europe.

12. See «La mayoría de la fresa y el tomate de Marruecos está en manos andaluzas» (“The Majority of Marruecos’ Strawberries and Tomatoes are in Andalusian Hands”), El País, 21/06/2010, available from http://www.elpais.com/articulo/andalucia/mayoria/fresa/tomate/Marruecos/manos/andaluzas/elpepuespand/20100621elpand_3/Tes.

After various attempts to establish employment quotas for foreigners and several ad hoc regularization campaigns (1986, 1991 and 1996), the year 2000 was declared a «year of immigration.» Thus, the foundation for current immigration law in Spain is Law 4/2000 of 11 January 2000, also known as *Ley de Extranjería* (the Foreign Workers Act). This law concerns the rights and freedoms of foreign workers in Spain and their social integration. It has been amended several times since its enactment (see below). Law 4/2000 was quickly followed by the return of the right to government which, under close European supervision, went back on some of the more favourable provisions to migrants. Spain ended (targeted) quotas, which were considered to generate a “pull factor”, replacing them with a contingent. Finally, Spain began to sign various bi-lateral labour agreements, in particular, with Morocco (2001), Poland and Romania (2002) and Bulgaria (2003).

Contracting in the country of origin: a reserve pool of workers

The implementation of Spanish law 4/2000 led to the establishment of a system of importing an annual contingent of foreign workers recruited in their home countries. This system has been termed *contratos en origen*¹³ – partly inspired by the French seasonal employment model referred to as *contrats OMI*.¹⁴ The system was first tested with the recruitment of 600 Polish women in 2000, followed by Moroccan women, and then a combination of various nationalities. Starting in 2005 this recruitment method spread on a smaller scale to the province of Almería, to make up for the workforce lost when migrants who had acquired legal resident status found employment in other sectors.

The term “*contratos*” encompasses two realities: the first is the recruitment of a person from a country of origin, for a limited time that coincides with the length of a season (3 to 9 months). Such a person undertakes to return to his/her homeland at the end of the contractual period. The second reality is a three-way agreement linking central, regional and local authorities with employer organisations and trade union bodies (UGT and CC.OO). The Huelva Provincial Commission is constituted to oversee migration, negotiating agreements for new or returning workers in accordance with the manpower needs identified by employer organisations. It establishes dates, contract terms, recruitment arrangements, and travel arrangements – all with the national labour agency in the country of origin. Once arrangements are in place, a small group of farm owners decides how workers will be allocated between different sites (*fincas*).

In accordance with employers’ wishes the annual contingent of seasonal workers is fixed well above immediate needs; this is a major departure from the French model. In France, the number of foreign workers imported is highly restricted by the State to protect national employment. This encourages many farmers to vary their labour force: in busy periods, they extend the length of the working day for seasonal workers under contract (with overtime rarely paid at the legal rate, if not unpaid), or they hire locals without declaring them or under bogus conditions.¹⁵ In France, migrants do not complain of lack of work. In France, as in Spain, the allocation of overtime is a way of rewarding the hardest workers.

Contrary to the French system, the Andalusian model constantly exposes foreign seasonal workers to the risk of unemployment due to the fact that they are only paid for days worked (see legal framework below). When they do not receive the minimum number of working days required to make their temporary migration worth while, migrant workers may put up resistance or try to flee. This particular aspect of the system of *contratos en origen* has multiple consequences.

13. This will be kept in its original Spanish, or translated as “hiring in the country of origin”.

14. *Office des Migrations Internationales* (Office of International Migration, French Ministry of Foreign Affairs).

15. Alain Morice, “Pas de séjour sans travail, ou les pièges du travail saisonnier – l’exemple des Marocains dans l’agriculture”, [“No Stay without Work, or the Traps of Seasonal Work – the Example of Moroccans in Agriculture”] *Migrations Société*, vol.

18, n° 107, Sept. – Oct. 2006, p. 211-231.

Firstly, it can explain worker attrition (workers running away) about which a number of growers complained.¹⁶ It may also explain why many workers are confined in accommodation in remote areas and why passports are retained by the employer during their stay. Finally, it has led to the development of “paternalist” practices which combine disciplinary measures with inter-cultural mediation.

Choosing where workers come from: a game of musical chairs for women

Selection of workers by country of origin rests on a complex interplay of factors, among them the relations between Spain and/or the European Union and the partner States supplying the labour force. These factors also encompass policy positions on migration and seasonal work matters, as maintained by the autonomous region of Andalusia and the Spanish state, (whose policies do not necessarily converge); as well as price fluctuations in the strawberry market, the strategies and ethnic prejudices of growers, and workers’ tolerance of living and working conditions. In Huelva, these factors make any attempt to explain reported fluctuations in the allocation of *contratos en origen* highly problematic; be they fluctuations in the number of agreements entered into or in workers’ countries of origin.

The Sub-Delegation of the Government in Huelva published the number of *contratos en origen* signed in the province by country of origin for eleven recruitment campaigns between 2000 and 2010. Notably, the statistics referred only to women. Indeed, in the Cartaya municipality, for the last three years (2008 to 2010) workers hired within the framework of the AENEAS programme have been almost exclusively women (99%). This programme entitled “An Integral and Ethical Management System for Inflows of Migrant Workers” began in 2005. Its remit was the management of Moroccan women workers, and it is presented as a good migration management model by municipal authorities. The issue of exclusively hiring women is controversial. When challenged on this point, (in other regions and for other crops the seasonal harvest is undertaken almost exclusively by men, with the women traditionally occupying positions in packing), growers tend to offer a sexist explanation: for strawberry picking, and even more so for raspberry picking, a woman’s delicate fingers and touch are considered more suitable. Whilst it does not do so explicitly, the AENEAS program favoured the recruitment of mothers¹⁷ with young children – a condition that is intended to limit the risk of workers fleeing during or after their term of contract.

Statistics relative to countries of origin need to be viewed with some caution; the data¹⁸ available for the past ten years is misleading. Analysing the data is further complicated by the fact that Poland ceased to be included in *contratos en origen* figures from 2006 and Romania and Bulgaria were excluded from the beginning of the 2009 season because their entry into the EU meant their nationals no longer had to go through this hiring process. However, the recent drop in hiring in countries of origin due to the political desire to demonstrate that measures have been taken to reduce foreign recruitment at a time of economic crisis, has led to an increase in the recruitment of women workers from Eastern Europe.

16. This rate of attrition was particularly significant during the early years of the *contractacion en origen* model. Since the implementation of the ANAPEC-Cartaya Convention in 2006, the number of non-returnees has not exceeded 5% according to Spanish and Moroccan authorities (Chancellery of the Spanish Embassy in Morocco / [ANAPEC]). According to the same source, In 2008 and 2009 official non-returnee figures were almost nil.

17. In Morocco, selection criteria for recruitment campaigns explicitly state a preference for women seasonal workers . See below.

18. For more detailed figures see the data from the Huelva Sub-delegation published by Juana Moreno Nieto in the article “Los contratos en origen de temporada: mujeres marroquíes en la agricultura onubense” [Seasonal contratos en origen: Moroccan Women in the Agriculture Sector of Huelva], (2009), Revista de Estudios Internacionales Mediterráneos, no. 7. 58-78. See also the data published by the AENEAS programme for the 2007-2010 crop harvests; the figures for the 2009-2010 harvests include the women seasonal workers hired by the employer association ASAJA. This association is no longer part of the AENEAS programme and now recruits directly through the ANAPEC.

According to figures provided by the Sub-Delegation of Huelva, the number of Romanian women recruited from 2005 to 2007 (for the 2006 to 2008 crop harvests) was approximately 20,000 a year. This corresponds to two-thirds of contracts signed in 2006 - 2007 and half of those signed in 2008. The number of Moroccan women rose steadily during the period, from 200 in the 2001 harvest to 13,700 in 2008, when it was announced that contracting would stop because of rising national unemployment. Since then, statistics are not clear, although it seems that the authorities were unsuccessful in mobilising Spanish workers who had become unemployed during the construction downturn, as had been hoped. Regardless, the great majority of workers for the 2011 season, whether Moroccan, Romanian or Bulgarian, were “repeaters” – a term used locally to designate returning women migrant workers. For the 2010 - 2011 harvest, 5,427 female Moroccan workers were hired.¹⁹

The FIDH mission found very few Spanish nationals working in the fields, though there were a few working as supervisors. Most Spanish nationals – for the most part women – work in the warehouses where the strawberries are checked, packed and shipped. In contrast, a large number of migrant workers, in particular men from Sub-Saharan Africa, work in the fields, some as pickers – a task growers claim is better suited to women. The workers live on farms during the contract period or in camps set up on the edges of towns, settlements (*asentamientos*) also called “*chabolas*”, or shanty towns. Many of them arrived in Spain without documents more than ten years ago and have since had their migration status regularised. The economic crisis has struck these migrants particularly hard: they often worked on construction and public works projects, and are now forced to follow the seasons, picking up whatever agricultural work is available across Spain. These migrants, who now work as casual day labourers, find it difficult to understand that they are competing with women workers who come via *contratos en origen*, while they themselves, despite their work permit, are often unable to find work. Moreover, all year long the *asentamientos* are home to irregular immigrants who work in a variety of areas, including agriculture, for unscrupulous farm owners.

The constraints of flexibility

In the fields, growers’ preferences for a given nationality do not seem to be based on simple rules, although there is an emerging trend toward diversification. Some farmers believe that Eastern European women are more demanding and less keen workers because they have the right to move around freely; others hold the opposite view and value the “repeaters” (returning workers) from countries such as Romania. As for female contingents from Morocco, despite a relative decrease in their recruitment, they offer the “advantage” of a supposedly rigorous selection process, carried out by ANAPEC in Morocco. Some employers consider that traditional culture and the supervision given to Moroccan women workers during their journey and on arrival contributes to a submissive workforce. It should be noted that despite all the precautions taken, the number of people who break their contract and run away appears to be higher than the official figures provided by ANAPEC or the AENEAS programme.

Overall, market demands determine recruitment strategies. Nearly nine-tenths of the produce is destined for European markets, mainly through mass retail networks that demand ever-greater flexibility from the farmers. The produce must reach the market as early as possible and at a price set by oligopolistic retailers. Producers know that early in the season they have to contend with competitors from Egypt and Morocco, while toward the end of the season there will be competition from Northern European countries, though they have no knowledge of how much will be produced, how much will eventually reach the market, or what price it will fetch. Grower cooperatives are governed by improvisation and pragmatism when it comes to the work

19. 3,600 Moroccan women were initially recruited but unable to leave for Spain. Their passports are still with ANAPEC in Morocco.

force and each unit develops its own practice. However many growers might like to see the same good workers return year after year, in the face of market uncertainty, there is little room for “paternalist” policies. The result is a hybrid workforce system, with a fluctuating but ever present undeclared, unofficial workforce.



Part II: The legal framework

International legal framework

The general framework for human rights protection in Spain is established in the Spanish Constitution, in its first section entitled “Fundamental rights and duties”. Article 10 (2) states that “Provisions relating to the fundamental rights and liberties recognised by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and with the international treaties and agreements on the same subject ratified by Spain”.

Spain has ratified most international human rights agreements. Of particular relevance to this report are the following:

- The International Covenant on Economic, Social and Cultural Rights (1966): this treaty came into force in 1976, was ratified by Spain in 1977 and guarantees just and favourable conditions of work. To date, Spain is the only European country to have ratified the optional protocol to the ICESCR (not yet in force), creating a means of recourse at the international level.
- The Convention for the Elimination of All Forms of Racial Discrimination (1965): Spain became a party to the treaty in 1968 and lifted its reservations in 1999.
- The Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979): this treaty came into force in 1981 and was ratified by Spain in 1983. Spain also ratified the Optional Protocol to the CEDAW, enabling victims of violations to lodge complaints before the United Nations CEDAW Committee.
- International Labour Organisation (ILO) fundamental conventions relating to freedom of association (No. 87 and 98), the banning of forced labour (No. 29 and 105), child labour (No. 138 and 182) and non-discrimination (No. 100 and 111).
- ILO Convention No 100 on equal remuneration for men and women workers for work of equal value, which was ratified by Spain on 26 October 1967 and came into force for Spain on 6 November 1968.
- ILO Convention No 129 on labour inspection in agriculture., which was ratified by Spain on 11 March 1971, and came into force for Spain on 5 May 1972.
- ILO Convention No 141 on rural workers’ organisations (1975), ratified by Spain in 1978.
- ILO Convention No 97 on migrant workers (revised) (1949), ratified by Spain in 1967. Article 6 of this convention stipulates that the State must “apply to immigrants lawfully within their territory treatment that is no less favourable than that which they apply to their own nationals”, particularly as regards remuneration (including family allowance), working hours, overtime, paid holidays, membership of trade union organisations and entitlement to the benefits offered by collective agreements, housing and social security.

However, Spain has not ratified Convention No. 143 on migrant workers (additional provisions) of 1975, nor the Convention No 184 on health and safety in agriculture of 2001, which covers measures concerning machine safety, ergonomics, transportation of materials, handling of chemical products, protection against biological risks, wellbeing and accommodation.

In addition, no EU Member State, including Spain, has ratified the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990). During its universal periodic review before the Human Rights Council in Geneva in September 2010, the Spanish representative asserted that this was an unbalanced text benefiting only the interests of countries of origin.

However, this political reticence does not exempt Spain, any more than other EU states, from their obligation to respect migrant rights, whether in regular or irregular situations. In September 2010, the Global Migration Group, comprised of 12 UN agencies, the World Bank

and the International Organization for Migration (IOM) issued a declaration pointing out that all migrants, irrespective of status, have “the right to the protection of economic, social and cultural rights, including the right to health, an adequate standard of living, social security, adequate housing, education and just and favourable conditions of work”, as well as the right to be free from discrimination based on national origin and the right to protection from exploitation.²⁰ As early as 2004, the UN Committee for the Elimination of all Forms of Racial Discrimination (CERD) pointed out in its General Recommendation No. 30 on non-citizens, that “all individuals are entitled to the enjoyment of labour and employment rights, including freedom of assembly and association, from the moment an employment relationship has been initiated until it is terminated”.²¹

Morocco, for its part, ratified the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families in 1993. While the main responsibility for respecting migrant workers’ rights lies with the countries in which they are employed, Morocco, as a country of departure, has a number of obligations under the Convention. The Convention applies to all stages of the migratory process, including “preparations for migration, departure, transit and entire duration of stay, remunerated activity in the employing country and return to country of origin or country of habitual residence” (article 1-2). It highlights migrants’ rights to consular assistance and protection (article 23) and the departure State’s obligation to give them practical support before their departure (article 65), as well as to inform them of their rights under the Convention (article 33).

European legal framework for the protection of human rights

Spain is also party to human rights agreements within the Council of Europe framework:

- The Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe in 1950 and effective from 1953 applies to any person located on the territory of a signatory state, irrespective of his/her nationality and situation in terms of residency legislation. It imposes the obligation not to discriminate on the basis of gender, race, colour, language or national origin.
- The European Social Charter was ratified by Spain on 6 May 1980 and guarantees a number of economic and social rights, including for regular migrants. The Social Charter protects the right to fair conditions of work and the right to freedom of association and collective negotiation. On the other hand, Spain has not ratified the protocol to the European Social Charter, which enables the European Committee on Social Rights to examine collective complaints.

At the level of European Community law:

- The European Union’s Charter of Fundamental Rights (adopted in 1999 by the European Council, and again proclaimed in 2007) guarantees rights in the workplace and includes the rights enumerated by the Community Charter of the Fundamental Social Rights of Workers (1989), a solemn declaration by Member State heads of state and government, establishing the main European principles for labour law and the place of labour in European society.

European initiatives to regulate seasonal work

On 14 July 2010, the European Commission presented a draft proposal concerning the conditions under which third-country nationals may enter and reside in the EU for the purposes of seasonal work.²² The European Parliament will be asked to approve this directive in 2012. The directive,

20. Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situations, 20/09/2010, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10396&LangID=E>.

21. Committee on the Elimination of Racial Discrimination, General Recommendation No.30: Discrimination against Non-Citizens, 01/10/2004, available at <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/e3980a673769e229c1256f8d0057cd3d?Opendocument>.

22. Directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment,

which concerns nationals of non-EU states travelling to a Member State for the purposes of seasonal work, is geared towards promoting circular migration, seen as a way of avoiding temporary migration turning into permanent residence. Designed to facilitate entry for seasonal workers to meet the needs of employing states, the directive aims to simplify procedures and allows for the possibility of a multi-seasonal work permit valid for three years. It sets a limit on the duration of seasonal work (six months per calendar year) and stipulates that seasonal workers should have the same rights as Member State nationals in some areas (association, social security).

However, a Coalition of several NGOs has highlighted that the directive creates the risk of “social dumping”. The NGO Coalition proposes that the definition of seasonal work should be limited to agriculture, horticulture and tourism and that it should be extended to third-party nationals whether or not they are resident in EU countries.²³

In October 2011, the European Association for the Defence of Human Rights (AEDH, a member of FIDH) said that the Commission’s proposed text did not amount to a guarantee of rights:

“the rigidity of seasonal worker status, the weakness of the guarantees offered and the non-transferability of social rights towards the country of origin will encourage workers to operate outside the legal framework, which will leave them seriously exposed to exploitation”.²⁴

AEDH went on to state that the proposal created “rights with variable geometry depending on the category of worker” and that a

“specific framework is established for seasonal workers from third countries, thereby introducing discrimination and unequal rights based on origin alone, with seasonal workers from a Member State remaining within the scope of the Council’s regulation No1408/71 (1). For example, the duration of seasonal work is set at a maximum of six months for foreign workers, compared with eight months for Europeans”.

Moreover, according to the draft Directive for intra-corporate transfer of non-EU skilled workers that the European Parliament will also be asked to approve, “the right to family reunification will be extended to such workers but not to seasonal workers. Yet in no case can enjoyment of the right to private life and family life be made dependent on a person’s level of qualification or remuneration.”

In response to popular uprisings in several countries to the south of the Mediterranean, and as part of within the framework of the European neighbourhood policy, the European Commission and the High Representative issued a paper entitled “*Un partenariat pour la démocratie et une prospérité partagée avec le sud de la Méditerranée*” [A partnership for democracy and shared prosperity with the Southern Mediterranean] on 8 March 2011, in which in which they proposed the establishment of “mobility partnerships”.²⁵ The content and objectives of these partnerships are set out in a European Commission paper dated 24 May 2011 entitled “A dialogue for migration, mobility and security with the southern Mediterranean countries”.²⁶

COM (2010) 379; commonly known as the «seasonal workers directive».

23. See La Strada, Solidar et al, “*Proposition de directive de l’Union européenne sur les travailleurs migrants saisonniers*” (Proposed EU seasonal migrant workers directive) Call for action, July 2011, available at: http://picum.org/picum.org/uploads/file/_Appel%20%C3%A0%20action%20Directive%20Travailleurs%20Saisonniers%20Juillet2011.pdf. The draft report by the Rapporteur of the Committee on Civil Liberties, Justice and Home Affairs and the draft opinion by the Rapporteur of the Committee on Employment and Social Affairs of the European Parliament have largely taken account of these concerns and recommendations, see draft report on proposal for the seasonal workers directive, 27/05/2011, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-464.960+02+DOC+PDF+V0//FR&language=FR>; and the draft opinion on the same issue, 27/05/2011, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-464.974+01+DOC+PDF+V0//FR&language=FR>.

24. AEDH, “*Immigration de travail dans l’UE : vers un régime à plusieurs vitesses, fondé sur l’inégalité de traitement ?*” (“Work-related immigration into the EU: towards a multi-speed system based on inequality of treatment?”), Press release, 17 October 2011, available at <http://www.aedh.eu/Immigration-de-travail-dans-l-UE,1328.html>. A full analysis of the draft is also available on the association’s website.

25. COM (2011) 200. The main recommendations were approved at the European Council meetings of 11 & 25 March 2011.

26. COM (2011) 292.

Focused on «security» and «combating illegal migration», these partnerships are aimed at ensuring that “migration and mobility between the EU and the South Mediterranean countries are channelled through regular processes and take place in an orderly and efficient manner». On one side, southern countries conclude readmission agreements and reinforce border controls; on the other, the EU can set up specific regimes for «facilitating labour», allowing for «specific programmes and/or facilitated legal frameworks for circular migration (including also in the seasonal sector),» as well as «capacity building for efficient matching between labour supply and demand». The Commission proposes to initiate dialogue with Morocco, Tunisia and Egypt, in order to establish such partnerships. These partnerships reflect the overall EU approach to migration policy, which tends to treat migrants as economic entities serving Member States’ labour markets, and calls on third countries to act as EU border guards.

Spanish legal framework for immigration

On 1 July 1985 the Spanish Parliament passed a law “on the rights and liberties of foreign nationals within the country” in anticipation of Spain joining the European Community on 1 January 1986. This marked the beginning of Spain’s immigration policy. Before this law, migration issues had been governed by two supreme laws: the Royal Decree of 1852 and article 13 paragraph 1 of the Constitution of 1978, which stated that “Foreign nationals in Spain shall enjoy the public liberties guaranteed in heading I, on terms to be established by treaties and the law”.

Law No. 4/2000 of 11 January 2000 sets out the rights and liberties of foreigners in Spain and their social integration (LOE). This law was amended on various occasions between January 2000 and December 2009 by organic law No. 8/2000, 14/2003 and 2/2009 of 11 December 2009.

Law 2/2009 on the rights and liberties of foreign nationals and their social integration was adopted in response to rulings by the Constitutional Court on the protection of the fundamental rights of immigrants as well as various European directives, including the “return” directive of 16 December 2008.²⁷

Article 2 bis of law No.4/2000 states that public administrations will implement policy defined by the government, while respecting: coordination of Spanish policy with that of the EU; management of migrant worker flows in accordance with the needs of the national employment situation; the social integration of immigrants; effective equality between men and women; the principle of non-discrimination; the rights recognised for every individual by the Constitution, treaties and laws; efforts to halt irregular immigration and human trafficking; equality of treatment in the workplace as regards social security; and collaboration with countries of origin.

Organic law No. 2/2009 grants certain fundamental rights to all immigrants, such as the right to assemble, set up an association, belong to a trade union and to strike.²⁸ Any foreign nationals subjected to discrimination by a public authority or official may apply to the courts to uphold their rights.

Finally, law No. 2/2009 adds new measures for female foreign nationals, particularly those in an irregular situation and for victims of violence. Such women may apply for residence and work permits on the grounds of exceptional circumstances.

Spanish labour law

Spanish labour law consists of a set of employment-related laws and decrees called the *Guía Laboral*. The working conditions of a employees are governed by the Workers’ Statute (*Estatuto de los Trabajadores*), a fundamental standard in Spanish labour law, approved by the *Real*

27. 2008/115/CE.

28. In November and December 2007, the Spanish Constitutional Court declared unconstitutional several provisions of organic law No. 8 of 22 December 2000, which limited the right to assemble, set up an association, belong to a trade union and go on strike, to legal immigrants.

Decreto Legislativo 1/1995 of 24 March 1995. The rights and obligations provided for in this Statute are developed or improved at business sector or company level in the Autonomous Communities. Strawberry workers in Huelva come under the regime of the Agricultural Collective Agreement of the province of Huelva.²⁹ The Labour Code stipulates that employers must deduct social security contributions and income tax before paying wages. In the case of a fixed term contract, wages will have 6.4% deductions for social security contributions; permanent contracts will have 6.35% deductions. There is a minimum wage (*Salario Mínimo Interprofesional*) the amount of which is determined annually. In 2011, the minimum monthly gross salary was 641.40 Euros.

The legal length of the working week is 40 hours. However, this can be more favourable in the collective agreement or work contract. Overtime must be compensated by an equivalent rest period or be remunerated, depending on the provisions of the collective agreement or work contract.

In principle, contracts must be in written form. If a contract is verbal only, it is supposed to be permanent. Various types of contract exist: the permanent contract is a common law contract; fixed term contracts that must meet certain requirements, such as the *obra o servicio* contract;³⁰ the *potential (eventual)* contract which is intended to respond to exceptionally heavy workloads; the training and placement contract; and the interim (*interinidad*) contract. Interestingly, there is a legal presumption that contracts unlawfully drawn up are permanent.

Certain companies, especially in the agricultural sector, use verbal contracts. Theoretically, in such cases, labour inspectors can order the employer to make the contract permanent within 24 hours

Seasonal work

Seasonal workers in the strawberry sector are hired via contracts “*por obra o servicio*”, the task or service in question being *la temporada*, the season. Here, the end date is not stipulated.

The work permit granted to a foreign national to do seasonal work (agricultural or other) can have a duration identical to that of the work contract, but shall not exceed nine months a year. The seasonal worker’s contract can be agreed either from one date to another, or for the duration of the seasonal work indicated in the contract. The work contract can be either written or verbal. The worker must be declared to social security services within 10 days of being hired.

Contracts must contain: the worker’s personal data, company identification, the type of contract, the post and professional category of the worker, the salary, the work day and work hours. It usually contains a 15-day trial period.

Contracts become effective from the worker’s first day in the workplace and terminate without formalities on the agreed date or at the end of the work. However, they can be terminated subsequent to the worker’s decision, or as collective or individual dismissals, etc. In fact, such contracts can be broken at any time by the employer, for example because of strawberry prices on the market, and without prior notice (see copy of contract in Appendix 2).

The Agricultural Collective Agreement of Huelva

The legal working week for work in the fields is stipulated in article 7 of the Agricultural Collective Agreement of the province of Huelva as fixed at 39 hours spread over 6 days (6.5 hours/day). As regards sorting and packing work, per month maximum working hours are 139,

29. *Convenio colectivo sindical del Campo de la provincia de Huelva*.

30. The “*obra o servicio*” contract is intended for assignments which are not part of the specific activity of the company. Its duration corresponds to the time required for the completion of assignments of this kind, and therefore has no precise term.

with a working day not exceeding 9 hours and not less than 3 hours (article 32). Sunday is considered to be a working day (*carácter laboral*) from 15 March to 15 June. For the rest of the year it should, in principle, be paid at 50% more if worked.

The daily wage for picking in the Huelva region is 38.63³¹ Euros for 6.5 hours of work.

The Collective Agreement of Huelva stipulates that overtime should be paid: the first hour at 10.08 Euros/hour for a normal day and 11.52 Euros/hour on Sundays and national holidays; after the first hour, 12.96 Euros/hour should be paid. A certain amount of flexibility is possible; for example, overtime can be compensated by days off, shorter working days or a temporary wage increase. The Collective Agreement states that if two hours are worked on a specific day, the whole day must be paid.

For national holidays which are not worked, workers are entitled to a compensatory payment. The Collective Agreement also guarantees rights to workers with a permanent (*fijo*) contract, which obviously excludes seasonal workers.

The Spanish system of social protection is composed of a general system covering salaried workers in industry and service sectors, and specific systems. Salaried and non-salaried workers in the agricultural sector are covered by the specific agricultural system, which is less favourable than the general one. One of its characteristics is the low level of social security contribution to be made by employers. Integration of agricultural workers into the general system, which has long been demanded by the trade unions, was scheduled for this year and should come into force in January 2012.

Social security contributions must be paid daily by the worker whether he or she works or not, the amount of contributions going down in proportion to the number of days worked per month: 0 euros for 23 days worked to 86 euros for 0 days worked per month (cf: special agricultural system).

Hiring in the country of origin

As explained above, Spanish law allows employers to recruit nationals of non-EC countries and to sign the relevant contracts in the country of origin. The system of labour recruitment in Andalusia is set out in a national agreement, concluded in 2006 between the central authorities, the trade unions and agricultural employers organisations, on the organisation of migratory flows in seasonal agricultural harvests. This agreement is implemented by a state commission and regional commissions (the regional commission on migration in Huelva), who are responsible for analysing and anticipating labour needs, establishing the numbers of workers required, identifying workers, organising their arrival and integration.

Workers are recruited for the duration of the harvest which in Huelva usually lasts three months, and they must return to their country at the end of the seasonal contract. Some workers may stay 9 months in Spain. In 2010, around 85% of workers in Huelva were recruited under the “hiring in the country of origin” (*contratación en origen*) system and since the start of this procedure more than 50% of the temporary contingent brought into Spain has been recruited in this way.

These recruitment contracts are based on bilateral agreements between Spain and a number of other countries (Morocco, Poland, Romania, Bulgaria). Each year, once labour needs have been assessed, employers organisations send representatives to the countries concerned to recruit workers. With the entry of Poland, Romania and Bulgaria into the EU, this recruitment system now concerns only Morocco, since recruiting in the Eastern European countries is handled by the cooperatives, either directly or through local recruitment agencies.

31. Charts of provisional salaries for 2010.

Having secured a contract, workers sign an undertaking to return to their home country and the general immigration department then issues them with a 3-6 month “temporary residence and work permit”, which specifies their geographic area and business sector. In their home country, workers sign a contract with the producers association in charge of recruitment; on arrival in Huelva with the farm employer. Seasonal workers take part in all the operations of the strawberry harvest: planting seedlings, maintenance, pesticide applications, picking, packing, removal of plastics, etc.

The right of residence is linked to the work contract, which does not stipulate a precise contract termination date.

This system corresponds to the EU approach to migration policy and to the regional legal framework, in particular agreements between EU countries and the Southern Mediterranean countries within the European Neighbourhood Policy and the Association Agreements, as detailed in bilateral agreements on labour and the management of migratory flows.

At the end of two seasons followed each time by return to their home countries, foreign workers have the right to apply for a work permit if their employer offers them a contract for one year (art. 40 (k) of the *Ley de extranjería* 2/2009). In the strawberry sector this is unlikely given the very low number of workers hired by the year.

The Spain-Morocco bilateral agreement for contratación en origen

In 2009, Moroccan seasonal workers accounted for 15% of foreign women workers employed by Spanish farmers in the Huelva region, constituting the second largest community, according to INE (Instituto Nacional de Estadísticas).

The bilateral labour agreement signed in Madrid on 25 July 2001 is the main legal instrument governing labour cooperation between Spain and Morocco.³²

The introduction to this agreement stipulates that its intention is to “regulate the flow of labour between the two countries in an orderly and coordinated fashion”. The Spanish authorities convey their labour needs, through the Spanish Embassy in Rabat to the Moroccan authorities, on the basis of existing job offers. The Moroccan authorities, through the Spanish Embassy in Rabat, inform the Spanish authorities of the possibilities for meeting this labour demand by means of sending Moroccan workers wishing to go to Spain (art. 3). Selected applicants will undertake a medical examination, and, if necessary, will engage in a prior training period (art. 4 para. 1). This training can also take place later, as specified in article 6: “Moroccan workers will have the rights and advantages granted to them by Spanish law. The competent authorities are committed in this context to take the necessary measures to facilitate access for these workers to a higher professional qualification”.

Chapter IV of the agreement concerns special provisions for seasonal workers. According to article 16, in application of the commitments already made by the two countries, the Moroccan and Spanish authorities will strengthen cooperation in the area of labour law controls, in particular to avoid exploitation of Moroccans in an irregular situation.

The Integral Management of Seasonal Immigration Programme

The Spain-Morocco bilateral agreement of 2001 provided a basis for the 2006 Framework Partnership Agreement between the National Agency for Promotion of Employment and Skills (ANAEPEC) of Morocco and the Municipality of Cartaya, which implements the AENEAS

32. An administrative agreement concerning Moroccan seasonal workers in Spain was signed in Madrid on 30 September 1999, valid for 3 years and renewable by silent approval.

Cartaya project,³³ officially called the “Integral Management of Seasonal Immigration Programme”. The overall purpose of this project, financed by the European Union, is to offer assistance to employers, their professional associations and seasonal workers, to ensure the processing of job offers from Huelva and the supply of labour to plantations in Moguer, Cartaya, Palos de la Frontera, Lucena del Puerto, Almonte, etc.

ANAPEC is in charge of all phases of the recruitment process, from pre-selection to taking up a post. This includes assistance with administrative procedures, departures, awareness-raising, banking facilities, and the reception, integration and training of workers.

The year 2002 saw an attrition rate for seasonal women workers of over 90%, out of a total of 500 workers. This high rate continued until 2005 when recruitment procedures were put in place by the Spanish and Moroccan governments and were further refined in the framework of the AENEAS Cartaya project. In 2005 nearly 1,370 women were recruited, followed by 2,299 in 2006, 5,115 in 2007, 12,030 in 2008 and 14,000 in 2009. The seasonal harvests in recent years show a 97% rate of return of workers to their countries of origin. This return rate is considered a measure of the success of this project.

Job offer conditions are as follows: a fixed term contract from 3 to 6 months; a wage of 34 to 37 euros per working day of 6.5 hours; the possibility of paid overtime; accommodation at the employer’s expense; one day off per week; transport from the place of residence in Spain to the workplace at the employer’s expense; and medical coverage ensured in Spain and in Morocco during the period of employment.

FUTEH, recruitment conditions and best practices code

The AENEAS Cartaya programme has now ended. Companies in Huelva that wish to pursue *contratación en origen* with Morocco have created the Foundation for Foreign Workers in Huelva (FUTEH) as a model of an “agency for the management of migratory flows of agricultural workers”. The FUTEH comprises: the city hall of Cartaya, the Federation of Beturia Districts, the Agro-Food Federation of the Trade Union Central, CCOO, the Consortium for the Integration of Migrants (CEPAIM), the Commission of Districts with Immigration (COMI) of Huelva, and the Commission of Agricultural Employers (COPA) of Huelva, which includes FREHUELVA, A.C.P.H. COAG, UPA, CORA, FAECA, etc.

An agreement to organise circular migration for seasonal workers between Morocco and Huelva was signed between FUTEH and ANAPEC in 2011. Compulsory conditions were appended to this agreement. These include the company’s obligation to guarantee 18 real work days per month; to declare workers with the social security services; not to withhold passports and to pay the full cost of the homeward journey if the contract is terminated within the first two weeks.

A Best Practice Code for companies and workers in agriculture is annexed to the agreement. It specifies, among other things, that accommodation with necessary furniture and utensils will be provided by the company free of charge and will meet minimal standards of comfort and services: “It will be subject at all times to potential visits from CCOO and UGT trade union organisations. In all cases it must have a permanent supply of running hot and cold water, electricity and adequate sanitary services”. Employers must also inform workers in a clear manner of deductions made to their wages.

33. The AENEAS programme was adopted by the European Commission in 2006 with a view to co-financing actions by third countries in the field of migratory flow management.

Part III: Seasonal workers: alarming working conditions

In the opinion of many people interviewed by the FIDH mission, the situation of migrant workers has noticeably improved in recent years, mainly because of bilateral labour agreements ensuring that the majority of workers are legally employed. Although irregular labour can continue to be a variable for adjustment in periods of peak production, farmers generally seek to hire a steady and sufficiently significant work force to cover their needs. In reality, the situation of these workers varies greatly according to the farm on which they work; some farm employers are more concerned with complying with legislation on working and housing conditions than others.

However, abuse of workers' rights continues to be widespread on farms in relation to all categories of seasonal worker. This is the result of the need for flexibility in the strawberry sector, a workforce totally dependent on its employer, and a collective agreement that is not very protective. In the opinion of all trade-union representatives who met with the mission, labour inspections in the agricultural sector are insufficient, if they exist at all.

No guarantee of a minimum wage

The Collective Agreement of Huelva is ultimately not very protective. Although it guarantees a minimum wage per day, it does not guarantee minimum remuneration for the duration of the contract. Days not worked are not paid. Workers cannot claim unemployment insurance as the right such benefit applies only after 270 days of work. Spanish unions³⁴ believe a mechanism must be found to compensate seasonal workers for the days not worked.

Rainy days, during which strawberries cannot be picked, go unpaid. This provision is of particular concern given that, as mentioned above, farmers tend to bring in more workers than they actually require, and that days not worked are frequent. In normal conditions, seasonal workers generally work 23 to 24 days per month. Due to the economic crisis, the labour market and climatic conditions, even those who worked less than 6.5 hours per day considered themselves privileged. In their case, the collective agreement provides that if two hours are worked during the day, the full day must be paid – though, according to testimony gathered during the mission, it never is.

In principle, the daily wage in the Huelva region is over 38 € for 6.5 hours worked. According to testimony received, when a full day is worked, this price is actually paid. When however only a few hours are worked, workers are paid per hour.

Apart from those workers recruited in their countries of origin (*contratación en origen*), who under the FUTEH/ ANAPEC agreement of 2011, must benefit from at least 18 days of work per month, there is no rule requiring employers to ensure a minimum number of days work for other categories of seasonal workers. The mission noted that some employers continue to sanction workers they consider to be less diligent by precluding them from working for several continuous days.

34. Comisiones Obreras (Communist Labour Union) (CC.OO) and Union General de los Trabajadores (General Workers Union) (UGT).

Employers have the power to terminate the contract of seasonal workers who they consider to be unsuitable during a 15-day trial period. However, in such instance, the employer must pay for the return journey of workers recruited in their countries of origin, as per the FUTEH/ ANAPEC agreement.

As contracts stipulate no end date (referring only to the end of the season), employers can argue that there has been a decline in production in order to justify laying workers off once the trial period is over. Moroccan workers are usually informed of their return home just days before such return. This is true of many Moroccan women who find themselves in Spain each year without a job, and with no compensation for their return to Morocco, even though they were hired with a valid contract. These women run the risk of having to go into hiding, of being exploited by unscrupulous employers and criminal networks, or of having to engage in prostitution.³⁵

According to testimony received, many such workers were sent home in 2011 because of the economic crisis and climate conditions. Unusually heavy rainfall in the Huelva region damaged many plantations and led to a reduction in the number of working days offered by the agricultural companies. Women migrant workers, especially from Morocco, got by thanks to solidarity among fellow employees. Some claim to have run up debt and are ashamed to return home without money. Notably, costs incurred for recruitment (passport, travel to the port) represent a significant sum for women from poorer backgrounds in Morocco.

Overtime

The majority of those interviewed agreed that overtime (hours over 6.5 hours per day for picking) was never paid at the rate set by the collective agreement (the first hour: €10.08 on a normal day, €11.52 on Sundays and holidays, and the following hours at €12.96).

Payment by time worked or amount of strawberries picked

Whereas the collective agreement provides that workers are paid by time worked and not on the basis of quantities picked, workers have confirmed that daily picking quotas need to be met. An employee is assigned to count the production of each picker; if it is insufficient, the person may be sanctioned by a day of forced unemployment for she is not paid. The mission spoke with one Moroccan woman who had not worked for over a week and had asked her employer to allow her to return to Morocco. The lack of sufficient work for the available workforce, and the fact that some workers are therefore necessarily without work for some time, makes it difficult to prove this type of sanction. This system can cause certain workers to overcompensate creating disagreement within the groups: for example, newcomers tend to speed up the pace of work, which frustrates "repeaters".

Late in the season, when the strawberries are of lower quality and destined for industry, workers are often paid by performance, not time worked, in breach of the collective agreement.

Difficult working conditions in strawberry picking result in competition between workers – men and women of all nationalities. They compete to fill the most boxes of strawberries so as to secure their jobs and be allowed to work a maximum number of days.

Social security contributions and rights to social security

Agricultural workers in Spain are affiliated to a specific system of social security which the trade unions say is much less favourable than the general scheme (very low pension, maternity leave etc.). Integration of the specific regime into the general scheme should come into force in early 2012.

35. See the study on the Women's Link Forum regarding Almería, which also analyses the path leading migrant women to prostitution; *Almería: la historia que nadie cuenta*, (Almería: the story that belongs to no one), April 2011. See also, for example, *El País*, "Víctimas del oro rojo", ("Victims of red gold"), 13/06/2010, available at: http://www.elpais.com/articulo/reportajes/Victimas/oro/rojo/elpepusocdmg/20100613elpdmgprep_4/Tes.

According to testimony, many employers under-report the number of days worked, so as to avoid social security payments.

Moreover, even though foreign seasonal workers make the same social security contributions as other workers in Spain, they are not entitled to unemployment support (which requires a minimum of 270 days contribution), retirement or maternity benefits. In effect, seasonal workers pay 60 € every month for retirement and unemployment insurance even though the system is designed so that they can never receive these benefits. Under a Moroccan-Spanish agreement from 1984, spouses and children are eligible for health insurance during the period of the contract. ANAPEC, the National Social Security Fund of Morocco and the Spanish authorities sought to implement this insurance in 2009. However, the difficulties are numerous.

Problems specifically related to hiring in countries of origin (contratación en origen)

Discriminatory hiring criteria

The *contratación en origen* system is only used to recruit women. However, the fact that there are both men and women working in the field makes the arguments for choosing women (detailed above) less credible. Another reason for hiring women is the belief that they work harder and create fewer problems.

Since 2006, recruitment criteria – posted in all ANAPEC agencies throughout Morocco during hiring periods – have been discriminatory. They are used to recruit women between 18 and 45 years of age who are married, widowed or divorced with a dependent child under 14 years of age. Unmarried women are not accepted. Furthermore, married women must have their employment application co-signed by their husbands, a requirement that violates women's rights to freedom of movement, which is guaranteed in the international instruments that Morocco has ratified and by the Moroccan family code (*Moudawana*) since a 2004 reform.

Most of the women recruited in Morocco come from rural areas. Recruitment criteria established by the Moroccan authorities are advantageous to the Spanish authorities. The criteria guarantee that the Moroccan women will return home at the end of the picking season and will not leave upon arrival to attempt to find another job in Spain (which occurred during initial seasons). Most Spanish trade unions are involved in the process alongside employers; this is not the case for Moroccan trade unions.

Since 2009, some women have been expressing their anger at working and living conditions in the camps, unpaid overtime, and unpaid working days by engaging in strikes and sit-ins. These demonstrations have been marginal and have not been taken up by trade unions or local organisations.

Especially vulnerable individuals

The Moroccan women met by the FIDH mission are especially vulnerable, when compared to other workers. Firstly, they come from rural areas; many of them are illiterate and only speak the local Arabic dialect or even for some of them Tamazight. Consequently, they are little inclined to assert or stand up for their rights. ANAPEC holds meetings for pre-departure emigrant women to provide them with very general information but barely touch upon rights in the workplace, working hours, wages, the right to join a union, the right to holidays, national health insurance, etc.

Secondly, strawberry picking is a considerable source of income for Moroccan women and their dependent families, with tremendously high stakes linked to getting contracts renewed for the following year. This pressure is compounded by the fact that the number of women recruited to pick strawberries is considerably lower than in previous years and the women are aware of their good fortune in being recruited.

Local social workers (referred to as “intercultural mediators”) have pointed to psycho-social problems among the Moroccan community. Pregnant women, for example, do everything possible to conceal their condition from their employer because they fear being forced to stop working and lose the season. Women pickers are also reluctant to go to healthcare centres or to inform their employer when they are sick. Social workers have also reported on the psychological distress suffered by women because they are away from their family and shoulder a very heavy responsibility.



Municipal social services have provided, and still provide, some training to these women on a variety of subjects. However, they are unable to train all women.

No copy of the contract and confiscation of passports

The framework created under *contratación en origen* requires workers to sign their employment contracts with the cooperative in Morocco. Once the women arrive in Spain, the contract is replaced by a contract with the farmer, who

only hires them once they are in Huelva. Moroccan women met by the FIDH mission said that they did not have a copy of their contract. Apparently many employers prefer to hold on to these contracts until the women leave. Although prohibited by law, some employers also keep the women’s passports until their departure, claiming that the women might lose them. International organisations deem this obstacle to freedom of movement to be a violation of the right to freely chosen or accepted work, which is protected by ILO conventions and the International Covenant on Civil and Political Rights.

Racial discrimination

Isolated cases of discrimination based on country of origin were reported. Some Moroccan women workers told us that they were discriminated against by their Romanian supervisor who gave more work to his fellow Romanians. In times of low employment, these sanctions are especially difficult for the Moroccan women to bear; they return to Morocco with less money than expected and have to explain why to their families back home.

The right to a normal family life

A proportion of Moroccan seasonal workers, who count themselves among the most fortunate, are hired for the whole strawberry growing period which lasts nine months, from the autumn planting to the removal of the plastic sheets at the end of the growing season. The remainder usually stay in Spain from three to six months. Some women have worked 4, 5 or 6 seasons. Although these women are recruited because they have young children, there are no provisions for family reunification or a trip home during the term of the contract.

Housing

Huelva's collective agreement provides for free housing but does not prescribe minimum conditions, other than stipulating that the workers should be able to live with dignity. Housing varies enormously from one farm to the next, from Algeco-type portable facilities to permanent structures of varying ages. The main problems encountered are lack of privacy (often four to six people per room, segregated according to sex and country of origin) and long distances from urban centres. A percentage of workers' wages is often withheld (legally) for water, electricity and, in some cases, (illegally) for work clothes. Under the code of good conduct for the FUTEH project, employers must provide a receipt specifying any amount deducted from wages with reasons.

Some employers provide sub-standard housing conditions with sub-standard hygiene, usually pre-fabricated shacks that are located dozens of kilometres from any city. Sheet-metal bungalows and huts are increasingly being used. Concurring reports described very alarming housing conditions on some farms including a lack of potable water, in violation of both Spanish law and the right to adequate housing as defined in the International Covenant on Economic, Social and Cultural Rights. Under the AENEAS Cartaya programme in Cartaya, new accommodation was recently built after unfit housing conditions were reported.

To make up for the legal void and provide employers with recommendations on minimum standards, trade unions recently drew up principles on housing conditions for seasonal farm workers. According to these principles, all types of housing are acceptable, including (under certain conditions) prefabs. Employers are required to provide transportation at least once a week for workers living more than one kilometre from an urban centre; workers must be free to come and go and must have access to potable water. Accommodation must have, *inter alia*, proper ventilation and lighting, with no more than six persons in a single room which must measure at least 12 sq.m.



Most lodgings are located on the farms, often dozens of kilometres from the nearest city, unlike the *almacenes* run by large cooperatives, which are generally located near urban centres. Even when strawberry farmers do commit to taking their workers shopping at least once a week, the rest of the time these workers are virtually confined to the farms. More experienced workers who speak Spanish do not tend to experience this sense of isolation. They are able to leave the farm whenever they want to; women who come from rural Morocco and do not speak Spanish are not so able. In all cases, the women's comings and goings are monitored by their co-workers and employers.



The lack of union representation

Trade union rules relative to representation, like the requirement of six months seniority to be eligible for election, generally prevent seasonal workers from applying. The only workers who can run in union elections are those employed on a yearly basis in cooperatives or on farms, i.e. administrative and supervisory staff. To guarantee adequate representation and broader protection for workers, unions have suggested using a permanent contract though discontinuous in time.³⁶

Given that they have limited means and a large number of farms and workers to cover, major unions (CCOO and UGT) are unable to carry out many inspections or awareness raising actions during the picking season. The Farm Workers' Trade Union, (*Sindicato obrero del campo, SOC*), also sends one or two people during the season.

Moroccan women told the FIDH mission that they had received a visit from some people but did not understand who or what they represented. These people asked the women to sign a document that they were unable to read. They signed it to “do the same thing as the Romanians”. In fact these people were representatives from one of the major union and came to inspect housing. This situation clearly illustrates the distance between the Moroccan women pickers and trade union representatives, as well as the lack of resources of the unions.

Additionally, Moroccan trade unions are not involved in recruitment or in what happens afterwards.

36. Consult arguments, for instance, in the CC.OO, *Informe de la situación en la Campaña de Cítricos en la Bega del Gualdaquivir 2009* (Report on the Situation in the Citrus Sector in la Bega del Gualdaquivir for the crop year 2009).

Conclusion and recommendations

Migrant workers recruited in their countries of origin, a system which is referred to by Emmanuel Terray as “on-site delocalisation” - are entirely dependent on their employer for the opportunity to return to Spain to work and have no union representation. This system prevents workers from making any type of demand concerning living and working conditions, and explains why they accept conditions that do not meet national and international legal standards, especially in periods of economic hardship.

It explains why there are no complaints (to our knowledge) filed before the Spanish labour courts. Respect for workers’ rights depends largely on the attention paid to the practices of growers by governmental authorities, trade unions, the media, civil society, and strawberry buyers.

The situation observed by FIDH among seasonal female workers on strawberry farms brings two issues to the fore. The first is the employers’ failure to comply with existing regulations and the agreements that cover seasonal work. Economic conditions, competition and conditions for the sale of their produce force growers to reduce their costs to a minimum, and to use workers’ wages as a variable for cost adjustments. On that issue, the responsibility of mass retailers is fundamental.

The second is the problem of circular migration itself, of which seasonal migration is one aspect. By increasing barriers to immigration and creating only rare windows of opportunity to work legally, European Union migration policy, and Spain’s policy in particular, puts migrants in a position of vulnerability, as well as dependence on their employers and intermediaries in charge of recruitment. In addition, seasonal workers have no prospects for career or salary advancement, are not entitled to child allowances, unemployment or retirement benefits, are only covered by medical insurance when they are working, and have no right to family reunification. For women strawberry pickers, the situation is worsened by sexist and paternalistic selection criteria that favour the recruitment of women with young children as a guarantee that they will return home, violating their right to a family life and instrumentalising: the legitimate desire to live as a family as a pressure tactic against migrant women.

Recommendations

To the Spanish state and/or regional authorities

- Ratify the International Convention on the Protection of Rights of all Migrant Workers and Members of their Families, and promote its ratification within the European Union;
- Ratify the 1975 ILO Convention No. 143 on Migrant Workers (supplementary provisions) as well as the 2001 ILO Convention No. 184 on Health and Safety in Agriculture;
- Create conditions that make it easier for seasonal workers to obtain permanent residence permits and to bring their families with them;
- Consider eliminating visa requirements and authorizations for short stays and start negotiations on this matter with the European Union and other partner countries;
- Reform labour laws and regulations, including the Huelva Collective Labour Agreement, with a view to reinforcing the protection afforded to farm workers. This should include an end date stipulated in contracts, guarantees of a minimum monthly wage, support for trade union representation by lifting current restrictions, use of the temporary contract model - *fijo discontinuo* - for recurrent seasonal workers allowing them to benefit from the same rights guaranteed to workers with temporary contracts, including the right to be represented by a union;

- Increase the number of workplace inspections and ensure that workplace inspectors are accompanied by interpreters. Increase inspections of employer practices with regards to social security;
- Enhance municipal social services so that they can offer support to migrant workers who encounter difficulties; and
- Offer women seasonal workers from Morocco courses on their rights, as well as in literacy, when needed;
- To municipal authorities: Develop a transport system that would allow seasonal workers to leave farms freely more than once a week.
- To municipal health centres: Address workplace health problems brought about by working in strawberry fields, including allergies, headaches, and back problems; and
- Ensure that all housing designated for workers meet with all criteria for appropriate and respectable housing as outlined in the recommendations made by international organizations (including, the ILO and the Committee on Economic, Social and Cultural Rights) and the principles established by trade unions relative to housing for farm workers.

To employers

- Ensure compliance with Spanish labour legislation, the FUTEH Convention and code of conduct;
- Guarantee a minimum wage in the work contracts of workers recruited in their country of origin so as to avoid the practice of over-recruiting and late recruiting, which results in few work days for certain women;
- Guarantee decent housing in accordance with the guiding principles established by trade unions; and
- Conduct all the necessary training required by Spanish law, especially in workplace safety, food handling, and the handling of chemical pesticides;
- Make sure supervisors do not practise discrimination on the basis of the sex or origin when distributing work among the workers.

To the State of Morocco

- Include Moroccan union representatives within Commission in charge of recruiting seasonal workers and in the supervision of the implementation of the Convention;
- Eliminate discriminatory recruitment criteria by making work accessible to everyone – men and women, regardless of their marital status, age, or dependent children;
- Involve women returning from Spain in activity programs that generate revenue, especially those of the *Initiative de Développement Humain (INDH)* which covers the poorest regions of Morocco, from where such women come; and
- Return the passports of the 3,600 recurrent women workers who have been unable to return to Spain and whose passports remain with ANAPEC.

Within the framework of the Morocco and Spain cooperation framework

- Implement the 1984 agreement between the National Social Security Fund of Morocco and its Spanish counterpart to ensure medical coverage for the family members of female Moroccan seasonal workers during the term of their contracts;
- Ensure that seasonal workers returning to Morocco are guaranteed their rights to unemployment and retirement benefits;
- Provide Spanish language training in Morocco so that workers can interact and achieve a minimal level of integration in Spanish society and offer workers literacy courses through literacy programs provided by the Moroccan Ministry of Education and NGOs; and
- Develop a scheme, via ANAPEC, to train workers on their rights and to that end improve awareness raising sessions.

To buyers

- Require their suppliers to comply with Spanish labour laws and with the principles established by trade unions relative to housing. This should be done by *inter alia* stipulating conditions

in supply contracts; , commit to complying with the International Convention on the Rights of Migrant Workers;

- Provide training to quality control auditors on working conditions and labour laws and regulations;
- Increase the number of social audits on farms and packaging plants and improve the quality of audits by training auditors and systematically providing them with interpreters during their visits. A system of ongoing evaluations for corrective measures should be developed and supplier bases adjusted accordingly;
- Encourage suppliers to guarantee that their workers have independent representation;
- Support, including financially, training sessions for workers on their rights; and
- Review purchasing practices, including the price paid to producers, and contracts with suppliers to ensure that fundamental workers rights are respected.

To the European Union

To the European Parliament

- Amend the “seasonal workers directive” with a view to increasing the level of guarantees and access to rights through the strengthening of equal treatment, non-discrimination, and decent housing facilities and work conditions. Seasonal workers who work in the EU, regardless of their country of origin or skills level, should benefit from the same rights as European Union citizens. They should be given the opportunity of obtaining permanent residence status without having to leave EU soil. These recommendations are largely taken up in the draft report of the rapporteur of the European Parliament Commission on Civil liberties, justice and internal affairs and in the draft opinion of the rapporteur of the Commission on Employment and Social Affairs. Mandate impact studies of the consequences of circular migration for respect of migrants’ human rights.

To the EU Commission

- In accordance with the “Smart Regulation Communication”, mandate impact studies of the consequences of circular migration for respect of migrants’ human rights.

To Member States of the European Union

- Reach political agreement with the European Parliament to amend the “seasonal workers directive” with a view to increasing the level of guarantees and access to rights through the strengthening of equal treatment, non-discrimination, and decent housing facilities and work conditions. Seasonal workers who work in the EU, regardless of their country of origin or skills level, should benefit from the same rights as European Union citizens. They should be given the opportunity of obtaining permanent residence status without having to leave EU soil.

To all entities within the European Union

- Radically reform EU migration policy, from a utilitarian approach where migrant workers are considered as economic units, to an approach based on human rights and principles of non-discrimination and equal treatment.

Appendix 1: List of people met by the mission

- SOCOMO/ Carrefour Spain

Mario Rodriguez Moya, Quality and Sustainable Development Director, Carrefour Spain.

Eva Alapont Arlandis, Quality Department, SOCOMO, Carrefour Spain

- KIWA

Susana Costa Hernández, « Responsable Area de Desarrollo » (R&D Manager)

- UGT – Union general de trabajadores

4 representatives including Jesus Acasuso Medina, Secretary on Migration

- CCOO – Comisiones Obreras

Santiago Lepe, *Responsable del Sindicato provincial Agroalimentario*, (Regional Food and Agriculture Federation, Manager), CC.OO Huelva

Miembro de la ejecutiva del Sindicato provincial Agroalimentario, (Regional Food and Agriculture Federation, Member of the Board), CC.OO Huelva

Antonio Perianes, *Secretario General de la Federación Agroalimentario*, (Food and Agriculture Federation, Secretary General), CC.OO Andalucía

Aurora Martíneaz, *Responsable de migraciones y comunicación de la Federación Agroalimentaria*, (Food and Agriculture Federation, Migration and Communication Officer), CC.OO Andalucía

- SOC/ SAT

Pedro Barrera Portillo

- CODENAF

Ali El Amine, Delegate CODENAF Huelva

- Moguer Municipality

Maria del Mar Dominguez

Natividad Dominguez Moreno

- Cartaya Municipality

Manuel Garcia Vateh

- Guardia Civil

EDATI, *Equipo de Atencion al inmigrante*, Migrant Assistant Team

Antonio J. Castilla Moreira, Communication Department, Guardia Civil, Huelva

- APDHA en Huelva

- Dolores Redondo Toronjo, Lecturer at the University of Huelva

Names of workers (approximately 50) have not been included, neither have names of farms/ companies visited. The FIDH mission visited 4 farms and 2 packing houses. One farm refused to allow a visit.

Appendix 2: Examples of contracts

Mod. PE-177 A (III)

DATOS DE LA CUENTA DE CONTABILIZACION		REGIMEN		COD. PROV.		NUMERO		DIA CONTR.		ACTIVIDAD ECONOMICA	
0 6 1 3		2 1				9 0		AGRICULTURA, GANADERIA CAZA Y RELACIO		0 1	

DATOS DEL CENTRO DE TRABAJO

PAIS ESPAÑA

MUNICIPIO MOGUER

7 2 4

2 1 0 5 0

DATOS DEL/DE LA TRABAJADOR/A

D/ONA

NIF/NIE

FECHA DE NACIMIENTO

Nº AFILIACIÓN S.S.

NIVEL FORMATIVO SIN ESTUDIOS

8 0

6 4 2

MUNICIPIO DEL DOMICILIO

PAIS DOMICILIO

ESPAÑA

2 1 0 5 0

7 2 4

MOGUER

Con la asistencia legal, en su caso, de D./Dña. en calidad de (2)

con N.I.F./N.I.E.

DECLARAN

Que reunen los requisitos exigidos para la celebración del presente contrato y, en consecuencia acuerdan formalizarlo con arreglo a las siguientes:

CLAUSULAS

PRIMERA: La persona contratada prestará sus servicios como (3) **PEON AGRICOLA, FRUTICULTURA** incluido en el grupo profesional / categoría / nivel (4) **RECOLECCION** de acuerdo con el sistema de clasificación vigente en la empresa.

SEGUNDA: La jornada de trabajo será de (5):

☒ **A tiempo completo:** la jornada de trabajo será de **39** horas semanales, prestadas de **LUNES** a **VIERNES** con los descansos que establece la ley.

☐ **A tiempo parcial:** la jornada de trabajo ordinaria será de horas ☐ al día, ☐ a la semana, ☐ al mes, ☐ al año, siendo esta jornada inferior a (6):

☐ La de un trabajador a tiempo completo comparable.

☐ La jornada a tiempo completo prevista en el Convenio Colectivo de aplicación.

☐ La jornada máxima legal.

La distribución del tiempo de trabajo será de

TERCERA: La duración del presente contrato se extenderá desde **26/03/04** hasta **FIN DE CAM** Se establece un periodo de prueba de (7) **15 DIAS**

En caso de que el convenio colectivo permita una duración mayor a la establecida legalmente, señálelo con una X: ☐

<http://www.inem.es>



MINISTERIO
DE TRABAJO
Y ASUNTOS SOCIALES

KENITRA

CIN:

Espacio reservado para el sello de registro de entrada

DATOS DE LA EMPRESA

CIF/NIF

Nombre y apellidos del representante legal

DNI/NIF/NIE

Denominación social

Actividad

C.C.C. Seg. Social

Domicilio

Teléfono

FAX

Correo electrónico

Localidad

Provincia

Código Postal

DATOS DEL TRABAJADOR

Apellidos

Nombre

Pasaporte

Fecha de nacimiento

Lugar de nacimiento

Nacionalidad

NIE

Domicilio para notificaciones en el país de origen o de residencia legal

Teléfono

Localidad

ACUERDAN celebrar este contrato de trabajo y formalizarlo con arreglo a las siguientes CLÁUSULAS:

- La modalidad de contratación será Temporal
- El convenio colectivo por el que se registró este contrato será Del campo de la provincia de Huelva
Publicado en el B.O.E. / B.O.P. (tache lo que no corresponda) N° 58 de Fecha 23/03/2007
- La duración del contrato será de Mínimo 3 Meses para la campaña u obra Recolección de Fresas y otros
y se extenderá desde Enero hasta Junio (según duración de la campaña)
- La jornada de trabajo será:
 - A tiempo completo: de 39 horas semanales, prestadas de Lunes a Domingo, con los descansos que establece la ley.
 - A tiempo parcial: de 39 horas al día, a la semana, al mes, al año (tache lo que no corresponda)
- El/la trabajador/a contratado/a prestará sus servicios como Recolector incluido/a en el grupo profesional/categoría/nivel Peón Agrícola en el centro de trabajo ubicado en La provincia de Huelva
- El/la trabajador/a percibirá una retribución de 35,23 como salario base, de 0 como complementos salariales, siendo el salario bruto de 35,23 por todos los conceptos, según lo establecido en el convenio colectivo aplicable. Asimismo percibirá una retribución económica por la parte proporcional de las vacaciones anuales que le correspondan en función de los días trabajados. Se abonará con una periodicidad de mensual y se extenderán los oportunos documentos para que obren en poder de cada una de las partes.
- En el caso, a juicio del empresario, de que por inclemencias del tiempo o por falta de trabajo no se pudiera trabajar durante uno a varios días, serán retribuidos según la forma establecida en el convenio colectivo aplicable.
- Durante el periodo de la contratación, el empresario pondrá a disposición del trabajador un alojamiento adecuado que reúna las condiciones previstas en la normativa en vigor en materia de alojamiento.
- El empresario organizará los viajes de llegada a España y de regreso al país de origen, y asumirá, como mínimo, el coste del primero de tales viajes y los gastos de traslado de ida y vuelta, entre el punto de entrada a España y el lugar del alojamiento. En la parte que, en su caso, corresponda al trabajador, su importe tendrá la consideración de salario en especie.
- El/la trabajador/a regresará a su país una vez concluido el contrato objeto de su traslado a España, presentándose ante la Oficina Consular que le expidió el visado.
- En lo no previsto en este contrato se estará al convenio colectivo y a la legislación vigente que resulte de aplicación.
- Las cláusulas de este contrato entrarán en vigor una vez el trabajador haya entrado en España y obtenido la autorización de trabajo.

Mohammadia 9 de diciembre de 2007

Mohammadia 9 de diciembre de 2007

El/la trabajador/a

El/la representante legal de la empresa

Sello de la oficina consular o de
la entidad encargada de la
selección



Fdo

Fdo

El empresario deberá comunicar el contenido de este contrato a la oficina de empleo, en el plazo de los 10 días siguientes a la incorporación del trabajador

PRESENTAR ORIGINAL Y TRES COPIAS

Appendix 3: Undertaking to return

ANEXO VII

**MINISTERIO DE ASUNTOS EXTERIORES
MINISTERIO DE TRABAJO Y
ASUNTOS SOCIALES**

COMPROMISO DE RETORNO

**PARA TRABAJADORES EXTRANJEROS DE TEMPORADA CON
CONTRATO DE TRABAJO DE DURACIÓN DETERMINADA**

TRABAJADOR/A

Apellido	Nombre		Sexo
[REDACTED]	[REDACTED]		F
Número de Pasaporte	Fecha de Nacimiento	Lugar de Nacimiento	
[REDACTED]	[REDACTED]	[REDACTED]	
Nacionalidad	NIE	NIV	NEV
MARROQUE			
Dirección para notificaciones en el país de origen o de residencia legal		Localidad	País
[REDACTED]		Kenitra Blie	MARRUECOS

EMPRESA CONTRATANTE


Nombre o Razón Social de la Empresa		Dirección del Centro de Trabajo	
FRESHUELVA		C/ MARINA, 16 - 1º C	
N.I.E.-D.N.I.	Cód. Cuenta Cotización S.S. (C.C.C.)	Localidad	Provincia
[REDACTED]	[REDACTED]	HUELVA	HUELVA
Actividad Económica	Teléfono	Fax	
AGRÍCOLA	[REDACTED]	[REDACTED]	

EL TRABAJADOR DECLARA:

- Que es conocedor/a de la obligatoriedad de cumplir con la Normativa aplicable al contrato de trabajo previamente firmado y se compromete a cumplir con todas las cláusulas recogidas y firmadas en el mismo.
- Que FINALIZADA LA RELACIÓN LABORAL, cumplirá con los trámites para efectuar el RETORNO al país de origen COMPARECIENDO PERSONALMENTE EN EL CONSULADO EN EL PLAZO DE UN MES DESDE EL DÍA DE SU SALIDA DE ESPAÑA.
- Que PRESENTARÁ en la Oficina Consular que le expidió el último visado para el permiso temporal, EL PASAPORTE al objeto de dejar constancia de la fecha de su presentación y de la regularidad de su retorno en cuanto fechas de entrada y salida de España, utilizando el visado de que se trate.

Y para que conste, ASUME ESTE COMPROMISO por triplicado.

KENITRA 16 de ENERO de 2006
EL/LA TRABAJADOR/A,



VERIFICACIÓN DEL RETORNO (A cumplimentar por la Oficina Consular que expidió el visado)

Oficina Consular de España en	Visado Expedido	Duración de Estancia (Días)
RABAT	[REDACTED]	30
Fecha de presentación en Oficina Consular	Fecha del sello de entrada en España	Fecha del sello de salida de España
31/05/06	06/04/06	28/05/06

VALORACIÓN DEL RETORNO


Presentado en la Oficina Consular dentro del plazo de un mes desde la salida de España:

(1) SI ☒ (2) NO ☐

Salida de España dentro del plazo señalado en la Rubrica "AL" del Visado (3) ☒

Salida de España fuera del plazo señalado en la Rubrica "AL" del Visado (4) ☐

RABAT 31 de MAYO de 2006
EL JEFE DE LA OFICINA CONSULAR,



This report was realised with the support of the Ford Foundation and EED
The analyses and opinions set out in this report do not in any way reflect
the positions of these institutions.



FIDH represents 164 human rights organisations on 5 continents

Keep your eyes open

Establishing the facts

investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community

permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting

mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

FIDH - International Federation for Human Rights

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FIDH
represents **164**
human rights organisations
on **5** continents



of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest,

ABOUT FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

- A universal movement

FIDH was established in 1922, and today unites 164 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

- An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

fidh

Find information concerning FIDH's 164 member organisations on **www.fidh.org**