



Verification Report  
HILANDERIA DE ALGODÓN PERUANA S.A.

Date of the report: January 31<sup>st</sup>, 2023  
Investigators: Oxfander Ramírez / Martha Maldonado

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## I. Background

On June 11, 2019, the Fair Labor Association (hereinafter, "FLA") received a Third Party Complaint (hereinafter, "TPC") from the union *Sindicato de Trabajadores de la Hilandería de Algodón Peruano S.A.*, accusing the factory *Hilandería de Algodón Peruano S.A.*, (hereinafter "HIALPESA") concerning the suspension of the employment contracts of 190 workers in the spinning and knitting areas, requesting an investigation of the process carried out by HIALPESA and its adherence to FLA's Workplace Code of Conduct and Compliance Benchmarks. At the time the TPC was submitted by the Union, FLA members Burton Snowboards and 47 Brands were sourcing from HIALPESA.

FLA commissioned the investigation of these allegations to the independent consultant, Ena Núñez O'Brien, who carried out the field investigation between August 12-16, 2019, conducting an on-site visit at HIALPESA facilities and conducting interviews with the parties involved.

During the investigation, it was corroborated that HIALPESA was missing several policies and procedures to ensure adequate management and communication with workers about termination and retrenchment, freedom of association among other topics, and there were noncompliances regarding benefit payments, labor rights and several FLA Compliance Benchmarks. A Corrective Action Plan (CAP) was drafted, and HIALPESA was asked to complete the remediation actions.

In September 2022, VeLaR received a request from FLA to perform a verification of the implementation status of all the remedial actions included in the CAP. The verification was carried out from November 2<sup>nd</sup> to November 4<sup>th</sup>, 2022, by VeLaR's investigators: Oxfander Ramírez and Martha Maldonado (hereinafter, "the investigators"). Only Burton Snowboards was engaged in the verification.

The investigators verified the implementation status of following remedial actions (R):

- **RN1:** Enhance existing policies and procedures to sufficiently detail all aspects of employment.
- **RN2:** Develop a plan to move away from short term employment contracts and towards hiring permanent employees to support regular business needs.
- **RN3:** Develop and implement policies and procedures for educating management, as well as interacting with general employees and unionized employees. Recognition of the Union and its role within the factory as it was agreed between HIALPESA management and the Union, which must be communicated to the workers in a detailed and written manner.
- **RN4:** Ensure there is a procedure in place that is followed exactly for legally required payouts, delivery of the corresponding payment to the workers who have not reached an agreement with the company, and who did not receive the bonus payment for July's national holiday.
- **RN5:** Develop and implement policies and procedures for retrenchment which include a policy banning release of rights in exchange for severance or legally required benefits.

- **RN6:** Correction of the family allowance payment. Develop a procedure to prevent future occurrences of collective bargaining contradicting law.
- **RN7:** Ensure policies and procedures are developed, with general timelines noted, for consulting with worker representatives in the event of layoffs.
- **RN8:** Develop and implement a process for managing worker hours in line with FLA requirements.
- **RN9:** Should the AAT decision regarding the open appeal by HIALPESA find in favor of the workers, all wages must be paid in full to cover the time period starting from when the "perfect suspension" occurred on June 6, 2019.

## II. Methodology

The verification process was carried out as follows:

Table 01 Verification Agenda	
Date	Activity
November 2 <sup>nd</sup> , 2022	Revision of the previous documentation received.
November 3 <sup>rd</sup> , 2022.	Opening Meeting Interviews with HIALPESA representatives Revision of the documents and evidence presented by HIALPESA onsite. Visit to the areas and buildings of HIALPESA facility. Interview with the representatives of the " Sindicato de Tintorería".
November 4 <sup>th</sup> , 2022.	Interview with the members of " <i>Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.</i> " inside the HIALPESA facilities. Interviews with HIALPESA production workers in the production facilities. Interview with representatives of " <i>Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.</i> " outside the HIALPESA facilities. Closing meeting and the status of the remediation actions was discussed with HIALPESA representatives.

### Document Review

The complete list of the documents reviewed by the investigators has been attached as Appendix "A" herein. In addition to those shared by HIALPESA, the representatives of the "Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A." also shared relevant documents<sup>1</sup> pertinent to the progress of the remediation.

### Interaction with HIALPESA representatives

The investigators held an opening meeting (November 3<sup>rd</sup>) and a closing meeting (November 4<sup>th</sup>) with HIALPESA representatives. Specifically, the following representatives participated in both meetings:

Table 02: Interaction with the company representatives
Human Resources Manager
Chief of Personnel Administration
Chief of Remuneration and Compensation

<sup>1</sup> These documents are listed in Appendix A

During the opening meeting, HIALPESA representatives were informed about the verification, its objective and scope, as well as of the documents and evidence that would be requested.

HIALPESA representatives showed openness and transparency, accepting right from the beginning the actions that have been carried out and those that have not. They provided to the investigators the available documentation from a requested list of evidence that VeLar was planning to review, and they indicated which evidence was not available or missing (since actions were not completed).

Throughout the process there was constant communication with HIALPESA representatives, who did not refuse to answer the questions asked by the investigators.

At the end of the process, the list of remedial actions was reviewed again, and the investigators clearly explained the status of each of the remedial items and the representatives did not express any disagreement.

### **Interview with union representatives**

During the opening meeting, HIALPESA representatives indicated that in addition to the TPC complainant (Sindicato de Trabajadores Hilandería de Algodón Peruano S.A), there was now a second union: the "Sindicato de Tintorería " which in turn held the highest representation within the factory. Managers declared they were from 55 to 60 employees enrolled in this second union ("Sindicato de Tintorería") and presented a copy of the Collective Bargaining Agreement (CBA) named "*Acta de Negociación Colectiva*" signed with the "*Sindicato de Tintorería*"

The investigators indicated that it would be necessary to talk with the representatives of both unions and HIALPESA managers facilitated the investigators to proceed with the interviews.

### Interviews with "*Sindicato de Tintorería*"

On November 3<sup>rd</sup>, HIALPESA called two representatives of the "Sindicato de Tintorería". These representatives were interviewed in one of the private rooms of the office area that was provided by the factory.

During the interview:

- Investigators noted that the union board representatives were uncomfortable, especially when the investigators asked about the union creation and their election as union board representatives.
- Representatives never refused to talk with the investigators. However, these representatives never provided information about how the union was created and how they came to be the union leaders. They did not present their union credentials or any information corroborating their union status.
- The investigator asked several times these two questions and the union representatives started getting upset and answered that was not important, that the important thing is the union exists and it helps the workers through the negotiation of the Collective Agreement.

Interviews with "Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A" inside the facility:

On November 4<sup>th</sup>, the investigators again requested to speak with the representatives of the union *Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A*. Two unionized employees were called by HIALPESA representatives to be interviewed in a separate office outside the main building and near the facility entrance. This office did not have the same privacy as the previous one, since it had transparent windows, and it was near the security booth.

In this second interview, the union members interviewed stated that they are union members, but they are not part of the union board.

During this interview, these union members:

- Indicated that they work in a separate building (a materials' warehouse).
- Explained they are not allowed to have contact with the rest of the employees in the main building, they are monitored every time they arrive at the main building. Auditors tried to verify this information, and they noted these employees do work in another building. No monitoring evidence was detected since these employees were not found in the main building during the process.
- Also declared this situation is different for the union members of the Sindicato de Tintorería who are not segregated.
- When the investigators asked about any Freedom of Association communication from the managers, they answered there was no policy, training, or any official communication from the factory with the employees on this matter.

Interviews with "Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A" outside the facility:

On November 3<sup>rd</sup>, the investigators contacted the representatives of Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A by WhatsApp. Their phone numbers were previously provided by FLA and they agreed to be interviewed at a facility located ten minutes from HIALPESA's buildings. This interview was conducted on November 4.

During this interview the union representatives stated the following:

- This union was created in 1985.
- In 2012, the union obtained permanent labor contracts for 1,200 employees who previously were hired under temporary contracts during a continuous period, even when they had a permanent labor relationship with the factory. The length of the working relation varied from one employee to another and since there were 1,200, it is not possible to specify the time.
- HIALPESA's reaction to this situation was to harass unionized employees and non-unionized employees who were in contact with the union, showing them pictures and videos of their mistakes or faults inside the building and mentioning the possible consequences (terminations) that would be enforced only if they continue or enroll in the union.

- In 2014 **Employee number 1**<sup>2</sup> working performance was recognized and the employee received the factory's congratulations, but three months later, she was dismissed (her temporary labor contract simply was not renewed). **Employee number 1** also declares she asked the factory managers for the reasons without receiving a proper answer. However, privately, she was told by an administrative employee that it was because she was seen in a shopping mall talking with a union board member (at that moment, she was not part of the union board). She initiated a lawsuit against the factory.
- In 2019, 190 employees were terminated (again, their temporary labor contracts were not renewed) since 94 of those employees were unionized, the union started a lawsuit against the factory for those 94 employees (this was the core allegation the FLA investigated through the 2019 TPC investigation).
- While they were fighting the legal process, the managers contacted some union members and offered them a new contract if they leave the union.
- The factory directly participated in the creation of the union "*Sindicato de Tintorería*" with the members who accepted the offer and left the union "*Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.*".
- The union obtained a CBA with the factory through a judicial order (Laudo Judicial) from 2020 to 2021. This means that the negotiation was not completed between the factory and the union, and the union requested the governmental intervention. It is the judicial authority who enabled the CBA resolutions. But they were still in negotiations to sign the CBA from 2022 to 2023.
- In September 2021, **Employee number 1** won the lawsuit, and the factory was requested by the authority to reinstall her in her position or a similar one. Her original position was "*Responsable de Módulo*" (Module Responsible) in the Product Development Unit.
- **Employee number 1** was rehired but in a cleaning and maintenance position, and she was requested to work the night shift sweeping a warehouse that was not in use.
- **Employee number 1** felt that this was to keep her away from the other employees who were curious about her situation and reinstallation.
- After discussing the situation with the managers, she was moved to the Almacén de Avíos (Small parts warehouse) in which she is still working.
- On August 31<sup>st</sup>, 2020, the judicial authority delivered a resolution about the 2019 lawsuit, and resolved that from the 94 terminated employees, 87 terminations were justified and seven were not. Those seven employees were part of the union board, but also they were those with permanent contracts before the termination.
- The factory appealed on September 17<sup>th</sup>, 2020, against the resolution of reinstalling the seven employees. The union appealed the ruling regarding the approval of the termination of the 87 workers.
- The family allowance was underpaid because of the following facts: This amount was established in the CBAs signed before 1997 and at that moment the agreed amount was in compliance with the law. However, in 1997, the company delayed the negotiations, and no CBAs were signed between 1997 to

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<sup>2</sup> Name was eliminated for confidentiality reasons.



2004. When the negotiations finally concluded in a CBA renewal, the family allowance amount was no longer in compliance with the amount required by law. The factory refused to increase the amount, and the union accepted because it did not want to lose the opportunity to renew the CBA. The factory was increasing the amount year after year, but still was not reaching the legal amount. Finally, in the last negotiations that were obtained by a judicial order (Laudo Judicial), the factory corrected the family allowance amount and paid it in accordance with the law since February 2021.

- On the day of the interview, *the union “Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.”* had 29 employees enrolled and working in the factory and 72 employees dismissed by the factory (those employees that are part of the 2019 lawsuit).
- The current enrolled employees working in the factory are located in the materials’ warehouse and are not able to speak with other employees.
- The union board believes that the factory knows they will not win the appeals process, but it is aiming to delay the reinstatement of the employees.

In total, six union members were interviewed. A listing of the people who were interviewed is shown in the following table:

<b>Table 02: Interaction with union representatives</b>			
<b>LABOR UNION</b>	<b>LABOR STATUS</b>	<b>NUMBER OF REPRESENTATIVES</b>	<b>INTERVIEW PLACE</b>
<b>Sindicato de Lavanderia</b>	Working	2	The factory's premises.
<b>Sindicato de Trabajadores Hilandería de Algodón Peruano S.A.</b>	Working	2	The factory's premises.
<b>Sindicato de Trabajadores Hilandería de Algodón Peruano S.A.</b>	In suspension <sup>3</sup> .	2	Union facilities.

### **Worker Interviews**

Between November 3<sup>rd</sup> and 4<sup>th</sup>, the investigators conducted a total of 50 worker interviews in the areas of finishing, sewing, laundry, dry cleaning, embroidery, printing, warehouse, finished product warehouse, and cutting.

<sup>3</sup>Ceased by the factory, but in a legal suing process to determine their final status.

### III. Verification Results

The verification was conducted based on the CAP established to resolve the findings from the investigation performed by independent consultant, Ena Núñez O'Brien, on August 12-16, 2019. At that time, a number of important non-compliances against the FLA Code of Conduct and Compliance Benchmarks were detected. The noncompliances were related to Freedom of Association, Retrenchment and Compensation.

The Corrective Actions and the verification results are detailed in the following chart. However, it is important to note although there was a total of eighteen findings, there were only nine recommendations; two findings were repeated and several findings were covered with the same recommendation.

<b>FINDING No. 1 HIALPESA CAP 2019</b>	
<b>COMPLIANCE BENCHMARK ER.1.1</b>	
HIALPESA only has a policy for termination of the employment relationship titled "Procedure for Termination of Labor Relationship", which does not include a procedure to cover all aspects related to employment contract terminations due to employee retrenchment, but only mentions them in general. HIALPESA does not have a specific policy regarding the course of action to be followed in cases of employee retrenchment that leads to employment contract terminations.	
RN1	Build out existing policies and procedures to sufficiently detail all aspects of employment. You may reference local law, but this should not replace details required for employees to understand the conditions of employment and for management to follow through on appropriate processes.
VERIFICATION RESULTS	<p>HIALPESA presented the following policies:</p> <ul style="list-style-type: none"> <li>Payments and compensations</li> <li>Freedom of Association</li> <li>Non-Discrimination and No Child Labor Policies (named by HIALPESA as <i>Prevención eliminación y sanción de la discriminación, en contra del trabajo infantil y discriminación</i>)</li> </ul> <p>The following procedures:</p> <ul style="list-style-type: none"> <li>Hiring</li> <li>Termination (named as HIALPESA as <i>Desvinculación</i>)</li> <li>Complaints and suggestions for situations of harassment, abuse and discrimination,</li> <li>Prohibition of Child Labor (named by HIALPESA as <i>Prohibición del Trabajo de Menores</i>).</li> </ul> <p>The following protocols:</p> <ul style="list-style-type: none"> <li>No Forced Labor</li> <li>Labor Promotion.</li> </ul>

	<p>However, they did not present evidence of training conducted on these policies, procedures, and protocols. HIALPESA representatives explained that training is delivered and covers: Introduction to the labor rights and obligations, remuneration, personnel administration, social and legal benefits; but does not cover HIALPESA policies, procedures and protocols.</p>
<p><b>CAP FINDING No. 2</b></p>	
<p><b>COMPLIANCE BENCHMARK ER.7.2</b></p>	
<p>The investigator was able to verify that the use of short-term contracts (one or two months) is a general practice at HIALPESA; all the interviewed workers – except for those who had been declared to be permanent employees by a judicial resolution – have short-term employment contracts. This includes 17 of the 95 unionized workers affected by the suspension, with a tenure between 4 to 22 years. Although Peruvian law (Law No. 728 and/or Legislative Decree 22342) allows – without any limits – employment of workers through recurring renewal of short-term employment contracts, this practice violates the FLA Benchmarks.</p>	
<p>RN2</p>	<p>Utilizing historical business information, develop a plan to move away from short term employment contracts and towards hiring permanent employees to support regular business needs. This plan should consult the FLA Benchmarks and incorporate written policies and procedures for hiring.</p>
<p>VERIFICATION RESULTS</p>	<p>Addressing this point, HIALPESA representatives stated that the factory continued implementing short-term contracts and did not present a plan for the elimination or reduction of this practice.</p> <p>50 employees' files were reviewed, and it was confirmed that HIALPESA continues using short-term contracts. As part of this sample, there are workers who have been working for HIALPESA during periods that go from four months to 17 years and are still working under continuous short-term contracts.</p> <p>HIALPESA Managers declared that since they are cotton product exporters, they are allowed to use the short-term contracts. This is based on Article 32 of the Decree Law N° 22342 which states that those industries considered as Non-Traditional exporters (this include cotton products), can hire employees under short-term contracts considering their production needs.</p> <p>It is important to mention that even while it is a practice permitted by law, it is contrary to what is established in FLA's Conduct Code and Compliance Benchmarks<sup>4</sup>.</p>

<sup>4</sup> FLA's Compliance Benchmarks governing Employment Relations ER.9.1; ER.9.2; and ER.9.3

<b>CAP FINDING No. 3</b>	
<b>COMPLIANCE BENCHMARK ER.9.1, ER.9.2, ER.9.3</b>	
Same finding explained in the Finding No. 2 also violated these Benchmarks; therefore, it was included twice in the initial CAP.	
RN2	Since it was the same finding, it was also the same recommendation.
<b>CAP FINDING No.4</b>	
<b>COMPLIANCE BENCHMARK ER.16.1</b>	
It became evident to the investigator that there is a fear to exercise the right to freedom of association on the part of workers. Management confirmed that training has never been provided on the subject. HIALPESA does not have a policy regarding freedom of association and has never carried out training or had discussions regarding this subject involving personnel from the Executive Offices and other management. This was acknowledged both by Management and by interviewed workers.	
RN3	Policies and procedures for educating management, as well as interacting with general employees and unionized employees, should be developed and implemented. While the activities of the Union should be independent from Management, the recognition of the Union's role in the factory should be agreed upon (by management and the Union) and detailed in writing for all workers.
VERIFICATION RESULTS	<p>The Freedom of Association policy presented by HIALPESA mentions:</p> <p>The factory will fulfill the national regulations and will ensure its Internal Rules Handbook, procedures and training plans are accordance with those regulations.</p> <p>The factory promotes, recognizes and respects the employees' right to freedom of association.</p> <p>The factory will not discriminate against employees for enrolling in the union.</p> <p>The factory ensures there is an effective mechanism to address complaints in the working place.</p> <p>The factory will install suggestion box points in strategic places.</p> <p>The factory develops communication practices about FOA.</p> <p>The factory asks employees' representatives about the secure working conditions and also about any situation that is required by law, such as employee dismissals.</p> <p>Union representatives are elected by the employees without factory's interference.</p> <p>The factory ensures the collective negotiations fulfill the legal requirements and follows the steps to have a good understanding with the employees' representatives initiating with the reception of its proposals, having meetings with the representatives and finishing with an administrative record addressing the agreements.</p>

However, this policy **does not**:

Specify how HIALPESA guarantee that employees' FOA right will be respected; for instance, it does not specify that reprisals or sanctions will not be allowed for exercising the right in one way or another, and how will this be enforced by the factory with the managers and supervisors.

Establish the commitment of non-interference in the workers' decisions about the union creation, organization, and other union activities.

There is no document detailing in writing the recognition of the union's role in the factory after being agreed by management and the union (this is part of the recommendation).

The policy also does not mention that unions will be allowed to carry out their activities freely and that union board members will be allowed to carry out their functions without being subject to retaliation.

On the other hand, when HIALPESA representatives were asked to present evidence of training on this policy, they indicated that such training has not been carried out, that workers had not yet been informed of the policy (updated in August 2022).

The foregoing could be corroborated during the interviews with the workers who reported not knowing the factory's position regarding the right to freedom of association. The investigators were even able to verify that when this issue is brought up, the workers get nervous or respond evasively. The investigators had the feeling that it is an issue that makes workers uncomfortable.

Finally, no evidence was presented regarding communications about freedom of association topics to the workers and, as previously detailed, management accepted that this information has not been shared with the workers. The investigators were able to notice during the interviews that the workers do not know HIALPESA's policy on this topic.

Regarding treatment and relation with the unions:

During the interviews with members and union board representatives of the "*Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.*", investigators received information about the different treatment that is provided to the employees enrolled in this union who are also prevented from having any communication and contact with non-unionized workers.

During this interview, investigators were informed about the situation of **Employee number 1**, who was dismissed by the company, and was reinstated after the authority

ruled in her favor. But she was not reinstated in her last position (prior to termination), and after been located in a cleaning position, is now working in the small parts warehouse that is located in a separate building. She was not asked about her agreement to be in this new position, and she felt it as a discrimination for her situation and she is not allowed to talk with other employees or use other factory facilities, whenever she tries, security guards stop her indicating that are the Human Resources department instructions.

Investigators tried to corroborate the above and confirmed that the two union workers who were interviewed were brought from a building that is located one block away from the main building (which is used as a warehouse) and no workers belonging to this union were noted during the general employees' interviews carried out in the main building. Auditors also visited the warehouse building, and it was noted that working conditions are the same than in other areas; and it is located a block away from the main building.

It is also important to mention that the investigators in the interview with the *Sindicato de Tintoreria* board members tried to obtain information about the formation of the union and the election of its representatives. But the interviewees responded evasively and with some annoyance. They did not provide information around the formation of the union, claiming that was not relevant the process. They argued what is important is that they were doing well and that HIALPESA upholds the law. They did not report the same situation regarding isolation from other workers.

There is no compelling evidence regarding the statement made by the representatives of *Sindicato de Trabajadores de Hilanderia de Algodón Peruano S.A.* However, no evidence was presented on the formation of the *Sindicato de Tintoreria* that refutes the above.

Regarding the document review, we were able to verify that HIALPESA already has a CBA signed with the *Sindicato de Tintoreria* (the newest union in the factory), but HIALPESA has extended and postponed the negotiations with the *Sindicato de Trabajadores Hilanderia de Algodón Peruano S.A.* to renew the last Collective Bargaining Agreement that ended on July 31<sup>st</sup>, 2020. At the time of the verification, both parties admitted that negotiations are stagnant.

The scenario described herein makes it clear that upper and middle managers lack training and tools to guarantee respect for freedom of association, non-interference, non-discrimination and non-retaliation.

<b>CAP FINDING No.5</b>	
<b>COMPLIANCE BENCHMARK ER.17.1</b>	
HIALPESA does not have a policy regarding freedom of association and has never carried out training or had discussions regarding this subject involving personnel from the Executive Offices and other management. This was acknowledged both by Management and by interviewed workers.	
RN3	Although it is not the same specific violation than Finding No.4, they were related, and it was included the same recommendation than CAP Finding No4. (RN3).
<b>CAP FINDING No.6</b>	
<b>COMPLIANCE BENCHMARK ER19.1</b>	
Those workers currently pursuing legal action regarding their termination have not received the payment of the national holiday bonus corresponding to July. This information was confirmed by management; it is waiting for the resolution by AAT although management is aware that it is a payment that will have to be disbursed irrespective of whether the layoffs are authorized or not, since it represents acquired rights that are not negotiable and must be paid even though the employment relationship is terminated. The right to a bonus for national holidays is recognized in Law No. 27735 (06-28-2002) and in Supreme Decree 005-2002-TR which contains the Regulatory Standards for the law that regulates the granting of bonuses for workers in the private sector corresponding to National Holidays and Christmas. One is awarded in July and the other in December; both must be paid during the first fifteen days of the month. The law establishes in Art. 6 that in order to be eligible for the bonus, the worker must be working at the moment when the bonus is payable, but Art. 7 states that where the worker no longer has a current employment relationship at that time, they still have the right to receive the proportional amount corresponding to the months effectively worked.	
RN4	Ensure there is a procedure in place that is followed exactly for legally required payouts. Payments should also be made to the workers who have not reached an agreement and have not yet received the payment of the national holiday bonus corresponding to July. Any additional payments can be made after the AAT resolution is finalized.
VERIFICATION RESULTS	HIALPESA representatives provided evidence of the National holiday bonus payment corresponding to workers that are currently working in the factory; in relation to the terminated employees that are part of the lawsuit in which the authority ruled in their favor, managers confirmed that they have not received their national holiday bonus payment as HIALPESA's appeal is ongoing.

<b>CAP FINDING No. 7</b>	
<b>COMPLIANCE BENCHMARK ER19.3</b>	
<p>The investigator confirmed that some workers affected by the layoffs who presented their resignation and received their indemnity signed an “extrajudicial agreement” through which they waived the right to exercise actions regarding claims in their favor -- of any nature -- and acknowledge that all claims that they may have stemming from the employment relationship have been satisfied. Included in these agreements is a clause entitled: “OBLIGATION TO PRESERVE THE REPUTATION” ... The document does not include the signature of the company representative [the representative responsible for managing workers’ termination], and the investigator assumes that the workers did not receive a copy. This release and waiver of worker rights in exchange for an indemnity to cover their benefits and the so-called “exgratia payment” run counter to FLA Workplace Code of Conduct.</p>	
RN5	Create policies and procedures for retrenchment which include a policy banning waiver of rights in exchange for severance or legally required benefits.
VERIFICATION RESULTS	HIALPESA representatives presented the <i>procedimiento de desvinculación</i> (Work Termination Procedure), which includes information on HIALPESA's staff reduction policy, work termination causes, work termination due to dismissal, and work termination due to objective reasons; however, the mechanisms to correctly calculate the workers’ final payments according to the law and the applicable conditions are not mentioned. The prohibition of requesting workers to sign a declaration of good health, waiver or release of other rights upon receipt of compensation payment is not established either.
<b>CAP FINDING No.8</b>	
<b>COMPLIANCE BENCHMARK ER.22.2</b>	
<p>In spite of multiple court rulings in favor of Union members that have recognized the right to the payment of the family allowance pursuant to Law No. 25129, the company continues to apply the CBA for those workers who have not presented a claim or have not obtained a firm resolution.</p>	
RN6	The unionized workers are owed (retroactively and proceeding receipt of this notice) the amount of the underpayment of family allowance in order to comply with the legal required amount. Correction of the family allowance payment will also require adjustments to the amounts of other social benefits. Further, a procedure should be established to prevent future occurrences of collective bargaining contradicting law.



<p>VERIFICATION RESULTS</p>	<p>During the document review of payroll and compensation records for November 2021 and September 2022, it was confirmed that the workers in the randomly selected sample of 50 employees, did receive the payment corresponding to the Family Allowance. No violations on this matter were detected neither money owed by the factory, in the case of employees in the selected sample.</p> <p>For those employees terminated by the factory that are part of the lawsuit and appeal process, no payment records were provided, since the factory is waiting for the final resolution from the authority.</p> <p>Regarding the second part of the recommendation about the legal compliance with the CBA, the Freedom of Association policy mentions that "The company regarding collective negotiations, complies with the corresponding legal requirements".</p> <p>Nevertheless, it is not specified how they make sure that the CBA do not establish clauses that are contrary to the law or have lesser conditions than the ones established in the legislation.</p> <p>In this regard, the company's representatives presented the current Collective Agreement signed on April 9, 2022, with the <i>Sindicato de Tintorería</i>, which does not establish guidelines contrary to the law.</p> <p>Regarding the union: <i>Sindicato de Trabajadores de la Hilandería de Algodón Peruano S.A.</i>, the union board members presented their last agreement that was in compliance with the law, since as mentioned before it was the authority who delivered the negotiation resolutions.</p>
<p><b>CAP FINDING No.9</b></p>	
<p><b>COMPLIANCE BENCHMARK ER.32.3</b></p>	
<p>There was no real and effective consultation with worker representatives with a view to avoid or minimize the impact of the termination measures.</p>	
<p>RN5</p>	<p>No recommendation was included.</p> <p>However, this correction was verified by the investigators during the Retrenchment Procedure revision (Finding number 7). It will be explained further on this report.</p>

<b>CAP FINDING No.10</b>	
<b>COMPLIANCE BENCHMARK ER.32.4</b>	
While HIALPESA did have a plan which took into account proposals for both Union members and non-members, the layoff plan was neither comprehensive nor sufficient.	
RN5	No recommendation was included. However, this correction was verified by the investigators during the Retrenchment Procedure revision (Finding Number 7). It will be explained further on this report.
<b>CAP FINDING No.11</b>	
<b>COMPLIANCE BENCHMARK ER.32.5</b>	
The plan regarding the collective dismissals was shared by the company with both the Union and with non-unionized workers; however, what was communicated to them only concerned the decision to initiate the proceedings for the collective termination before the AAT, as well as the proposed measures to mitigate the adverse effects caused by the terminations. The so-called “alternative” measures did not refer to the terminations. In none of the minutes for the meetings with non-unionized workers is it stated that they were consulted or that clarifications were made regarding the measures proposed by HIALPESA. Furthermore, they do not record whether management communicated to workers how to present their proposals or request more information or clarify their doubts, to whom they could be addressed, or the approximate timeframe and planned dates to initiate the proceedings with the AAT.	
RN5	No recommendation was included. However, this correction was verified by the investigators during the Retrenchment Procedure revision (Finding Number 7). It will be explained further on this report.
<b>CAP FINDING No.12</b>	
<b>COMPLIANCE BENCHMARK ER.32.6</b>	
The relocation to other areas of the company or to other companies was not a measure offered by HIALPESA to workers; it only came about as an extraordinary measure for Union officers at the last meeting on June 4. The company offered relocation on a part-time basis and at 50% of their current base salary to those Union officers. The Factory did not make the necessary effort to transfer suspended workers to other production areas within the plant, even to positions that required some sort of training which the Factory could provide. The absence of this alternative is not justified or offset by offering Union officers transfer to a part-time position at half salary because it entails a serious deterioration of their working conditions.	
RN5	No recommendation was included. However, this correction was verified by the investigators during the Retrenchment Procedure revision (RN5). It will be explained further on this report.

<b>CAP FINDING No.13</b>	
<b>COMPLIANCE BENCHMARK FOA.8.2</b>	
<p>HIALPESA has presented to the AAT a report dated June 4, 2019, prepared by an authorized auditor as stated in the document. All of this will be examined by the AAT, which will ultimately decide if the reasons invoked by HIALPESA are valid, so that they justify the termination of the employment contracts of 190 workers.</p>	
RN7	<p>Ensure policies and procedures are developed, with general timelines noted, for consulting with worker representatives in the event of layoffs. This documentation should consult FLA benchmarks and include guidelines for what is expected of the worker representatives (union and non-union), what management will provide (documentation, retrenchment alternatives, etc.), and how communication channels are expected to work. This should be drafted by management and presented to the Union for feedback and edits.</p>
VERIFICATION RESULTS	<p>During the termination procedures (Procedimiento de Desvinculación) revision, it was possible to detect that the document does not include the mechanisms and times to adequately notify the workers' representatives in the event of a retrenchment or mass layoff. Nor does it establish the review stages to be followed with said representatives to seek alternatives to termination and in the event that they are not reached, then seek options to reduce the impact and effect on workers.</p> <p>On the other hand, the Freedom of Association policy mentions that "the company consults with the workers' representatives on any problem that is a legal requirement, such as mass layoffs, business restructuring". However, it does not specify how and when this consultation will be carried out, the processes to be followed and times.</p> <p>The above-mentioned situation was informed to the HIALPESA representatives who accepted that this information has not been implemented or carried out.</p> <p>It is important to mention that the above points are specified in the FLA Benchmark requirements on this matter.</p> <p>Additionally, the company has proceeded with other retrenchments during 2020 and 2021, and there is no evidence of effective plans discussed with the worker representatives from any of the two unions. Even in the case that capacity/financials does not allow other plans, there is no evidence that this was discussed with the employees or other options were explored together with them.</p>

<b>CAP FINDING No.14</b>	
<b>COMPLIANCE BENCHMARK FOA.16.2</b>	
HIALPESA did not provide the Union representatives with pertinent, sufficient and timely information, and did not attempt constructive negotiations prior to effecting the "perfect suspension" of workers.	
RN7	Same recommendation as finding No.13 was included, only specific details were added: An ideal document would outline the process for a stalemate in negotiations between management and the Union and would include measures to prevent negotiation stalemates from occurring.
<b>CAP FINDING No.15</b>	
<b>COMPLIANCE BENCHMARK FOA.20.2</b>	
Same finding explained in the Benchmark ER.8.22.2 (Finding No.8), also violated these Benchmarks, therefore it was included twice in the Initial CAP.	
RN6	Since it was the same finding, also was the same recommendation.
<b>CAP FINDING No.16</b>	
<b>COMPLIANCE BENCHMARK HOW.1.3</b>	
The excessive hours worked per day and per week violate Art.1 of Legislative Decree No. 854 regarding Work Shift, Schedule and Overtime, modified by Law No. 27671, as well as Convention No. 1 of the ILO ratified by Peru and the FLA Code of Conduct.	
RN8	Management should develop and implement a process for managing worker hours in line with FLA requirements.
VERIFICATION RESULTS	During the review of time records, it was verified that four workers from a selected sample of 50 workers, worked 25.4, 17.32, and 18.07 overtime hours during the period of September 2022, exceeding the limit of 60 weekly hours indicated in FLA's Conduct Code.  The result of this review was discussed with the company's representatives who accepted that this still happens, but it adheres to local legislation.
<b>CAP FINDING No. 17</b>	
<b>COMPLIANCE BENCHMARK HOW.6</b>	
Same finding explained in the Benchmark HOW.1.3 (Finding 16) also violated these Benchmarks, therefore it was included twice in the Initial CAP.	
RN8	Since it was the same finding, also was the same recommendation.

<b>CAP FINDING No.18</b>	
<b>COMPLIANCE BENCHMARK HOW.19.2</b>	
Workers were not paid during the time of suspension of work.	
RN9	Should the AAT decision regarding the open appeal by HIALPESA find in favor of the workers, all wages must be paid in full to cover the time period starting from the "perfect suspension" that occurred on June 6, 2019.
VERIFICATION RESULTS	<p>The company's representatives presented documentation in which it was possible to verify that the authority has ordered that seven of the dismissed workers must be paid all the benefits and salaries that they did not receive during this period and be rehired in their positions or similar positions if these no longer exist.</p> <p>However, the company filed an appeal, and the workers have not received this payment, nor have they been reinstated. It now remains to wait for the appeal's result.</p> <p>During the interview with the representatives of the "<i>Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.</i>", it was mentioned to the investigators that the company has used this appeal only to lengthen the process, although the company is aware that eventually the resolution will be the same, and that the company's lawyers are only buying time.</p> <p>The investigators tried to obtain information from the authority on the legal process progress; however, as they are not litigants or represent any of the parties, it was not possible to obtain more information.</p>

## IV Conclusions

1. The verification results reflect that policies, procedures and protocols developed by the factory still do not include in their structure and contents all elements required in the FLA Benchmarks, which also are the basis for the systemic compliance with the FLA Code of Conduct requirements.
2. No training of any kind has been given to managers, supervisors and workers on said policies and procedures since the beginning of the contract period or during the employment relationship.
3. The Freedom of Association policy still lacks elements that guarantee non-interference, the absence of reprisals, respect for the union activities and the representatives' roles and functions; as well as equal treatment between unionized workers and non-unionized workers (regardless of the union they belong to).
4. The company has not developed a program to eliminate the use of temporary contracts.
5. It is still necessary to provide management, supervisors and workers with information and tools that will guarantee the implementation of the Freedom of Association policy and unrestricted respect for this right. Likewise, there are elements to presume that the workers of the "*Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.*" do not receive equal treatment.
6. The workers have not received information about their right to Freedom of Association or how they are guaranteed respect on this right, and that they will not be penalized, repressed or discriminated against for exercising this given right in one way or the another.
7. The company has updated the payments to provide current workers with the corresponding payments and benefits (including family allowance). But this payment has not been delivered to the terminated workers that were part of the 2019 lawsuit since the appeal processes are still in progress. The factory initiated an appeal process against the authority resolution ordering the reinstatement of seven workers from the 94 that were terminated and the union "*Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.*" initiated an appeal process against the authority resolution of approving the termination of 84 from the 94 workers.
8. No guidelines have been established on the Termination Procedure (Procedimiento de desvinculación) to ensure that everyone receives the corresponding payments according to the law and to prohibit any waiver of rights request by workers in exchange for severance payment or legally required benefits.

9. The family allowance payment has been updated to be in compliance with the legal requirements. The CBA signed with *Sindicato de Tintorería* state the right amount. Also, the agreement that was approved by the authority with "*Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.*" state the right amount. And the union board members from "*Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.*" declared it is correctly paid. Also, the reviewed records from November 2021 and September 2022 reflect the correct payment.
10. Existing Termination procedure (Procedimiento de Desvinculación) does not guarantee that in the event of collective terminations, the worker representatives are called upon to seek alternatives or measures to minimize the impact on workers.
11. Existing Freedom of Association Policy does not include a statement or protocol to prevent the Collective Bargaining Agreement from contravening or being inferior to what is established by law. This is not included in any other document.
12. There is no effective process to manage working hours in compliance with FLA requirements. The overtime limits established in the FLA Benchmarks continue to be exceeded.
13. The authority has issued a resolution in relation to the lawsuit for the termination of 94 employees, initiated by the union "*Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.*". The authority determined to approve the dismissal of 87 of the employees and required the factory to reinstall the other seven in their last position or in a similar one in case this does not longer exists. However, the company filed an appeal suing to avoid reinstalling these 7 workers and the union has filed an appeal suing against the resolution of the dismissal approval of the other 87 workers. Authority's final resolution has not been delivered yet, so the factory has not issued the corresponding payments to the workers.

Based on the results HIALPESA has only completed one out of nine recommendations, so it has not fully complied with the Corrective Action Plan .

## V. Recommendations

As of the results of this investigation, the following is recommended:

- 1 Review and update the policies, procedures, and protocols related to Freedom of Association and Retrenchment developed by the company to include all the elements required in the FLA Benchmarks, which in turn lay the foundations to guarantee systemic compliance with the Conduct of Code requirements. Establish and implement a training program to convey these policies and procedures inside the company.
- 2 Review the Freedom of Association policy, establishing the company's commitment to guarantee non-interference, the absence of reprisals, respect for the union activities and their representative functions and roles, as well as equal treatment between non-union and union workers (regardless of the union they belong to).
- 3 Develop a program to eliminate the use of temporary contracts.
- 4 Provide management, supervisors and workers with information and tools to guarantee the implementation of the Freedom of Association policy and unrestricted and equal respect for this right.
- 5 Provide workers with information about their right to Freedom of Association and how they are guaranteed this right. Delivering the corresponding training during the onboarding process and in the refresher trainings, also publishing the Freedom of Association policy, the CBA and any other related document that can be developed after.
- 6 Comply with the judicial authority resolutions as soon as they are issued by the corresponding instance. In that sense, the factory should comply with the judicial order to reinstate the seven workers who already have a favorable judicial decision from August 31, 2020, regarding their reinstatement, and within the conditions already ordered by the judicial authority.
- 7 Review the termination procedure to ensure that everyone receives the corresponding payments according to the law and prohibit any request to waive the worker's rights in exchange for severance payment or legally required benefits.
- 8 Review existing procedures to ensure that in the event of considering a collective termination, the worker representatives are involved to seek alternatives or measures to minimize the impact on workers. Not only should these procedures ensure the workers are informed, they should also allow them to raise solutions and analyze them together to take the best option for employees.



- 9 Develop a procedure that prevents the Collective Bargaining Agreements from contravening or being inferior to what is established by law.
- 10 Develop an effective process to manage working hours in compliance with FLA requirements and ensure that overtime limits established in the FLA Benchmarks are not exceeded.
- 11 Improve communications with the employees and their representatives from both unions. Ensure both unions receive the same treatment and are allowed to freely conduct their activities without interference or reprisal. Ensure unionized employees from "*Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.*" are allowed to use all facilities and freely speak with other non-unionized employees. Ensure rehired employees are in their last position before dismissal or a similar one in case the previous position no longer exists. Avoid any discriminatory practices against unionized employees especially but not limited to those enrolled in the "*Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.*".

## APPENDIX A

- Procedimiento de desvinculación laboral.  
Retrenchment Procedure.
- Acta de Negociación Colectiva Celebrada con el Sindicato de Tintorería.  
CBA signed with the Sindicato de Tintorería.
- Política de Libertad de Asociación y Negociación Colectiva.  
Freedom of Association Policy.
- Procedimiento de prevención y sanción por discriminación a trabajadores que presenten quejas, sugerencias o afiliación al sindicato.  
No Retaliation procedure against employees that present complaints.
- Registro de asistencia a inducción y reinducción sobre inducción a los derechos, obligaciones y beneficios laborales (área de remuneración, admin de personal, beneficios sociales, y legal) de los trabajadores. Con fecha 14 de Marzo de 2022 y 25 de October de 2022.  
Training records for general working rules dated on March 14<sup>th</sup>, 2022, and October 25<sup>th</sup>, 2022.
- Cantidad de trabajadores (registro mensual de Marzo 2022 a Septiembre 2022).  
Total list of employees to September 2022.
- Resolución Directoral General N.1188-2020-MTPE/2/14 del 31 de agosto de 2020.  
Resolution related to union suing for the dismissal of 94 employees.
- Registros de Liquidación de beneficios sociales.  
Social benefits payment records.
- Plantillas de pago de los meses de Noviembre 2021 y Septiembre 2022.  
Payroll records from the months of November 2021 and September 2022.
- Pagos y compensaciones,  
Payments and compensations.
- Control de asistencia (Diciembre 2021 a Septiembre de 2022)  
Attendance records from selected periods (November 2021 and September 2022).

- Prevención eliminación y sanción de la discriminación, en contra del trabajo infantil y discriminación.  
Policy against discrimination and child labor.
  
- Procedimientos de Contratación,  
Hiring procedures.
  
- Procedimiento de Quejas y sugerencias para situaciones de acoso, abuso y discriminación,  
Grievance procedure for harassment, abuse and discrimination situations.
  
- Procedimiento de Prohibición del trabajo de menores.  
No Child labor procedure.
  
- Protocolos de No trabajo forzado  
No forced labor protocols.
  
- Protocolo de Promoción laboral.  
Promotion Protocol.