



Specific Instance

OECD Guidelines for Multinational Enterprises

NIDERA

Concerning NIDERA's hiring and treatment of temporary workers for detasseling corn in Argentina

Amsterdam, Netherlands, June 26rd, 2011

Complainants:

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Introduction

We, the Centre for Human Rights and Environment (CEDHA), the INCASUR Foundation (for Human Promotion through its International Institute of Studies and Social Training of the South), SOMO (Stichting Onderzoek Multinationale Ondernemingen) and Oxfam Novib, the complainants, hereby file a Specific Instance against the multinational enterprise NIDERA, headquartered in Rotterdam, the Netherlands, and its Argentine subsidiary NIDERA S.A. for operating in violation of the OECD Guidelines for Multinational Enterprises (hereafter “the Guidelines”) with relation to its hiring and treatment of temporary workers detasseling corn in the Province of Buenos Aires of the Republic of Argentina.

In recent months, numerous reports have surfaced regarding the activities carried out by NIDERA S.A., specifically related to the hiring of temporary workers during the months of December 2010 and January 2011. The allegations in these reports include acts that have been labelled as human trafficking, exposing workers to subhuman and degrading working conditions, and denying access to dignified health care and proper conditions of hygiene to satisfy basic human needs. Furthermore, it has also been mentioned that improper hiring practices have been employed, and that preliminary information was withheld from the workers regarding the conditions, the place and location, and the content of the tasks they had to carry out. Information has also been released concerning threats made to avoid the workers fleeing this treatment, and also about their exploitation by means of their forcefully having to buy food and working material at excessive prices, which were later discounted from their wages when they were to be paid.

NIDERA S.A., which has been accused of severely abuses the human rights of its workers in Argentina, does not have a human rights policy. We call upon the Dutch National Contact Point to use its good offices and facilitate a dialogue aimed at having NIDERA adopt and implement a company-wide human rights policy that includes a concrete due diligence process for identifying, preventing and mitigating actual and potential adverse human rights impacts throughout its global operations, in particular regarding the hiring and employment processes of the temporary workers in detasseling operations. Such a policy should be accompanied by the necessary tools and management systems to implement monitor and independently verify the development and impact of the policy.

PART I

*Description of the complainants **CEDHA, INCASUR, SOMO and Oxfam Novib, and of the MNE, NIDERA.***

A) COMPLAINANTS: CEDHA

The Centre for Human Rights and Environment, (CEDHA), was founded in 1999 and is a non-profit non-governmental organisation from Argentina. Its objective is to promote the respect for and enforcement of human rights and environmental protection. In the sphere of Human Rights and Business, CEDHA works towards strengthening and complying with the frameworks of norms and standards regarding human rights that govern enterprises at the local and international levels. It also works towards strengthening the State’s duty to protect and promote the enforcement of human rights, promoting the private sector’s observance of formal and informal frameworks of standards, and improving the tools that victims of violations committed by business operations can use to access the legal protection system.

In this sense, CEDHA works within the framework of OECD, the Organisation for Economic Co-operation and Development, by engaging in lobbying activities in its main organs and processes, thus testing the efficiency of the OECD Guidelines for Multinational Enterprises and empowering civil society organisations.¹

INCASUR

¹ <http://www.cedha.org.ar/index.php?view=inicio&m=0&sm=>

From its inception, the Human Promotion Foundation (Fundación Promoción Humana), through its International Institute of Studies and Social Training of the South (INCASUR), has been developing a variety of working programmes whose strategic objectives are linked to the issue of sustainable and sustained social development, with the ultimate aim of achieving inclusion and eliminating poverty.² It is an Argentinean institution that trains union, social and political leaders and follows a clear humanistic orientation that aims at supporting national and international organisations and promoting the respect and enforcement of workers' rights.

SOMO

SOMO is an independent, non-profit research and network organisation working on social, ecological and economic issues related to sustainable development. Since 1973, the organisation investigates multinational corporations and the consequences of their activities for people and the environment around the world. SOMO supports social organisations by providing training, coordinating networks and generating and disseminating knowledge on multinational corporations in a context of international production, trade, financing and regulation.

OXFAM NOVIB

Oxfam Novib is one of the 14 national affiliates of the Oxfam International Confederation. It started life in 1956 as the Netherlands Organisation for International Assistance (Novib), and joined forces with Oxfam in 1994. Working together in confederation, the Oxfam affiliates can speak with one clear and compelling voice on issues of global concern: climate change, health and education for all, agriculture, trade, and conflicts and emergencies.

Poor people can't build independent livelihoods when their rights are not respected. That is why Oxfam Novib supports them to stand up for their rights.

B) COMPANY: NIDERA.

NIDERA is a worldwide company with central headquarters in the city of Rotterdam, the Netherlands, and with subsidiaries in 22 countries. The company was founded in 1920 by a group of European exporters. They chose the name NIDERA, since it reflected the initials of the countries where they decided to concentrate their activities. These are the Netherlands, India, Deutschland (Germany), England, Russia and Argentina. The company works in the field of research and production of corn, wheat, sorghum, soybean and sunflower seeds, and in the distribution of fertilisers and agrichemicals.³

NIDERA Argentina S.A. is one of the largest enterprises of the private and export sector of Argentina. According to data of the Argentinean Ministry of Agriculture, in 2010 NIDERA occupied the fifth place, due to an export volume of 1.412.919 tons of grains.

PART II

I) DESCRIPTION OF THE ALLEGED FACTS

During the months of January and February, 2011, various news media, reports and investigations carried out by official Argentinean institutions accused the multinational enterprise, NIDERA, S.A., of having hired temporary workers for detasseling corn, under conditions that did not seem to meet the standards for the protection of workers and of internationally recognised and enforced human rights in the Republic of Argentina. The facts detailed below provide the basis for our allegations of NIDERA's breach of the OECD Guidelines, in particular Chapter II (General Policies) and Chapter IV (Employment and Industrial Relations). The specific Guidelines' provisions of which we believe NIDERA to be in breach are outlined in Annex I.

Sources

The facts described below were taken from the following sources: government sources; sources from the news media; and results of various interviews and communications with official entities.

² <http://www.incasur.org/institucional/quienesomos/quienesomos.asp>

³ http://www.asa.org.ar/vertex_clipping.asp?id=6823

The primary official source is considered to be the official copy of the report of the National Institute against Discrimination, Xenophobia and Racism (INADI, Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo⁴), that works under the scope of the Ministry of Justice and Human Rights of the Nation. This report was drafted after having gained access to the legal files related to the case, and to all the reports that are included in it. A personal interview conducted with the first chief prosecutor of the case, Dr. Rubén Darío Giagnorio⁵, was also taken into consideration, as well as telephone conversations with staff of the Rescue and Support Office for Persons Affected by the Crime of Human Trafficking (Oficina de Rescate y Acompañamiento a las Personas Damnificadas por el Delito de Trata), which is part of the Ministry of Justice of the Nation. Finally, we have also paid special attention to various news articles⁶ published in relation to the NIDERA case.

Recruitment and transportation

According to the abovementioned sources, NIDERA S.A. hired around 130 workers who mainly came from the province of Santiago del Estero, while others came from the provinces of Tucumán and Mendoza. Twenty of them were minors between 16 and 17 years old. These crew teams were made up of 14 to 18 workers engaged in detasseling corn.

According to Mariana Schwartz, the coordinator of the Technical Team from the Rescue and Support Office for Persons Affected by human trafficking, (office which interviewed the workers) the working policy that the company applies towards the workers is, “The less they know, the better”. She comments that “very few knew anything about the hiring methods, still others didn’t even know that they were registered”.

Lack of information

According to the testimonies of the workers, they mention that they were not informed of the place where they would carry out their tasks, nor how many days had to be worked, nor how long the daily working hours were, nor what the wages and other conditions inherent to hiring workers were.

Working hours

The workers who testified mentioned that work is carried out Monday to Sunday from around 05:30 h to 11:00 h, and from 14:00 h to 19:30 h, and that sometimes these working hours were longer, with no interruption if it rained.

Living conditions

All the workers mentioned that they worked for NIDERA S.A., and all of them were living on the plot of land that was inspected. The shacks they had to live in were precarious small sheet metal dwellings where up to eighteen people lived in overcrowded conditions. There were eight such dwellings in all, each for a specific crew team.

The witnesses indicated that there was no electricity at the workplace (if they wanted to charge their mobile phones, they had to pay 2 pesos), and neither toilets nor running water. They had to light a fire on the floor to cook their food. At the lodging, there were no sheets or blankets, nor working materials – they were forced to buy them. They also mentioned other unfavourable conditions, such as the presence of scorpions, rodents, snakes, spiders and the like, and that they had no adequate protection against them.

If they needed to use the toilet or wash themselves, the workers had to do it in the open, or they even had to dig a well or hole. They made a bath curtain from bags and rags.

During a local radio interview, Julio Caraballo, a doctor who is the Director of Bromatology of the City of San Pedro, said that the conditions there were reminiscent of those in a concentration camp. Two holes in the ground served as toilets, covered only by a curtain sewn with NIDERA bags. He also saw an adolescent man who was bathing in water carried in a

⁴ Official Report on the case (Dictamen) Numer 007-11 of January 10, 2011 of INADI. See the copy included in the Annex II.

⁵ Interview conducted by Sol Delamer on May 20, 2011 at San Nicolás, in the UFI No. 6 of San Nicolás, Buenos Aires Province, public prosecutor's office.

⁶ <http://www.pagina12.com.ar/diario/elpais/1-162024-2011-02-09.html>, amongst others.

receptacle reserved for agrototoxic material⁷. It was also observed that one of the water wells from which the workers drank contained non-potable water. Finally, it was also observed that four water wells were found there from which water was extracted using pumps for agricultural irrigation (approx. 100.000 litres per hour). These have not been duly registered nor authorised to function by the pertinent authorities.

Health and safety conditions

Reports mention that the workers didn't receive adequate clothing or the necessary safety and security equipment to carry out their tasks. Pictures were examined that show footwear of a terrible quality, or cases where a worker himself had tied a cardboard sole to his feet. This is especially serious when one considers that these workers had to walk across the entire fields many times a day to get to the place where they carried out their tasks.

Concerning health care, according to the testimonies if a worker got sick, medical assistance was delayed in cases of poisoning by agrichemicals, scorpion and snake bites, and of diarrhoea resulting from ingesting rotten food and drinking non-potable water. The overseer supplied medicines without medical prescription, and the workers were charged for the medicines thus dispensed. These temporary rural workers had to detassel corn even if they were sick. Many claims were made concerning the case of a man who broke various ribs and had to keep on working.

Food

In terms of the food, it was mentioned that it had expired often. The Rescue and Support Office's report states that "the meat, which according to the workers was the only fresh food they received, was in a bad state and arrived by non-refrigerated transport in garbage bags". No labour camp had a refrigerator. Because they couldn't refrigerate their food, their health was at risk. Further, the non-perishable food they got had expired, and the NIDERA, S.A.-appointed company that sold it charged exorbitant amounts.

Wages

None of the workers interviewed had received his salary at the moment of the interviews. Furthermore, not one of them knew what they were going to get paid for the work carried out. Some only had an idea of what the payments had been like in previous years, which according to their calculations were about 85 pesos per day. None of the workers had any idea of when a particular hectare had been completed, as it was the 'engineer' who calculated when a hectare was done. One hectare could be done three times over again without getting paid for it. It took two to three days each time a hectare had to be done over again and, in some cases, one hectare had to be done eight times over. Furthermore, the workers mentioned that they would get paid through a bank once they returned to the places where they were hired from, or that payment would be included in an envelope handed to them by the company's staff responsible for this. The only workers who knew this were the ones who had worked for the same company in previous years. The rest of them could only guess this, or simply had no idea of how and when the payment due for their work would be made.

Submission and dependence

Many of the workers were illiterate or had not finished their formal education. Many of the workers showed a submissive and resigned attitude, which made them even more vulnerable. This results from the abusive environment they were exposed to: bad food and poor hygiene; overcrowding; a lack of rest, privacy and relaxation; abusive treatment; extremely long working days; a lack of financial autonomy, etc. The victims were able to voice their disagreement with the situation in which they found themselves to the government officials who intervened in this case. The impossibility of having and administering one's own money places a limit on one's mobility and self-determination. This all led to increasing their exposure and vulnerability to the discretion of those who unlawfully abused their power over them. It is obvious why promising payments is vital to detaining workers in a certain place. Most of them didn't know the place where they were. Further more, the plantation field that was inspected lies in a remote area,⁸

⁷ [http://www.urgente24.com/noticias/val/2155/gravisimas-denuncias-de-verbitsky-contra-NIDERA-\(habra-descargo\).html](http://www.urgente24.com/noticias/val/2155/gravisimas-denuncias-de-verbitsky-contra-NIDERA-(habra-descargo).html)

⁸ In this case, various inspections were made on the plot that was rented by NIDERA for detasseling, which include reports of the visual site inspections and of interviews conducted with the workers.

far away from the nearest town or city. This placed even more limits on the workers' mobility and autonomy. Finally, the workers were threatened in specific terms about fleeing, thus placing more conditions on the exercise of their own will.

If workers expressed a wish to leave due to the terrible working and living conditions, they were threatened and pressured by the overseers and engineers. At a ranch that goes by the name of the "El Algarrobo", their overseer had pointed out that: "He who crosses over the boundaries of the plot, or heads across the fields, might be shot". In other ranches, they are told that the neighbours of adjacent fields will shoot if they trespass their properties. However, the most common threat was a financial one: "If anyone asks to leave, then the remaining crew team members must also leave this place, thus affecting the rest of the workers". This threat leads to confrontations between those who 'work' trusting that they shall be paid as promised, and those who mention they wish to leave because of the poor conditions. Confrontation amongst victims is a method applied frequently in this type of human rights violation.

Furthermore, according to news sources of press releases from the Ministry of Labour, other NIDERA, S.A. company sites south of Buenos Aires were observed as being engaged in similar irregularities in the hire and working conditions of temporary workers involved in corn detasseling⁹. According to this information, the Buenos Aires Ministry of Labour observed more than 180 rural workers in the Mar del Plata, Miramar and Lobería zones, who come from other provinces and carry out work under deficient hygienic and safety conditions.

II) Applicability of the Guidelines to the Multinational Enterprise, NIDERA

The Guidelines fully apply to NIDERA, since it is a multinational enterprise headquartered in the Netherlands, and is closely linked to the Swiss holding that, in turn, has direct links to NIDERA S.A. in Argentina. The activities of this Multinational Enterprise were carried out in the Republic of Argentina, an adherent country to the OECD, and this enterprise's parent company is located in Switzerland and the Netherlands, both full member states of the OECD.

Company structure

The parent company of NIDERA S.A. is NIDERA Capital BV. NIDERA Holdings BV, founded in 2003, is the main company behind the global trading activities of NIDERA Handelscompagnie BV, and behind the agroindustrial activities carried out by NIDERA S.A. in Argentina.

In Argentina, NIDERA is managed by NIDERA Argentina S.A., Investment Company, that is a subsidiary of NIDERA Holding S.A. in Switzerland. At the same time, the Swiss holding is owned by NIDERA Handelscompagnie BV, from Rotterdam, the Netherlands.

III) Competence of the Dutch National Contact Point

We are aware that it is standard practice for OECD Guidelines specific instances to be handled by the NCP of the country in which the alleged violations have taken place, which in this case would be Argentina. Nevertheless, we are consciously and intentionally submitting this request to the Dutch NCP (with a copy to the Argentine NCP) because a multinational company's headquarters is of vital importance to ensure responsible business conduct in a global context. The purpose of the present case is to have NIDERA (the parent company) adopt a policy commitment to respect human rights and follow due diligence procedures at the highest management levels of the company. An additional reason for filing the specific instance in the Netherlands is because of the loans provided to NIDERA by the Dutch development bank, FMO.

IV) Parallel legal proceedings surrounding the case and their *non-applicability* to the specific instance

The focus of this specific instance (i.e. promoting a human rights policy within NIDERA), is not the subject of the parallel legal proceedings surrounding the case in Argentina.

⁹ http://www.lapoliticaonline.com/noticias/val/70861/descubren-mas-trabajadores-esclavos-de-NIDERA_-ahora-en-la-costa-bonaerense.html

V) Alleged violations of the Guidelines.

The information and reports on the case primarily denote violations to former Guidelines chapters II General Principles, and chapter IV Employment and Industrial relations. A detailed relate on how the alleged acusations violate each chapter in light of Argentina domestic law and international commitments is described in Annex I of the present complaint.

VI) Language of this Specific Instance

We have no problem communicating in English or Spanish with the NCP and/or with the company.

PART III

REQUESTS TO THE DUTCH NATIONAL CONTACT POINT and NIDERA.

The Dutch National Contact Point is uniquely placed to promote and become engaged in a process that would permit the company in question to assume its leadership in embracing policies of respect for human rights in line with the OECD Guidelines.

We thus call upon the Dutch National Contact Point to use its good offices and facilitate a dialogue aimed at having NIDERA adopt and implement a company-wide human rights policy that includes a concrete due diligence procedure for identifying, preventing and mitigating actual and potential adverse human rights impacts throughout its global operations, in particular regarding the hiring and employment processes of the temporary workers in detasseling operations. Such a policy should be accompanied by the necessary tools and management systems to implement monitor and independently verify the development and impact of the policy. The policy should be consistent with the characteristics described below.

The new chapter on human rights of the revised Guidelines and the Guiding Principles¹⁰ for the framework policy approved by the UN Human Rights Council, declare that if a MNE is to uphold human rights it must, amongst other things, have a policy of its commitment to respect human rights and exercise due diligence according to its size and nature, and to the context in which it operates, and the severity of the risks of having adverse human rights impacts.

The guiding principle for the policy of commitment to respect human rights describes that it should include:

- Its approval at the most senior hierarchical level of the business enterprise.
- Drafting it with input from internal and external expertise.
- Stipulating the enterprise's human rights expectations, concerning its personnel, business partners and other parties directly linked to its operations, products or services.
- Disclosing it publicly and communicating it to all its personnel, business partners and parties that are directly linked to it, as well as to other relevant interested parties.
- Duly reflecting it in the operational policies and procedures that are required for its implementation.

To help define what human rights due diligence would actually imply, one Guiding Principle¹¹ gives a clear description and indicates what it should involve. It reads as follows:

In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, multinational enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, acting upon the findings and communicating how impacts are addressed. Human rights due diligence:

¹⁰ See Principle 16 of the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

¹¹ Principle 17 of the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. *Ut supra*.

- Should cover adverse human rights impacts that the MNE may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- Will vary in complexity with the size of the MNE, the risk of severe human rights impacts, and the nature and context of its operations;
- Should be an ongoing assessment, recognising that the human rights risks may change over time as the MNE's operations and operating context evolve.

We suggest that the human rights due diligence procedure, which should include the prevention against possible violations through the actions of the MNE, especially related to hiring temporary workers to work in detasseling, *should* include a timely disclosure of clear information about at least the following topics:

- The method for hiring and recruiting temporary workers for detasseling, and the guarantee that the access to information is adequate and occurs on beforehand, referring to the conditions, workplace and implications of the job, in order to promote the free consent, or non-acceptance, of this job.
- The housing/lodging, hygiene and safety and security working conditions.
- The location of the field, and the period of the detasseling activity, thus allowing the unions and relevant authorities to be able to carry out inspections.
- The quantity of chemical toilets and showers that proper and decent health care requires.
- The conditions for preserving and refrigerating foodstuffs for the workers, as well as the cost of these foodstuffs and who pays for them.
- The working hours, the amount of hectares that has to be detasseled, the shifts, and the materials and other equipment needed to carry out this activity.
- The health care system for the temporary workers.
- The guarantees for rescissions of contracts, as well as for the abandonment of the activities, should a worker decide to do this.

ANNEX I

Enumeration of alleged violations of the Guidelines by NIDERA, S.A.

A) VIOLATION OF CHAPTER II – GENERAL POLICIES

The alleged practices certainly infringe the recommendations made in Chapter II¹²:

- 1. *No contributions are made to social and environmental progress with a view to achieving sustainable development.***
- 2. *There is no respect for the human rights of those affected by its activities.***
- 3. *There is a lack of application of effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.***

¹² 1. *Contribute to economic, social and environmental progress with a view to achieving sustainable development.*

2. *Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.*

7. *Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.*

8. *Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.*

9. *Refrain from discriminatory or disciplinary action against employees who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.*

10. *Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.*

4. *There is a lack of promoting employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.*

5. *There is a lack of refraining from discriminatory or disciplinary action against employees who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.*

6. *There is a lack of concrete actions taken to encourage that business partners, including suppliers and sub-contractors, apply principles of corporate conduct compatible with the Guidelines.*

A.1) No contributions are made to social and environmental progress with a view to achieving sustainable development.

Compliance with domestic law of the host countries where they operate is the first obligation of Multinational Enterprises¹³.

MNE's should fully consider the policies of the countries where they operate, and should also consider the views of other stakeholders. In this sense, the alleged abuses related to corn detasseling activities described in the complaint are absolutely contrary to social inclusion as a fundamental pillar upon which sustainable development rests.

These violations not only fail to contribute to social progress in the country, but rather consolidate one of the most degrading practices of human rights violations, namely work carried out under degrading conditions.

A.2) No respect for the human rights of those affected by its activities. This should be in consistency with the host government's international obligations and commitments.

Multinational Enterprises that carry out activities in countries other than those where they have registered their headquarters must comply with current domestic legislation of the countries where they operate, and they must also heed the recommendations made by the States relative to their activities, through the OECD (Organisation for Economic Co-operation and Development) Guidelines for Multinational Enterprises.

These Guidelines provide a clear framework for respecting Human Rights in Chapter II, which is part of its General Policies. The Guidelines mention that MNE's must respect the human rights of those affected by their activities, in accordance with the host government's international obligations and commitments relative to human rights. In the case of Argentina, these are the following:

A.2.a) Human Rights Treaties

Through its last constitutional reform in 1994, the Republic of Argentina incorporated a series of human rights treaties that enjoy maximum constitutional hierarchy¹⁴.

Besides these treaties, Argentina is a member of the International Labour Organization and has adopted the majority of international labour standards by incorporating many conventions in its domestic legislation. Argentina has vast legislation concerning various subjects that are directly linked to human rights, such as laws against human trafficking.

¹³ OECD Guidelines for Multinational Enterprises, Chapter II, Commentary 2

¹⁴ Go to: <http://www.senado.gov.ar/web/interes/constitucion/atribuciones.php>

These treaties are: The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and its Optional Protocol; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child.

The broad matrix of recognized standards that Argentina has adopted related to human rights protection reflects the range of responsibilities that MNE's must respect in terms of human rights.

According to the related facts of the case, the human rights violations perpetrated are numerous and outrageous. The following description is only meant to illustrate these numerous and excessive violations.

The methodology for hiring temporary workers regardless of being an oral contract must all relevant information in order to avoid tainting any consent given. Furthermore, hiring minors without due authorisation, and subjecting people to degrading working conditions, are indicative of exploitation.

The *modus operandi* that consists of keeping the working place hidden and building an almost forced isolation, by which even the possibilities of communicating with the outside world depend on the abuse of those who have electricity to sell mobile phone charging time, definitely contravenes international labour standards. Furthermore, the conditions that have been described concerning overcrowding and the lack of privacy, rest and relaxation, make victims more vulnerable. They are thus faced with little alternative but to bear these abuses the best they can.

In the description of the facts, it is mentioned that occupational health and safety conditions were practically nonexistent. This meant that the temporary workers had to face the shame of satisfying their sanitation basic needs in a well dug in the field, covering these improvised and natural latrines with remainders of bags. Another thing that was mentioned was the lack of light, gas and adequate medicines – i.e. appropriate medical coverage was lacking. All this, added to the sanitary conditions described earlier and the testimonies, including that of the doctor, Julio Caraballo, who said he saw an adolescent man carrying water for his bath in a used receptacle reserved for agrotoxic material, placed the health of temporary workers seriously at risk.

The facts of the generalised abuse described concerning the working conditions constitute serious workers' rights violations, which are also human rights. These abuses include not supplying the minimum working tools for carrying out the task of detasseling, the exaggerated daily working hours, the much inflated prices charged for food and clothing, and finally the threat of firing and not paying if a member of the crew team decided to leave.

All these practices clearly violate the human rights treaties mentioned, which are standards that should be kept in mind when defining the responsibility of MNE's to respect human rights, considering the Guidelines.

A.2.b) *United Nations Framework for Human Rights and Transnational Corporations and other Business Enterprises*

As was mentioned before, the UN Human Rights Council have accepted and approved unanimously in 2008 the United Nations Policy Framework for Human Rights and Transnational Corporations and other Business Enterprises¹⁵. This framework policy rests on three pillars: the State duty to protect against human rights abuses, the Multinational Enterprises' and other corporations' responsibility to respect human rights, and finally the need for achieving a greater access by victims to better and more effective remedy processes. In order to operationalize the so called Policy Framework, the UN HRC has approved last June 16th 2011 the Guiding Principles.

In both, the Framework Policy and the Guiding Principles, a clear emphasis is placed on the fact that the responsibility of the MNE's with respect to human rights, is related to not violating the rights of persons, and to due reestablishment and remediation whenever these human rights

¹⁵ For more information concerning the mandate and the Framework Policy on Human Rights and Transnational Corporations and other Business Enterprises, and the Guiding Principles for this Framework Policy, please visit the web page of the Special Representative of the United Nations Secretary-General on Human Rights and Transnational Corporations and other Business Enterprises, at: <http://www.business-humanrights.org/SpecialRepPortal/Home>.

are violated. This stems from norms and standards in the field of internationally recognised human rights, and especially from those laid down by the International Labour Organization.

In order to be able to meet these responsibilities, MNE's must have internal policies and adequate procedures that include their commitment to respect human rights, a due diligence procedure that helps to identify, prevent and mitigate adverse human rights impacts, and mechanisms that make it possible to remedy the negative impacts caused or contributed by the company.

A.3) Lack of application of effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate; and

A.4) Lack of promoting employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.

The practices employed by NIDERA reflect a lack of the enterprise's responsible management, which should aim at building confidence and mutual trust between the community and the MNE's activities. It is clear that the exploitation of people takes concrete form through the abuse of the most vulnerable conditions of those who need and make efforts to find employment so badly that they accept the conditions described in the reports.

It's important to emphasise that the construction of confidence and trust builds upon due compliance with existing rules and legislation. This would imply that the exercise and enjoyment of the human rights of the workers hired for detasseling had to be respected.

Furthermore, according to the facts described by the news media, which were obtained through interviews conducted with the temporary workers, they had no idea of the policies and practices of NIDERA S.A., and neither of the working location, place, or conditions.

A.5) Lack of refraining from discriminatory or disciplinary action against employees who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.

Another observation that can be made based on the facts described, is that intimidation and threats were employed when there was a chance of questioning the working conditions or of wishing to leave the working place. According to the facts, threats ranged from retaliations against the rest of the crew team members, thus extending to others the consequences of abandoning work, to mentioning that because there were no free exits, the owners of the adjacent fields would attack with firearms anyone who endeavoured to cross their properties.

A.6) *Responsibility for the value chain*: Lack of concrete actions taken to encourage that business partners, including suppliers and sub-contractors, apply principles of corporate conduct compatible with the Guidelines.

Part of the progress made through the United Nations process and of the OECD Guidelines review process, involves the inclusion of the responsibility for preventing and mitigating adverse human rights impacts that are directly linked to a MNE's operations or services by their business relationships, even if the MNE has not contributed to those impacts. Business relationships are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services¹⁶.

A component of due diligence relative to respecting human rights is that those who are directly involved in business operations - in this case, the company that recruits and hires - must respect human rights. The fact of the present case is that there has been a concrete violation of the responsibility for preventing adverse human rights impacts by those key entities directly

¹⁶ Go to: <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

linked in the value chain, since they are essential components in the hire for corn detasseling and in the development of this activity.

B) VIOLATION OF CHAPTER IV – EMPLOYMENT AND INDUSTRIAL RELATIONS

According to public information available on the case, the NIDERA S.A. enterprise did not comply with Human Rights standards, especially in relation to the prohibition of workers' exploitation, both in the domestic sphere in light of Law No. 22.248 (National Rural Work Law) and at an international level, which is reflected through the recommendations made by governments in the OECD Guidelines for Multinational Enterprises.

Chapter IV of the Guidelines contends that enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

- 1. Respect the right of their employees to be represented and that their representatives engage in all kinds of negotiations concerning employment conditions and other issues of mutual concern.¹⁷**
- 2. Provide facilities to employee representatives as may be necessary to assist in the development of effective negotiations concerning both parties involved.¹⁸**
- 3. Contribute to the effective abolition of child labour.¹⁹**
- 4. Contribute to the elimination of all forms of forced or compulsory labour.²⁰**
- 5. Hire employees without discriminating on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.²¹**
- 6. Ensure health and safety in their operations by taking all the necessary steps.²²**

B.1) Respect the right of their employees to be represented and that their representatives engage in all kinds of negotiations concerning employment conditions and other issues of mutual concern;²³ and

B.2) Provide facilities to employee representatives as may be necessary to assist in the development of effective negotiations concerning both parties involved.²⁴

¹⁷ In paragraph 1.a) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions; in paragraph 8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters; in paragraph 5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities; in paragraph 3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

¹⁸ In paragraph 2.a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements; b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment; c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.

¹⁹ Paragraph 1.b) Enterprises must contribute to the effective abolition of child labour.

²⁰ In paragraph 1.c) the guidelines recommend contributing to the elimination of all forms of forced or compulsory labour.

²¹ In paragraph 1.d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

²² Guidelines paragraph 4 b) Take adequate steps to ensure occupational health and safety in their operations.

²³ In paragraph 1.a) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions; in paragraph 8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters; in paragraph 5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities; in paragraph 3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

As the Argentinean Union of Rural Workers and Dockers (UATRE) mentioned in the La Política Online²⁵ newspaper, no dialogue exists with the multinational enterprise in question, while it declares further that many of the discussions between them take place through the National Agricultural Work Commission.

NIDERA violates this Guideline when it makes it impossible to negotiate the conditions under which the task of detasseling takes place, and when it hinders the trade union, in this case UATRE, from monitoring this activity.

B.3) Contribute to the effective abolition of child labour.²⁶

The camp that had been set up at the “El Algarrobo” ranch, which NIDERA S.A. rented, housed 130 people, including some children and adolescents.

Concerning this issue, governments recommend through the Guidelines that enterprises contribute to the effective abolition of child labour in consideration of the provisions contained in the ILO 1998 Declaration and ILO Convention 182, regarding the worst forms of child labour. The longest-standing ILO instruments on child labour are Convention 138 and Recommendation 146 (both adopted in 1973) concerning minimum ages for employment. Convention 138 establishes that one of the most effective methods for preventing children from beginning to work too early is to define the minimum age when they can work or join the workforce. The fundamental principles of the ILO Convention regarding the minimum age for employment are embodied in a table drawn up by the convention. This fixes the minimum age allowed for working generally at age 15, since a guiding objective parameter is that the age for beginning work as an employee should not be below the age for finishing compulsory schooling. If it concerns hazardous work, no people under 18 may carry out tasks that **could put in danger their health or morality.**

In Article 1, Resolution 11/2011²⁷ passed by the National Agricultural Work Commission, which regulates the General Working and Housing Conditions for workers employed under the National Agricultural Work Law and who carry out transitory tasks, regulates the sphere of personal application by establishing general working conditions. These conditions apply to all workers who carry out tasks of a cyclical, temporary, seasonal and non-permanent nature, in the activities included in the National Agricultural Work Law (Law No. 22.248²⁸), carried out throughout the entire territory of the country, whenever these workers must live in the places where they carry out their tasks, and in camps and/or housing structures that are located outside urban centres.

Multinational enterprises can play a positive role in helping to address the root causes of poverty in general and of child labour in particular, through their labour management practices, their creation of high-quality, well-paid jobs and their contribution to economic growth. It is important to acknowledge and encourage the role of multinational enterprises in contributing to the search for a lasting solution to the problem of child labour. In this regard, raising the standards of education of children living in the host countries is especially noteworthy.²⁹

The high possibility of risking violations to human working rights that might expose children, both under the age of 16, as well as those between 16 and 18 with authorisation, to these abuses and to tasks that adversely affect their health, necessarily imposes the obligation to encourage preventing children from facing these practices and protecting children from them.

²⁴ In paragraph 2.a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements; b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment; c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.

²⁵ <http://www.lapoliticaonline.com/noticias/val/70611/venegas-%E2%80%99Cel-gobierno-no-tiene-politicas-de-estado-para-erradicar-la-explotacion-rural-.html>

²⁶ Paragraph 1.b) Enterprises must contribute to the effective abolition of child labour.

²⁷ http://www.puntoprofesional.com/P/Z0001HTM/CNTA_11-11.HTM

²⁸ http://www.defensor-alejo.com.ar/legis_web/nac/trab_agrario.htm

²⁹ <http://www.oecd.org/dataoecd/21/20/16975360.pdf>

The function of promoting internal policies of respect for human rights, including due diligence procedures to prevent human rights violations from occurring, should effectively enhance the opportunity to monitor, in situ, the labour conditions of temporary workers, thus ensuring the active protection of the human rights of children affected by this activity.

NIDERA violates this Guideline when it implements abusive and exploitative practices without allowing the monitoring necessary to ensure that minors between 16 and 18 years with the due authorisation of their parents, are not forced to work under the conditions described by the facts.

B.4) Contribute to the elimination of all forms of forced or compulsory labour.³⁰

According to the ILO, forced labour “occurs where work or service is exacted by the State³¹ or individuals who have the will and power to threaten workers with severe deprivations, such as withholding food or land or wages, physical violence or sexual abuse, restricting peoples’ movements or locking them up.”³²

In the NIDERA case, workers were not able to leave the radius within which they worked at the rural plot. This condition may occur because migrant workers are usually transported by night and almost in clandestine fashion, without their knowing where they are being taken. Therefore, they cannot leave the fields freely since they don’t know exactly where they are, to such an extent that they don’t even know which province they are living in. They can only guess given the type of activity they are carrying out, but not because they are told where they are, or where the exit is in case they want to, on their own free will, leave the job and head back home.

This type of common practice contravenes the dispositions of **Article 24** of the aforementioned Resolution, which establishes the duty of employers to inform their workers of³³:

- a) *The geographical location of the place where they shall carry out their tasks.*
- b) *The location and means of getting in touch with provincial and national labour authorities, and with the trade union with legal union status that covers the activity and/or of which he/she is a member.*
- c) *The way in which the salary, other wage components and payment periods are established.*

³⁰ In paragraph 1.c) of chapter IV, the guidelines recommend contributing to the elimination of all forms of forced or compulsory labour.

³¹ This core labour right is based on Convention 29 of 1930 of the International Labour Organization, which was ratified by Argentina in 1950, which requests that governments “suppress the use of forced or compulsory labour in all its forms within the shortest possible period,” and on Convention 105 of 1957, ratified by Argentina in 1960, which requests them to “suppress and not to make use of any form of forced or compulsory labour” for certain enumerated purposes (for example, as a means of political coercion or labour discipline), and “to take effective measures to secure the immediate and complete abolition of forced or compulsory labour”.

³² <http://www.ilo.org/declaration/principles/eliminationofchildlabour/lang--en/index.htm>

³³ The duty of enterprises to keep their employees informed is related to Paragraph 6 of the Guidelines, which establishes that enterprises, in considering changes in their operations which would have major effects upon the livelihood of their workers, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.

Paragraph 6 recommends that enterprises provide reasonable notice to the representatives of workers and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their workers, in particular the closure of an entity involving collective layoffs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in the industrial relations laws and practices of adhering countries to these Guidelines, although the approaches taken to ensuring an opportunity for meaningful co-operation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision to the interested parties. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful co-operation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented.

d) *The Working Risks Insurance (ART in Argentina) where the employer is affiliated, and the ways of reaching it in case of an accident.*

All these facts are indicative of forced labour, because the ILO considers that if a worker is not able to leave the working place voluntarily, labour is forced. If it can also be considered that identity documents were kept, leaving was forbidden and threats of not paying the corresponding salary were made, then we are in front of a forced or compulsory labour situation.

Some temporary workers who were found at the El Algarrobo plot knew the kind of work they were going to do, and the living and working conditions they had to suffer if they were to receive their much needed economic resources. Others were not conscious of this. In the case of those who had a sense of what these conditions were like, agreeing to them is a product of such means as the abuse of authority, their vulnerability, and being awarded or promised payments or benefits in order to get their approval. In this type of case, it is of no value that the victim mentions that he/she was taken to and received in a certain place "of his/her own free will," because the law has decided to punish perpetrators of these acts even in these cases, if they have resorted to a will which has been compromised previously. A recurrent method consists of offering the victim an appealing opportunity. The employer's offer of a supposedly dignified job opportunity for an amount of money that the victim would not be able to get in his/her surroundings or that, given his/her situation, is tempting.

The ILO Declaration on Fundamental Principles and Rights at Work obliges member States to eliminate forced labour. A work relationship should be freely chosen and free from threats. Countries may have definitions of forced labour that are more comprehensive than the ILO's. The ILO sets minimum standards that fix the bottom line below which individual countries should not fall, but they can naturally achieve higher standards of protection of workers.

In terms of local legislation, **Article 25** of Resolution 11/2011 that regulates Law 22.248 establishes: "*EFFECTIVE GUARANTEES THAT SHOULD BE ASSURED TO THE WORKERS. Employers must effectively guarantee their workers:*

a) *Freedom of movement and the chance to enter and leave once the working day has ended.*

b) *A dignified and respectful treatment.*

c) *The preservation of health and an adequate prevention of risks that might affect it".*

This clearly relates to the transportation of workers from one place to another, what's usually the case with migrant workers is that they are constantly moved from one field to another, from one city to another and even from one province to another, even without their knowing where they are being taken. This violation of the duty of enterprises to inform their employees implies a violation of the consent to, and free choice for, a job and its conditions. This generates a sphere of uncertainty, which is considered as violence, because the families of these workers also ignore where they are, and this clandestine situation makes it difficult to exercise due monitoring and control.

This is why the Resolution regulates this issue in **Article 15**, stating that employers must provide the means of transportation needed to move the workers, respecting the safety requirements stipulated by current laws. It also establishes that workers may not be transported in trucks, and that the vehicles used must have been built for the purpose of transporting people. It also regulates that the maximum amount of workers who can be transported in each vehicle depends on the amount of fixed seats provided, regardless of the distance that must be covered.

NIDERA has violated this Guideline, in view of the facts mentioned concerning the variety of persuasive disciplinary practices employed that aimed at keeping the workers at the working place, reducing their possibilities for fleeing the working place if they wanted to and at making them accept these conditions in submission.

B.5) Hire employees without discriminating on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.³⁴

The principle of non-discrimination in employment or occupation applies to conditions related to hiring, firing, wages, promotion, training and retirement. Included in the list are forms of discrimination that are forbidden, which ILO Convention 111 of 1958 enumerates, thereby considering any distinction, exclusion or preference on the grounds of these motives as contravening the convention. The Guidelines clearly mention that this list is not exhaustive.³⁵

Discrimination often traps people in low-paid, “informal” economy jobs. The victims of this kind of discrimination are often stucked in the worst jobs, and denied benefits, social protection, training, capital, land or credit. The failure to eradicate discrimination helps perpetuate poverty. A report published by the ILO concerning discrimination at work affirms that "eliminating discrimination is indispensable to any viable strategy for poverty reduction and sustainable economic development".³⁶

Everyone gains from eliminating discrimination at work - individuals, enterprises and society at large.

The National Institute against Discrimination, Xenophobia and Racism (INADI) intervened in the present case. In the website of Maria Rachid, who was Vice-president of INADI at the time, it is stated that she met the chief prosecutor to discuss some actions they would jointly take.³⁷ INADI has also manifested itself regarding this case, stating in its legal Official Report on the case, which can be found in Annex II of this Instance, that it has established that discrimination indeed occurred.

B.6) Ensure health and safety in their operations by taking all the necessary steps.³⁸

The reference to occupational health and safety implies that multinational enterprises are expected to follow prevailing regulatory standards and industry norms to minimise the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment.

This is about encouraging enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even where this may not be formally required by existing regulations in countries in which they operate. It also encourages enterprises to respect workers' ability to remove themselves from a work situation when there is reasonable justification to believe that it presents an imminent and serious risk to health or safety. Reflecting their importance and complementarities among related recommendations, health and safety concerns are echoed elsewhere in the Guidelines, most notably in chapters on consumer interests and the environment.

NIDERA violates these recommendations, since according to the case, workers lived in sheet metal trailers where up to 18 of them slept in overcrowded conditions.³⁹ They worked directly under the sun, and had no electricity nor light or drinking water, except for what they got in buckets.

³⁴ In paragraph 1.d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

³⁵ <http://www.oecd.org/dataoecd/21/20/16975360.pdf>

³⁶ http://www.ilo.org/wow/Articles/lang--en/WCMS_081324/index.htm

³⁷ Go to: <http://www.mariarachid.com.ar/p/prensa.html>

³⁸ Guidelines paragraph 4 b) Take adequate steps to ensure occupational health and safety in their operations.

³⁹ <http://www.pagina12.com.ar/diario/elpais/1-159715-2011-01-02.html>

National Agricultural Work Law No. 22.248 regulates the living and food, and health and safety conditions. Resolution 11/2011 regulates the law by establishing the minimum requirements that working and housing conditions for workers must meet.⁴⁰

Concerning mobile phones and communication, the employer has the obligation to facilitate mobile phones while respecting the conditions and requirements established in **Article 7**: “The employer must supply one active mobile phone per 15 (fifteen) workers, and each one of them may make 1 (one) call every day, free of charge. Any other calls workers make shall be charged according to the prices determined by the telephone service provider. In case the facilities are located in an area with no wireless communication, the employer must hire a phone and/or radio service that guarantees the minimum allowed use per worker mentioned above. The employer must make sure that communication is effective in each camp, and that it shall be available TWENTY FOUR (24) hours each day, to allow communication in cases of emergency and/or force majeure”.

The characteristics and minimum conditions that must be met by the lavatory and sanitary installations are established in **Article 3**⁴¹. Regarding Doctor Caraballo's observation of an

⁴⁰ For more information, see Resolution 11/2011

Art. 2, regarding the minimum requirements that housing must meet: *In case the employment contract stipulates or requires the provision of housing as per the conditions mentioned before, during the entire period that it entails, or a part thereof, housing must be built with such materials as to ensure adequate standards of comfort and habitability, and conditions of safety, health, shelter, and natural and artificial light. Rooms must also be provided with specific characteristics, and taking into account the number of persons who shall be housed. These should meet the following minimum requirements:*

- a) *The minimum allowed height of the residence may not be lower than two metres sixty centimetres (2,60 m).*
- b) *The length of the residence may vary depending on the amount of workers who must be housed.*
- c) *Each of the rooms may house a maximum of four (4) workers in fixed camps or housing structures, and up to a maximum of eight (8) workers in mobile camps or housing structures.*
- d) *The residence shall have one window per bed.*
- e) *The minimum volume of air in the residence shall be 15 m³ per person, while in the case of renovations, this shall be 12 m³ per person per hour.*
- f) *Adequate natural and artificial illumination must be provided.*
- g) *The walls and roofs of residences shall be lined with thermal insulation, according to the weather conditions in the region where these are built.*
- h) *Flooring shall be made of wood with no spaces in between, of smooth cement, or of any other insulating material for floors that guarantees proper movement and is easy to clean.*
- i) *One must be able to close any opening facing the exterior well enough to avoid water and air filtration.*
- j) *Whenever both female and male workers are hired, the residences must adequately meet the specific needs of both sexes.*
- k) *In case families are hired, an individual dwelling must be assigned to each family group.*

Regarding electric power in camps, **Art. 4** stipulates: *Dwellings must have electric power twenty four (24) hours a day. The technical and safety characteristics must follow current relevant standards, and must minimally meet the following conditions:*

- a) *If electric power is supplied through power lines, a section panel that includes a breaker and grounding system must be installed.*
- b) *If it is supplied through a generator, the same conditions mentioned above also apply.*
- c) *If electric power is fed through solar batteries, a maximum of 50 V may be used.*

In case the residences are mobile housing structures or dwellings, these should comply with the general parameters laid down above.

In **Article 16**, this resolution adds a number of specific duties for employers. These include that the employer must take all necessary measures to keep workers' dwellings free of undergrowth and brush in the immediate surroundings, and to ensure proper control of sources of fire and electric risks, as well as of the risk of collapse and other specific risks to which these dwellings might be exposed.

In the areas and spaces where temporary residences are built, lightning arresters must be placed in such a way that they cover the entire surface of the camp. Such has been established in **Article 6** of the resolution.

Concerning drinking water, the resolution has determined in **Article 10** that the employer must supply water that is suitable for human use and consumption, in sufficient quantity and of appropriate quality. This obligation includes its supply both to the workers' residences as to the places where the fulfilment of tasks has been planned.

⁴¹ *Lavatories shall consist of:*

- a) *One (1) shower for every four (4) persons, with hot and cold water*
- b) *One (1) toilet for every four (4) workers*
- c) *One (1) urinal for every four (4) workers*
- d) *One (1) washbasin for every four (4) workers*
- e) *Septic chamber*
- f) *Atmospheric tanks —placed horizontally*
- g) *One (1) sink for washing clothes*

Adequate lavatories must be installed, and they must be separate from each other according to sex, in sufficient amounts that are proportional to the number of people who work there.

adolescent carrying water for a bath in a receptacle reserved for agrotoxic material, which was included in the narration of the facts, **Article 11** stipulates: “Any receptacle that contains or has contained chemical or biological substances must be stored in places which have been properly signposted, located at a proper distance from personnel’s sleeping quarters, in order to prevent any health hazard from occurring (...). Dangerous waste must be treated in conformity with current rules and standards, and following resolutions on the matter dictated by the NATIONAL AGRICULTURAL WORK COMMISSION, in consultation with competent bodies”.

The employer must observe legal and regulatory provisions regarding occupational health and safety.

Article 8 establishes all matters relative to food, mentioning that it should be healthy, sufficient, adequate, and varied, according to the geographical area and to the activity being carried out, and that the employer is in charge of supplying it. Whenever it is impossible for workers to purchase products for their additional intake, given the distance that separates them from supply centres or difficulties in transportation, the employer must provide these under the conditions stipulated in subsequent Article 9. Furthermore, **Article 5**⁴² defines the minimum conditions that the kitchen should meet, assuming there is one at the camp. Concerning the exorbitant prices charged for food, **Article 9** makes it very clear that it forbids employers to deduct, withhold or compensate anything from the salaries: “The employer shall be able to sell goods to employees, but under no circumstance will the employer be able to withhold, discount, deduct or compensate the value of these goods directly from the salary. In order to be authorised to sell, the following conditions must be met:

a) the worker must request the purchase voluntarily;

b) the price of goods produced in the facilities must be the same as or lower than the going price in the region, and an agreement must be made concerning a special bonus for the worker that is above the price; and

c) the prices of the rest of the goods must be reasonable, in comparison to market prices in the nearest town or village”.

NIDERA violated this Guideline because it supplied food in bad conditions or at exorbitant prices, lavatories, sanitary installations and living conditions were either lacking or were deficient relative to regulations, and it didn’t provide communication means as dictated by current law.

ANNEX II

Sources: Documents

1. Copy of the Report (Dictamen) of INADI 007/11 on the NIDERA S.A. case. Spanish version.
2. Pictures that illustrate the working fields and working conditions, provided by UATRE

Sources: Norms and standards

- Slavery Convention of 1926. League of Nations
- ILO Forced Labour Convention No. 29, 1930
- United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and

⁴² The kitchen should meet all the necessary health, sanitary and cleansing requirements to ensure the quality of the food provided to the workers. The facilities shall meet the following conditions:

- a) Stoves (with a pit for pans and capacity for open fire)
- b) Be equipped with countertops with a faucet (stainless steel)
- c) Supply drinking water, both warm and cold
- d) Refrigerators or a freezer
- e) Pantry that is closed off with iron mesh
- f) Can be entirely closed off, with windows and two access doors
- g) Proper illumination and ventilation as necessary
- h) Ensure the availability of plates, cutlery and glasses for those who need them
- i) Each camp and/or housing structure shall have enough garbage containers located far away from the food

Institutions and Practices Similar to Slavery, 1956

- OECD Guidelines for Multinational Enterprises
- United Nations Policy Framework on Human Rights and Transnational Corporations and other Business Enterprises to 'Protect, Respect and Remedy'
- Guiding Principles for the Framework Policy
- Bill 22.248 concerning agricultural labour and Regulatory Decree 11/2011

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- NIDERA S.A. www.nidera.com
- Business and Human Rights Report Centre www.business-humanrights.org
- CEDHA www.cedha.org.ar
- INCASUR www.incasur.org
- SOMO www.somo.nl
- Asociación Semilleros Argentina (Argentine Association of the Seeds Industry) www.asa.org.ar/vertex_clipping.asp?id=6823
- Senado de la Nación Argentina (Argentinean Nation Senate) www.senado.gov.ar
- International Labour Organization www.ilo.org
- OECD www.oecd.org
- María Rachid (INADI) www.mariarachid.com.ar/p/prensa.html

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