



**Ethical Trade: Human Rights Watch's Correspondence with  
Private Actors in Connection with**

**“Ripe with Abuse: Human Rights Conditions in  
South Africa's Fruit and Wine Industries”**

August 23, 2011

## Table of Contents

Human Rights Watch Letter to WM Morrison Supermarkets .....	1
Response from WM Morrison Supermarkets, August 5, 2011 .....	4
Human Rights Watch Letter to SPAR South Africa Ltd .....	6
Response from SPAR Group Ltd, August 5, 2011 .....	8
Human Rights Watch Letter to Fruit South Africa .....	9
Response from Fruit South Africa, August 8, 2011 .....	11
Human Rights Watch Letter to Agri South Africa .....	18
Response from AgriSA, August 10, 2011 .....	20
Human Rights Watch Letter to Agri Wes-Cape .....	23
Response from Agri Wes-Cape, August 10, 2011 .....	25
Human Rights Watch Letter to Waitrose Ltd .....	28
Response from Waitrose Ltd, August 10, 2011 .....	31
John Lewis Partnership Responsible Sourcing Code of Practice .....	35
Cape Agri Employers' Organization comments, August 11, 2011, in response to Human Rights Watch questions .....	42
Human Rights Watch Letter to Marks and Spencer Group PLC .....	45
Response from Marks and Spencer PLC, August 11, 2011 .....	48
Human Rights Watch Letter to J. Sainsbury PLC .....	52
Response from Sainsbury's, August 11, 2011 .....	55
Human Rights Watch Letter to Tesco PLC .....	57
Response from Tesco Stores Ltd, August 12, 2011 .....	59
Human Rights Watch Letter to Fairtrade International .....	63
Response from Fairtrade International, August 15, 2011 .....	66

## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Email: [hrwnyc@hrw.org](mailto:hrwnyc@hrw.org)

### AFRICA DIVISION

Daniel Bekele, *Executive Director*  
Rona Peligal, *Deputy Director*  
Aloys Habimana, *Deputy Director*  
Jon Elliott, *Advocacy Director*  
Siphokazi Mthathi, *South Africa Director*  
Maria Burnett, *Senior Researcher*  
Kaitlin Cordes, *Fellow*  
Corinne Dufka, *Senior Researcher*  
Marianna Enamoneta, *Associate*  
Neela Ghoshal, *Researcher*  
Thomas Gilchrist, *Assistant Researcher*  
Eric Guttschuss, *Researcher*  
Charlene Harry, *Research and Advocacy Assistant*  
Leslie Haskell, *Researcher*  
Jehanne Henry, *Senior Researcher*  
Lindsey Hutchison, *Associate*  
Tiseke Kasambala, *Senior Researcher*  
Leslie Lefkowitz, *Senior Researcher*  
Lianna Merner, *Associate*  
Lewis Mudge, *Researcher*  
Ben Rawlence, *Senior Researcher*  
Lisa Rimli, *Researcher*  
Ida Sawyer, *Researcher*  
Carina Tertsakian, *Senior Researcher*  
Anneke Van Woudenberg, *Senior Researcher*  
Jamie Vernaede, *Associate*  
Matthew Wells, *Researcher*

### ADVISORY COMMITTEE

Jonathan Fanton, *Chair*  
Daniel Bach  
Suliman Baldo  
Fareeda Banda  
Innocent Chukwuma  
Wendy Keys  
Samuel Murumba  
Muna Ndulo  
Louis Marie Nindorera  
Peter Rosenblum  
John Ryle  
Nick Shaxson  
Darian Swig  
Arnold Tsunga  
L. Muthoni Wanyeki  
Michela Wrong

### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*  
Emma Daly, *Communications Director*  
Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olujobi, *Deputy Program Director*  
Dinah Pokempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

July 31, 2011

Dalton Philips  
Chief Executive Officer  
WM Morrison Supermarkets PLC  
Hilmore House, Gain Lane  
Bradford, BD3 7DL  
United Kingdom

*Via e-mail: [dalton.philips@morrisonsplc.co.uk](mailto:dalton.philips@morrisonsplc.co.uk)  
And via facsimile: +44 12 7449 4831*

Dear. Mr. Philips:

Human Rights Watch is preparing a report on farmworkers and farm dwellers in the Western Cape province of South Africa, focusing primarily on workers who labor on fruit and wine farms. Human Rights Watch is an independent, international organisation that conducts investigations of human rights abuses around the world. In 2010 and 2011, we interviewed more than 260 people about the situation of farmworkers and farm dwellers in the Western Cape.

We documented a range of exploitative practices and human rights abuses, which are similar to problems that have been identified in the past by the South African Human Rights Commission and other stakeholders. These abuses include poor housing conditions on many farms; attempts to evict farm dwellers without following the legal procedure; exposure to pesticides without the proper safety equipment, as well as other health and safety problems; denial of legal benefits, including an almost complete failure to provide legally-required sick leave without a medical certificate; obstacles to union formation; and extremely low wages. The focus of our research was to assess overall conditions on farms in the Western Cape. We did not trace the supply chain for the products from each farm, and we told interviewees that we would not identify individual farms in order to reduce the risk of retaliation against them, so the report will not match stories of abuses to particular suppliers or retailers.

Given that your company purchases fruit and/or wine from the Western Cape province of South Africa, we welcome information regarding the policies your company has adopted regarding respect for workers' human rights by the suppliers from which it purchases South African wine or fruit, and particularly by the farms where those products are grown and produced. Specifically, we would appreciate your responses to the questions raised below, as well as any additional information you wish to provide on this matter.

We strive to reflect all perspectives in our research and look forward to your response. In light of our publishing schedule, we would be grateful to receive your response by 11 August, sent to Kaitlin Cordes, Fellow in the Africa Division, by email to [cordesk@hrw.org](mailto:cordesk@hrw.org), by phone to +1-212-377-9427, or by fax to +1-212-736-1300.

Thank you very much. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, reading "Daniel Bekele". The signature is fluid and cursive, with the first name "Daniel" and last name "Bekele" clearly distinguishable.

Daniel Bekele  
Executive Director, Africa Division  
Human Rights Watch

1. We are aware that your company has an Ethical Trading Code. Can you please confirm whether you apply this code to supplier farms in South Africa? If you do, can you please tell us what concrete steps your company has taken to apply this code on supplier farms in South Africa that produce fruit or grapes for wine? We would also welcome receiving copies of relevant materials.
2. Your company's 2011 corporate social responsibility report indicates that it monitors compliance with its code through a Fair Working Conditions program and that suppliers are selected for audit following a risk-assessment process. Can you please confirm whether your company actively monitors labor rights conditions on supplier farms in South Africa? If so, what percentage of farms does it monitor, how does it do so, and with what frequency?
3. How successful are your company's efforts to ensure compliance with its standards on supplier farms in South Africa? Please be specific, for example by indicating in which areas you feel that compliance is satisfactory and in which areas further improvement is needed.

4. We note that the online description of Morrisons' "Ethical Trading Code" is similar to the Ethical Trading Initiative Base Code, although the company is not a member of that initiative. In addition, the company's code is broadly aligned with standards reflected in South African law, with the notable addition of a provision on the payment of a living wage. Can you please elaborate on Morrisons' commitment to paying a living wage, including in the context of South Africa?

CC:

Steven Butts, Head of Corporate Responsibility, [steven.butts@morrisonsplc.co.uk](mailto:steven.butts@morrisonsplc.co.uk)

August 5, 2011

Dear Kaitlin,

I am replying to the letter from your colleague Daniel Bekele addressed to my colleague Dalton Philips (dated July 31).

Firstly, may I say that I fully support your focus on the region. Our experience on the whole has been positive and there appears to be on the ground an increasing network of growers that are being moved to more ethical operational standards headed by a local organisation called Fruit South Africa. That is not to say that there are no issues that should be addressed. I set out below a summary of our recent experience which I hope provides support to your research.

We have just 11 suppliers who provide produce from the region. They take produce from a number of growers. The number varies depending on seasonality and supply elsewhere in the world. Our focus is always to source from the UK where quantity and quality allow which suppresses global sourcing compared to our competitors.

Nonetheless to ensure compliance with our Ethical Trading Code (ETC), which applies globally and is incorporated into our Terms and Conditions of Purchase applying to all suppliers, we undertook a series of targeted Fair Working Conditions (FWC) audits between 2008 and 2009. This was not without some resistance from local growers groups who argued that we were duplicating efforts and adding additional cost and burden onto growers.

The result was that the audits of our suppliers on the whole were positive with 86% achieving a 'Green' rating. None of the growers surveyed received a 'Red' rating. FWC operates to work with and support suppliers to ensure compliance with our ETC (which, as you point out is based on ETI principles). The audits are much more detailed than ordinary audits of this type and reviewers in the field spend more time with employees to get a clearer picture of the real working conditions focussed on health and safety and employee working conditions.

Of the suppliers audited that were not initially satisfactory one provided more significant concerns over working conditions. Our auditors made recommendations which were closely followed up (as is the case under the FWC process) and established over a period of time real improvements. I can share with you the assessor's summary (after their initial visit to one of the Amber rated farms) which, on a non-attributable basis, I set out below.

The issues we found were, as you suggest, based around workers' living conditions but also in some instances excessive working hours and living wages. We are committed to the principles in our ETC and where there are clear breaches take action to ensure compliance. We prefer to work with suppliers and encourage change but ultimately if suppliers do not recognise the issue then we have no alternative but to de-list them providing we are acting in full compliance with legal requirements which apply in the UK and locally.

Given the nature of the responses we have not re-assessed operations on the ground but continue to work with direct suppliers and engage with local organisations in the region to keep up pressure to develop (or maintain) standards.

I would be most grateful if you would share the findings of your report which I will feed back to colleagues here to ensure we maintain appropriate standards in our supply chain.

If you have any specific details in relation to suppliers or particular farms please let me know.

Kind regards,

**Steven Butts**

Head of Corporate Responsibility  
Wm. Morrison Supermarkets PLC

## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Email: [hrwnyc@hrw.org](mailto:hrwnyc@hrw.org)

### AFRICA DIVISION

Daniel Bekele, *Executive Director*  
Rona Peligal, *Deputy Director*  
Aloys Habimana, *Deputy Director*  
Jon Elliott, *Advocacy Director*  
Siphokazi Mthathi, *South Africa Director*  
Maria Burnett, *Senior Researcher*  
Kaitlin Cordes, *Fellow*  
Corinne Dufka, *Senior Researcher*  
Marianna Enamoneta, *Associate*  
Neela Ghoshal, *Researcher*  
Thomas Gilchrist, *Assistant Researcher*  
Eric Guttschuss, *Researcher*  
Charlene Harry, *Research and Advocacy Assistant*  
Leslie Haskell, *Researcher*  
Jehanne Henry, *Senior Researcher*  
Lindsey Hutchison, *Associate*  
Tiseke Kasambala, *Senior Researcher*  
Leslie Lefkowitz, *Senior Researcher*  
Lianna Merner, *Associate*  
Lewis Mudge, *Researcher*  
Ben Rawlence, *Senior Researcher*  
Lisa Rimli, *Researcher*  
Ida Sawyer, *Researcher*  
Carina Tertsakian, *Senior Researcher*  
Anneke Van Woudenberg, *Senior Researcher*  
Jamie Vernaede, *Associate*  
Matthew Wells, *Researcher*

### ADVISORY COMMITTEE

Jonathan Fanton, *Chair*  
Daniel Bach  
Suliman Baldo  
Fareeda Banda  
Innocent Chukwuma  
Wendy Keys  
Samuel Murumba  
Muna Ndulo  
Louis Marie Nindorera  
Peter Rosenblum  
John Ryle  
Nick Shaxson  
Darian Swig  
Arnold Tsunga  
L. Muthoni Wanyeki  
Michela Wrong

### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*  
Emma Daly, *Communications Director*  
Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olujobi, *Deputy Program Director*  
Dinah PoKempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

July 31, 2011

Wayne Hook  
Chief Executive Officer  
SPAR South Africa Ltd  
PO Box 1589  
Pinetown  
3600 South Africa

Via e-mail: [intcontact.us@spar.co.za](mailto:intcontact.us@spar.co.za)  
And via facsimile: +27 031 719 1990

Dear Mr. Hook:

Human Rights Watch is preparing a report on farmworkers and farm dwellers in the Western Cape province of South Africa, focusing primarily on workers who labor on fruit and wine farms. Human Rights Watch is an independent, international organisation that conducts investigations of human rights abuses around the world. In 2010 and 2011, we interviewed more than 260 people about the situation of farmworkers and farm dwellers in the Western Cape.

We documented a range of exploitative practices and human rights abuses, which are similar to problems that have been identified in the past by the South African Human Rights Commission and other stakeholders. These abuses include poor housing conditions on many farms; attempts to evict farm dwellers without following the legal procedure; exposure to pesticides without the proper safety equipment, as well as other health and safety problems; denial of legal benefits, including an almost complete failure to provide legally-required sick leave without a medical certificate; obstacles to union formation; and extremely low wages. The purpose of our research was to assess overall conditions on farms in the Western Cape. We did not trace the supply chain for the products from each farm, and we told interviewees that we would not identify individual farms in order to reduce the risk of retaliation against them, so the report will not match stories of abuses to particular suppliers or retailers.

Given that your company is believed to purchase fruit and/or wine from the Western Cape, we welcome information regarding the policies and practices your company has adopted regarding respect for workers' human rights by the farms where those products are grown and produced. Specifically, we would appreciate your responses to the questions raised below, as well as any additional information you wish to provide on this matter.



We strive to reflect all perspectives in our research and look forward to your response. In light of our publishing schedule, we would be grateful to receive your response by 11 August, sent to Kaitlin Cordes, Fellow in the Africa Division, by email to [cordesk@hrw.org](mailto:cordesk@hrw.org), by phone to +1-212-377-9427, or by fax to +1-212-736-1300.

Thank you very much for your response. I look forward to hearing from you.

Sincerely,



Daniel Bekele  
Executive Director, Africa Division  
Human Rights Watch

1. What steps does your company take to ensure compliance with South African law on farms in your company's supply chain that produce fruit or grapes for wine?
2. Does your company have any policies or measures in place that aim to meet a higher standard on supplier farms than that which is required by South African law? If so, please describe these. We would also welcome receiving copies of relevant materials.
3. Does your company monitor labor rights conditions on supplier farms? If so, how does it do so and with what frequency? For example, if your company undertakes audits, who conducts them, how often are they undertaken, and against which standards are farms measured?
4. How does your company handle cases when it learns something is amiss on supplier farms? Please provide concrete examples, e.g., whether you have undertaken special trainings or cut off business relationships with any suppliers due to concerns about conditions on their farms.
5. How successful are your company's efforts to ensure compliance with the law or other standards on supplier farms? Please be specific, for example by indicating in which areas you feel that compliance is satisfactory and in which areas further improvement is needed.
6. To what extent are your company's purchases of products shaped by ethical trade considerations or audit findings?

CC: Mrs. Thuli Tabudi, Group HR Executive, [thuli.tabudi@spar.co.za](mailto:thuli.tabudi@spar.co.za);  
[Lindelwa.mdubeki@spar.co.za](mailto:Lindelwa.mdubeki@spar.co.za)

**THE SPAR GROUP LTD**

**ETHICAL PROCUREMENT POLICY AND PRACTICES**

**August 5 2011**

SPAR South Africa's policy is to procure Fresh Produce only from the best possible growers. Criteria for selection include the range of products offered , quality standards and practices, food safety standards and adherence to SA Labour legislation. We also encourage all of our growers to adopt sustainable farming practices to improve yield, quality, and profitability and have a positive impact on the environment.

SPAR's minimum acceptable food safety standard for growers is GLOBALG.A.P , which, besides assessing good farming practices, also assesses farm worker welfare. Their compliance with the standard is audited by independent, suitably certified, third party auditors on an annual basis. We are also in the process of implementing GRASP, the GLOBALG.A.P Risk Assessment on Social Practice, which is a more in-depth assessment of worker welfare, as a bolt-on module to the existing GLOBALG.A.P certification.

SPAR has also aligned itself with the initiative currently being developed and implemented by Colleen Chennells of the Fruit SA Ethical Trade Programme. Their project includes the development and implementation of an Ethical Trade Handbook and Website, a training module and a Grievance Mechanism.

Members of SPAR's Fresh Produce Procurement team consisting of qualified, Food Technologists and Food Scientists and Agronomists as well as Senior Management visit farmers premises at least once a month during which observations are made of the standards of amenities and labour practices.

Should SPAR become aware of exploitative practices and human rights abuses by any of our contracted growers we will take steps to remedy the situation and, should that not prove successful, we will terminate the supply contract.

## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Email: [hrwnyc@hrw.org](mailto:hrwnyc@hrw.org)

### AFRICA DIVISION

Daniel Bekele, *Executive Director*  
Rona Peligal, *Deputy Director*  
Aloys Habimana, *Deputy Director*  
Jon Elliott, *Advocacy Director*  
Siphokazi Mthathi, *South Africa Director*  
Maria Burnett, *Senior Researcher*  
Kaitlin Cordes, *Fellow*  
Corinne Dufka, *Senior Researcher*  
Marianna Enamoneta, *Associate*  
Neela Ghoshal, *Researcher*  
Thomas Gilchrist, *Assistant Researcher*  
Eric Guttschuss, *Researcher*  
Charlene Harry, *Research and Advocacy Assistant*  
Leslie Haskell, *Researcher*  
Jehanne Henry, *Senior Researcher*  
Lindsey Hutchison, *Associate*  
Tiseke Kasambala, *Senior Researcher*  
Leslie Lefkowitz, *Senior Researcher*  
Lianna Merner, *Associate*  
Lewis Mudge, *Researcher*  
Ben Rawlence, *Senior Researcher*  
Lisa Rimli, *Researcher*  
Ida Sawyer, *Researcher*  
Carina Tertsakian, *Senior Researcher*  
Anneke Van Woudenberg, *Senior Researcher*  
Jamie Vernaede, *Associate*  
Matthew Wells, *Researcher*

### ADVISORY COMMITTEE

Jonathan Fanton, *Chair*  
Daniel Bach  
Suliman Baldo  
Fareeda Banda  
Innocent Chukwuma  
Wendy Keys  
Samuel Murumba  
Muna Ndulo  
Louis Marie Nindorera  
Peter Rosenblum  
John Ryle  
Nick Shaxson  
Darian Swig  
Arnold Tsunga  
L. Muthoni Wanyeki  
Michela Wrong

### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*  
Emma Daly, *Communications Director*  
Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olujobi, *Deputy Program Director*  
Dinah PoKempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

July 29, 2011

Colleen Chennells  
Ethical Trade National Co-ordinator  
Fruit South Africa  
Private Bag x5  
Century City, 7446  
South Africa

Via e-mail: [chennell@iafrica.com](mailto:chennell@iafrica.com)  
And via facsimile: +27 86 541 1646

Dear Colleen:

As you know, Human Rights Watch is preparing a report on farmworkers and farm dwellers in the Western Cape province of South Africa. Human Rights Watch is an independent, international organisation that conducts investigations of human rights abuses around the world. In 2010 and 2011, we interviewed more than 260 people about the situation of farmworkers and farm dwellers in the Western Cape. We documented a range of exploitative practices and human rights abuses, which are similar to problems that have been identified in the past by the South African Human Rights Commission and other stakeholders. These abuses include poor housing conditions on many farms; attempts to evict farm dwellers without following the legal procedure; exposure to pesticides without the proper safety equipment, as well as other health and safety problems; denial of legal benefits, including an almost complete failure to provide legally-required sick leave without a medical certificate; obstacles to union formation; and extremely low wages. The focus of our research was to assess overall conditions on farms in the Western Cape. We did not trace the supply chain for the products from each farm, and we told interviewees that we would not identify individual farms in order to reduce the risk of retaliation against them, so the report will not match stories of abuses to particular farms.

We intend to describe briefly the recent efforts of Fruit South Africa regarding the treatment of farmworkers in the Western Cape, and the impact this has. Given Fruit South Africa's efforts to address conditions on farms, we welcome information regarding the steps FSA has taken to ensure greater respect for farmworkers' and farm dwellers' human rights. Specifically, we would appreciate your responses to the questions raised below, as well as any additional information you wish to provide on this matter. We already have reviewed the preliminary documents you shared on FSA's Ethical Trade Programme, including the Frequently Asked Questions document.

We strive to reflect all perspectives in our research and look forward to your response. In light of our publishing schedule, we would be grateful to receive your response by 11 August, sent to Kaitlin Cordes, Fellow in the Africa Division, by email to [cordesk@hrw.org](mailto:cordesk@hrw.org), by phone to +1-212-377-9427, or by fax to +1-212-736-1300.

Thank you very much for your response, as well as for taking the time to meet with Human Rights Watch in December. I look forward to hearing from you.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Daniel Bekele', with a stylized, cursive script.

Daniel Bekele  
Executive Director, Africa Division  
Human Rights Watch

1. It appears that FSA, for the purpose of its ethical trade programme, defines ethical trade as that which satisfies existing legal mandates. Can you please clarify whether FSA's ethical trade programme encourages farmers to provide greater protections or benefits than required by South African law?
2. When we spoke, the FSA Ethical Trade Programme was under development. Can you please clarify whether FSA has officially launched its ethical trade programme and when it did so?
3. We are particularly interested in concrete plans to audit farms against standards and would welcome details. Specifically, when does FSA plan to commence audits of farms? How does it plan to undertake such audits and how often? What procedures are in place to handle cases when audits uncover problems on farms?
4. We would welcome information on any other efforts by FSA to improve conditions for farmworkers. For example, has FSA begun any awareness-raising, training, or capacity-building programs?



**A Response from Fruit South Africa**

**to**

**Human Rights Watch**

**on**

**Conditions on Farms in the Western Cape**

**August 8 2011**

HRW has asked FSA to respond to specific questions in relation to a report on conditions on farms in the Western Cape.

FSA would like to make the following broad comments in addition to the responses made in the original interview with HRW and to those following the questions below.

### **1. Principles of the fruit industry ethical trade programme**

The FSA ethical trade programme is underpinned by a number of principles including:

- A converged approach to ethical auditing where a single audit can address multiple requirements and reduce duplication of audits (and their respective costs);
- Subscribing to a monitoring system that includes third party ethical auditing and which is aligned to internationally recognized standards using the Global Social Compliance Programme reference tools as the platform;
- A shift in focus away from audits, where auditing is a means to an end to a process where the value lies in being able to identify problems and needs;
- Audits as not a pass-fail exercise or test; the focus is on support for growers to ensure legal compliance;
- An emphasis on continuous improvement of labour conditions on fruit farms, so that where there is a willingness to improve, growers are given time, opportunity and support to implement these changes;
- A pro-active approach to providing assurance to stakeholders by providing an informed and robust response to issues as they appear;
- A focus on support for growers and continuous improvement that includes the provision of ethical trade awareness-raising and training programmes, targeted training and development in areas that have been identified as a need.

### **2. Ethical Trade Programme - Work in progress**

It is important to note that the industry's ethical trade programme is a work in progress. The standard and the framework of the programme will be in place by October but will over time adapt to accommodate varying needs. Its intention is to work closely with stakeholders in its long-term development.

### **3. Farm inspections**

The industry cannot play an inspectorate role on farms - this is the function of the Department of Labour. The Department should deal with contraventions of the law in an appropriate manner. However, where the fruit industry is made aware of issues on specific sites it will investigate these in an open and transparent manner. Where cases have been put on the industry desk in the past, interventions have proved successful. For example, a case involving a complete breakdown in the working relationship between a union and management was brought to the attention of the industry. The industry helped to support a mediation process between the parties and provided funding for a 2-day, dispute-resolution training programme to be implemented through the CCMA.

Unfortunately, where issues are spelt out in general terms - i.e. culprits' names are not given - it means a targeted response is not possible, and there is greater reliance on general awareness-raising and training.

The industry is developing a mutually beneficial relationship with national and regional representatives of the Department of Labour in order to look at ways of jointly addressing issues on farms. For example, in the Eastern Cape meetings have been held with NGOs, workers and Department of Labour representatives where a proposal is under discussion to establish a forum to address issues concerning non-compliances on fruit farms.

#### **4. Department of Agriculture (Western Cape) Ethical Trade Working Group**

The industry is working closely with the Western Cape Department of Agriculture to establish an Ethical Trade Working Group, which will develop a 5-year Implementation Plan for an ethical trade programme on farms in the Western Cape. The target will include small-scale growers and ensure that the ethical programme also extends to them.

#### **5. Reports**

While Reports such as the HRW Report no doubt play an important role in raising awareness of issues on farms, it is important for FSA to know what HRW intends as an outcome(s) of this report. The fruit industry would be willing to work together with stakeholders to address any issues and a way forward constructively and within the context of its ethical and other programmes. *Unfortunately general allegations of poor working conditions negatively impact on the entire industry, regardless of individual ethical compliance. We need to find ways – beyond the media and general reports - to address the issues and to know, from the fruit industry perspective at least, which areas and issues require attention.*

#### **Questions 1:**

*It appears that FSA, for the purpose of its ethical trade programme, defines ethical trade as that which satisfies existing legal mandates. Can you please clarify whether FSA's ethical trade programme encourages farmers to provide greater protection or benefits than that required by SA law?*

As signatories to relevant ILO conventions, it has been incumbent on SA to include these principles into its own labour laws. The fruit industry therefore works off the premise that our labour laws meet global standards and are sufficiently robust. In line with this thinking, the ethical programme aims to drive full compliance with the law by all its growers. The fruit industry does however also support and promote best practice as part of its broader ethical programme and this can be seen in:

- *The Ethical Trade Handbook* which focuses on what the law says and what is best practice;

- *The Best Practice Guidelines for Worker Accommodation on SA Fruit farms* (currently being developed);
- *The Workplace Communication Toolkit* (grievance mechanism, disciplinary procedures developed as part of the UN Ruggie project);
- *The labour broker protocol*.

There are hundreds of farms in the fruit industry that go way beyond what the law requires and can be used to demonstrate what 'good' looks like.

### **Question 2:**

*When we spoke, the FSA Ethical Trade Programme was under development. Can you please clarify whether FSA has officially launched its ethical trade programme and when it did so?*

In November 2008, FSA officially launched the Ethical trade programme in the SA fruit industry. All five sectors financed an ethical trade coordinator who bedded down the principles and goals on which the whole Ethical trade portfolio rested. The programme – as described in the Q&A and interview – involved ongoing monitoring (third party ethical auditing), responding to trends and data reflected in audit results with appropriate awareness-raising and training programmes, as well as engagement and communication with stakeholders. The support programmes and resources identified under Question 4 below reflect the work that has been done in this portfolio since 2009.

Since 2009 FSA has been engaging with various international and local retailers, in support of a converged ethical programme that responds to all requirements but which is pro-active and South African driven. Towards this end FSA engaged with the Global Social Compliance Programme (GSCP) to support harmonisation of the various ethical codes and create a single standard for the industry that will be robust, aligned to international standards and satisfy all retailers. The GSCP has created a set of reference tools that can be adopted by an industry such as FSA as a platform for its own programme. The GSCP reference Code is a convergence of all requirements contained in various international Codes (ETI Base Code, BSCI, SA 8000 and other private standards) into one reference Code. FSA is currently aligning the GSCP reference Code to SA law and conducting trial audits against this Standard. The final Draft Standard as well as the ethical trade programme framework will then be sent to stakeholders for comment. In October 2011 the Standard will be submitted to the GSCP for equivalence which should take approximately 3 months. At the same time, in October 2011, FSA plans to launch the new Standard and framework guidelines.

We must emphasize that this process has necessarily taken time in order to ensure that we have the full endorsement from stakeholders in the industry. It has to date included holding industry workshops and attending regional farm meetings, farm visits, giving input at conferences, and consultations with retailers and other stakeholders.

### **Question 3:**

*We are particularly interested in concrete plans to audit farms against standards and would welcome details. Specifically, when does FSA plan to commence audits of farms? How does*



*it plan to undertake such audits and how often? What procedures are in place to handle cases when audits uncover problems on farms?*

There have been over 600 third party ethical audits conducted on fruit farms to date. These involve four man-day audits, development of corrective action plans, downloading reports onto the Sedex data system and verifications. These audits have largely been conducted against the ETI Base Code and will continue until such time as the SA Standard has gone through the GSCP Equivalence process (as mentioned under question 2), hopefully in February 2012. The auditing methodology of the future programme will also be based on the relevant GSCP reference tool and auditing bodies will be required to go through their own equivalence process with the GSCP in order to be recognized to do ethical audits.

Ethical audits will be conducted on a 5-year frequency basis (with non-compliances to be resolved within a year failing which a second audit will take place) with various other measures in place to monitor improvement in between audits. A risk-rating system will be developed to define audit frequency per site. Audit results can be viewed by retailers connected to Sedex, and verification of the corrective actions will be conducted by independent auditors. Fruit SA hopes in the future to have its own database system which will be used to capture self-assessment questionnaires and audit results thereby assisting with tracking problem areas, issues and trends. Further measures to monitor continuous improvement include an annual self-assessment questionnaire, and unannounced and semi-announced audits.

**Question 4:**

*We would welcome information on any other efforts by FSA to improve conditions for farm workers, for example, has FSA begun any awareness-raising, training or capacity-building programmes?*

The FSA Ethical Trade Programme focuses on two areas in respect of the above:

1. Awareness-raising and training on ethical trade
2. Capacity-building resources in response to needs reflected in audits

Some programmes are complete while others are in the process of development. Most have been developed in collaboration with industry stakeholders, including retailers.

**A. Awareness-raising and training on ethical trade**

- *Ethical Trade Training* - In the past two years, at least 60 industry ethical trade training sessions (reaching approximately 750 business units) have been held providing an introduction to ethical trade, the ethical audit process and contents of the ethical code.
- *Ethical Trade Handbook* (English and Afrikaans) – A guide to the law and best practice on farms and has been sent to over 4000 fruit producers throughout SA.

- *Ethical Trade Module* – A stand-alone module for ethical ‘champions’ to provide in-house information sessions. It builds understanding of ethical trade with practical guidelines on how to use the Handbook.
- Ethical Trade Training programme for *Department of Agriculture Extension officers* to encompass small-scale growers.
- *Ethical Trade website* – This provides information on the FSA programme, copies of the Handbook and other support materials.

## **B. Supporting toolkits for capacity-building and development**

The following ‘toolkits’ were developed in response to needs reflected in audits. All materials and tools will be made available on the website.

- *Best Practice Guidelines for Worker Accommodation on SA Fruit farms* – this will be made available to all growers on the website.
- *Workplace Communication Toolkit* - this incorporates best practice policy and procedures for a *grievance mechanism, disciplinary procedure and workplace communication structure*. It was developed with the CCMA, Harvard University and John Ruggie, the UN Special Representative on Business and Human Rights. A one-day information session outline is currently being developed and trialed on five fruit farms. The initiative will be rolled out onto at least 20 farms before the end of 2011.
- *ETI Supervisor / Diversity programme* – This programme deals with issues around diversity, discrimination and sexual harassment. The programme, developed by the ETI (UK), is due to be rolled out onto approximately 150 fruit, flower and wine sites in 2011 / 2012 / 2013.
- *Labour broker programme* – This revolves around the development of a labour broker protocol in the form of a ‘checklist’ that growers will be required to complete as part of their own audit (to ensure their broker is fully compliant with the law). The protocol will be an addendum to the SA Standard. Industry-sponsored information sessions are due to be held in the next two months to inform brokers and producers of their legal obligations and requirements in respect of this protocol.
- *Leadership and mentorship programme* – This programme enables owners/senior managers to work with potential leaders in their organizations to create a platform for them to rise to positions of management. A year-long pilot programme involving 20 leaders and 20 mentors started in August 2011.
- *Passport to Work Programme* – This is an induction programme focusing on the rights of workers. It includes an introduction to ethical trade, the law on

hygiene, health and safety, as well as contracts of employment. In-house training is conducted using DVDs and visual materials to inform workers of their rights and responsibilities. Workers receive a card that identifies that they have received the training, and do not need to repeat this training in a specific year. This information is entered into a central database.

- *Training Register for SA Farms* – A training register listing training service providers and courses offered throughout the industry.

## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Email: [hrwnyc@hrw.org](mailto:hrwnyc@hrw.org)

### AFRICA DIVISION

Daniel Bekele, *Executive Director*  
Rona Peligal, *Deputy Director*  
Aloys Habimana, *Deputy Director*  
Jon Elliott, *Advocacy Director*  
Siphokazi Mthathi, *South Africa Director*  
Maria Burnett, *Senior Researcher*  
Kaitlin Cordes, *Fellow*  
Corinne Dufka, *Senior Researcher*  
Marianna Enamoneta, *Associate*  
Neela Ghoshal, *Researcher*  
Thomas Gilchrist, *Assistant Researcher*  
Eric Guttschuss, *Researcher*  
Charlene Harry, *Research and Advocacy Assistant*  
Leslie Haskell, *Researcher*  
Jehanne Henry, *Senior Researcher*  
Lindsey Hutchison, *Associate*  
Tiseke Kasambala, *Senior Researcher*  
Leslie Lefkowitz, *Senior Researcher*  
Lianna Merner, *Associate*  
Lewis Mudge, *Researcher*  
Ben Rawlence, *Senior Researcher*  
Lisa Rimli, *Researcher*  
Ida Sawyer, *Researcher*  
Carina Tertsakian, *Senior Researcher*  
Anneke Van Woudenberg, *Senior Researcher*  
Jamie Vernaede, *Associate*  
Matthew Wells, *Researcher*

### ADVISORY COMMITTEE

Jonathan Fanton, *Chair*  
Daniel Bach  
Suliman Baldo  
Fareeda Banda  
Innocent Chukwuma  
Wendy Keys  
Samuel Murumba  
Muna Ndulo  
Louis Marie Nindorera  
Peter Rosenblum  
John Ryle  
Nick Shaxson  
Darian Swig  
Arnold Tsunga  
L. Muthoni Wanyeki  
Michela Wrong

### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*  
Emma Daly, *Communications Director*  
Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olujobi, *Deputy Program Director*  
Dinah PoKempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

July 29, 2011

Johannes Möller  
President  
Agri South Africa  
Inkwazi Office Park,  
1249 Embankment Street  
Centurion, South Africa

Via e-mail: [agrisa@agrisa.co.za](mailto:agrisa@agrisa.co.za)  
And Facsimile: +27 12 663 3178

Dear Mr. Möller:

Human Rights Watch is preparing a report on farmworkers and farm dwellers in the Western Cape province of South Africa, focusing primarily on workers who labor on fruit and wine farms. Human Rights Watch is an independent, international organisation that conducts investigations of human rights abuses around the world. In 2010 and 2011, we interviewed more than 260 people about the situation of farmworkers and farm dwellers in the Western Cape.

We documented a range of exploitative practices and human rights abuses, which are similar to problems that have been identified in the past by the South African Human Rights Commission and other stakeholders. These abuses include poor housing conditions on many farms; attempts to evict farm dwellers without following the legal procedure; exposure to pesticides without the proper safety equipment, as well as other health and safety problems; denial of legal benefits, including an almost complete failure to provide legally-required sick leave without a medical certificate; obstacles to union formation; and extremely low wages. The purpose of our research was to assess overall conditions on farms in the Western Cape. We did not trace the supply chain for the products from each farm, and we told interviewees that we would not identify individual farms in order to reduce the risk of retaliation against them, so the report will not match stories of abuses to particular farms. We do intend to describe the agreement between Agri SA, the Department of Labour, and other parties regarding access to farms, and the impact this has, including by providing the opportunity for some farmers to try to manipulate labor inspections.

We met with Carl Opperman of Agri Wes-Cape in December and March, and have written a follow-up letter to him regarding conditions on farms in the province and the Agri Wes-Cape Code of Conduct. In addition, we met with Anton Rabe (referred via email by Elize van der Westhuizen) in December. We write to you now with some specific questions on which we would appreciate clarification. We also welcome any other information regarding

steps your association has taken to ensure greater respect for farmworkers' and farm dwellers' human rights, in the Western Cape or more generally.

We strive to reflect all perspectives in our research and look forward to your response. In light of our publishing schedule, we would be grateful to receive your response by 11 August, sent to Kaitlin Cordes, Fellow in the Africa Division, by email to [cordesk@hrw.org](mailto:cordesk@hrw.org), by phone to +1-212-377-9427, or by fax to +1-212-736-1300.

Thank you very much for your response. We appreciate your assistance with this project, and I look forward to hearing from you.

Sincerely,



Daniel Bekele  
Executive Director, Africa Division  
Human Rights Watch

1. We understand that Agri SA has entered into a protocol with the Department of Labour and other parties under which officials who are statutorily authorized to access farms, including labor inspectors, must make prior arrangements with the farmer or person in charge of the property. Could you provide a written copy of the protocol?
2. What is the rationale for this special arrangement?
3. Please comment on concerns that advance notice of labor inspections appears to contravene the spirit of the law that empowers inspectors to enter freely into places of employment and may hamper their ability to accurately assess conditions. Particularly when an inspector undertakes reactive inspections based on specific complaints, the ability to enter farms without advance notice would help ensure that the reported problems are not covered up before the inspector's arrival.
4. As mentioned, our research focused on the Western Cape but our findings are similar to what others have documented in the past in the agriculture sector generally in South Africa. We would welcome your assessment of how conditions on farms in the Western Cape compare to those on farms elsewhere in South Africa.

CC:

Anton Rabe, [anton@hortgro.co.za](mailto:anton@hortgro.co.za)

Carl Opperman, [carl@awk.co.za](mailto:carl@awk.co.za)



Blok A, Inkwazi-Gebou  
Embankmentstraat 1249  
Centurion

Block A, Inkwazi Building  
1249 Embankment Street  
Centurion

✉ Private Bag X180  
Centurion, 0046  
☎ +27+12 663 9935  
📠 +27+12 663 6318  
🌐 agrisa@agrisa.co.za

10 August 2011

Mr Daniel Bekele  
Executive Director, Africa Division  
Human Rights Watch  
1630 Connecticut Ave., N.W., Suite 500  
Washington, D.C.,  
20009

Email: [vernaej@hrw.org](mailto:vernaej@hrw.org); [cordesk@hrw.org](mailto:cordesk@hrw.org)

### **Investigation into conditions on fruit and wine farms in the Western Cape Province**

Thank you for the opportunity to comment on your questions on behalf of the commercial agricultural sector in South Africa. Please note our concerns with the general drift of your findings. We reserve our right to differ with a number of those findings and the following comments are made without prejudice.

Agri SA has developed a declaration of intent (**attached for ease of reference**) as part of the commitment that we and our members strive to meet. This declaration speaks about the social enhancement and well-being of farm workers. It must be noted that there are various kinds of farm dwellers residing on farms. Some of these people are family members of farm workers, some are ex-workers who refuse to leave the farm after their employment has been terminated and some are living on farms without the consent of the landowner. Sometimes farm dwellers cause damage to the farm, and cause trouble for other dwellers and the owner. Farm dwellers who reside on the farm with permission, such as family members of farm workers, are protected by legislation against arbitrary eviction. Contravention of the statutory provisions, e.g. eviction without a court order, is a criminal offence. Very few farmers have been prosecuted for such contraventions.

Agri SA encourages its members to comply with the law when evicting farm dwellers. This is a drawn-out and expensive process for land owners, providing substantive protection for farm dwellers. Farm dwellers who are under threat of eviction are assisted by lawyers paid by government. Farms are production units, not residential areas, and any given farm can only accommodate a limited number of farm dwellers. The situation has to be regulated in order to protect production.

The Nkuzi report, which is generally cited on the issue of evictions, is one of the only research reports on farm evictions, on a national basis. Agri SA does not agree with the findings of the Nkuzi-report, namely that thousands of people have been evicted over the last 20 odd years, of which is claimed that the vast majority of these having been illegal evictions. The report claims that only 1% of all these involved a legal process. This simply cannot be correct. It should be borne in mind that the concepts of legal and illegal evictions only came into existence in 1997 with the enactment of ESTA. The report deals with historic facts and goes back to the 1980's. We should rather deal with recent facts. Nkuzi Development Association has been making claims regarding evictions for over a

decade and the research was done by an organisation with close ties to Nkuzi. Although Agri SA was part of a reference group which was consulted on the research, we have our doubts as to the objectivity of the report. Agri SA has long been advocating independent, reliable research on this subject.

Agri SA's stance has always been that farmers should comply with the law. In our view, there is no reliable evidence to show that this is not the case, i.e. that many farmers are evicting a vast number of people illegally. We have called for objective, independent research into the controversial issue of farm evictions, and is willing to do so again. **Attached** is a recent presentation of agri SA to the Portfolio Committee on Rural Development and Land Reform in Parliament which provides some perspectives in this regard. Agri SA is currently in discussion with the International Labour Organisation and the Portfolio Committee about independent research with regards to the issue of evictions and treatment of farm workers. Such research should also look into the living conditions of farm workers and the drivers of socio economic trends.

It must further be noted that relationships on farms are complicated by the fact that people work and stay on the same premises. It usually is the responsibility of local government to provide basic services to private household. Having said that, in the case of the agricultural sector, it is expected from the farmer / employer to provide the said services to farm workers and farm dwellers residing on the farm. Housing and basic services are provided without financial or other support from government, mostly at the farmers' expense.

You requested some input on the farm access protocol. The high incidence of violence and the lack of respect for life and private property in South Africa are issues that impact negatively on community safety, stability, confidence and rural development. This problem manifests in crime, accompanied by a high level of brutality and trauma, the motives for which are often questioned. Farm attacks and general criminality are but some of the threats that have an adverse effect on individual safety and the production capacity of South African agriculture. Without a safe and prosperous farming sector, food security and rural stability in South Africa cannot be guaranteed.

Agri SA's concerns regarding the increase in rural crime, especially farm attacks and farm murders, led to a National Guideline for Farm and Smallholding Protection having been developed in 2001. One of the aspects which were included in this Guideline is the protocol for access to farms. The Guideline was co-signed by both the National Defence Force and the South African Police Service. The protocol was also acknowledged in a Vision for Labour Relations in the agricultural sector, signed by the then Minister of Labour, Membathisi Mdladlana, Agri SA, SAAPAWU, FAWU and Nafu on 29 May 2001. The intent of the Vision is not to prohibit labour inspectors from doing inspections on farms, but to contribute towards a safe environment for all residing on farms.

A farm is not a typical workplace with an office separate from the farmers' house. More often than not, the applicable administrative records are kept in the farmer's house. According to the Basic Conditions of Employment Act, item 65.1(1), regulating labour inspections:

"In order to monitor and enforce compliance with an employment law, a labour inspector may, without warrant or notice, at any reasonable time, enter—

- (a) any workplace or any other place where an employer carries on business or keeps employment records, that is not a home".

Due to the safety situation, it is usually very difficult for any person to access a farm without damaging gates or locks. Farms are usually large and farming activities could not always be conducted near the farmhouse or in the vicinity thereof. It is therefore for practical reasons that inspectors should adhere to the protocol for accessing farms.

Agri SA has stated on record various occasions that in cases where farmers transgress the law, they should be prosecuted. In the past, various allegations had been made regarding exploitative practices and abuse of human rights, with no reference to when it happened, where it happened and by whom the law was contravened. Our approach to these kinds of accusations is normally to, first and foremost, ascertain whether these allegations are true and, if so, what can be done to rectify it. In our experience, however, these kinds of allegations are most often not true. In cases where we have found the farmer at fault, we have taken steps to ensure compliance.

For Agri SA to accept that your organisation's report correctly reflects conditions and practices on farms, we would like to know how many of the 260 people interviewed were farmers and how the allegations were verified.

Lastly, Agri SA cannot comment on a comparison of conditions on farms in the Western Cape versus other parts of the country, as reliable information is not available. What we do know, is that the deciduous fruit industry, which is primarily based in the Western Cape, together with the other fruit sectors (citrus and sub-tropicals), have made excellent progress with creating awareness and transparency relating to ethical trade issues (compliance with legislation and international best practice). These practices are 3<sup>rd</sup>-party accredited and verified via on-farm audits as required by the international retail trade. This sector is also developing protocols for labour brokers with associated best practices to ensure legal compliance and to prevent abuse. Similar initiatives are forthcoming from the wine industry bodies. As such, we are confident that the major sectors in the Western Cape (fruit and wine) are working diligently, pro-actively and transparently to ensure both legal and ethical compliance by the farming community.

Kind regards



**JF VAN DER MERWE**  
**EXECUTIVE DIRECTOR**



## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Email: [hrwnyc@hrw.org](mailto:hrwnyc@hrw.org)

### AFRICA DIVISION

Daniel Bekele, *Executive Director*  
Rona Peligal, *Deputy Director*  
Aloys Habimana, *Deputy Director*  
Jon Elliott, *Advocacy Director*  
Siphokazi Mthathi, *South Africa Director*  
Maria Burnett, *Senior Researcher*  
Kaitlin Cordes, *Fellow*  
Corinne Dufka, *Senior Researcher*  
Marianna Enamoneta, *Associate*  
Neela Ghoshal, *Researcher*  
Thomas Gilchrist, *Assistant Researcher*  
Eric Guttschuss, *Researcher*  
Charlene Harry, *Research and Advocacy Assistant*  
Leslie Haskell, *Researcher*  
Jehanne Henry, *Senior Researcher*  
Lindsey Hutchison, *Associate*  
Tiseke Kasambala, *Senior Researcher*  
Leslie Lefkowitz, *Senior Researcher*  
Lianna Merner, *Associate*  
Lewis Mudge, *Researcher*  
Ben Rawlence, *Senior Researcher*  
Lisa Rimli, *Researcher*  
Ida Sawyer, *Researcher*  
Carina Tertsakian, *Senior Researcher*  
Anneke Van Woudenberg, *Senior Researcher*  
Jamie Vernaede, *Associate*  
Matthew Wells, *Researcher*

### ADVISORY COMMITTEE

Jonathan Fanton, *Chair*  
Daniel Bach  
Suliman Baldo  
Fareeda Banda  
Innocent Chukwuma  
Wendy Keys  
Samuel Murumba  
Muna Ndulo  
Louis Marie Nindorera  
Peter Rosenblum  
John Ryle  
Nick Shaxson  
Darian Swig  
Arnold Tsunga  
L. Muthoni Wanyeki  
Michela Wrong

### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*  
Emma Daly, *Communications Director*  
Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olujobi, *Deputy Program Director*  
Dinah PoKempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

July 29, 2011

Carl Opperman  
Chief Executive Officer  
Agri Wes-Cape  
Address: 227, Paarl, 7620  
Fax: 086 685 0423

Via e-mail: [carl@awk.co.za](mailto:carl@awk.co.za); and sent to Leilani le Roux: [leilani@awk.co.za](mailto:leilani@awk.co.za)

Dear Mr. Opperman:

As you know, Human Rights Watch is preparing a report on farmworkers and farm dwellers in the Western Cape province of South Africa, focusing primarily on workers who labor on fruit and wine farms. Human Rights Watch is an independent, international organisation that conducts investigations of human rights abuses around the world. In 2010 and 2011, we interviewed more than 260 people about the situation of farmworkers and farm dwellers in the Western Cape.

We documented a range of exploitative practices and human rights abuses, which are similar to problems that have been identified in the past by the South African Human Rights Commission and other stakeholders. These abuses include poor housing conditions on many farms; attempts to evict farm dwellers without following the legal procedure; exposure to pesticides without the proper safety equipment, as well as other health and safety problems; denial of legal benefits, including an almost complete failure to provide legally-required sick leave without a medical certificate; obstacles to union formation; and extremely low wages. The purpose of our research was to assess overall conditions on farms in the Western Cape. We did not trace the supply chain for the products from each farm, and we told interviewees that we would not identify individual farms in order to reduce the risk of retaliation against them, so the report will not match stories of abuses to particular farms.

We intend to describe the engagement of Agri Wes-Cape in respect of the treatment of farmworkers in the Western Cape, and the impact this has, including the wide-ranging Code of Conduct that it released in 2001, but its apparent lack of comprehensive monitoring or enforcement.

Given the importance of farmers' actions in how farmworkers and farm dwellers are treated, we welcome information regarding the steps your association has taken to ensure greater respect for farmworkers' and farm dwellers' human rights. Specifically, we would appreciate your responses to the questions raised below, as well as any additional information you wish to provide on this matter.

We strive to reflect all perspectives in our research and look forward to your response. In light of our publishing schedule, we would be grateful to receive your response by 11 August, sent to Kaitlin Cordes, Fellow in the Africa Division, by email to [cordesk@hrw.org](mailto:cordesk@hrw.org), by phone to +1-212-377-9427, or by fax to +1-212-736-1300.

Thank you very much for your response, and for meeting with Human Rights Watch in December and March. We appreciate your assistance with this project, and I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Bekele". The signature is fluid and cursive, with the first name "Daniel" and last name "Bekele" clearly distinguishable.

Daniel Bekele  
Executive Director, Africa Division  
Human Rights Watch

1. What steps has your association taken to ensure compliance with South African legislation on your members' farms? Please be specific, including by providing dates for any actions.
2. What steps has your association taken to implement and monitor the Agri Wes-Cape Code of Conduct that was created in 2001?
3. How successful are your association's efforts to ensure compliance with the law and the Code of Conduct on members' farms? Please be specific, for example by indicating in which areas you feel that compliance is satisfactory and in which areas further improvement is needed.
4. How does your association handle cases when it learns something is amiss on members' farms? Please provide concrete examples, e.g., whether you have undertaken special trainings or revoked membership due to concerns about conditions on their farms.

10 August 2011

**Mr Daniel Bekele & Jamie Michelle Vernaelde**

**Executive Director & Associate, African Division**

**HUMAN RIGHTS WATCH**

1630 Connecticut Avenue, N.W.

Suite 500

Washington, DC 20009

Tel: 202-612-4321

Fax: 202-612-4333; 202-478-2988

Email: [Jamie.Vernaelde@hrw.org](mailto:Jamie.Vernaelde@hrw.org)

Cc: Kaitlin Cordes ([cordesk@hrw.org](mailto:cordesk@hrw.org))

Good morning

**Human Rights Watch regarding South African Farmworkers**

Referring to your e-mail dated 29 July 2011 and received 1 August 2011.

We want to put on notice that the short time to react on these questions is not appreciated.

We are reserving our all rights and all comments below are made without prejudice.

1. We were under the impression that prior to the publication of the report we would be afforded an opportunity to preview the report and that the comments we made would be put in the right perspective. Especially after the time we had afforded this project and the fact that we had to change various other appointments and schedule to accommodate the consultation with you.

**CONTACT INFORMATION**

11 Market Street, Paarl, 7620 • PO Box 227, Paarl, 7620  
Phone: +27 (0) 21 860 3800 • Fax: +27 (0) 21 872 3388  
E-mail: [info@awk.co.za](mailto:info@awk.co.za) • Website: [www.awk.co.za](http://www.awk.co.za)

**KONTAKBESONDERHEDE**

Markstraat 11, Paarl, 7620 • Posbus, Paarl, 7620  
Tel: +27 (0) 21 860 3800 • Faks: +27 (0) 21 872 3388  
E-pos: [info@awk.co.za](mailto:info@awk.co.za) • Webtuiste: [www.awk.co.za](http://www.awk.co.za)

**QHAGAMSHELA APHA**

11 Market Street, Paarl, 7620 • PO Box 227, Paarl, 7620  
Phone: +27 (0) 21 860 3800 • Fax: +27 (0) 21 872 3388  
E-mail: [info@awk.co.za](mailto:info@awk.co.za) • Website: [www.awk.co.za](http://www.awk.co.za)

2. Reading your second paragraph one gets the feeling this is just another report.

No matter what we have achieved up to date, Organised Agriculture is guilty as charged and we are only afforded to comment on certain questions on this late stage to enable you to claim that we have had the opportunity to respond!

Allegations are made with no reference when it happened, where it happened and by whom the alleged misdeeds were perpetrated. Our approach normally to these kinds of accusations is, to first and foremost attain if these allegations is true, and if so what can be done to rectify it. In our experience however, these kinds of allegations are very often not true. We speak of experience on numerous false claims created for the benefit of the so-called whistle blowers for their own financial gain. We speak of experience the false claims that farmer's rape there workers, ill treatment of pensioners still living on farms and no financial support when in fact the opposite is true.

There are farms that lost a part of their international market as a result of false claims. It turned out that those who made the allegations in one instance were only trying to legalise their illegal occupation on the farm concerned.

3. In paragraph three on the Code of Conduct you mention that "but the lack of comprehensive monitoring and enforcement." This is once again a general accusation without proof or founding. We would like you to cite specific examples of cases that prove the so-called lack of monitoring and Enforcement. The one sided research is also a problem. Have you ever done research on the abuse famers undergone from the side of farm labours, certain NGO's and trade unions?

4. Re your questions:

- a. On a constant basis we emphasise the legislation on various matter that concerns agriculture. Our correspondence to farmers takes place at association meetings, congresses and one to one meeting. At the same time we work with the government on all issues related to agriculture to ensure that there is compliance. We cannot be accused of not delivering when there is a serious lack of delivery on the side of government. Organised agriculture cannot take on all kinds of responsibilities that rest with Government.

- b. Same as above. We are at presently distributing the third reprint of the code as there is a demand for additional copies.
  - c. We are successful. The Department of labour for instance is consistently giving us clean bill of health on their inspections. We have very strong working relations with the government especially when it comes to labour, health, rural safety and education.
  - d. Once we are informed of a problem a task team is assembled that will investigate and report back. If the allegations prove to be founded, true corrective measures are taken. If the Farmer is not willing to participate in the matter and it is a legally punishable offence we will hand it to the authorities to take the matter further. Yes, we have suspended membership. We also take it upon us to where there is no compliance to get the help in from the farmer's suppliers to put pressure on them.
5. We as organised agriculture in the Western Cape have invested heavily to create a positive environment for all who work and live in it... The South African farmer, regardless of the colour of his or her skin, including emerging farmers are challenged with a wide variety of external and internal challenges with very limited government assistance or even protection. The commercial arm of agriculture is under constant threat of nationalisation, land reform, farm attacks, poor infrastructure and many more. Under these circumstances we deliver food security, jobs as well as food and fibre for the value chain.

The constant negativity that is created by certain NGO's and trade unions is going to be the downfall of this food security. In our experience claims by organised agriculture to the Human Rights Commission are not dealt with satisfactorily. At present our lawyers is handling a case at the Human Rights commission on such a claim we have lodged.

I hope that on your next visit to South Africa you will set time aside to discuss these issues in the depth which they deserve and not hasten to publish a report without proper fact-finding.

Yours sincerely



CB OPPERMAN: CEO: Agri Wes-Cape

## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Email: hrwnyc@hrw.org

### AFRICA DIVISION

Daniel Bekele, *Executive Director*  
Rona Peligal, *Deputy Director*  
Aloys Habimana, *Deputy Director*  
Jon Elliott, *Advocacy Director*  
Siphokazi Mthathi, *South Africa Director*  
Maria Burnett, *Senior Researcher*  
Kaitlin Cordes, *Fellow*  
Corinne Dufka, *Senior Researcher*  
Marianna Enamoneta, *Associate*  
Neela Ghoshal, *Researcher*  
Thomas Gilchrist, *Assistant Researcher*  
Eric Guttschuss, *Researcher*  
Charlene Harry, *Research and Advocacy Assistant*  
Leslie Haskell, *Researcher*  
Jehanne Henry, *Senior Researcher*  
Lindsey Hutchison, *Associate*  
Tiseke Kasambala, *Senior Researcher*  
Leslie Lefkowitz, *Senior Researcher*  
Lianna Merner, *Associate*  
Lewis Mudge, *Researcher*  
Ben Rawlence, *Senior Researcher*  
Lisa Rimli, *Researcher*  
Ida Sawyer, *Researcher*  
Carina Tertsakian, *Senior Researcher*  
Anneke Van Woudenberg, *Senior Researcher*  
Jamie Vernaede, *Associate*  
Matthew Wells, *Researcher*

### ADVISORY COMMITTEE

Jonathan Fanton, *Chair*  
Daniel Bach  
Suliman Baldo  
Fareeda Banda  
Innocent Chukwuma  
Wendy Keys  
Samuel Murumba  
Muna Ndulo  
Louis Marie Nindorera  
Peter Rosenblum  
John Ryle  
Nick Shaxson  
Darian Swig  
Arnold Tsunga  
L. Muthoni Wanyeki  
Michela Wrong

### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*  
Emma Daly, *Communications Director*  
Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olujobi, *Deputy Program Director*  
Dinah PoKempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

July 31, 2011

Mark Price  
Managing Director  
Waitrose Ltd  
Doncastle Road  
Bracknell  
Berkshire RG12 8YA  
United Kingdom

Via e-mail: [mark\\_price@waitrose.co.uk](mailto:mark_price@waitrose.co.uk)  
And facsimile: +44 20 7592 6333

Dear Mr. Price:

Human Rights Watch is preparing a report on farmworkers and farm dwellers in the Western Cape province of South Africa, focusing primarily on workers who labor on fruit and wine farms. Human Rights Watch is an independent, international organisation that conducts investigations of human rights abuses around the world. In 2010 and 2011, we interviewed more than 260 people about the situation of farmworkers and farm dwellers in the Western Cape.

We documented a range of exploitative practices and human rights abuses, which are similar to problems that have been identified in the past by the South African Human Rights Commission and other stakeholders. These abuses include poor housing conditions on many farms; attempts to evict farm dwellers without following the legal procedure; exposure to pesticides without the proper safety equipment, as well as other health and safety problems; denial of legal benefits, including an almost complete failure to provide legally-required sick leave without a medical certificate; obstacles to union formation; and extremely low wages. The focus of our research was to assess overall conditions on farms in the Western Cape. We did not trace the supply chain for the products from each farm, and we told interviewees that we would not identify individual farms in order to reduce the risk of retaliation against them, so the report will not match stories of abuses to particular suppliers or retailers.

Given that your company purchases fruit and/or wine from the Western Cape province of South Africa, we welcome information regarding the policies your company has adopted regarding respect for workers' human rights by the suppliers from which it purchases South African wine or fruit, and particularly by the farms where those products are grown and produced. Specifically, we would appreciate your responses to the questions raised below, as well as any additional information you wish to provide on this matter.

We strive to reflect all perspectives in our research and look forward to your response. In light of our publishing schedule, we would be grateful to receive your response by 11 August, sent to Kaitlin Cordes, Fellow in the Africa Division, by email to [cordesk@hrw.org](mailto:cordesk@hrw.org), by phone to +1-212-377-9427, or by fax to +1-212-736-1300.

Thank you very much. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Bekele". The signature is fluid and cursive, with the first name "Daniel" and last name "Bekele" clearly distinguishable.

Daniel Bekele  
Executive Director, Africa Division  
Human Rights Watch

1. We are aware that the Waitrose Foundation funds projects in South Africa. Can you please clarify whether any of its projects address labor conditions on supplier farms in the country? If so, we would welcome further information about these projects and their impact.
2. The John Lewis Partnership, which owns Waitrose, indicated in its 2010 corporate social responsibility report that it supports all those in its supply chain “in obeying the law and respecting their employees and the environment.” In addition, the report notes that all own-brand suppliers must commit to the terms of the Responsible Sourcing Code of Practice, which covers standards for workers’ rights. Can you please confirm whether Waitrose applies this code to all supplier farms in South Africa? If you do, can you please tell us what concrete steps your company has taken to apply this code on supplier farms in South Africa that produce fruit or grapes for wine? We would also welcome receiving copies of relevant materials.
3. The John Lewis Partnership’s report also notes that nearly all of Waitrose’s own-brand suppliers are registered on Sedex and that “all high-priority sites were audited.” Can you please confirm whether Waitrose actively monitors labor rights conditions on supplier farms in South Africa? If so, what percentage of farms does it monitor, how does it do so, and with what frequency?
4. How successful are Waitrose’s efforts to ensure compliance with the law or other standards on supplier farms in South Africa? Please be specific, for example by indicating in which areas you feel that compliance is satisfactory and in which areas further improvement is needed.

5. Under its Code of Practice, the John Lewis Partnership states that wages shall meet national legal requirements or industry standards, whichever is higher, as well as that wages shall meet basic needs plus discretionary income. Can you please elaborate on Waitrose's commitment to paying such a wage, including in the context of South Africa?

CC:

Gemma Lacey, Head of Corporate Social Responsibility, John Lewis Partnership  
[gemma\\_lacey@johnlewis.co.uk](mailto:gemma_lacey@johnlewis.co.uk); [csr@johnlewis.co.uk](mailto:csr@johnlewis.co.uk).





# Waitrose



10th August 2011

Mr Daniel Bekele  
Executive Director, Africa Division  
Human Rights Watch  
350 Fifth Avenue, 34th Floor  
New York NY 10118-3299  
USA

Dear Mr Bekele,

**Re: Your letter regarding farm workers and farm dwellers on fruit and wine farms in the Western Cape province of South Africa**

Thank you for your letter dated 31st July and for giving Waitrose the opportunity to provide information on the policies we have adopted regarding respect for workers' human rights by the suppliers from which we purchase South African wine or fruit.

We have provided answers to each of your questions below and we hope this will help assure you of the importance we place on ensuring good working conditions for farm workers and farm dwellers on fruit and wine farms in the Western Cape of South Africa. We have also provided some additional information at the end of the letter.

*1. We are aware that the Waitrose Foundation funds projects in South Africa. Can you please clarify whether any of its projects address labour conditions on supplier farms in the country? If so, we would welcome further information about these projects and their impact.*

The Waitrose Foundation is a supply chain partnership that returns a percentage of profits from the sale of produce to fund projects chosen by the farm workers and smallholders who grew it.

The Foundation aims to improve farm workers' lives through social projects. The projects of the Foundation in South Africa are chosen by farm worker committees on farms and are all social upliftment projects. These mainly fall into four categories: Educational (adult literacy, life skills, crèches, aftercare media centres, libraries, etc.); Health (farm and mobile clinics, HIV/Aids projects, primary healthcare provision and cure); Recreational (community centres, sports clubs, sports days, sporting facilities) and Income Generation (small entrepreneurial projects, i.e. glass recycling, piggery, beehive project, etc.). A tertiary bursary fund is also available to provide funds for the children of farm workers to further their studies.

The aim of the projects is to improve the lives of farm workers and their families; not addressing labour issues directly. No specific projects in this regard are funded by the Foundation. However, because farm workers often have improved literacy as a result of Foundation projects, they will for example be able to read and understand their employment contracts better. It is therefore true that the Foundation projects may have an indirect impact on workers' understanding of their labour environment.

Waitrose is committed to ensuring good standards of worker welfare at Waitrose Foundation farms and we arrange for all our Foundation member farms to have an independent ethical audit. These

Food shops of the John Lewis Partnership

Bracknell, Berkshire RG12 8YA  
Telephone 01344 424680  
[www.waitrose.com](http://www.waitrose.com)

audits include a site tour, confidential worker interviews, a documentation review (e.g. wages and working hours records), as well as meetings with farm management to discuss findings. These ethical audits enable us to work with our suppliers to help improve labour standards and worker welfare conditions on farms, including fruit and wine farms in the Western Cape of South Africa.

***2. The John Lewis Partnership, which owns Waitrose, indicated in its 2010 corporate social responsibility report that it supports all those in its supply chain “in obeying the law and respecting their employees and the environment.” In addition, the report notes that all own-brand suppliers must commit to the terms of the Responsible Sourcing Code of Practice, which covers standards for workers’ rights. Can you please confirm whether Waitrose applies this code to all supplier farms in South Africa? If you do, can you please tell us what concrete steps your company has taken to apply this code on supplier farms in South Africa that produce fruit or grapes for wine? We would also welcome receiving copies of relevant materials.***

As a retailer sourcing products from many different countries, we aim to uphold internationally agreed standards of labour. In particular, we expect suppliers to obey the law and respect the well-being of their employees by treating employees fairly, honestly and with respect for their basic human rights.

Our expectations of suppliers on labour standards and working conditions are outlined in our John Lewis Partnership Responsible Sourcing Code of Practice. The Code has been in place for over a decade and helps ensure the fair treatment of all workers in our supply chain. All our suppliers are expected to ensure that they meet the requirements of our Code and our Waitrose Terms and Conditions of Purchase include specific requirements on Responsible Sourcing and our Code. The scope of our Code meets and exceeds that of the Ethical Trading Initiative (ETI) Base Code and a copy is enclosed. Waitrose regularly communicates the importance of complying with the Code to our suppliers. We also expect suppliers to communicate the Code to all their suppliers and workers involved in the supply-chain and to ensure compliance with the Code. The Code is available in a number of languages, including Afrikaans.

The Code itself does apply to all supplier farms in South Africa which supply us, including wine and fruit farms in the Western Cape of South Africa. We monitor compliance with the Code through the independent ethical audits that take place at the farms.

In addition, Waitrose supported Fruit South Africa, an alliance of various fruit exporting sectors, in the development of the Ethical Trading Handbook for South African Fruit Growers. Hard copies have been distributed to farms through growers associations in South Africa and all Waitrose Foundation farms in South Africa received a copy. This Handbook provides guidance for growers on complying with the ETI Base Code and local law.

***3. The John Lewis Partnership’s report also notes that nearly all of Waitrose’s own brand suppliers are registered on Sedex and that “all high-priority sites were audited.” Can you please confirm whether Waitrose actively monitors labour rights conditions on supplier farms in South Africa? If so, what percentage of farms does it monitor, how does it do so, and with what frequency?***

The Waitrose Responsible Sourcing Programme is our supplier assessment and audit programme on ethical compliance. Through the Programme, we ensure our suppliers meet our requirements and work to continually improve worker welfare and labour standards. We monitor how our suppliers are meeting the expectations set out in our Code, and where problems occur we help and support suppliers to improve. All suppliers of Waitrose own-label product are engaged in the Programme, which involves sites registering on a secure web-based database on workplace standards, called Sedex (Supplier Ethical Data Exchange). Through Sedex, suppliers can demonstrate that they behave responsibly towards their workers. Waitrose performs a risk assessment of all sites engaged in our Programme every 6 months. This takes into account factors such as working hours, wages, worker numbers and country of production.



We believe our supplier assessment programme is a very effective way of assessing and improving labour standards in our supply chain and we remain committed to fully investigating and taking appropriate action to address any instances of poor labour standards that are brought to our attention.

We ensure that all Waitrose Foundation member farms have an independent ethical audit at least once every three years. If appropriate, a follow-up audit is undertaken to close off non compliances, which typically take place between 6-12 months of the initial audit. Through these audits, Waitrose works collaboratively with our suppliers to improve labour standards and working conditions.

***4. How successful are Waitrose's efforts to ensure compliance with the law or other standards on supplier farms in South Africa? Please be specific, for example by indicating in which areas you feel that compliance is satisfactory and in which areas further improvement is needed.***

We consider our efforts to ensure compliance with the law or other standards on supplier farms in South Africa successful. Where any labour standards issues are brought to our attention, we will always work with our suppliers to help resolve that issue. However, we do recognise that more can always be done to help suppliers improve working conditions on farms and we always try to identify opportunities to help us do this.

***5. Under its Code of Practice, the John Lewis Partnership states that wages shall meet national legal requirements or industry standards, whichever is higher, as well as that wages shall meet basic needs plus discretionary income. Can you please elaborate on Waitrose's commitment to paying such a wage, including in the context of South Africa?***

Within our Code of Practice it states that "Wages and benefits shall be at least fully comparable with locally benchmarked industry norms or national legal requirements, whichever is higher. Wages shall always be sufficient for basic needs whilst still providing some discretionary income..." We do expect all our suppliers to comply with our Code, including these clauses on wages. The ethical audits and the information we have access to within Sedex, provides us with a good indication of suppliers' compliance with the clauses on wages within our Code.

#### **Additional Information**

Wine and fruit farms in the Western Cape of South Africa are regularly visited by their UK importers and Waitrose in an effort to understand the performance of farms and convey Waitrose policies and requirements (including ethical). During such visits, there are often opportunities to meet with workers.

We have recently launched the Waitrose Farm Risk Assessment, which covers our Code and worker welfare. This is currently being rolled out to our supply base. The collected data can be interrogated, providing a better understanding of current and future needs on farms. In addition, we require farms to be GLOBALGAP accredited and we are in the process of rolling out LEAF accreditation in our supply chain. Both GLOBALGAP and LEAF involve an independent auditor checking worker welfare and health and safety, among other things.

Waitrose strives to maintain long-term, mutually beneficial relationships with our suppliers and we have always recognised that our responsibility to them extends to their employees and their suppliers. Our commitment to Responsible Sourcing remains as firm as ever and we will continue to work in partnership with our suppliers to ensure the fair treatment of workers in our supply chain.

We do hope this response has provided you with sufficient detail and assurance on how we assess and help improve labour standards in the companies that supply us and demonstrates our commitment to ensuring the fair treatment of workers throughout our supply chain.

We would be very interested in reading your report, once it is published. If you have any questions, or require any further information, then please do not hesitate to contact **Rose Foster**, the Waitrose Responsible Sourcing Technologist, [rose\\_foster@waitrose.co.uk](mailto:rose_foster@waitrose.co.uk).

You may also be interested in reading the latest copy of our Corporate Social Responsibility (CSR) report on our corporate website, which contains additional information on CSR, including Responsible Sourcing and the Waitrose Foundation.

[www.johnlewispartnership.co.uk/ourresponsibilities](http://www.johnlewispartnership.co.uk/ourresponsibilities)

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cheryl White', with a long horizontal stroke extending to the right.

Cheryl White  
Head of Food Technology

Enclosed: John Lewis Partnership Responsible Sourcing Code of Practice

## **JOHN LEWIS PARTNERSHIP RESPONSIBLE SOURCING CODE OF PRACTICE**

### **Introduction**

The partnerships we have with our suppliers help us to offer our customers over 350,000 product lines in John Lewis, from fashion and furnishings to household goods, and around 18,000 high quality food products in Waitrose.

In sourcing these products from many different countries, we aim to uphold internationally agreed standards of labour, and we expect our suppliers to treat workers fairly, honestly and with respect for their basic human rights and well being.

Our aim is to build lasting relationships with suppliers and we have always recognised that our responsibility extends to their employees and suppliers. As a result, we have worked with our suppliers for many years to help them build sustainable businesses, commercially, ethically and environmentally, and to provide long-term, satisfying employment.

Robust policies and procedures and strong relationships with our suppliers are essential if we are to continue to source our products responsibly. Our Responsible Sourcing Code of Practice sets out the Partnership's expectations of suppliers on issues such as pay, working hours, child labour, worker rights and representation.

In building long term relationships with our suppliers, we seek to work with companies who share our values and who are prepared to commit themselves to meeting the requirements of this Code. We are committed to working with suppliers to support necessary improvements but we may also take action if suppliers are not prepared to work collaboratively to drive improvements.

We believe that the application of our Code enables real and practical steps to be taken towards improving social conditions in those locations involved in the production of the goods we sell.

A handwritten signature in grey ink, appearing to read "Charlie Mayfield".

Charlie Mayfield  
Chairman, John Lewis Partnership

## **Application of the code**

The provisions of this Code constitute minimum and not maximum standards. It should not be used to prevent companies from exceeding these standards. Companies applying this Code are expected to comply with national and other applicable law. Where the provisions of law and this Code address the same subject, the provision which affords the greater protection should be applied.

Workers are defined as those employed on a temporary or permanent basis, as well as workers that are employed either directly or indirectly.

Suppliers of our own brand products are expected to ensure that they meet the requirements of this Code of Practice. Suppliers of branded goods are expected to have noted the requirements and to have established similar arrangements.

### **(A) Implementation of Code Requirements**

- i) Suppliers are expected to establish management systems for delivering compliance to this Code, and maintain records demonstrating compliance. An individual in a senior management position should be appointed to ensure compliance with the Code.
- ii) Suppliers are expected to communicate and ensure compliance of this Code across all workers, suppliers and any out-workers or sub-contractors engaged in their supply chain,. Suppliers should also provide means for workers to report or discuss non-compliances confidentially.
- iii) Suppliers shall comply with all applicable national laws in the countries in which they operate and all relevant ILO conventions. Where these standards differ, the standard that provides workers with greater protection will prevail.
- iv) Suppliers shall comply with all relevant John Lewis Partnership policies.

**Reference:** *ILO Conventions 81 (Labour Inspection).*

### **(B) Employment of Children and Young Workers**

- i) Children under the age of 15 shall not be recruited or employed, unless the local minimum age for work or mandatory schooling specifies a higher age or if International Labour Organisation (ILO) developing country exemptions apply. Children must not be exploited or denied education, and their health and safety must be protected. Children may participate in activities which culturally involve the whole community over a limited period of time.
- ii) Children and young people under 18 shall not be expected to work at night or carry out activities that are potentially hazardous or injurious to their health and development.

- iii) If under age workers are found working, the supplier involved will be expected to cease the practice and provide remediation. This should include support for the child to attend and remain in education until the national minimum working age, or 15, or mandatory schooling age which ever is longest is reached. Suppliers shall clearly document and communicate their policies for dealing with under age children, even if there are no known children employed.

**Reference:** *ILO Conventions 138 and 182, Recommendation 146 (Minimum Age), Recommendation 190 (Worst Forms of Child Labour).*

### **(C) Forced Labour**

- i) There shall be no forced, bonded or involuntary labour of any description.
- ii) Suppliers shall allow their workers the right to leave after giving reasonable notice, and with due regard to relevant domestic legislation.
- iii) Workers shall not be required to lodge deposits or I.D. papers unless it is a legal requirement to do so. In all circumstances these must be returned promptly upon cessation of employment.

**Reference:** *ILO Conventions 29 and 105, Recommendation 35 (Forced and Bonded Labour).*

### **(D) Health, Safety and Hygiene**

- i) Every effort shall be made to provide a safe and hygienic working environment, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps should be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work. Suppliers should, as far as is reasonably practical, minimise the causes of hazards inherent in the working environment. Procedures must be in place to deal with serious injuries.
- ii) Suppliers must complete fully documented risk assessments of their sites and accommodation provided, and regularly monitor risks posed to workers' health and safety.
- iii) Suppliers are expected to assign a senior management representative to be responsible for health and safety issues. Suppliers should set up procedures to consult with workers to seek their contribution in assessing the site's health and safety and in developing health and safety standards.
- iv) No worker shall be employed in potentially hazardous conditions without receiving adequate health and safety training and supervision. Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers. Records of health and safety training must be available for inspection. Individual workers must be able to demonstrate their understanding of the job and the ability to perform it to at least the minimum standard required by their employer.



- v) Suppliers shall provide adequate, climatically appropriate personal protective equipment and safety equipment free of charge to their workers.
- vi) Workers shall be provided with free access to potable water, clean toilet facilities, sanitary facilities for food storage and (if appropriate) washing facilities.
- vii) Where provided, accommodation shall be safe, clean and meet the basic needs of workers. Secure storage facilities should be provided. Suppliers should provide a range of mixed gender, segregated and family accommodation as appropriate for the number of workers housed.
- viii) Where management provides dedicated transport for the movement of workers to, from, or within the workplace, these shall conform to the minimum standards set down in the appropriate national transport legislation. In the absence of such legislation, the management shall make every reasonable effort to minimise risk to the workers whilst transporting them.
- ix) Food, beverages, domestic goods and accommodation offered for sale to workers shall be at price levels no higher than those prevailing nationally or locally.

**Reference:** *ILO Convention 155 & Recommendation 164 (Occupational Safety & Health), ILO Convention 190 & Recommendations (Safety and Health in Agriculture).*

#### **(E) Freedom of Association and Worker Representation**

- i) Suppliers shall recognise and respect the rights of workers to freely join associations (such as workers councils, trade unions and workers associations) which can collectively represent their interests. Employers shall not interfere with or attempt to dominate or control such bodies, nor discriminate against workers choosing to belong to them.
- ii) Suppliers shall respect the rights of such workers' associations to represent their members, and to bargain collectively as defined and interpreted by the ILO and national legal framework.
- iii) Where the right to freedom of association and collective bargaining is restricted under national law, suppliers should facilitate, and not hinder, the development of parallel means of independent and free association and bargaining. In such circumstances, suppliers are encouraged to share with their workers information which will affect working conditions, and enable effective mechanisms for consultation

**Reference:** *ILO Conventions 87 and 98. Also relevant are Convention 135 and Recommendation 143 (Workers' Representatives), and Convention 154 (Collective Bargaining).*



## **(F) Equality of Treatment**

- i) There shall be no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on (but not limited to) gender, age, disability, national origin, race, marital status, sexual orientation, political opinion, union (or non-union) membership, religion, or caste unless provided for in domestic legislation.
- ii) Workers must not be expected to perform duties incompatible with their physical or mental abilities.

**Reference:** *ILO Conventions 100 and 111, Recommendations 90 and 111 (Equal Remuneration, Discrimination (Employment and Occupation)), ILO Conventions 122 (Employment Policy), ILO Convention 159 & Recommendation 168 (Vocation Rehabilitation & Employment/Disabled Persons).*

## **(G) Discipline**

- i) Physical abuse or discipline, the threat of physical abuse, verbal abuse, harassment or other forms of intimidation are not acceptable.
- ii) Disciplinary and grievance procedures shall be clearly documented and communicated to all workers. All disciplinary measures of a serious nature shall be recorded, including evidence that the worker knew what they were accused of and were given the right to put across their point of view.

## **(H) Working Hours**

- i) Workers shall not be expected to work in excess of 48 hours per week or less if there is a lower national limit or an agreed industry norm.
- ii) Overtime shall be voluntary, limited to no more than 12 hours per week above full time, and not requested on a regular basis, it shall be paid at a premium rate or in accordance with national legislation.
- iii) There shall be proper provision for rest and sleep. Breaks, holiday allowance and rest periods shall be in full accordance with national law. Individual workers shall have on average at least one full day's rest per 7 days or the equivalent if shift work is involved.

## **(I) Wages**

- i) Wages and benefits shall be at least fully comparable with locally benchmarked industry norms or national legal requirements, whichever is higher. Wages shall always be sufficient for basic needs whilst still providing some discretionary income.
- ii) Before entering into employment, workers should be informed as to the payment process. Wages shall be paid directly to the workers in the form of cash or cheques or into the

workers' nominated bank account, at the agreed intervals and in full. Information relating to wages shall be available to workers in an understandable form.

- iii) No deductions from wages, other than those required by national law, shall be permitted without the agreement of the worker concerned. Deduction from wages for disciplinary purposes shall not be permitted.

**Reference:** *ILO Convention 131 and 90.*

#### **(J) Regular Employment**

- i) All workers shall be provided with simple, written contracts which must detail the terms and conditions of their employment. Employers should ensure workers understand their contract of employment, through verbal or written means, and such provisions should take account of the different languages spoken by workers.
- ii) Suppliers must not employ workers on repeated temporary contracts or apprenticeship schemes merely to avoid paying wages and other benefits given to permanent workers. Suppliers are encouraged to offer continuity of service and security of employment to workers with good work records where appropriate.
- iii) Where suppliers make use of labour providers, they shall take measures to ascertain the conditions of employment of workers, and shall endeavour to ensure that, in respect of those working on their premises, the labour provider is complying with the standards set out in this Code and any additional relevant domestic legislation.
- iv) Suppliers shall encourage workers to participate in all state benefit schemes, especially sickness, maternity, injury, and retirement pensions. They shall offer advice to do so, if needed.
- v) Suppliers must take effective steps, which are at least in compliance with the requirement or recommendations of government and/or local labour authorities, to avoid the employment of workers who do not have the legal right to work.

**(K) Environment**

- i) Suppliers shall seek to make continuous improvements in their environmental performance and, as a minimum, comply with the requirements of local, national and international laws and regulations.
- ii) Suppliers shall make practical efforts to minimise the use of energy, water and raw materials: where possible these resources shall be renewable.
- iii) Suppliers shall make practical efforts to minimise solid waste and effluent and dispose of it in a safe, efficient, and environmentally responsible manner.
- iv) Suppliers shall avoid contamination of the local environment and ensure that air, noise and odour levels are within nationally defined limits.
- v) Suppliers shall minimise chemical use and abide by international, national and sector specific Codes of Practice for the use, handling and disposal of pesticides and chemicals.

**(L) Animal Welfare** (if applicable)

- i) Companies shall be aware that the John Lewis Partnership has separate protocols to which it expects its suppliers to comply, in order to ensure high standards of animal welfare in the rearing of livestock. These protocols also contain guidance for the humane transportation of livestock and restrictions on the use of animal testing.
- ii) Where animals are used as beasts of burden, (for example, in ploughing), they shall be treated humanely, and allowed to live free of hunger, thirst, fear, distress, pain, injury or disease.

11th August 2011

Kaitlin Cordes  
Human Rights Watch  
Sent via e-mail to [cordesk@hrw.org](mailto:cordesk@hrw.org)

Dear Kaitlin

My apology for the lateness of my response – time is at a premium!

Let me say at the outset that what you are requesting us to do, i.e. to respond to your four questions, our replies which you will add to your report as being our response to your report (which we have had no sight of), is seen as highly unfair. That being what it may, I will nevertheless try to give you something that I trust will be helpful to you.

1. One of my Organizations' main objectives are to continuously inform members specifically on labour laws and what their responsibilities are into. these laws. Newsletters are circulated regularly and any new or proposed new labour laws are dealt with, including warnings about cut-off dates for the submission of statutory returns such as annual Employment Equity returns. This service to members is one of the main reasons why members join our Organization. At our general meetings recognized senior labour law experts present papers on the intricacies of the legal requirements that employers have to comply with. We have accredited a team of human resource specialists who service members with on site advice and assistance. These experts attend regular refresher courses organized by us. We maintain close links with the management of the Department of Labour's Western Cape Regional Office to ensure that our advice to members is in line with the official position. Through this contact we are able to be kept informed of the level of compliance by members – for that matter, by farmers in general.
2. The Agri Western-Cape Code of Conduct as you may know was initiated by Agri Western-Cape and negotiated between the Western Cape Provincial Government, the Western Cape Department of Labour, Organized Labour, and a cross-section of NGO's active in agriculture. The scope of the Code goes well beyond my organizations' narrow interest and we were not involved in the negotiations, although we fully support the document. Our understanding is that Agri Western-Cape still adheres fully to the Code, and so does the provincial government, even though there has been a regime change since the acceptance of the Code. To us it would appear that organized labour and NGOs have largely "lost interest" and have reneged on their agreement to uphold the Code's principles and objectives. Why, one can only speculate.

3. When we respond to this question we have to rely on feedback from the official inspections carried out by the Inspectorate of the Department of Labour. The former Minister of Labour, Mr Mdladlana, has on several occasions publically expressed his satisfaction with the level of compliance with labour laws by farmers in the Western Cape. At our AGM last year the Head of Inspection Services Western Cape, when asked during the meeting what his Inspectorate had found stated categorically that minimum wages are adhered to and bettered on, and that any non-compliance they do find is mostly of a technical and administrative nature. To our surprise though we encountered a press release min June last year where the provincial Executive Manager Western Cape stated that “farm inspections showed some 46% compliance with labour laws”! The reason for this, we can only speculate on. While we do not have any capacity ourselves to monitor compliance of our members, we have from our own observations, as supported by the Inspectorates’ reports, developed a clear picture showing that the great majority of farmers are complying. This is also supported by compulsory “audits” that are carried out by privately accredited agencies on farms of farmers wishing to export their produce. These are done on behalf of large international buyers of farm produce such as GlobalGAP, Nature’s Choice, HACCP, BRC as well as focussed ethical audits. Large local retail chains such as Woolworths and Pick n Pay are also now insisting on similar audits. We have enough evidence to support our belief that Western Cape farmers do comply, and where there are lapses we intervene.
4. Accusations of non-compliance with labour laws and general mal-treatment of workers by farmers are commonplace. Strangely and sadly enough these accusations normally increase just before elections, local or national. The one thing they mostly have in common is that no names and other details are provided! A simple example we suspect will be your current report! Will we be able to take action against any individual based on your report? We in organized agriculture take these accusations seriously, but seldom do we have something to act on. And act we will, as the following will illustrate:
  - 4.1 Earlier this year the Head of Inspection Services, whom I regularly ask to give me examples of poor labour practices, mentioned to me a hostel with shocking conditions that he saw on a farm next to the road outside the town of Citrusdal. He could not provide the name of the farm or that of the owner. We took it seriously and after a week or so received information on a possible location. We travelled some 500 kilometers (there and back) and found the hostel – in a shocking and unacceptable state! Enquiries led us to the owner whom we confronted immediately. Using his exclusive contract with a well-known local retail chain against him we “persuaded” him to close the hostel immediately;
  - 4.2 Another recent case is that of an article in the magazine “Kurier” (July 2011), revealing the shocking treatment of workers by a labour broker in Wellington. The reporter was contacted but upon advice from her editor would not

reveal the names of the workers, the broker, or that of the locality. We have been on this case for about a week, and we will find this man. If we do, and if the facts are borne out, we will report criminal charges. What we will also try to do is establish which farmer(s) this broker supplies labour to, and contact them immediately. If any wrongdoing is revealed we will report that to the authorities as well, apart from any internal action should they prove to be members;

4.3 The accusations in these two cases proved to be correct. Over time though far too many proved to be fabrications, or at least gross exaggerations and generalisations:

- The worst case was that of a young lady in Rawsonville not so long ago that accused the farmer of raping her. She eventually admitted that she had perjured herself – clearly not acting on her own accord?;
- Last year outside Stellenbosch a case of an attempted “eviction of a widowed worker” was reported. The union involved failed to keep several appointments made to discuss the issue, and later “exposed” the “attempted eviction” to a reporter of a UK paper (Guardian). The reporter investigated and established that it was actually a demand for a “living wage”.
- Also last year allegations about mal-treatment was made by the same union to Tesco, despite an agreement with them that the Industry should be alerted. Tesco investigated and established that the farmers’ actions were perfectly legal and fair;
- A farmer from Robertson was reported to the Industry on account of concerns about the recognition of the union and other allegations concerning abuses of farm worker’s rights. Intervention by the Industry led to the farmer paying for two mediation sessions conducted by a CCMA mediator. This led to an Industry sponsored three day dispute resolution course presented by the CCMA. Relations have consequently normalized.

Carl Opperman and Anton Rabe have asked me to represent them at your launch on 23<sup>rd</sup> August 2011 due to prior commitments by themselves. I hereby confirm that I have agreed to do so. I re-iterate my wish that when you return to the Western Cape I would have an opportunity to meet with you to discuss ways in which we can work together to bring about positive change.

Yours sincerely

Jack van Dyk  
Executive Officer

## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Email: [hrwnyc@hrw.org](mailto:hrwnyc@hrw.org)

### AFRICA DIVISION

Daniel Bekele, *Executive Director*  
Rona Peligal, *Deputy Director*  
Aloys Habimana, *Deputy Director*  
Jon Elliott, *Advocacy Director*  
Siphokazi Mthathi, *South Africa Director*  
Maria Burnett, *Senior Researcher*  
Kaitlin Cordes, *Fellow*  
Corinne Dufka, *Senior Researcher*  
Marianna Enamoneta, *Associate*  
Neela Ghoshal, *Researcher*  
Thomas Gilchrist, *Assistant Researcher*  
Eric Guttschuss, *Researcher*  
Charlene Harry, *Research and Advocacy Assistant*  
Leslie Haskell, *Researcher*  
Jehanne Henry, *Senior Researcher*  
Lindsey Hutchison, *Associate*  
Tiseke Kasambala, *Senior Researcher*  
Leslie Lefkowitz, *Senior Researcher*  
Lianna Merner, *Associate*  
Lewis Mudge, *Researcher*  
Ben Rawlence, *Senior Researcher*  
Lisa Rimli, *Researcher*  
Ida Sawyer, *Researcher*  
Carina Tertsakian, *Senior Researcher*  
Anneke Van Woudenberg, *Senior Researcher*  
Jamie Vernaede, *Associate*  
Matthew Wells, *Researcher*

### ADVISORY COMMITTEE

Jonathan Fanton, *Chair*  
Daniel Bach  
Suliman Baldo  
Fareeda Banda  
Innocent Chukwuma  
Wendy Keys  
Samuel Murumba  
Muna Ndulo  
Louis Marie Nindorera  
Peter Rosenblum  
John Ryle  
Nick Shaxson  
Darian Swig  
Arnold Tsunga  
L. Muthoni Wanyeki  
Michela Wrong

### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*  
Emma Daly, *Communications Director*  
Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olujobi, *Deputy Program Director*  
Dinah PoKempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

July 31, 2011

Mark Bolland  
Chief Executive Officer  
Marks and Spencer Group PLC  
Waterside House  
35 North Wharf Road  
London, W2 1NW  
United Kingdom

Via e-mail: [mark.bolland@marks-and-spencer.com](mailto:mark.bolland@marks-and-spencer.com)

And facsimile: +44 0845 303 0170

Dear Mr. Bolland:

Human Rights Watch is preparing a report on farmworkers and farm dwellers in the Western Cape province of South Africa, focusing primarily on workers who labor on fruit and wine farms. Human Rights Watch is an independent, international organisation that conducts investigations of human rights abuses around the world. In 2010 and 2011, we interviewed more than 260 people about the situation of farmworkers and farm dwellers in the Western Cape.

We documented a range of exploitative practices and human rights abuses, which are similar to problems that have been identified in the past by the South African Human Rights Commission and other stakeholders. These abuses include poor housing conditions on many farms; attempts to evict farm dwellers without following the legal procedure; exposure to pesticides without the proper safety equipment, as well as other health and safety problems; denial of legal benefits, including an almost complete failure to provide legally-required sick leave without a medical certificate; obstacles to union formation; and extremely low wages. The focus of our research was to assess overall conditions on farms in the Western Cape. We did not trace the supply chain for the products from each farm, and we told interviewees that we would not identify individual farms in order to reduce the risk of retaliation against them, so the report will not match stories of abuses to particular suppliers or retailers.

Given that your company purchases fruit and/or wine from the Western Cape province of South Africa, we welcome information regarding the policies your company has adopted regarding respect for workers' human rights by the suppliers from which it purchases South African wine or fruit, and particularly by the farms where those products are grown and produced. Specifically, we would appreciate your responses to the questions raised below, as well as any additional information you wish to provide on this matter.

We strive to reflect all perspectives in our research and look forward to your response. In light of our publishing schedule, we would be grateful to receive your response by 11 August, sent to Kaitlin Cordes, Fellow in the Africa Division, by email to [cordesk@hrw.org](mailto:cordesk@hrw.org), by phone to +1-212-377-9427, or by fax to +1-212-736-1300.

Thank you very much. I look forward to hearing from you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel Bekele". The signature is fluid and cursive, with the first name "Daniel" and last name "Bekele" clearly distinguishable.

Daniel Bekele  
Executive Director, Africa Division  
Human Rights Watch

1. We are aware that your company has Global Sourcing Principles and is a member of the Ethical Trading Initiative, and as such has agreed to adopt a set of standards (the ETI Base Code) to be implemented by the company across its supply chain. As you may be aware, the standards in the ETI Base Code broadly align with those reflected in South African law, with the notable addition of a provision on the payment of a living wage. Can you please tell us what concrete steps has your company taken to apply your company's principles and/or the ETI Base Code standards on supplier farms in South Africa that produce fruit or grapes for wine? We would also welcome receiving copies of relevant materials.
2. The Global Sourcing Principles state that "[a]ll production sites are visited and assessed regularly by our suppliers and by our own people." Can you please confirm that, in line with this policy, your company actively monitors labor rights conditions on supplier farms in South Africa to assess compliance? If so, what percentage of farms does it monitor, how does it do so, and with what frequency?
3. How successful are your company's efforts to ensure compliance with its standards on supplier farms in South Africa? Please be specific, for example by indicating in which areas you feel that compliance is satisfactory and in which areas further improvement is needed.



4. We note that the Global Sourcing Principles posted online simply state that suppliers must strive to comply with the ETI base code and relevant laws and regulations. One issue that is relevant to our research is the ETI Base Code's requirement that "Living wages are paid." Can you please clarify your company's commitment to paying a living wage, consistent with the ETI Base Code, including in the context of South Africa?

CC:

Louise Nicholls, Head of Responsible Sourcing, [louise.nicholls@marks-and-spencer.com](mailto:louise.nicholls@marks-and-spencer.com)

11<sup>th</sup> August 2011

Dear Mr Beleke,

Thank you for your recent letter concerning labour standards and the treatment of workers in South Africa.

Ethical trading has been a cornerstone of Marks & Spencer's business since the company was formed in 1884. Marks & Spencer is a founder member of the Ethical Trading Initiative(ETI),which brings together Trade Unions, Non Governmental Organisations (NGOs) and commercial businesses to work together to improve labour standards. In 2007 Marks & Spencer launched an ambitious sustainability programme called Plan A, which includes 100 commitments (now increased to 180) to tackle sustainability issues across the business. These commitments further strengthened our focus on ethical trade.

As active members of the ETI we have committed to implementing the ETI base code in our supply chain. We are involved in over 40 external working groups committed to furthering best practice in ethical trading, in 2010 we held 20 international ethical trading conferences attended by over 2,900 people and provided over 170,000 training hours to build capacity in the supply chain.

South Africa has been a key focus country for last 10 years.

#### **Ethical Trading Audit Programme**

We have around 60 farm sites in South Africa and a further 20 wine sites. Every Farm is visited by trained agronomists who carry out our Field to Fork programme (farm audits). Within this programme there are a series of ethical questions. This gives us key ethical information and ensures that our ethical standards are being adhered to. The audit also focuses on health and safety, ensuring that there is no exposure to harmful pesticides and that all the correct health and safety equipment is in place. Our growers know that they have to meet M&S ethical requirements and know that they have to demonstrate this at their Field to Fork audit. All wine supplying sites follow the WIETA programme.

In addition, all suppliers who are judged as high risk are required to have a full independent ethical audit to the SMETA (Sedex Members Ethical Trade [www.sedex.org.uk](http://www.sedex.org.uk)) audit protocol. We have assessed six ethical audit companies since 2008 and have approved three to carry out independent audits for M&S in South Africa. By focusing on the quality of audits and by using only a specific pool of auditors, we believe the audits are more successful at indentifying the root cause of issues. Since 2008, over 1200 corrective actions to non compliances have been completed.

On our visit to South Africa in 2008 we realised very quickly that some of the farms were not ready to have a full ethical audit and that this was simply setting sites up for failure when they had never worked on these issues before. To address this we worked with Africa Now to develop a series of training modules to help raise awareness of ethical trading, why it is important and to explain how to implement basic management systems. This course and a similar course developed by Acert have been used widely in South Africa to help train growers for ethical trading audits. We have also developed a training course and DVD for suppliers on how to set up an effective worker committee, initially in Kenya, these materials have subsequently been used in South Africa.

### **Going Beyond Compliance -**

Our ethical audit programme plays an important role in our work in South Africa, however, we have also focussed on capacity building, raising awareness and supplier training. These can be summarised as follows:

- **Ethical Trading Conference Programme**

We have held three Ethical Trading Conferences since 2008 with over 120 people attending each event. Topics covered included black economic empowerment, discrimination, fair contracts and piece rate. Over the years we have seen a step change in attitudes with farm owners understanding both the moral imperative to treat people well and the business case by doing so. Our method is to use our own South African suppliers to play key parts in these conferences, presenting best practice case studies and showing others how to make improvements. These events have received excellent feedback from suppliers with 94% of delegates saying that they would use learnings from the event in their business.

Feedback examples –

- “Feel inspired by M&S not just to comply but to actually proactively exceed expectations” Sean Tager, Haygrove Heaven
- “The interaction between the producers, auditors and M&S representatives was excellent” anon
- “It was great to have the opportunity to discuss local problems and solutions as well as learning from other producers” A Largier, Little Oaks

- **Setting up of WIETA**

We initially worked very closely with the ETI on the inception of WIETA, helping create the audit programme and then ensuring that all of our wine suppliers entered the programme. We have maintained our membership and support of the initiative.

- **Setting up of Fruit South Africa Ethical Trade Programme**

M&S has been extremely supportive in the set up of the FSA Ethical Trade Programme. As a business we have supported meetings, strongly encouraged our suppliers to become members and become actively involved in the work of FSA. We believe that the work that FSA is doing is a great example of the South African industry taking a lead under its own steam to address ethical trading issues rather than being pushed by customers. We believe the programme is making good progress. The FSA programme is working on specific projects such as how to work with labour brokers and a system for dispute resolution for workers on farms.

Specifically M&S has helped fund the publication of a Grower Handbook to address labour standards (this handbook was based on a previous UK project [www.ethicalgrowers.org.uk](http://www.ethicalgrowers.org.uk)) and the idea was born

at one of our ethical conferences to prepare a similar resource for South African suppliers. The handbook has recently launched and although it is early days has received extremely positive feedback.

- **ETI Supervisor Training**

M&S sits on the working group of the ETI Supervisor Training programme and funded initially some of the pilot projects and roll out in Kenya and the UK. This programme has been particularly successful in dealing with issues of discrimination and harassment. . The programme was recently awarded a grant of over £300,000 by the UK funding organisation Comic Relief to roll the training out across 150 sites in South Africa. We are continuing to support the programme and believe it has the potential to be extremely successful in South Africa.

- **Projects with the Shell Foundation**

We have worked closely with the Shell Foundation to develop two innovative projects in South Africa to support worker empowerment. The first set up in 2006 with Flower Valley Conservation Trust (FVCT), to develop a sustainable wild flower bouquet to protect 30,000ha of wild flower or fynbos meadows while creating 135 sustainable jobs in an area where three out of four people are unemployed. To date FYNOSA has supplied more than 850,000 bouquets of flowers to our customers.

The second is the 'Bright Futures' with Haygrove scheme which began in earnest during 2007. Each year around 25 talented farmworkers are selected from within Haygrove to join the programme. They embark upon an intensive training programme that teaches basic business skills (as well as life skills such as English, computing or driving lessons) whilst they work on the farm. The effort, ability and performance of each student determines the level of coaching they go on to receive, along a clearly established progress ladder (Bronze to Platinum). Rewards for success range from clothing and education for their families, to specific agricultural and business training, financial loans, and ultimately the formation of equity partnerships to start their own soft fruit business supplying Marks and Spencer. As of March 2010, 26 farmers had qualified for Bronze level awards, 15 of those had moved to Silver, and seven were likely to reach Gold and Platinum levels during 2011. A new intake of 20 farmers started the programme in April 2010. Both of these enterprises have people at the heart of their business and have provided numerous case studies and best practice to share with the rest of our supply base.

### **Living Wage**

The area of living wage is complex. We have worked extremely closely with Sedex [www.Sedex.org.uk](http://www.Sedex.org.uk) to ensure that real wage data is collected in the audit reports so that we can understand the average wages being paid to all workers in the supply chain.

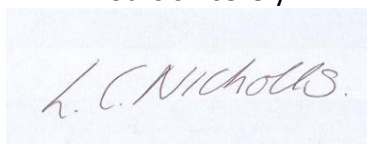
We have gone further than any other global retailer in publicly committing to implement a process to ensure our clothing suppliers are able to pay workers a fair living wage in the least developed countries we source from, starting with Bangladesh, India and Sri Lanka by 2015. We will achieve this by ensuring that the cost prices we pay to our suppliers are adequate to pay a fair living wage and by rolling out our ethical model factory programme. We have learnt a lot about implementing a living wage from this programme and will be happy to share more information with you if you wish to find out more.

In foods we have started work on taking the learning from the ethical model factory programme and embedding it into our balanced scorecard so suppliers are measured equally on Commercial, Technical, logistics, quality and sustainability (ethical, environment and lean) performance and focussed our

capacity building/pilot projects on raising awareness on higher performance. Living wage is part of this work.

If you have any further questions around the contents of this response please do not hesitate to contact me,

Yours sincerely

A handwritten signature in dark ink, reading "L. C. Nicholls.", is centered within a light blue rectangular box.

LOUISE NICHOLLS  
HEAD OF RESPONSIBLE SOURCING

Direct Line : 020 87 182287  
[Louise.nicholls@marks-and-spencer.com](mailto:Louise.nicholls@marks-and-spencer.com)

## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Email: [hrwnyc@hrw.org](mailto:hrwnyc@hrw.org)

### AFRICA DIVISION

Daniel Bekele, *Executive Director*  
Rona Peligal, *Deputy Director*  
Aloys Habimana, *Deputy Director*  
Jon Elliott, *Advocacy Director*  
Siphokazi Mthathi, *South Africa Director*  
Maria Burnett, *Senior Researcher*  
Kaitlin Cordes, *Fellow*  
Corinne Dufka, *Senior Researcher*  
Marianna Enamoneta, *Associate*  
Neela Ghoshal, *Researcher*  
Thomas Gilchrist, *Assistant Researcher*  
Eric Guttschuss, *Researcher*  
Charlene Harry, *Research and Advocacy Assistant*  
Leslie Haskell, *Researcher*  
Jehanne Henry, *Senior Researcher*  
Lindsey Hutchison, *Associate*  
Tiseke Kasambala, *Senior Researcher*  
Leslie Lefkowitz, *Senior Researcher*  
Lianna Merner, *Associate*  
Lewis Mudge, *Researcher*  
Ben Rawlence, *Senior Researcher*  
Lisa Rimli, *Researcher*  
Ida Sawyer, *Researcher*  
Carina Tertsakian, *Senior Researcher*  
Anneke Van Woudenberg, *Senior Researcher*  
Jamie Vernaede, *Associate*  
Matthew Wells, *Researcher*

### ADVISORY COMMITTEE

Jonathan Fanton, *Chair*  
Daniel Bach  
Suliman Baldo  
Fareeda Banda  
Innocent Chukwuma  
Wendy Keys  
Samuel Murumba  
Muna Ndulo  
Louis Marie Nindorera  
Peter Rosenblum  
John Ryle  
Nick Shaxson  
Darian Swig  
Arnold Tsunga  
L. Muthoni Wanyeki  
Michela Wrong

### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*  
Emma Daly, *Communications Director*  
Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olujobi, *Deputy Program Director*  
Dinah Pokempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

July 31, 2011

Justin King  
Chief Executive Officer  
J. Sainsbury plc  
33 Holborn  
London, EC1N 2HT  
United Kingdom

Via e-mail: [justin.king@sainsbury.co.uk](mailto:justin.king@sainsbury.co.uk)  
And facsimile: +44 020 7695 7610

Dear Mr. King:

Human Rights Watch is preparing a report on farmworkers and farm dwellers in the Western Cape province of South Africa, focusing primarily on workers who labor on fruit and wine farms. Human Rights Watch is an independent, international organisation that conducts investigations of human rights abuses around the world. In 2010 and 2011, we interviewed more than 260 people about the situation of farmworkers and farm dwellers in the Western Cape.

We documented a range of exploitative practices and human rights abuses, which are similar to problems that have been identified in the past by the South African Human Rights Commission and other stakeholders. These abuses include poor housing conditions on many farms; attempts to evict farm dwellers without following the legal procedure; exposure to pesticides without the proper safety equipment, as well as other health and safety problems; denial of legal benefits, including an almost complete failure to provide legally-required sick leave without a medical certificate; obstacles to union formation; and extremely low wages. The focus of our research was to assess overall conditions on farms in the Western Cape. We did not trace the supply chain for the products from each farm, and we told interviewees that we would not identify individual farms in order to reduce the risk of retaliation against them, so the report will not match stories of abuses to particular suppliers or retailers.

Given that your company purchases fruit and/or wine from the Western Cape province of South Africa, we welcome information regarding the policies your company has adopted regarding respect for workers' human rights by the suppliers from which it purchases South African wine or fruit, and particularly by the farms where those products are grown and produced. Specifically, we would appreciate your responses to the questions raised below, as well as any additional information you wish to provide on this matter.

We strive to reflect all perspectives in our research and look forward to your response. In light of our publishing schedule, we would be grateful to receive your response by 11 August, sent to Kaitlin Cordes, Fellow in the Africa Division, by email to [cordesk@hrw.org](mailto:cordesk@hrw.org), by phone to +1-212-377-9427, or by fax to +1-212-736-1300.

Thank you very much. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, reading "Daniel Bekele". The signature is fluid and cursive, with the first name "Daniel" and last name "Bekele" clearly distinguishable.

Daniel Bekele  
Executive Director, Africa Division  
Human Rights Watch

1. We are aware that your company has a Code of Conduct for Ethical Trade (also described as a Code of Conduct for Socially Responsible Sourcing) and is a founding member of the Ethical Trading Initiative, and as such has agreed to adopt a set of standards (the ETI Base Code) to be implemented by the company across its supply chain. We have taken note of the statement on your website that your Code of Conduct is consistent with the ETI Base Code. As you may be aware, the standards in the ETI Base Code broadly align with those reflected in South African law, with the notable addition of a provision on the payment of a living wage. Can you please tell us what concrete steps has your company taken to apply your company's code and/or the ETI Base Code standards on supplier farms in South Africa that produce fruit or grapes for wine? We would also welcome receiving copies of relevant materials.
2. Your company's website indicates that your suppliers are categorized by risk and, where warranted, are audited against standards by independent, third-party inspectors. Can you please confirm that, in line with this policy, your company actively monitors labor rights conditions on supplier farms in South Africa to assess compliance? If so, what percentage of farms does it monitor, how does it do so, and with what frequency?
3. How successful are your company's efforts to ensure compliance with its standards on supplier farms in South Africa? Please be specific, for example by indicating in which areas you feel that compliance is satisfactory and in which areas further improvement is needed.

4. We note that the online description of your company's Code of Conduct for Socially Responsible Sourcing, while similar to the ETI Base Code, does not fully correspond to it. In a discrepancy that is relevant to our research, the company's list refers to "renumeration" without elaboration whereas the corresponding principle in the ETI Base Code reads: "Living wages are paid." Can you please clarify your company's commitment to paying a living wage, consistent with the ETI Base Code, including in the context of South Africa?

CC:

Ben Eavis, Head of Corporate Responsibility, [ben.eavis@sainsburys.co.uk](mailto:ben.eavis@sainsburys.co.uk)



8/11/2011

Dear Daniel,

Justin has asked me to reply to you both on his behalf.

Thank you for engaging us before publishing your forthcoming report. Please find below our responses to each of your questions.

1. Code of Conduct for Ethical Trade - Sainsbury's have a revised Code of Conduct for Ethical Trade as of 2011 which has been shared with our suppliers but has not yet been made public. Our revised Code of Conduct is consistent with the ETI Base Code and requires that suppliers ensure they and their suppliers comply with the Base Code and/ or national laws. All our South African suppliers have received a copy of the Code of Conduct and are aware of their obligations. We monitor dissemination of the Code both at supplier and farm level in South Africa through SEDEX. Our Code of Conduct has been communicated to all suppliers at our South Africa conferences (held annually in Cape Town). Compliance against the Code of Conduct is monitored by Sainsbury's Product Technologists on visits to suppliers and growers in the country. We would also expect and encourage the majority of our suppliers who source from South Africa to have their own codes of conduct which are in line with the ETI's and our own and which they would monitor against at grower level. We work with suppliers to ensure they have the right people, policies and processes to support compliance against our Code of Conduct at grower level wherever in the world they source from. We have attached our Code of Conduct for Ethical Trade to this email.
2. As stated above, our code of conduct requires suppliers to take responsibility for monitoring labour rights conditions at farm level in South Africa and we would expect 100% coverage of farms by suppliers. We have visibility of labour rights issues on close to 400 South African farms through SEDEX and would track compliance through the SEDEX Self Assessment Questionnaire and ethical audits on a monthly basis.
3. Sainsbury's recognises the ongoing challenges of ensuring workers' rights in South Africa. Third party independent ethical audits provided by farms in South Africa to Sainsbury's highlight a range of issues of which health and safety, regular employment, wages and working hours are the most prominent. We recognise however that there are limitations to the issues identified by audits and work with suppliers and external parties on a range of other issues which we know exist in South African supply chains. These include union recognition, accommodation, harassment and discrimination and worker-management communication including grievances. We are at times made aware of farm or supplier-specific labour rights issues by a number of NGOs and worker organisations that we have links with in South Africa and the UK. In these instances, we work closely with these organisations and our suppliers to take steps to improve working conditions and ensure fair treatment of workers.
4. Living Wage – as per point 1 our revised Code of Conduct is consistent with the ETI Base Code which would include a commitment to work towards living wages being paid in our supply chains.
5. Other relevant points
  - a. In addition to the points raised above, Sainsbury's have been closely involved with other UK retailers, Fruit South Africa and the Fresh Produce Exporter's Forum (FPEF) in the development of a South African Grower Handbook on ethical trade. Details of the Grower Handbook are available on the FPEF website - <http://fpef.co.za/2010110918/ethical-trade.html> and a website for the handbook will be available soon. The handbook is a user-friendly guide on the Ethical Trading Initiative (ETI) Base Code, and how to implement its principles in the workplace, designed for growers. It also provides guidelines on the auditing process and the support available to help growers with issues of compliance. Copies of the handbook have been made available to all Sainsbury's growers in South Africa including a CD containing policies and procedures.
  - b. Sainsbury's are also part of an Ethical Trading Initiative project with Comic Relief funding. The supervisor training programme has been developed in the UK and Kenya and will be

rolled out through 174 training courses for workers, supervisors and managers in fruit, flower and wine suppliers to Sainsbury's and other UK retailers  
<http://www.ethicaltrade.org/training/eti-supervisor-training-programme>

- c. Sainsbury's are the world's largest retailer of Fairtrade products and we have made a significant commitment to support the growth of Fairtrade in South Africa, particularly amongst our wine suppliers. Our suppliers and farmers in South Africa are engaged with us in the role that Fairtrade plays in ensuring workers, and farmers, are fairly paid and well treated.
- d. Sainsbury's 'Fit for the Future' conferences were held for the second year in 2011 in Cape Town and Nairobi. A central theme in both locations was ethical trade with external parties and suppliers sharing their best practice on complying with the ETI Base Code and ensuring fair treatment of workers. Sainsbury's intend to retain worker welfare as a central theme for the 2012 Africa conferences.

We would welcome the opportunity to talk to you in more detail. We think this will be particularly relevant once your report is published.

If you would like clarification on any of the above, please contact me directly.

Best wishes

Ben

Ben Eavis | Head of Corporate Responsibility and Ethical Trade  
Sainsbury's Supermarkets Ltd | 33 Holborn, London | EC1N 2HT  
[ben.eavis@sainsburys.co.uk](mailto:ben.eavis@sainsburys.co.uk) | 020 7695 4924 / 07769 235 655

Our [Annual Report 2010/2011](#) and [Corporate Responsibility Report 2010/2011](#) are now available to view or download.



## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Email: [hrwnyc@hrw.org](mailto:hrwnyc@hrw.org)

### AFRICA DIVISION

Daniel Bekele, *Executive Director*  
Rona Peligal, *Deputy Director*  
Aloys Habimana, *Deputy Director*  
Jon Elliott, *Advocacy Director*  
Siphokazi Mthathi, *South Africa Director*  
Maria Burnett, *Senior Researcher*  
Kaitlin Cordes, *Fellow*  
Corinne Dufka, *Senior Researcher*  
Marianna Enamoneta, *Associate*  
Neela Ghoshal, *Researcher*  
Thomas Gilchrist, *Assistant Researcher*  
Eric Guttschuss, *Researcher*  
Charlene Harry, *Research and Advocacy Assistant*  
Leslie Haskell, *Researcher*  
Jehanne Henry, *Senior Researcher*  
Lindsey Hutchison, *Associate*  
Tiseke Kasambala, *Senior Researcher*  
Leslie Lefkowitz, *Senior Researcher*  
Lianna Merner, *Associate*  
Lewis Mudge, *Researcher*  
Ben Rawlence, *Senior Researcher*  
Lisa Rimli, *Researcher*  
Ida Sawyer, *Researcher*  
Carina Tertsakian, *Senior Researcher*  
Anneke Van Woudenberg, *Senior Researcher*  
Jamie Vernaede, *Associate*  
Matthew Wells, *Researcher*

### ADVISORY COMMITTEE

Jonathan Fanton, *Chair*  
Daniel Bach  
Suliman Baldo  
Fareeda Banda  
Innocent Chukwuma  
Wendy Keys  
Samuel Murumba  
Muna Ndulo  
Louis Marie Nindorera  
Peter Rosenblum  
John Ryle  
Nick Shaxson  
Darian Swig  
Arnold Tsunga  
L. Muthoni Wanyeki  
Michela Wrong

### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*  
Emma Daly, *Communications Director*  
Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olujobi, *Deputy Program Director*  
Dinah PoKempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

July 29, 2011

Philip Clarke  
Chief Executive Officer  
Tesco PLC  
Tesco House, Delamare Road  
Cheshunt, Hertfordshire EN8 9SL  
United Kingdom

*Via e-mail:* [cr.enquiries@uk.tesco.com](mailto:cr.enquiries@uk.tesco.com)  
*And Facsimile:* +44 19 9263 0794

Dear Mr. Clarke:

Human Rights Watch is preparing a report on farmworkers and farm dwellers in the Western Cape province of South Africa, focusing primarily on workers who labor on fruit and wine farms. Human Rights Watch is an independent, international organisation that conducts investigations of human rights abuses around the world. In 2010 and 2011, we interviewed more than 260 people about the situation of farmworkers and farm dwellers in the Western Cape.

We documented a range of exploitative practices and human rights abuses, which are similar to problems that have been identified in the past by the South African Human Rights Commission and other stakeholders. These abuses include poor housing conditions on many farms; attempts to evict farm dwellers without following the legal procedure; exposure to pesticides without the proper safety equipment, as well as other health and safety problems; denial of legal benefits, including an almost complete failure to provide legally-required sick leave without a medical certificate; obstacles to union formation; and extremely low wages. The focus of our research was to assess overall conditions on farms in the Western Cape. We did not trace the supply chain for the products from each farm, and we told interviewees that we would not identify individual farms in order to reduce the risk of retaliation against them, so the report will not match stories of abuses to particular suppliers or retailers.

We intend to describe the engagement of Tesco regarding the treatment of farmworkers in the Western Cape, and the impact this has, including that we were told that the Ethical Trading Program was designed to promote improvement in the supply chain but that it should not be understood as offering a guarantee that conditions on all supplier farms currently meet the requirements of the ETI Base Code. We explain that Tesco requires audits, has multiple projects to improve conditions on farms, and was involved in a pilot project on grievance mechanisms. We also note that Tesco declined to

provide us with a list of its supplier farms in the Western Cape, citing trade secrecy.

Given that Tesco purchases fruit and/or wine from the Western Cape province of South Africa, we welcome information regarding the policies your company has adopted regarding respect for workers' human rights by the suppliers from which it purchases South African wine or fruit, and particularly by the farms where those products are grown and produced. We met with a representative of Tesco's Ethical Trading Programme in March. In addition, we spoke with Giles Bolton, Ethical Trading Manager, by phone in July. We appreciate the information they shared and write to you now with some specific questions on which we would appreciate clarification. We would appreciate your responses to the questions raised below, as well as any additional information you wish to provide on this matter.

We strive to reflect all perspectives in our research and look forward to your response. In light of our publishing schedule, we would be grateful to receive your response by 11 August, sent to Kaitlin Cordes, Fellow in the Africa Division, by email to [cordesk@hrw.org](mailto:cordesk@hrw.org), by phone to +1-212-377-9427, or by fax to +1-212-736-1300.

Thank you very much for your response. I look forward to hearing from you.

Sincerely,



Daniel Bekele  
Executive Director, Africa Division  
Human Rights Watch

1. We are aware that your company has a policy on ethical trading and is a founding member of the Ethical Trading Initiative, and as such has agreed to adopt a set of standards (the ETI Base Code) to be implemented by the company across its supply chain. We understand that, under your company's Ethical Trading Program, suppliers are audited against these standards by independent, third-party inspectors. Representatives of that program have informed us that, in line with this policy, your company actively monitors labor rights conditions on supplier farms in South Africa to assess compliance, as well as having other programs in place. Can you please tell us what percentage of supplier farms in South Africa your company monitors and with what frequency?
2. How successful are your company's efforts to ensure compliance with its standards on supplier farms in South Africa? Please be specific, for example by indicating in which areas you feel that compliance is satisfactory and in which areas further improvement is needed.
3. We note that the standards in the ETI Base Code broadly align with those reflected in South African law, with the notable addition of a provision on the payment of a living wage. Can you please clarify how Tesco implements its commitment to paying a

living wage, consistent with the ETI Base Code, including in the context of South Africa?

4. When we spoke to Giles Bolton, he noted that your company's Ethical Trading Programme does not guarantee that conditions on all of Tesco's supplier farms currently meet the requirements of the ETI Base Code. He also referred us to ETI's Principles of Implementation, which call for "continuous improvement in the application of these [ETI Base Code] principles." In this light, can you please comment on Tesco's ability to guarantee that conditions on supplier farms in South Africa meet, at a minimum, the basic standards required by South African law?

CC:

Ruth Girardet, Corporate Responsibility and Communities Direct, Tesco PLC,  
[ruth.girardet@uk.tesco.com](mailto:ruth.girardet@uk.tesco.com)

Giles Bolton, Ethical Trading Manager, Tesco PLC, [giles.bolton@uk.tesco.com](mailto:giles.bolton@uk.tesco.com)

Tania Moodley, Ethical Action Team Manager, Tesco Stores Ltd,  
[tania.moodley@uk.tesco.com](mailto:tania.moodley@uk.tesco.com)



Daniel Bekele  
Executive Director, Africa  
Human Rights Watch  
1630 Connecticut Avenue, N.W.  
Suite 500  
Washington, DC 20009  
United States

*via email*

Tesco Stores Ltd  
Cirrus Building A  
Shire Park  
Welwyn Garden City  
Herts  
AL7 1GA

Tel: +44 (0)1707 678 743  
giles.bolton@uk.tesco.com

12 August 2011

Dear Mr Bekele,

**Re: South Africa farm workers and dwellers**

Thank you for your letter of July 29 to Philip Clarke, CEO of Tesco plc, about the condition of farm workers and dwellers in Western Cape, South Africa. I have been asked to reply on his behalf.

Your letter included a number of questions further to recent discussions held between Tesco and Human Rights Watch staff. I have set out responses to these at the end of this letter.

As I hope was clear during the open discussions held with your colleagues, Tesco is strongly committed ensuring decent conditions for all workers in our supply chain in South Africa. This includes both improving any problems we identify and playing a strong and proactive role in helping the South African fruit industry as a whole to improve working conditions. While there is more to be done to achieve consistent, strong standards across farms, we believe our efforts exceed those made by other international retailers in the country and we look forward to continuing to play a constructive role in the industry's progress.

Yours sincerely

Giles Bolton (via email)  
Head of Ethical Trading  
**Tesco Stores Limited**

**1. Can you please tell us what % of supplier farms in SA your company monitors and with what frequency?**

Over the last 3 years we have ensured independent ethical audits of all our farms in South Africa have been carried out by competent locally-based ethical experts. To support this we have provided all our suppliers with training on a range of issues including improving management/worker dialogue, the ethical audit process, and addressing non-compliances.

We have also provided – and continue to provide – considerable support to the whole fruit industry in South Africa, through Fruit South Africa (Fruit SA), to develop a strengthened industry-wide approach to monitoring and improving conditions at all farms. This is likely to require every farm and packhouse to complete an annual ethical self-assessment, have an independent ethical audit on a 5 year cycle and any non-compliances resolved within 1 year, with independent verification.

**2. How successful are your company's efforts to ensure compliance with its standards on supplier farms in SA?**

We would agree with what we understand to be some of the findings of HRW's research, namely that ongoing, particular challenges across the South African fruit industry include generally weak worker-management relations and communication, low awareness by both managers and workers of rights and processes, very limited development of unions, a growing use of agency labour and complex issues around the historical location of workers' housing on farm land. These in turn can lead to a range of specific problems with standards including those of freedom of association and collective bargaining, housing, and the potential for general abuse.

As in other global supply chains, we find that some of these areas of non-compliance can be relatively easily corrected through the audit process, while other areas of require more in-depth engagement to help drive improvement – often in partnership with local South African stakeholders. As a member of the Ethical Trading Initiative, our emphasis is on supporting suppliers to improve conditions where problems exist, rather than cut and run, and we believe we are making a strong contribution to improving conditions both in our own direct supply chain and across the industry as a whole.

We have invested in a broad range of targeted interventions in response to these challenges including:

- a) Workshops to raise workers' awareness of their rights and responsibilities in the workplace using a DVD-based 'Passport to Work' program – with more 36,000 workers trained to date.
- b) Developing and piloting a new, South African-owned best practice model for farm grievance mechanisms, in conjunction with South Africa's Centre for Conciliation, Mediation and Arbitration, the UN Special Representative on Business and Human Rights and Harvard University – plus South African farms, NGOs and unions. Following on from this work we have also developed a toolkit for workplace communication comprising a communication structure, appeals and disciplinary procedures. This is being piloted with a major supplier in the Eastern Cape and a grower association covering Ceres, Elgin and Langkloof.
- c) Supporting a 3-year program on diversity being run in conjunction with the UK-based Ethical Trading Initiative. This work is focused on building awareness and capacity amongst supervisors to help them recognize and deal with discrimination in the workplace and is planned to cover 170 sites.

- d) Funding the development of a national database of accredited service providers for training on a number of workplace issues including health and safety, to be made available through the Fruit SA website.
- e) Funding a career development training program specifically for women line supervisors and managers.

**3. Can you please clarify how Tesco implements its commitment to paying a living wage, consistent with the ETI Base Code, including in the context of SA?**

Our ethical audits check our suppliers' compliance with paying workers in accordance with their local legal obligations, including for any overtime. Any non-compliances are regarded as very serious and must be rectified urgently.

With regard to the often contentious debates living wages, we are in regular dialogue with a range of stakeholders across our supply chains to understand their perceptions. In countries where we identify a strong disparity between the wages paid and the wage necessary to meet the requirements on Living Wage as set out in the ETI Base Code (that wages and benefits must meet national legal standards/ industry benchmarks and 'should always be enough to meet basic needs and to provide some discretionary income'), we have engaged in a range of measures designed to close any gap identified in a robust and sustainable way. In Bangladesh, for example, this has included lobbying the Government for a substantial increase and more regular review of minimum wages, and support for suppliers to improve productivity to enable higher wages and reduced hours.

In other countries where disparities between wage minima and living wage claims are not as high and where there is a strong local debate in which worker organizations are well represented, in general we do not believe it is for foreign retailers to dictate what precise wage levels. This includes a country such as South Africa, where the ruling government party, the ANC, itself has strong links with worker organizations. Our own research indicates a large majority of our suppliers' workers receive pay and benefits above or close to campaigners' targets for wage increases.

**4. Can you please comment on Tesco's ability to guarantee that conditions on supplier farms in SA meet, at a minimum, the basic standards required by SA law?**

As independent South African businesses, our suppliers hold ultimate responsibility to ensure they meet their obligations under South African Law. Without being constantly present at all supplier sites, we cannot of course guarantee all standards are constantly met. However, we choose our suppliers carefully and work closely with them to ensure they are aware of their obligations and meet them in full, including improving any areas of concern.

Our ethical trading strategy, 'Trading Fairly', sets out a robust approach under which supplier selection and engagement, monitoring, the resolution of issues, training and capacity building, and communication and dialogue are undertaken. More detail on this comprehensive process along with an outline of a number of country-specific initiatives including those undertaken in South Africa is available at <http://www.tescopl.com/corporate-responsibility/our-community-promises/buying-and-selling-products-responsibly/>



## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Email: [hrwnyc@hrw.org](mailto:hrwnyc@hrw.org)

### AFRICA DIVISION

Daniel Bekele, *Executive Director*  
Rona Peligal, *Deputy Director*  
Aloys Habimana, *Deputy Director*  
Jon Elliott, *Advocacy Director*  
Siphokazi Mthathi, *South Africa Director*  
Maria Burnett, *Senior Researcher*  
Kaitlin Cordes, *Fellow*  
Corinne Dufka, *Senior Researcher*  
Marianna Enamoneta, *Associate*  
Neela Ghoshal, *Researcher*  
Thomas Gilchrist, *Assistant Researcher*  
Eric Guttschuss, *Researcher*  
Charlene Harry, *Research and Advocacy Assistant*  
Leslie Haskell, *Researcher*  
Jehanne Henry, *Senior Researcher*  
Lindsey Hutchison, *Associate*  
Tiseke Kasambala, *Senior Researcher*  
Leslie Lefkowitz, *Senior Researcher*  
Lianna Merner, *Associate*  
Lewis Mudge, *Researcher*  
Ben Rawlence, *Senior Researcher*  
Lisa Rimli, *Researcher*  
Ida Sawyer, *Researcher*  
Carina Tertsakian, *Senior Researcher*  
Anneke Van Woudenberg, *Senior Researcher*  
Jamie Vernaede, *Associate*  
Matthew Wells, *Researcher*

### ADVISORY COMMITTEE

Jonathan Fanton, *Chair*  
Daniel Bach  
Suliman Baldo  
Fareeda Banda  
Innocent Chukwuma  
Wendy Keys  
Samuel Murumba  
Muna Ndulo  
Louis Marie Nindorera  
Peter Rosenblum  
John Ryle  
Nick Shaxson  
Darian Swig  
Arnold Tsunga  
L. Muthoni Wanyeki  
Michela Wrong

### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*  
Emma Daly, *Communications Director*  
Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olugboji, *Deputy Program Director*  
Dinah PoKempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

July 31, 2011

Rob Cameron  
Chief Executive Officer  
Fairtrade International (FLO)  
Bonner Talweg 177  
53129 Bonn, Germany

*Via e-mail: [r.cameron@fairtrade.net](mailto:r.cameron@fairtrade.net)  
And via facsimile: +49 228 2421713*

Dear. Mr. Cameron:

Human Rights Watch is preparing a report on farmworkers and farm dwellers in the Western Cape province of South Africa. Human Rights Watch is an independent, international organisation that conducts investigations of human rights abuses around the world. In 2010 and 2011, we interviewed more than 260 people about the situation of farmworkers and farm dwellers in the Western Cape.

We documented a range of exploitative practices and human rights abuses, which are similar to problems that have been identified in the past by the South African Human Rights Commission and other stakeholders. These abuses include poor housing conditions on many farms; attempts to evict farm dwellers without following the legal procedure; exposure to pesticides without the proper safety equipment, as well as other health and safety problems; denial of legal benefits, including an almost complete failure to provide legally-required sick leave without a medical certificate; obstacles to union formation; and extremely low wages.

We intend to describe briefly Fairtrade certification in the Western Cape, and the impact this has, as well as some of the problems that can still occur on certified farms, such as health and safety issues and low levels of union formation. Although our research did not focus on Fairtrade-certified farms, we did conduct some interviews that discussed specific problems on one Fairtrade-certified farm, as well as general problems that can arise on Fairtrade-certified hired labor farms in the Western Cape. One worker on a Fairtrade-certified wine farm spoke of numerous problems—including physical abuse by a farm foreman, exposure to pesticides without the proper safety equipment, and problems with freedom of association—and said she felt unable to share her account with the Fairtrade auditor without fear of repercussion because she and other workers were questioned in a group, rather than privately, and she feared that someone might tell the farmer what she had said. Human Rights Watch asked a representative of FLO-Cert in South Africa about this scenario; the representative acknowledged that, although employers do not choose whom the auditor

questions, it is difficult in practice to maintain confidentiality on small hired labor farms. A different person who works with workers on Fairtrade-certified farms in the Western Cape told Human Rights Watch that the worker's concerns were reasonable and consistent with accounts from other workers. This person also noted that some Fairtrade-certified farms in the area seek to block their workers from forming unions.

Given Fairtrade International's work to ensure that certain standards are met on Fairtrade-certified farms, we welcome information regarding the steps it has taken to ensure greater respect for farmworkers' and farm dwellers' human rights. Specifically, we would appreciate your responses to the questions raised below, as well as any additional information you wish to provide on this matter.

We strive to reflect all perspectives in our research and look forward to your response. In light of our publishing schedule, we would be grateful to receive your response by 11 August, sent to Kaitlin Cordes, Fellow in the Africa Division, by email to [cordesk@hrw.org](mailto:cordesk@hrw.org), by phone to +1-212-377-9427, or by fax to +1-212-736-1300.

Thank you very much for your response. I look forward to hearing from you.

Sincerely,



Daniel Bekele  
Executive Director, Africa Division  
Human Rights Watch

1. How does Fairtrade International ensure that audits fully uncover problems with working conditions on farms, including on small hired labor farms where feedback could more readily be traced to individual workers and possibly subject them to risk of retaliation? Does Fairtrade International have procedures in place to ensure that workers are comfortable disclosing problems during Fairtrade audits and that they do not face retaliation?
2. Given that Fairtrade standards require freedom of association, what steps has Fairtrade International taken to address some farmers' resistance to union formation on certified farms in South Africa?
3. How successful are Fairtrade International's efforts to ensure compliance with Fairtrade standards on hired labor farms in South Africa? Please be specific, for example by indicating in which areas you feel that compliance is satisfactory and in which areas further improvement is needed.

4. How does Fairtrade International handle cases when it learns something is amiss on certified farms? Please provide concrete examples, if possible, from South Africa.

CC:

Tuulia Syvaenen, Chief Operating Officer, Fairtrade International, [t.syvaenen@fairtrade.net](mailto:t.syvaenen@fairtrade.net)



Bonn 15<sup>th</sup> of August 2011

Dear Mr Beleke,

Thank you contacting us about this important issue. We would like to respond to both the content of your letter and the specific questions below.

We are indeed concerned about the grave allegations by the one worker from a Fairtrade farm. They violate the Fairtrade Standards and the local legislation. If she feels able to do so, the worker can and should report these problems internally to her shop steward or worker representative and to the local enforcement agencies where possible. The Fairtrade Standards require certified plantations to work towards putting a formal grievance procedure in place. In the meantime employers are required to meet regularly with worker representatives in order to deal with grievances. The conclusions/agreements of these meetings are documented by signed minutes. In addition we would strongly urge the worker, or support organization involved, to make use of the allegations procedure of FLO-CERT to investigate these issues further. FLO-CERT follows up on all complaints or allegations they receive.

We would like to also inform you about our ongoing work to improve compliance for workers' rights across the Fairtrade system. The Fairtrade Standards protect workers' basic rights according to the International Labour Organization (ILO) conventions. This means bonded and illegal child labour is prohibited, health and safety standards must be followed, employers must allow workers to have freedom of association and collective bargaining, and no discrimination is allowed. Nevertheless, we know that workers can face many subtle or overt barriers to enjoying quality work conditions and to forming or joining a union, even in Fairtrade. That's why we launched a major programme to deepen Fairtrade's impact for workers and hired labourers. Highlights include:

- We are conducting a strategic review of our work in hired labour. For the first time since Fairtrade first included workers in its scope, we are re-evaluating our entire approach in this area.
- A group of trade unions, labour rights NGOs, industry experts and Fairtrade members are advising us on how we can deepen Fairtrade's impact for workers. The Fairtrade Advisory Committee on Worker Rights and Empowerment (WRAC) began in January 2011.
- We are hosting a series of pilot workshops on workers' rights across Latin America. All groups with a stake in workers' rights in Fairtrade – workers and managers from Fairtrade certified farms, experts from trade unions and national NGOs, and the Fairtrade International team – have sat down together to talk about what workers' rights mean and how they could work together better to make a real change for workers.
- We are working on a new brochure to inform workers on Fairtrade plantations and factories of their rights and where to go if they have complaints or concerns.

We have hired a full-time staff person in the position of Senior Adviser on Worker Rights and Trade Union Relations. This person is overseeing the hired labour strategy review, supporting us to build relationships with local and global trade unions, and developing and implementing policies and activities related to workers' rights in the Fairtrade system.

Please find below our answers to your questions about our work to prevent and resolve labour violations and our specific work in South Africa.

***1. How does Fairtrade International ensure that audits fully uncover problems with working conditions on farms, including on small hired labor farms where feedback could more readily be traced to individual workers and possibly subject them to risk of retaliation? Does Fairtrade International have procedures in place to ensure that workers are comfortable disclosing problems during Fairtrade audits and that they do not face retaliation?***

FLO-CERT is the certification body for Fairtrade certified farms. All plantations and also small-producer farms with a significant number of hired workers are audited annually against a comprehensive checklist of criteria based on the Fairtrade Generic Standards for Hired Labour. Local legislation is applied where a higher standard is set.

An audit includes random sampling of individual and group interviewees. Each individual interview covers every aspect of the Standard while focus group discussion will focus on a particular area. All information gathered is triangulated with documents, additional interviews and physical inspections. No names or identifying facts are listed in the findings in order to protect individual confidentiality. Any non-compliance found with the Standard is discussed with workers and management and an opportunity provided for them to suggest corrective actions. Proof that these have been taken is then followed up before a certification decision is taken. Violations of major criteria, including freedom of association or discrimination, meet with sanctions including suspension and ultimate removal of the certification. To the specific issue of retaliation the annual audit also reviews all disciplinary action and gathers information about promotions and appointments to ensure that these are done within the policies of the company and without discrimination.

***2. Given that Fairtrade standards require freedom of association, what steps has Fairtrade International taken to address some farmers' resistance to union formation on certified farms in South Africa?***

The Fairtrade Standards do not allow resistance to union formation. In fact, they require employers to facilitate contact with a union and information being provided on unionisation to workers.

There is however low unionisation of agricultural workers in South Africa and particularly in the Western Cape. Unlike many other Southern African countries, South Africa does not have one agricultural sector union and has no sector CBA (The Fairtrade Standards would require engagement with such a union should it be in place). Rather, there are a vast array of independent and affiliated unions who change regularly. In most certified farms in the Western Cape, there has at some stage been a union representing workers but workers have withdrawn as they did not receive services for their dues.

This means that the workers on some certified farms now prefer on-site workers fora/committees rather than unionisation as their preferred form of worker. The Fairtrade Standards allow this but put the obligation in these cases on management to make an effort to negotiate written agreements on conditions of employment with workers forums/committees. Those agreements should cover topics usually included in a CBA, including wages. (The Fairtrade Standards for Hired Labour specify that in countries where a CBA is agreed for the sector, certified plantations sign and adhere to it within one year of certification.)

The Association for Fairness In Trade (AFIT) is a very important partner in supporting workers to unionize. AFIT is an independent organization created by Fairtrade certified farms workers that represents small-scale farmers and farm-workers in the Fairtrade system. They advise workers on their



options to unionize, including on trust-worthy unions. Workers trust AFIT since it is a workers' organization. AFIT can help bridge the gap where workers have lost their trust in unions.

**3. How successful are Fairtrade International's efforts to ensure compliance with Fairtrade standards on hired labor farms in South Africa? Please be specific, for example by indicating in which areas you feel that compliance is satisfactory and in which areas further improvement is needed.**

Fairtrade International supports certified small producer organisations and plantation to adhere to the Fairtrade Standards. Fairtrade International has a team of field staff which provide direct training and support to plantations and workers. We have three Liaison Officers in South Africa and one coordinator for the Southern Africa region. In the case of plantations we support to management to understand and fulfill the Standards and to workers to understand their rights and benefits according to the Fairtrade Standards.

We also collaborate with organizations that focus on supporting workers to understand and defend their rights. For example, AFIT organizes workshops for workers on topics such as negotiation skills, national workers rights, etc.

Every month AFIT, PSR and union representatives meet together and discuss issues which have arisen on certified farms. This transparent exchange of information allows us to tackle issues workers may not have been willing to share directly with Fairtrade, or to call upon support from unions when workers request it.

Workers on one Fairtrade farm in the Western Cape recently announced a successful wage negotiation handled by Sikhula Sonke and Workers Party Union (WPU). They publicly acknowledged Fairtrade's support on this. The union representative explained he was satisfied by the 6.9% victory, which goes beyond the Fairtrade Standards and national requirements. AFIT had provided a lot of the support to link workers with the unions and train workers. (see attached AFIT newsletter)

There are currently 39 Fairtrade certified cooperatives and plantations in South Africa. Successes and challenges of compliance and good labour practices vary farm per farm. Gaining the commitment of the management is a key issue to have a high level of compliance with Fairtrade Standards and good labour relations.

**4. How does Fairtrade International handle cases when it learns something is amiss on certified farms? Please provide concrete examples, if possible, from South Africa.**

FLO-CERT follows up on all allegations in accordance with the Complaints and allegations procedure (see above). If violations are found then FLO-CERT takes appropriate action. This could include corrective measures and depending on the severity might result in a suspension of their Fairtrade certificate.

Fairtrade International has a similar allegations procedure which is coordinated by quality management. Fairtrade International also provides support to certified cooperatives and plantations to address any issues of non compliance with the Fairtrade Standard as explained above.



We look forward to further dialogue and collaboration with the Human Rights Watch on the important issue of workers rights.

Best regards

Ruediger Meyer  
Chief Executive Officer  
FLO-CERT

Tuulia Syvänen  
Chief Operating Officer  
Fairtrade International