



Ethical Trading Initiative
Respect for workers worldwide

Freedom of association in company supply chains

A practical guide

www.ethicaltrade.org

Ethical Trading Initiative

8 Coldbath Square • London EC1R 5HL • United Kingdom
T +44 (0)20 7841 4350 • F +44 (0)20 7833 1569
eti@eti.org.uk • www.ethicaltrade.org • twitter: @ethicaltrade

This guidance document was developed by a team from Just Solutions Network comprising Vic Thorpe and Stirling Smith (www.just-solutions-net.com, T: +44 (0)1273 430 777).

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Contents

1 Introduction	2
1.1 About this guide	3
2 What are freedom of association and collective bargaining?	4
2.1 Benefits of freedom of association	4
2.2 When is a union not a union?	6
3 Labour rights are human rights	8
3.1 The ILO Core Conventions	8
3.2 What do the international conventions require?	10
4 Six steps to freedom of association	12
Quick start guide	12
Step 1 Setting the policy	14
Step 2 Exercising due diligence	15
Step 3 Establishing the current situation	16
Step 4 Developing and implementing the action plan	18
Step 5 Monitoring	18
Step 6 Continuous improvement	21
5 Responding to challenges to freedom of association	26
5.1 Active opposition	26
5.2 Restrictions on union recognition and collective bargaining	28
5.3 Precarious and casualised work	31
5.4 State intervention and legally supported monopoly unions	33
5.5 State-supported alternatives and worker committees	35
Annexes: Tools and resources	
Annex A Sample policy commitment to freedom of association	38
Annex B Supplier self-assessment for freedom of association	39
Annex C Model recognition and procedural agreement	40
Annex D Sources of information online	43

1 Introduction

Clause 2 of the Ethical Trading Initiative (ETI) Base Code calls for ETI members – companies, trade unions and non-governmental organisations (NGOs) – to support the exercise of freedom of association and the right to collective bargaining (Box 1.1). International norms, guidelines and standards, and many company codes of conduct, place a similar priority on these rights.

Freedom of association is misunderstood more widely than other areas of social and ethical compliance and attracts greater opposition in practice. Impact assessments have shown that codes of social and ethical compliance have been effective in raising standards in supply chains around issues of health and safety, child labour and forced labour, for example. But their effect on attitudes towards, and the practice of, freedom of association and collective bargaining has been negligible.¹

The United Nations Framework and Guiding Principles on Business and Human Rights place a clear responsibility on business enterprises to respect human rights:

'The responsibility to respect human rights requires that business enterprises:

- (a) *Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;*
- (b) *Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.'*²

Box 1.1 The ETI Base Code, Clause 2

- 2 Freedom of association and the right to collective bargaining are respected**
- 2.1 Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively.**
- 2.2 The employer adopts an open attitude towards the activities of trade unions and their organisational activities.**
- 2.3 Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.**
- 2.4 Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.**

1. See, for example, *The ETI Code of Labour Practice: Do Workers Really Benefit? Report on the ETI Impact Assessment 2006, Part 1*, ETI, 2009.

2. *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (often called the Ruggie Principles after their author, UN Special Representative John Ruggie), Principle 13, UN Human Rights Council, 2011.

The Guiding Principles state that the business responsibility to respect human rights refers, at a minimum, to the rights expressed in the International Bill of Human Rights and the International Labour Organisation's (ILO's) Declaration on Fundamental Principles and Rights at Work. Freedom of association, freedom to form and join trade unions and the right to bargain collectively are core elements of these documents.

Many companies that seek to apply ethical trading standards to their global sourcing activities recognise that social compliance cannot be enforced by auditing alone. Effective compliance also needs the involvement of empowered workers in monitoring workplace conditions and negotiating necessary improvements with employers. In many sourcing countries, however, lack of recognition of trade unions and the impacts of globalisation mean that unions may not exist or may be weak and unable to fulfil a monitoring and negotiating role.

Companies wishing to implement a full ethical trading policy are often confused by in-country labour relations and the trade union presence they encounter, and about how they can improve local industrial relations. Workers in global supply chains often fear that attempts to organise or even raise concerns may lead to dismissal.

1.1 About this guide

This ETI guide provides practical help to companies in identifying and understanding the impacts of their operations on the fundamental rights of freedom of association and collective bargaining. It is a guide to many aspects of industrial relations across different regions and cultures.

In addition to showing how companies can establish a practical framework for monitoring and protecting these rights, the guide suggests ways to improve the situation of workers in the supply chain by supporting their right to set up and join unions and to negotiate collectively with employers. Taking action on these issues will form an important element of human rights due diligence for many businesses.

The guide covers the rights to freedom of association and collective bargaining; what constitutes a trade union; the ILO Core Conventions; how companies can drive change in their supply chains; and challenges to freedom of association. It also provides a selection of relevant tools and resources.

The company recognises the fundamental importance of independent and democratic organisations of workers' own choosing – commonly known as trade unions – in achieving sustainable improvements and encourages an open and positive attitude towards trade unions and collective bargaining because they are the essential elements of all mature systems of industrial relations.

ETI Principles of Implementation, 5.4

2 What are freedom of association and collective bargaining?

Freedom of association is the right of all workers and employers without exception to establish and join organisations of their own choosing without prior authorisation and without interference from government or from one another.

In the workplace, freedom of association grants an explicit right for all workers to create their own organs of representation or trade unions in whatever form they decide is most effective. Employers also take advantage of this right when they form employer associations.

Collective bargaining is the process of negotiation between organisations of workers and their employers (or a single employer).

The aim of negotiation between worker representatives and an employer is to reach an agreement – known as a **collective agreement** – that sets out the terms and conditions of the employment relationship and, usually, the rights and responsibilities of the respective parties.

Collective bargaining involves a process of joint decision-making and is thus distinct from other forms of governance such as government regulation, individual contracts and/or the unilateral decisions of employers.³

There is a large body of international convention law, treaty law and 'soft' law that reiterates and reinforces the principles of freedom of association and collective bargaining. Such laws place a requirement on both state and non-state actors to recognise and facilitate these rights. With increasing public awareness and scrutiny of business' global operations, companies that fail to take their obligations seriously incur a substantial reputational risk.

A compliance industry has developed to oversee corporate social responsibility performance and to help protect companies against reputational risks. There are also internal business reasons why companies should support and encourage the realisation of rights to freedom of association and collective bargaining in their operations and in their supply chains, as we shall now see.

2.1 Benefits of freedom of association

Freedom of association is good for people, good for society, good for business and good for morale.

Good for people: Workers who combine their interests by approaching their employer together as a group can help to balance the power inherent in any employment relationship. This encourages people to speak their minds without fear of reprisal. The relative security of numbers allows individuals to express themselves more openly and adds to the value of information that is exchanged.

Good for society: Rights to freedom of association and collective bargaining are called 'enabling rights', because they enable citizens to organise in order to realise other human rights and they underpin the democratic process. Not only do these rights directly assist with the improvement of living and working conditions, they contribute more broadly to economic and social development. In developing countries, freedom of association and collective bargaining can help establish a stable foundation for growth.

3. S. Hayter, ed., *The Role of Collective Bargaining in the Global Economy: Negotiating for Social Justice*, ILO, 2011.

Good for business: Extensive research stretching back to the 1930s has demonstrated that, at the individual company level, employee engagement and the feeling of being valued contribute to increased quality, productivity and performance (Box 2.1).⁴ Good industrial relations are generally characterised by:

- ▶ Trust
- ▶ Mutual confidence between employees and their managers, and managers and their employees
- ▶ Good interpersonal relations
- ▶ Realistic working agreements and arrangements
- ▶ A willingness to work together⁵

Good for morale: A dialogue-based workplace empowers and engages its workers, enhancing morale and leading to improvements in performance. By contrast, a subdued and disempowered workforce will tend towards low engagement and underperformance.

Ideas of dialogue and negotiation may run counter to crude management approaches based on unilateral decision-making and action. Problems often result from managers' nervousness about losing authority. But authoritarian management leaves little or no space for workers to express their needs and aspirations or for dialogue. Typical results are unhappy workers, rapid employee turnover, poor motivation and low productivity. Where a company encounters these issues in its supply chain, the first place to look is at the workplace management style. Tackling such problems at the root can be very beneficial for all concerned.

Box 2.1 Collective bargaining: good for business

Recent ILO analysis states: 'far from dragging business down and reducing productivity, there is considerable evidence that collective bargaining agreements actually reduce wage inequality and can contribute to productivity and competitiveness'.*

Some evidence recognises the collective voice of workers' organisations as an important influence not only in stabilising labour relations but in improving management performance. Research shows that a trade union presence in a company is associated with:

- **greater wage equality;**
- **an increase in the share of income allocated to social benefits;**
- **lower employee turnover, leading to lower recruitment and training costs;**
- **skills retention and development;**
- **smoother changes in workplace practices;**
- **and**
- **increased productivity.**

These advantages create an enhanced community of interest in which both sides work together to deliver successful outcomes for the company and its employees. Collective bargaining is the mechanism through which management and workers can achieve and sustain this balance in a changing and competitive environment.

* 'Weakening collective bargaining hurts recovery', ILO, September 2012, www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_189517/lang--en/index.htm

4. The earliest research was the Hawthorne studies of Elton Mayo, 1927–32; more recently, see, for example, the UK's 1998 *Workplace Employee Relations Survey* (WERS 98) for the link between union-management relations and positive performance; see also *Making the Difference: Union Representatives and Company Performance*, Trades Union Congress, 2007, for a summary of evidence.

5. L.M. Millward, *Understanding Occupational and Organisational Psychology*, Chapter 4, Sage, 2005.

2.2 When is a union not a union?

Management-appointed 'worker representatives' have no role in ensuring freedom of association. Unless workers can freely choose their own spokespeople, the process lacks credibility. Equally, management communications tools such as worker satisfaction surveys and suggestion boxes are no substitute for direct dialogue.

For effective dialogue to take place, workers need confidence and freedom from intimidation, so that they can raise issues and negotiate solutions directly with employers. An ethical trading policy establishes the ground rules to ensure that workers may organise and choose their own representatives to voice their concerns and aspirations to management (*Box 2.2*).

Another way that some companies arrange the appearance without the substance of freedom of association is by sponsoring, controlling and often financing a worker association. Such associations – often called '**yellow unions**',

'white unions' (in Latin America), 'pocket unions' or 'paper unions' – may look like representational structures but are not based on employees' free choice.

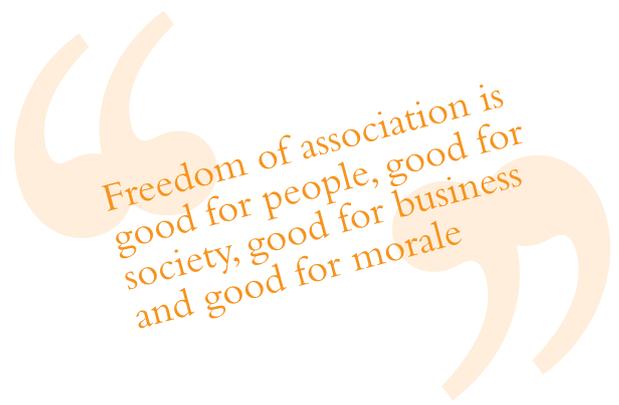
Although yellow unions usually take the form of associations within a single company, national unions in some countries may be similar in that they work with employers to block the efforts of genuinely representative worker organisations. An employer may sign a collective agreement with one of these 'non-aggressive' unions without the workforce's knowledge or consent.

Such 'sweetheart agreements' or 'protection contracts' generally involve the employer paying fees to the union and agreeing a minimum legal level of wages and working conditions in return for the union guaranteeing not to intervene in the company's affairs. The fees usually come from compulsory deductions from workers' pay as 'union dues', without consulting the workers (*Box 2.3*).

Box 2.2 Appearance and reality in freedom of association auditing

In one Pakistan apparel factory the social audit team was introduced to a group of six people identified as worker representatives. These people painted a glowing picture of good industrial relations at the workplace. The audit team appeared satisfied with the answers received.

An external observer monitoring the audit asked each 'representative' separately how they had been chosen and received six different answers. It also transpired that all were supervisors, not line workers. Further investigation revealed that the human resources manager had unilaterally appointed the six people. The fact that the workers had filed no complaints reflected their negative view of the value of dialogue with management rather than satisfaction with workplace arrangements.



Freedom of association is good for people, good for society, good for business and good for morale

Box 2.3 Protection contracts in Mexico

The Mexican research institute CILAS undertook a study for the Dutch trade union federation FNV in 2010 and found that the Mexican subsidiaries of five major Dutch multinational companies (Philips, Unilever, Akzo Nobel, Heineken and ING) all made use of protection contracts.* Several agreements were with ‘phantom’ unions of appointed people that the company paid to act as quasi-representatives without the workers electing them. In some cases the company had put a contract in place before it had hired a single worker at the workplace.

Most workers had no idea that they were ‘represented by’ a union, despite the fact that the employer deducted and paid union fees from their wages. The multinational parent companies in their published sustainability reports listed these protection contracts as genuine collective agreements. Headquarters staff were simply ignorant of the local reality.

* *Freedom of Association and Collective Bargaining at Dutch Companies in Mexico*, Centro de Investigación Laboral y Asesoría Sindical, June 2010, FNV Mondiaal, Amsterdam, Netherlands.

Box 2.4 Union-busting

A major global fruit company operating in the Philippines wanted to rid itself of the trade union AK-NAFLU-KMU, which 80% of its workforce had chosen. The union had opposed the company’s policy of replacing full-time workers with external subcontractors. The company brought together discontented officers from a previous rival union and gave them special privileges, including upgraded status and paid leave to arrange meetings to oppose the existing union, and an internal watching brief over union activists.

The company attempted to de-recognise the KMU union by inciting disagreement over rice subsidies and by calling an emergency meeting to replace the union leadership. The Philippine Department of Labor denounced these efforts, but the company persisted in illegal recognition of its own yellow union and refused to negotiate with the KMU. Worn down by years of company opposition and threats, workers finally agreed to accept the company’s yellow union, after which the company cut the full-time workforce more rapidly. Following the cuts, the company sold its operations. Workers now face an uncertain future without a real trade union to defend their interests.

Company deals with such sponsored and controlled unions block genuine unions that would effectively represent the wishes of the workforce (Box 2.4). The ILO conventions outlaw such arrangements and stipulate that freedom of choice of union is a right of workers and not a matter for employers.

3 Labour rights are human rights

The international community has for many years recognised the social and economic benefits of collective workplace bargaining. It has repeatedly proclaimed and reinforced workers' right to form and join trade unions (Box 3.1).

International labour standards are based on conventions and recommendations of the ILO, the UN agency responsible for the world of work (Box 3.2). Labour conventions are open to voluntary ratification by ILO member states. When a member state ratifies a convention it becomes a signatory to a legally binding international treaty. The ratifying country undertakes to apply the convention's provisions, to adapt its national law and practice to the convention's requirements, and to accept reporting to and supervision by the ILO.

3.1 The ILO Core Conventions

Certain ILO conventions are so important that they are regarded as basic human rights. The International Labour Conference of 1998 adopted the Declaration on Fundamental Principles and Rights at Work. This states that all countries, as ILO members, must abide by the rights and principles contained in a specified group of Core Conventions.

The four principles that the Core Conventions cover are:

- ▶ freedom of association and effective recognition of the right to collective bargaining;
- ▶ elimination of all forms of forced or compulsory labour;
- ▶ effective abolition of child labour; and
- ▶ elimination of discrimination in respect of employment and occupation.

Box 3.1 Freedom of association: a fundamental human right

The Universal Declaration of Human Rights enshrines the right to freedom of association and trade union membership in two articles:

Article 20

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

And even more specifically, although less quoted:

Article 23

- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Box 3.2 What is the ILO?

The International Labour Organisation (ILO) is a specialised agency of the United Nations responsible for rights at work, employment, social protection and all work-related issues. It is unique in the UN system in that it has a tripartite governance model. The three ILO partners are employers, workers and governments, and they agree all international labour standards on a global basis. ILO standards are therefore not imposed by trade unions, nor are they imposed by developed countries on developing countries.

So, even if an ILO member state has not ratified one of the Core Conventions, the principle behind it is still binding upon the country. These conventions are included in the UN Global Compact⁶ and the OECD Guidelines for Multinational Enterprises⁷ and explicitly referenced in the UN Guiding Principles on Business and Human Rights.⁸

The inclusion of freedom of association as one of the Core Conventions' four binding principles is significant. Freedom of association is not just an aspiration but has the same importance as the abolition of child labour or forced labour, because it enables workers to defend themselves against other abuses (Box 3.3).

Box 3.3 Relevant ILO conventions and recommendations

A number of international labour standards are directly relevant to the rights to freedom of association and collective bargaining:

- **Convention 87: Freedom of Association and Protection of the Right to Organise.**
- **Convention 98: Right to Organise and Collective Bargaining.**
- **Recommendation 163: Collective Bargaining.**
- **Convention 135 and Recommendation 143: Workers' Representatives.**
- **Convention 154: Promoting Collective Bargaining.**
- **Recommendation 129: Communications within the Undertaking.**

Many companies have adopted zero tolerance policies with respect to the presence of child labour in their supply chains. Few would now accept a supplier's excuse that "Because the families are very poor, we believe that the children's earnings are needed to help them." If companies were to adopt a similarly tough-minded policy towards freedom of association, as international law requires, they would no longer accept a supplier saying, "Trade unions prevent us from managing our business solely in the interest of our owners, so we want to keep them out of the industry."

The ILO Committee on Freedom of Association (CFA) exists to examine complaints about violations. Under this procedure, governments or workers' or employers' organisations can submit complaints concerning states' violations of trade union rights. If the CFA finds that there has been a freedom of association violation, it issues a report through the ILO's Governing Body and makes recommendations on how the situation should be remedied.

This supervisory mechanism has given rise to a large body of case law on freedom of association, which the ILO publishes in a periodic *Digest of Decisions and Principles*.⁹

Freedom of association enables workers to defend themselves against other abuses

6. www.unglobalcompact.org

7. *OECD Guidelines for Multinational Enterprises*, OECD, 2011.

8. See note 2 above.

9. *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, ILO, 2006.

3.2 What do the international conventions require?

Freedom of association includes:

▶ **The right of workers and employers to form and join organisations of their own choosing, without prior authorisation**

Workers have the right to form or join any workplace organisation they choose. Neither the employer nor the government should interfere in this right in any way. Placing any requirement in a written or verbal contract that restricts this right is contrary to the principle of freedom of association.

▶ **The free functioning of trade unions**

Neither management nor government should interfere in the internal affairs of a trade union. ILO Convention 98 makes it clear that such interference includes employers' financial contributions to a union. This is not the same as providing agreed facilities, such as an office or telephone. It is also unacceptable for a management representative to be present during a union meeting, or for the management to approve the minutes of a union meeting before they are released to members.

▶ **The union's right to form or join federations and confederations**

The union's freedom to form or to join federations and confederations is particularly important in jurisdictions where unions are composed only of employees from one particular factory, farm or plantation. Workers must be free to join a larger grouping of workers organising outside the workplace unit, such as a union federation, if they choose to.

▶ **Non-interference in election or duties of union representatives**

ILO Convention 135 deals with workers' representatives. Management should not try to place restrictions on whom the union members elect as their officers in terms of length of workplace service or educational level. This is nothing to do with the employer. Union members should be free to choose their representatives, who should then be free to carry out their duties without interference. This does not mean that representatives can do whatever they want or give up working. They should function in accordance with national law and/or under a collective agreement on such matters as the facilities they can use and the amount of time they can take off work for union duties (as is provided for in UK law, for example).

▶ **Non-interference by non-union bodies**

There are examples of legally-based non-union worker representation, such as works committees in India and *solidarismo* organisations in Central America (Box 3.4). Where these bodies exist alongside independent unions, the ILO is clear that they should not undermine the position of the unions or their representatives. Instead, companies should encourage cooperation between the non-union body and the trade union.

▶ **Collective bargaining**

Collective bargaining, as the ILO applies the term, can only take place between independent representative workers' organisations, on the one hand, and employers, on the other. 'Independent' means separate from and uninfluenced by either public authorities or employers.

Genuine collective bargaining, leading to a collective agreement, cannot therefore take place between an employer and a workers' welfare committee or any group of workers that a company creates purposely to agree a collective pact or direct agreement.

Union representatives should function in accordance with national law and/or under a collective agreement

Box 3.4 *Solidarismo* organisations

Some Central American governments have confused the guidelines on freedom of association by permitting company-supported *solidarismo* organisations to block access for independent trade unions. These in-house associations, which organise cultural and sporting activities for workers and their families, are funded partly by employees' retirement funds and partly by employer contributions. The problem occurs where, as often happens, *solidarismo* organisations also have representation on permanent company committees and sign direct agreements (*arreglos directos*) with companies on wages, piece rates, and health and safety. Usually the employer initiates these agreements.

Solidarismo organisations that make agreements with companies on behalf of the workforce are common in the banana- and pineapple-growing sectors of Costa Rica and Honduras. Their introduction since the early 1980s has led to the disappearance of independent unions. In Costa Rica, for example, there have been far more direct agreements between companies and *solidarismo* associations than collective agreements with unions: 74 direct agreements were in force in 2008, as opposed to just 13 collective agreements.

Complaints about *solidarismo* organisations have reached the ILO's Committee on Freedom of Association. The CFA has ruled that such associations are in violation of the ILO conventions on freedom of association if there is any management interference in their funding or administration and if they take part in worker representation via permanent committees or sign direct agreements with employers.

4 Six steps to freedom of association

'Respecting human rights is not a passive responsibility: it requires action on the part of businesses.'¹⁰ The UN Guiding Principles define clear steps that a company should take in order to operate on a basis of respect for the human rights of its stakeholders:

- ▶ to create, publish and embed a policy commitment;
- ▶ to ensure a legitimate procedure for remediation of any adverse impacts.¹¹
- ▶ to undertake ongoing human rights due diligence; and

Quick start guide

Box 4.1 sets out the six key steps that companies can take to support freedom of association in their supply chain. These steps are discussed in more detail in the rest of this chapter.

- | | |
|-----------------------------------|-------------------------------|
| 1 Write your policy statement | 4 Develop an action plan |
| 2 Plan your due diligence | 5 Monitor implementation |
| 3 Establish the current situation | 6 Seek continuous improvement |

“Good management starts with good policy. Good policy starts at the top”

10. *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide*, United Nations, 2012.

11. See note 2 above.

Box 4.1 Quick-start guide to freedom of association

Here is a quick summary of the six key steps that companies can take to support freedom of association and collective bargaining in their supply chain:

- 1 Write your policy statement (for an example, see Annex A)**
 - Consult with key stakeholders (unions, NGOs, suppliers, agencies).
 - Consult with internal management team.
 - Fix responsibility for implementation.
- 2 Plan your due diligence**
 - Conduct a simple risk analysis to identify which countries, suppliers or agencies are most likely to create difficulties.
 - Prioritise key suppliers.
 - Assess your leverage with the most at risk suppliers.
- 3 Establish the current situation**
 - Gather information on each workplace from:
 - workplace self-assessments;
 - local stakeholders (unions, NGOs, community groups);
 - internal staff who visit the workplaces; and
 - audit reports of previous buyers or via Sedex (www.sedexglobal.com).
- 4 Develop an action plan**
 - Inform and engage suppliers.
 - Check new suppliers.
 - Share your plan with the whole management team.
 - Maintain communication with labour stakeholders.
 - Encourage local dialogue between workplaces and unions.
- 5 Monitor implementation**
 - Check social auditors for understanding/quality on freedom of association.
 - Cooperate with other buyers.
 - Check Sedex information regularly.
 - Maintain local stakeholder/NGO contact.
 - Consider NGO hotlines.
- 6 Seek continuous improvement**
 - Find and address root causes of issues.
 - Fully engage suppliers to own the implementation process.
 - Encourage adoption of grievance procedures.

Step 1 Setting the policy

Good management starts with good policy. Good policy starts at the top. A clear statement of a company's commitment to uphold freedom of association and the right to bargain collectively throughout its operations and down its supply chain needs to carry authority from the highest level of management (Box 4.2).

The statement on freedom of association and collective bargaining will usually form part of an overall stated policy commitment to human rights, perhaps within a formal code of conduct. The company code can also form part of a contract for services with suppliers and partners. This will create a

culture of human rights observance around the company's total operations and lessen risks arising from partners' ignorance or misunderstanding of the company's commitments. It also creates a basis for monitoring performance and driving improvements down the supply chain.

It is essential to publish a copy of the policy in each supplier's workplace, so that workers can remind themselves of the commitment. Many workplaces have such policy statements displayed on the wall but do nothing more, and this is inadequate. The supplier's managers and supervisors should receive adequate training on the company's freedom of association policy and its relevance to other rights for which the company is responsible, such as freedom from discrimination.

Box 4.2 What should a policy statement on freedom of association look like?

A policy statement that promotes the ETI Base Code and international conventions regarding freedom of association and collective bargaining should contain the following elements:

- **A headline statement that the company respects and supports the rights of all employees to freedom of association and collective bargaining.** This is part of the company's commitment to dialogue-based industrial relations in which employees may express their opinions without fear of reprisal. The company supports collective bargaining as a fair and balanced mechanism for reaching agreements governing relations between the company and its workforce.
- **Implementation clauses that give substance to the statement by undertaking:**
 - To comply with both national law and international instruments and standards on freedom of association and collective bargaining.
 - To allow all workers, without distinction, to form and/or join trade unions of their own choosing.
 - To recognise workers' unions as partners for the purpose of collective bargaining.
 - Where rights to freedom of association and collective bargaining are restricted under law, to facilitate and not to hinder the development of parallel means for independent and free association and bargaining. This may include the facilitation of free choice by workers to elect their own workplace representatives.
 - To allow union representatives to conduct their activities, including meetings with and of their members, without interference.
 - Not to tolerate intimidation, reprisal or discrimination of any kind against union members or representatives or those advocating membership of a union.
- **An undertaking to monitor the application of the policy throughout the company's operations, to identify areas in which the right to exercise freedom of association may be at risk and to take action to support these rights.**

Step 2 Exercising due diligence

A company's exercise of due diligence requires it to examine its current operations to ensure that it maintains an adequate standard of care. In the context of freedom of association and the right to bargain collectively, due diligence requires the company to:

- ▶ investigate its own operations and the operations of its suppliers;
- ▶ ensure that nothing that the company does or fails to do prevents or inhibits workers from freely forming or joining trade unions, or from engaging in collective bargaining over their employment terms and conditions; and
- ▶ ensure that nothing that the company's suppliers do or fail to do prevents or inhibits workers from freely forming or joining trade unions, or from engaging in collective bargaining over their employment terms and conditions.

Rights to freedom of association and collective bargaining form part of a **mature system of industrial relations**. A mature system benefits from established institutions: representative and recognised trade unions; established employer associations; a culture of dialogue and negotiation; and a body of enabling legislation that supports a structure of binding collective agreements at national, regional, sector and/or company levels.

In many countries involved in global supply chains, most of these features are compromised or do not exist. How in such countries can companies exercise their required due diligence regarding freedom of association and the right to collective bargaining? Companies should factor this challenge into any decision to source from such countries, along with other considerations such as price.

Targets and priorities

Modern supply chains are often complex and geographically dispersed. Companies need to establish clear targets and priorities to advance principles of freedom of association and the right to collective bargaining throughout their operations. A key step should be to agree where in the supply chain action is most needed and where the company can exercise most influence:

- ▶ **Strategic suppliers** with which the company has a direct, long-term and stable relationship are a priority. The company is usually a significant customer of such suppliers, and the suppliers are critical to the company's operations. There is a mutual interest in developing a shared policy and approach to social responsibility.
- ▶ The company should prioritise **high-risk areas** of its supply chain on the basis of known issues arising from local law and practice, or because of the production pattern. For example, the hand-stitching of soccer balls in Pakistan and India is usually based on a cottage industry model. The workplace produces materials that middlemen distribute into the surrounding community for home stitching, with considerable risk of child labour and unregulated work. This model allows no room for union organising or collective bargaining.
- ▶ **Subcontractors** (and sub-subcontractors) may also pose a significant risk, despite their arm's length relationship to the buying company. The more tiers between supplier and buyer, the more likely are informal labour arrangements to be present as a way of keeping wages low. This helps ensure profits at each level while allowing the direct supplier to negotiate a sustainable price with the company. Such arrangements do not favour stable industrial relations or unions.

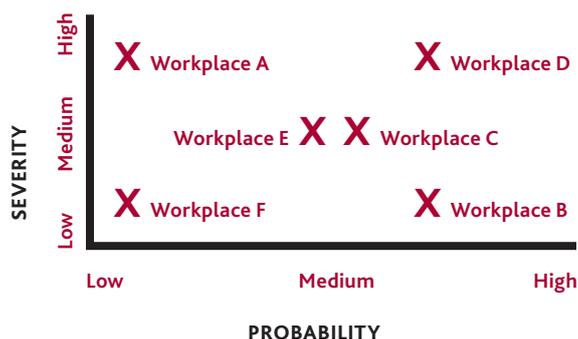
Creating an action plan

Once the company has agreed its priorities, its **due diligence action plan** should start with a description or map of the supply chain. This should list all known suppliers and differentiate them according to range of products, activities and geographical regions. A supplier map will:

- Describe the **different products and services** supplied.
- Show the **flow of inputs and outputs** at each level of the production tree, not forgetting suppliers, subcontractors and agents.
- Identify the **general risks** for freedom of association and collective bargaining at each level. To achieve this, the company needs to be in dialogue with unions, labour rights NGOs, business and government officials in the regions concerned.
- Map **individual supplier risks**. If you are approaching a new supplier, or if you are establishing a new ethical supply chain policy, ask for evidence of compliance with the law and with international operating requirements. Use a simple risk matrix to assess the relative urgency of individual workplace issues based on severity and probability (*Figure 4.1*).

Supplier mapping will enable your company to construct a detailed action plan that will range from preventing worst cases to raising supplier awareness in a managed and effective framework.

Figure 4.1 A simple risk matrix



12. www.sedexglobal.com

Step 3 Establishing the current situation

Once your company has set priorities and mapped suppliers and supply chain risks, you need to refine the basic risk assessment to establish a baseline for current operations. This will enable you to develop your action plan and measure improvement.

- When you introduce your ethical trading policy statement (*Box 4.2 above*) to your suppliers, include a **self-assessment survey** so that each supplier can review its performance against the measures your policy requires. Suppliers will aim to present their operations in the most favourable light, but a well-constructed questionnaire should enable you to gain a clear understanding of where action may be necessary. For a suggested short supplier questionnaire covering freedom of association and collective bargaining, see Annex B.
- Ask suppliers for copies of any **previous social audit reports** produced by other buyers and reports on any actions they have taken to respond to findings. Use databases such as Sedex to access audit reports.¹²
- Use **internet research and direct contact** to obtain additional information from local stakeholders such as trade unions, labour rights NGOs, other suppliers, other companies sourcing from the same supplier or country, local university departments of development or industrial relations, and local newspapers and journalists.
- Visit the supplier's workplace.** Companies large enough to have their own compliance team should always include new suppliers (and any subcontractors) in country inspection visits to gather intelligence on their operations. Company inspection teams need to develop relationships with in-country unions and labour rights NGOs to effectively assess risks. Companies that have no regional or local compliance team should ask personnel or buying staff visiting the supplier's workplace to complete a survey of essential features of freedom of association as part of their due diligence.

- Companies without their own audit or monitoring teams are likely to need **external audit services** to undertake an initial social audit of new suppliers. Auditors may be commercial consultants or, in some cases, NGOs. Poor auditing is common, so it is essential to check the approach of external auditors to be sure that they are competent to report on freedom of association issues (see Step 5 below.)

Gathering local information

To achieve an understanding with suppliers you need to appreciate the context in which each supplier operates:

- Check what the **national and local law** in the country concerned says about freedom of association and collective bargaining. Is the law clear? Are there gaps or ambivalence? Are trade unions or labour rights NGOs challenging any aspects of the local law, in the country or internationally? You may be able to find the applicable law from a search of websites listed in Annex D; you may also need to consult a language specialist for your research. Bear in mind that following the national law may not be sufficient (Box 4.3).
- A good **guide to specific problems** is the International Trade Union Confederation (ITUC) *Annual Survey of Violations of Trade Union Rights*.¹³ These surveys give pointers to the issues that your company might encounter when dealing with workplaces in a particular country. The Global Union Federations (GUFs) that group trade unions from different branches of industry to deal with multinational employers and international industrial relations are an excellent source of detailed information on the local situation in most countries and may be able to advise you via their national member unions on the status of individual workplaces.¹⁴
- Make **regular contact with national and local federations of unions and employers**, whether or not your local suppliers are organised by unions or members of employer associations. These bodies will give you current information on industrial relations in the country. Their often contrasting viewpoints will help you understand the attitudes you may encounter. The GUFs will be able to link you with local unions in the relevant sector.

Box 4.3 Why isn't following the local law enough?

The UN Guiding Principles on Business and Human Rights are clear on the duty of companies faced by weak national legislation:

'The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.'

'Business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes.'^{*}

* Principle 11, commentary.

- Build up a **picture of the structure of industrial relations** in the country concerned: whether there is a single or multi-union environment; whether there is a record of government intervention, positive or negative; and, where collective bargaining takes place, whether this is at the national, regional, sector or workplace level. Guidance on some specific country issues is provided in Section 5; Annex D includes some online sources of country information.

13. *Annual Survey of Violations of Trade Union Rights*, ITUC, survey.ituc-csi.org

14. See www.global-unions.org/IMG/pdf/MakingWorldDifference_4.pdf

Step 4 Developing and implementing the action plan

Analysis of the information you obtain will give you a clearer idea of priority areas for improvement in the exercise of freedom of association across your company's supply chain. This will feed into development and implementation of your action plan.

Developing the plan

There should be two aspects to your planning:

Engaging with existing suppliers

- ▶ Supplier engagement means helping change supplier managers' approach to their daily interactions with workers. Without this, the compliance process will remain in 'policing' mode. The aim is to get suppliers to share your vision of sustainable industrial relations.
- ▶ Hold briefings to remind your suppliers of the increasing visibility and importance of freedom of association on global markets and among your customers, and of what meeting business and public expectations implies. Many suppliers are ignorant of international concerns and even of local labour laws.

Selecting new suppliers

- ▶ As your company's needs change, you are likely to draw new suppliers into the supply chain. To avoid problems later, in your choice of new suppliers consider carefully each candidate's industrial relations structures, practices and approach to dialogue with its workforce.
- ▶ Deal with the high-risk areas first. Your goal should be to move from 'policing' new suppliers' compliance with your policy to a positive shared responsibility for implementation.
- ▶ Include your policy statement on freedom of association – usually as part of the overall company code – in your supplier contract and draw attention to it.

Implementing the plan

- ▶ Allocate responsibility for implementing your company's action plan and for each component within it across your team.
- ▶ Set clear and mutually agreed objectives for progress.
- ▶ Ensure your company discusses and agrees, at the highest level, the importance of workplace dialogue and freedom of association in the context of the overall ethical trading policy.
- ▶ Recognise the possibility that your company may experience tension between commercial objectives and ethical principles. Prepare to address this by integrating freedom of association and collective bargaining into your risk review and decision-making systems.
- ▶ Maintain regular communication with stakeholders such as trade unions and labour rights NGOs.
- ▶ Encourage and facilitate relations between suppliers and local unions through dialogue and joint training where this is helpful.

Step 5 Monitoring

As your company implements the due diligence action plan, you will need to assess the plan's effectiveness.

Compliance auditing

If you have your own regional compliance team, their reports will be key data for your verification process. Regular compliance team training and orientation are essential to maintaining a keen eye on the progress of individual supplier workplaces.

If you do not have in-house capacity, consider using commercial auditors to provide assurance. Unfortunately, dramatic accidents in workplaces that were supposed to have been rigorously audited – such as the Ali Enterprises fire in Pakistan and the Tazreen Fashions factory fire in Bangladesh – have demonstrated the weakness of commercial audits.¹⁵ Recognise that audits alone will not be enough for effective assessment.

Companies need to choose and vet social auditors carefully to ensure that they report reliably on freedom of association. This is one of the weakest areas of audit training and practice. Here is a checklist to help you decide whether an auditor is sufficiently aware of workers' right to organise, and to help you brief your chosen auditor so that they work effectively on your behalf:

Effective auditing checklist

- ▶ The audit team should contain someone with **direct trade union experience or specific knowledge of labour and trade union affairs**. S/he should be able to provide a breakdown of the trade union situation in the country: what confederations exist, their orientations and which unions organise in the sector concerned. Many auditors who come from a management background are not fully aware of the union structures and organisations in their own country, or even of the functions that workers' organisations perform.
- ▶ The auditor's reports should contain details of any **contacts they made with local unions and labour rights and community NGOs**, whether or not the workplace is unionised. You need to discover any significant underlying reasons why a workplace is not unionised.
- ▶ **Unannounced spot-checks** – surprise audits – should be a regular feature of the auditor's work. While it is usually necessary to obtain permission to enter a workplace, this should not be date-specific. Your suppliers should understand that spot-checks are part of the buying relationship. Preannounced audits are liable to find a carefully prepared scenario. While a good auditor can usually determine the underlying situation, given sufficient time for investigation, an unannounced visit can help provide clarity.
- ▶ **Sample size and format** of worker interviews are important indicators of audit quality. An effective auditor will sample interviews across the organisation and include people from every operation and group. Women workers, young workers, migrant and occasional/informal workers and other vulnerable groups need attention. The audit team should include a **female auditor** where there are women workers, and special **language coverage** if there are migrants who speak a different language.
- ▶ All interviews should be **confidential**. This is often difficult in the workplace, so the auditor should conduct some interviews elsewhere, such as in workers' homes, clubs or gathering places. The audit team should also speak to community groups and local NGOs in the workplace's catchment area. Some groups may be able to arrange off-site discussions with workplace employees.
- ▶ **Individual face-to-face interviews** are preferable to focus groups of several workers at a time. Workers are often reluctant to speak frankly or confidentially in groups, out of concern that any critical remarks will reach the ears of management.
- ▶ Auditors need well-developed **interpersonal skills** as well as specialist knowledge.
- ▶ Auditors should physically check and obtain a copy of any workplace **collective agreement**. The audit report should record the date and duration of the agreement and whether or not it was signed after workers were hired and had had the chance to choose their union.
- ▶ If the collective agreement has expired, auditors should find out why and whether **negotiations** are continuing for a replacement. Proof that negotiations are ongoing would include draft proposals.

15. See, for example, bit.ly/XPX6ij and nyti.ms/12FD5f9

▶ A valid collective agreement is one signed by representatives of management and the relevant union(s). Auditors should **meet some of the union signatories** to verify that the agreement is genuine. If there is more than one union on site, they should speak with representatives of each union separately.

▶ Auditors should record whether **workers have copies** of the collective agreement and/or know its contents.

See also *Box 4.4* for useful questions that auditors can ask about freedom of association.

Maintaining a watching brief

However focused and efficient your auditing system, it is never possible to guarantee that what the visiting team has assessed is the current and continuing situation. The best monitoring system is a confident workforce that will speak up and unite in negotiating decent conditions with its employer. Such confidence comes most easily from belonging to a trade union that can take up issues in a professional manner.

There are nevertheless other options available to buyer companies to help maintain a watching brief over supply operations in regular sourcing countries:

▶ In countries where many workplaces lack union representation, and worker–management communications are poor, workers will benefit from an **independent communication channel**. Some brands have helped establish worker hotlines through which workers can call a central telephone number in confidence to leave information regarding a particular problem or incident (*Box 4.5*). You may also be able to support the work of a local NGO that can hold regular surgeries where workers can voice complaints or ask questions. While such initiatives can help workers to be heard, they are no substitute for the proper exercise of freedom to organise a union that will act on workers’ behalf without exposing the individual to possible repercussions.

Box 4.4 Useful questions for auditors

Auditors should generally spend at least a third of audit time on worker interviews. Useful questions auditors can ask about freedom of association include:

- ‘Do you know whether there is a trade union agreement at this workplace?’
- ‘Can you name the union that the agreement is made with?’
- ‘Were you ever asked to vote on accepting the agreement?’
- ‘Can you name your union representative?’
- ‘Did you take part in a secret vote to choose the representative?’

Where there is no trade union:

- ‘Is there a worker representative to whom you could talk if you had a problem with your work or with your supervisor?’
- ‘Can you name this representative?’
- ‘Have you ever raised an issue with her/him?’
- ‘Was their intervention effective?’
- ‘Have you ever been asked to take part in a secret vote for a worker representative at this workplace?’
- ‘Has there ever been a trade union here?’
- If yes: ‘What happened to it?’
- If no: ‘How do you think the company would react if workers wanted to form or to join a union?’

Box 4.5 Worker hotlines in China

The adidas Group has engaged independent Chinese NGOs to act as contact points for workers employed by factories in its supply chain. China Labour Support Network (CLSN) launched its hotline in 2008.* Handshake, an NGO in southern China, launched a second hotline in 2010. Workers from more than 400 employers, including factories that adidas sources directly and indirectly, have access to these hotlines.

The service providers operate under a strict confidentiality agreement. Workers may remain entirely anonymous within the process if they wish.

adidas believes that this arrangement gives it early warning and enables it to guide factory managements in improving internal grievance systems for individual cases, as well as in mitigating the risk of conflicts and preventing recurrence of problems.

* www.adidas-group.com/en/ser2009/suppliers/3_5.html

- Keep your action plan up to date by regularly reviewing incoming information and changes in local situations in different supply zones, as well as ensuring the plan incorporates relevant changes in your company's policy and business practice.

Step 6 Continuous improvement

Achieving supplier commitment to effective freedom of association and collective bargaining is not a one-off event. Feedback from your contacts and monitoring systems will inevitably raise issues that require changes in suppliers' management style and attitude. This implies an ongoing corrective action plan for breaches of your company policy or code.

Principle 22 of the UN Guiding Principles states: 'Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.'¹⁶ The *Interpretive Guide* published to assist companies in implementing the Principles points out that 'if an enterprise relies entirely on ad hoc processes to remedy any impact it has caused or contributed to, there is unlikely to be a shared understanding within the enterprise as to what kind of response is appropriate. This creates a risk of internal dispute over how to proceed and of delays in remediation.'¹⁷

- Knowledge management systems will help your company capture information from a range of sources and organise and access it when needed. Good information systems survive changes in personnel and individual memory.
- Maintain and extend **contacts with local stakeholders**: local unions, NGOs, academics, journalists and so on. This should be part of the work of your company's local team if there is one. If not, maintain and extend contacts through regular emails and/or Skype calls. When you need detailed and rapid local information to deal with a sudden event, it is too late to begin opening up new communication channels.

16. See note 2 above.

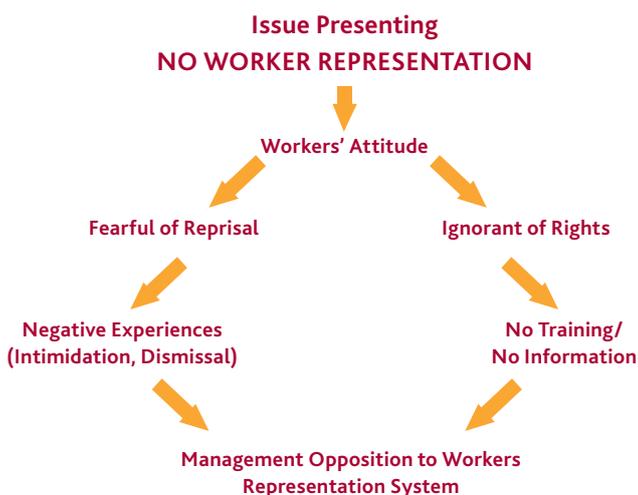
17. *Interpretive Guide*, note 10 above, pp.64-5.

Responding to issues

When significant freedom of association issues emerge as a result of auditing or other monitoring, how should your company respond?

- First, the issues need **in-depth assessment**. Corrective action, to be effective, must address the underlying reasons for a supplier's failure to meet its commitment. Cause-and-effect flow charts can help your analysis (Figure 4.2).

Figure 4.2 A cause-and-effect flow chart



- Prepare responses** to situations you are likely to encounter where suppliers fall short of the commitment you require. What will need to be done to bring supplier operations into line with expectations?

- Consider not only action to put the issue right, but **preventive action** (change in the system) to ensure that a repeat does not occur.
- If your company has capacity, consider a programme of **awareness training** for suppliers' managers and workers to raise standards. It may be possible to join with other companies or work with multi-stakeholder initiatives in certain markets, because others will almost certainly be struggling with similar issues. ETI often works with members to develop joint programmes building shared solutions to common sourcing difficulties. Your team may find it helpful to develop a grid of training and remediation responses in line with your company's available resources (Table 4.1).
- Constant **feedback and review** should be a feature of your company's response to supply chain difficulties. Questions to ask include:
 - 'Was this activity effective in bringing about a change of attitude and preventing further violations of our agreed freedom of association or collective bargaining standard?'
 - 'Do we need to change our way of approaching these issues?'
 - 'Do we need to intensify our action?'

ETI often works with members to develop joint programmes building shared solutions to common sourcing difficulties

Workplace issue	Good practice solution
No union in place	Awareness training for managers and workers; facilitate union access to the workforce
No worker representation of any kind	Awareness training for managers and workers; facilitate free election of worker representatives to works committees (a legal requirement in some countries); occupational health and safety, grievance and disciplinary, women's and anti-discrimination committees have all served to introduce worker representation into workplaces prior to full elections; facilitate union access to the workforce
Law does not allow free trade union choice (China, Jordan, Vietnam and other countries)	Form a parallel representation system, with free election of worker representatives to works committees; committees may address more than one issue; external independent training for elected worker representatives
Workers prevented from joining unions	Clear statement from company to supplier of its policy of supporting the right to freedom of association; awareness training for managers and workers; facilitate union access to the workforce – if necessary, in the context of a training programme. Brands call on government to end exemptions to freedom of association in Export Processing Zones
Company-sponsored yellow union or worker association blocks free union access	Reminder from company to supplier of its compliance policy; inclusion of managers in general awareness training on the value of open dialogue and expectations of the international market; facilitate union access to the workforce

Ultimately the aim is to develop **local-level cooperation and joint interaction** between suppliers and unions. This will largely remove the need for external policing and replace it with a self-balancing system of negotiation. It requires a sustained effort to get this change perceived as a positive step rather than a burden, especially when suppliers have experienced conflictive labour relations (Box 4.6).

Many global brands have concluded that simply policing labour rights is unproductive. Instead, where causally related problems occur, they are sponsoring initiatives to shift the emphasis from individual workplace compliance to broad **supplier development programmes**.

Box 4.6 Two examples of supplier development programmes

Indonesia

Global sportswear brands sourcing from suppliers in Indonesia are party to a protocol on freedom of association drawn up between them, their local suppliers and national trade unions organising the sector. This protocol, signed in 2011, affirms a joint responsibility to uphold the right to freedom of association ‘as part of the body of universal human rights’.* Suppliers are required to apply the principles and implementation procedures outlined in the agreement to their own contractors.

Recognising past problems, this agreement covers union recognition, non-intervention in union affairs by employers and non-discrimination against union members and officers. It also deals with access and the provision of facilities for union work and places a duty on employers to engage in collective bargaining with recognised trade unions.

Turkey

Inditex is working closely with the IndustriALL Global Union Federation and local affiliated unions in Turkey to develop the concept of social dialogue and worker representation in six supplier factories. “We understand that the global unions are our natural counterparts,” says Aleix Gonzalez Busquets, Inditex’s Corporate Social Responsibility Global Director.

Workers in each factory freely chose three representatives for training in grievance handling, in a vote that Inditex’s local team supervised. Factory managers received awareness training on the aims of the project. Since the training, workers have raised work-related issues with their trained representatives.

The project aims not to force the organisation of trade unions but to make workers aware that they may exercise this option if they wish, and to give them a taste of effective representation. Inditex points out that its brand leverage was essential in achieving the understanding and participation of supplier factories.

* *Indonesia: Protocol on Freedom of Association*: www.ituc-csi.org/indonesia-protocol-on-freedom-of

Grievance mechanisms

A key component of remediation and change is an effective **grievance mechanism**.

The *Interpretative Guide* to the UN Guiding Principles states: 'In many instances, the most effective and efficient way to provide for remediation processes is through an operational-level grievance mechanism. A grievance mechanism is not just an internal administrative procedure for handling impact or grievances. Whereas an internal procedure is typically passive, that is, waiting for problems to arise and then responding, a grievance mechanism is active: it aims to facilitate the identification of grievances and address them as early as possible.'¹⁸

There are important points to bear in mind with regard to grievance mechanisms:

- ▶ Where there is a trade union, the grievance mechanism will usually form part of the **collective agreement**, and union participation in the process will be assured. The absence of a union or worker representation causes a credibility problem, because the company may be seen as adjudicating amid a conflict of interest. In such cases there should be an agreed **independent third-party adjudicator** of last resort.
- ▶ The existence of a grievance mechanism alone is **no substitute for a genuine trade union** chosen by the workers. Commentary on the UN Guiding Principles points out that 'Operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms.'¹⁹
- ▶ Workers should be made aware of and assisted in following the correct procedure for finding a rapid and fair response to any complaint. The overriding aim is to achieve a **'seen-fair' and 'felt-fair' conclusion** that can enhance dialogue. Many supplier workplaces provide suggestion boxes and claim to have 'open-door policies', but these are of little use without genuine grievance mechanisms or real worker–management dialogue. Workers usually find suggestion boxes ineffective and ignore them, and the power imbalance between workers and managers tends to discourage open dialogue.
- ▶ There should be a clear description of the **process** by which a complainant can seek redress, and a clear **timetable** for progress of an issue through the procedure.
- ▶ Grievance mechanisms should support the right of a worker who raises a grievance to **participate** directly in its settlement. They should have the right to be **accompanied and advised** by their union representative or any person of their choosing. They should be able to access any **information** that would assist them through the process, provided this does not infringe the confidential rights of anyone else.
- ▶ All stages of the grievance process should be **transparent** and systematically **minuted**. This will demonstrate that hearings, and the collection and use of evidence, are fair and in line with agreed procedure. An effective grievance mechanism will instil confidence among those who need to use it, knowing they will receive a full and fair hearing. If the process leaves complainants feeling cheated, it is likely to exacerbate rather than improve matters.
- ▶ Suppliers need to see worker grievances not as a threat but as an **opportunity to learn and improve** their policy or implementation and thus to avoid future problems. For an example grievance procedure, see Annex C, Clause 8.

18. *Interpretive Guide*, note 10 above, p.65.

19. UN Guiding Principles, note 2 above, Principle 29, commentary.

5 Responding to challenges to freedom of association

The aim of enlightened workplace dialogue is to bring about a mature system of industrial relations. But the reality in many of the world's workplaces falls far short of this. Many countries lack the mature institutions necessary to support such a system, such as strong trade unions, employers' associations ready to engage in dialogue, supportive government legislation and structures for inspection, mediation and arbitration. These institutions have either not yet developed or been eroded by economic globalisation.

In addition, authoritarian management attitudes persist throughout much of the world, despite their negative results (lack of worker motivation, low productivity, high absenteeism and high rates of worker migration). Too many managers see the right to freedom of association as a challenge to their view that management should do as it pleases and that workers should accept this silently or quit.

Any company serious about meeting its commitments under the ETI Base Code that proactively supports freedom of association in its supply chain will encounter obstacles such as the following.

5.1 Active opposition

The ITUC reports that in 2011 at least 76 workers were recorded killed as a direct result of their trade union activities. This was a 'quiet' year by comparison with many that preceded it. Countless thousands of workers are abused, threatened and fired annually for standing up for their freedom to organise a union. Frequently their families are implicated in a widening pattern of intimidation and violence.

In April 2012, for example, Aminul Islam, a labour activist at the Bangladesh Center for Worker Solidarity (BCWS) and a former apparel worker, was found tortured and murdered in Dhaka. This followed a beating at the hands of the Bangladeshi National Intelligence Service during interrogation about his role in instigating strikes by workers seeking a pay rise and trade union representation. Many members of the BCWS work for factories that supply products to global brands. Similar cases of violence and intimidation occur in other countries (Box 5.1).

Box 5.1 Intimidation of union organisers in India

A large producer of jeans-wear for the global market, based in Bangalore, India, faced an organising drive of its workers by the Munnade, the women's section of the Garment and Textile Workers Union of India. A Munnade activist who was talking to colleagues about their rights was called to the manager's office and threatened. Unless she renounced the union, not only would she be sacked, but her uncle (with whose family she lived) would also lose his job as a security guard for the contractor that supplied services to the company.

The woman was made to stand in the central courtyard in the burning sun for several hours to think about this threat, while the manager told her colleagues over the factory loudspeaker: "This is what happens to disloyal employees." Fearing for the livelihood of the family under whose kindness she lived, the activist quit her job and did not wish to take the case to court.

The garment industry of Bangalore has long been accused of maintaining a blacklist of union activists.

Anti-union attitudes and union busting are not restricted to developing countries. The USA had not signed the ILO conventions on freedom of association and the compulsory recognition of collective bargaining prior to this becoming an obligatory feature of ILO membership in 1998.²⁰

The USA is also the country where the term **union-busting** was coined. According to a 2009 study, when faced with union elections US employers threatened to close the plant in 57% of elections, discharged workers in 34% and threatened to cut wages and benefits in 47% of elections; workers were forced to attend anti-union one-on-one sessions with a supervisor at least weekly in two-thirds of elections. In 63% of elections employers used supervisor one-on-one meetings to interrogate workers about who they or other workers supported, and in 54% used such sessions to threaten workers.²¹

The organisation American Rights at Work has reported that 75% of US employers, when faced with a union organising drive, hire a union-busting consultant to run campaigns among their employees to counter union efforts. Not surprisingly in as many as 30% of companies where a union wins a recognition election, no collective agreement results.

A more subtle approach to preventing union organising occurs when management unilaterally grants standard union benefits to workers without any representation or negotiation – and without any guarantee that the benefits will endure as part of the workers' terms and conditions. Because the terms are not underwritten by a collective agreement, they may just as easily be removed.

This paternalist model tends to involve much informality and management discretion. There is no formal grievance system. Managers will speak of an open-door policy for settling complaints. The workplace is hierarchical and depends heavily on personal relations. There is no recognition of workers' rights; instead workers are infantilised by the assumption that 'management knows best'.

'Lean' manufacturing models that seek to involve workers in solving the company's production problems, without a representation structure through which workers can negotiate their own needs and aspirations, are doomed to failure in the long run. Initial gains made by encouraging workers to feel involved in the company fade over time as the one-sided nature of labour relations becomes apparent.²²

In some countries, close relations between a political party involved in government and a trade union confederation may have built up a conflict of interest over the years that can interfere with workers' right to freely choose a trade union that reflects their interests. Institutional barriers operate subtly to disadvantage more progressive union formations and to oppose their entry into collective bargaining (Box 5.2).

Box 5.2 Institutionalised corruption

Mexico's labour law looks progressive on paper. But many years of close collaboration between the 'official' trade union, the CMT, and the Partido Revolucionario Institucional (PRI), the main party of government, have given rise to structural impediments to the emergence of new union groupings.

Box 2.3 gave examples of the wide use in Mexico of protection agreements, signed with companies by corrupt unions and lawyers without worker involvement. An even greater barrier in practice is the arrangements in Mexico for administering the labour law via conciliation and arbitration boards. Made up of representatives of government, employers and the old official unions, these allies combine to oppose the registration of new independent and potentially more representative unions. They also undermine independent attempts to seek justice for wronged workers, because they arbitrate cases such as of wrongful dismissal for union activism.

20. The USA shares this distinction with Afghanistan, Bahrain, Brazil, Brunei, Canada, China, Guinea-Bissau, India, Iran, Iraq, Jordan, Kenya, Laos, Lebanon, Malaysia, Maldives, Marshall Islands, Mexico, Morocco, Myanmar, Nepal, New Zealand, Oman, Palau, Qatar, Saudi Arabia, Singapore, Somalia, South Korea, South Sudan, Sudan, Thailand, Tuvalu, UAE and Uzbekistan.
21. K. Bronfenbrenner, *No Holds Barred: The Intensification of Employer Opposition to Organising*, Economic Policy Institute, Cornell School of Industrial and Labor Relations, 2009.
22. Toyota's recent series of product recalls is an example of the limits of 'quality team' workplace organisation.

How to respond to active opposition

There is much repression towards trade union rights worldwide. As a buyer, the best way your company can understand and influence local anti-union culture in an unfamiliar context is through regular interaction with workers, local trade unions and labour rights NGOs outside the workplace.

If you encounter local opposition to freedom of association, you may need to develop a long-term programme of awareness-raising among suppliers' owners and managers. Ideally this would engage a majority of buyers to maximise leverage on suppliers to change their approach. The aim should be to achieve a change of attitude among workplace managers.

Faced with historical political relationships, it is difficult for a non-national company to challenge national institutions directly. However, companies seeking to maintain an ethical supply chain need to communicate to suppliers that they will not give tacit support to corrupt practices. **Your company should let it be known that:**

- ▶ It does not accept protection agreements as genuine attempts to meet freedom of association criteria.
- ▶ It will call for transparency in providing all workers with a copy of any agreement signed on their behalf. (Currently most protection agreements are not accessible to the workers for whose benefit they were supposedly signed.)
- ▶ It will not tolerate exclusion clauses in workplace agreements that prohibit any worker from opting out of the agreement and joining a genuine trade union.
- ▶ It will respect any formation of workers who seek to organise a genuine alternative union of their choice, even if they have been refused permission to register for collective bargaining purposes.
- ▶ It will require secret and secure ballots before recognising any group of worker representatives.

- ▶ It will not tolerate anti-union discriminatory management behaviour or blacklisting.

Your company may be able to participate in one of the ILO's Better Work Programme in-country projects (Box 5.3).

Box 5.3 Regional and sector-level solutions: the ILO Better Work Programme

The ILO Better Work Programme engages the leverage power of brands to promote decent work through better compliance with labour standards. Global buyers such as M&S and GAP are advisory board members of the programme. Many others are signatories to partnership agreements that commit them to apply the core labour standards among their suppliers in the target country. Freedom of association is built into training and assessment by inclusion of trade unions as well as employers and government authorities.

Better Work projects are now running in Cambodia, Haiti, Indonesia, Jordan, Lesotho, Nicaragua and Vietnam.*

* Better Work Programme: www.betterwork.org/global/

5.2 Restrictions on union recognition and collective bargaining

Once workers form a workplace union, its success in representing its members through negotiation with the employer depends on the employer being willing to talk to the union. Article 4 of ILO Convention 98 on the Right to Organise and Collective Bargaining places an obligation on the national

government to adopt 'Measures appropriate to national conditions ..., where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements'.

Collective bargaining is the practical expression of the right to organise. Agreement by the company to recognise a union for the purpose of collective bargaining usually affords important rights to the union:

- ▶ Time off for union representatives (and sometimes for members) to conduct union business.
- ▶ Access to information from the employer for collective bargaining purposes.
- ▶ A right to be consulted in the case of redundancies being considered.
- ▶ A right to advance information in the case of a takeover.

(See the model trade union recognition agreement, Annex C.)

Without recognition, much of the purpose of a union is nullified. This is why Convention 98 requires governments to 'encourage and promote' the practice of collective bargaining by establishing a legal framework for recognition in cases where employers refuse it. In the UK, for example, the Employment Relations Act 1999 sets rules by which one or more unions can progress a claim for compulsory recognition where an employer does not voluntarily grant recognition:

- ▶ The union must be independent of the employer.
- ▶ The employer must employ at least 21 workers.
- ▶ There must be no existing collective agreement under which a union is recognised to conduct collective bargaining for the same group of workers.

- ▶ At least 10% of the workers in the bargaining unit must be members of the union, and a government central arbitration committee must be satisfied that the majority of the workers in the unit would be likely to favour recognition.
- ▶ There must be no competing applications for recognition from other unions unless the unions can show that they would cooperate on behalf of the workers.
- ▶ No application must have been made for recognition within the previous three years in respect of the same group of workers.

In many countries, however, governments have reflected the fear of their employer lobbies by legislating to restrict the right to organise and to bargain collectively in ways that seriously impact on workers seeking to exercise these rights.

Many governments restrict collective bargaining in violation of ILO Convention 98 by imposing an unreasonably high threshold on membership numbers necessary for trade union recognition. For example:

- ▶ In Belarus for a union to be registered it must show it has at least 500 members across all the national regions.
- ▶ In India a union needs 100 workers or 10% of the workforce to register.
- ▶ Indonesia requires 50%-plus-one votes at company level for a union to register.
- ▶ In Malawi a union must represent at least 15% of workers at sector level and 20% at workplace level to be recognised for bargaining purposes.
- ▶ In Morocco bargaining is only open to the most representative union in a workplace as determined by the government ministry, provided that the union has at least 35% membership at workplace level.
- ▶ Pakistan requires at least 30% of employees at company level to negotiate for a collective agreement.

- ▶ In Russia only one collective agreement may be signed per company, but unions may combine to achieve the 50% minimum membership to engage in collective bargaining.
- ▶ Thailand allows only one union per company, and the union must have at least 20% of employees as members to make collective bargaining demands; the government

ministry can dissolve a union whose membership falls below 25%.

- ▶ In the USA a union must win a recognition vote of 50%-plus-one of all employees in the defined bargaining unit.

See Box 5.4 for an account of restrictions in Turkey.

Box 5.4 Restrictive law in Turkey

Turkey is the subject of continuous criticism via the ILO's Committee on Freedom of Association for its highly prescriptive approach to trade union recognition and collective bargaining. Unions are allowed to organise only on the basis of industry branch, not by occupation or workplace. The Ministry of Labour exercises the right to decide within which industry sector – and therefore under which union group – each workplace is categorised. To gain recognition for purposes of collective bargaining, a union must have membership of at least 10% of all workers registered in the industry branch concerned. Agreements are not allowed at sector level, however, but must be the outcome of recognition and negotiation at individual company level.

At company level the union must gain the paying membership of at least 50%-plus-one of the total manual workforce (including supervisors) in the workplace to gain recognition. Membership must be by a signed legal document, witnessed by a notary, costing about the equivalent of a day's pay. After a union recruits members in a new workplace it often takes the ministry several months to verify the list of members, and employers routinely challenge the declared results. During verification employers frequently dismiss union members so that a new challenge will show a reduced number of members.

Unions have a right to challenge such dismissals of their members, and this process again takes many months. In the event that an unjust dismissal is agreed by the labour court, the employee has a right to reinstatement. But the employer may still declare the worker redundant and make a standard termination payment. Thus there is very little incentive for the employer to play fair if it does not wish to negotiate with a union.

It took the Turkish textile union Teksif nearly two and a half years of campaigning to achieve recognition at the Paxar company, which produces labels and designs for international apparel brands operating in Turkey. During this time the courts ordered the reinstatement of workers who had been dismissed for union activity; the union alleged that the company was encouraging individual members to leave the union; and the company challenged ministry verifications. When eventually the union's right to recognition was upheld, the collective agreement negotiations that followed were protracted and only concluded after the buyers brought pressure through the ETI and the Fair Labor Association.

Turkey's legal restrictions on the ability of unions to organise and to engage in collective bargaining are very likely one reason for the low level of unionisation in the country's apparel sector. Only about 3% of the registered workforce is unionised, and only 1% of apparel factories operate under a collective agreement.

How to respond to restrictive legislation

The UN Guiding Principles emphasise companies' obligations regarding freedom of association and collective bargaining, whether or not governments in the countries where they operate legally protect these rights: 'The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.'²³

What should your company do when facing restrictive national legislation, which as we have seen can be very complex?

► **Understand the local context.** Ethical buyers need detailed knowledge of the law on freedom of association and collective bargaining in any country where they have suppliers. Remember that the country's laws represent the lower threshold of legal obligation and that there is no reason in most countries why your supplier cannot *voluntarily* recognise a union representing a group of its workers and engage with in collective bargaining.

► **Incentivise, encourage and train suppliers.** Buyers can and should promote the need to recognise and reach collective agreements with genuine unions among their suppliers as part of their ethical trading policy. Most global brands exercise leverage and encouragement towards suppliers to maintain performance improvements and uphold their reputation. Possible ways to do this include:

- **Compliance premium:** Some buyers have discussed encouraging best practice by paying a slightly enhanced price to suppliers that perform positively in terms of union recognition.
- **Balanced scorecard approach:** Many brands reward positively performing suppliers by elevating them to 'key supplier' status, which guarantees orders over an extended period as far as possible.
- **Assurances:** Suppliers need encouragement to pursue a sometimes costly programme of social improvement. They often seek assurances from buyers that orders will

at least remain at current levels or even increase, as far as possible, if the supplier makes good progress in meeting social compliance goals.

- **Sector training programmes:** Supplier participation in programmes administered jointly by several brands or by the local manufacturers' confederation, or one of the many NGO and ILO programmes, such as Better Work, is a good way to set them meaningful goals in line with industry norms.

Where suppliers clearly violate local law, buyers' early intervention is important. It is not good company practice to abandon responsibility while the local law runs its course. Delays in achieving just outcomes can have grave consequences for workers. Many employees are under pressure to feed their families and cannot afford to wait for long-running legal disputes to conclude. Brands cannot risk being passive when faced with legal cases that could impact negatively on their reputation.

5.3 Precarious and casualised work

The most effective way to ensure suppliers' good practice in matters of freedom of association is for workers to participate in an ongoing dialogue as members of their chosen union. A management–union collective agreement will usually include provisions for dispute resolution in cases of rights violations. However, the significant rise in numbers of workers who are engaged outside the traditional employment relationship is presenting a major challenge to collective bargaining as a mediation mechanism. 'Triangular' employment relationships – with workers employed by a contractor, agency or labour-only broker for work previously done by permanent staff – now occur in every type of enterprise.

Many employers have prevented collective bargaining by shifting large numbers of their workers from permanent status to the subcontract payroll. Fixed-term contracts, casual labour and temporary labour have always been a factor in seasonal employment such as agriculture, but in recent years they have become far more common in a wide range of sectors, with a resulting deterioration in working relationships (Box 5.5).

23. UN Guiding Principles, note 2 above, Principle 11, commentary.

Box 5.5 Work casualisation in Pakistan

Speaking at an international conference on casualisation of labour in 2009, an officer of the International Union of Food workers (IUF), a global union federation, described the situation in a major food company's supply factories in Pakistan.

The company's Pakistan division claimed to employ over 7,000 people, directly or indirectly. But of these many thousands of people, only 323 were employed by the company on permanent contracts. At the factory in Lahore, for example, there were 89 permanent workers — and 750 workers employed on a casual basis.

The company's Khanewal tea factory employed 22 permanent workers, who were trade union members covered by a collective agreement. But another 723 workers were hired through six contract labour agencies. They were in principle allowed by law to form a union and negotiate with the employer, but their employer was the labour hire agency, not the company. These workers received one-third the wage of the permanent workers and had no employment security, benefits or pension.

Until the previous year, the company had had a second tea processing factory, in Karachi. That plant had employed 122 permanent workers and 450 casuals. But this had been considered too many permanent workers, so the plant had been abruptly closed and production transferred to a former warehouse nearby — with 100% outsourced, temporary staff.

P. Rossman, 'Financialization and casualization of labour', ILO/GLU International Conference on Financialization of Capital: Deterioration of Working Conditions, 2009, www.globallabour.info/en/2009/12/financialization_and_casualiza.html

More securely employed workers are very aware of the threat to their full-time jobs from the growing army of precarious labour. As a result, employers' threats to casualise or subcontract work can strongly deter freedom of association and undermine collective bargaining.

How to respond to casualisation

It will take time for the legal framework in most countries to catch up with practical reality in the workplace. During this period, companies' obligation to exercise due diligence to ensure application of the rights to freedom of association and collective bargaining will remain very important.

It is usually possible to establish who is and who is not working in a supplier's workplace at a given time. An employer owes a duty of common care to all workers under their direction, whatever the details of their contract or their formal employment status. This duty should extend to the realm of discrimination; it is not allowable for one group of workers to receive less in wages or benefits than fellow workers doing an identical job.

For purposes of best practice on freedom of association and collective bargaining, responsibility for the treatment of the individual worker rests with the entity on whose premises the contracted person is working. The days when a global brand could deny responsibility for conditions in its supply chain are long gone. In the same way, no local workplace can deny responsibility for people who work on its premises but happen to be legally employed by an agent.

In some countries, popular protest at work casualisation has persuaded governments to set legal limits. In the UK, for example, Agency Worker Regulations introduced in 2011 entitle agency workers to the same or no less favourable treatment as comparable employees with respect to basic employment and working conditions once they complete 12 weeks in a particular job. In Slovenia a popular referendum overturned government intentions to allow students and pensioners to work outside the operation of normal labour law and forced a rethink. A new Slovenian law now prohibits use of agency labour if a company has made redundancies in the past 12 months, sets a maximum quota of 25% of the total workforce for contract workers and requires companies to issue permanent contracts for any job occupied by

a contract or agency worker for more than two years. Pressure is mounting in a number of other countries for similar protection.

These restrictions provide excellent guidelines to companies wishing to monitor and regularise the use of agency workers in their supply chain. The extent to which suppliers use casual, temporary and agency labour should be included in your company's monitoring data. Buyers should seek agreements with suppliers to extend equal treatment to all those who work on behalf of the company, whether they are employed on permanent contracts or via agencies or subcontractors, with regard to wages, work time, protections and conditions (Box 5.6).

Unions increasingly aim for collective agreements with employers on freedom of association for **all** workers within the company, regardless of whether workers have a permanent company contract or are employed via an agency or subcontractor. Ethical supply principles require companies to accept such demands as a means to extend proper protection to all workers in the supply chain.

5.4 State intervention and legally supported monopoly unions

Authoritarian regimes in a few countries fear the democratic potential of trade unions so much that they have banned them outright. Saudi Arabia and the United Arab Emirates are two countries where workers' representative organisations are illegal. Although works councils are permitted in companies with over 100 workers, their role is very limited, and no form of collective bargaining is allowed. Migrant labour comprises 85% of these countries' populations, and migrants are strictly forbidden to join any kind of representative body, including works councils.

There are now several thousand **Export Processing Zones** (EPZs) throughout the world. The intention behind EPZs is to encourage the production of exports through the use of cheap labour, in the hope that developing countries will benefit from the 'trickle-down' of income and technological knowhow. Incentives to external investors in EPZs often include the suspension of national legislation on trade union organising, allowing union organisers to be discriminated against and fired with impunity. A few countries, such as Nigeria and Pakistan, actually ban unions from EPZs.

Box 5.6 A global framework agreement for global cooperation

The Spanish-based apparel retailer Inditex is one of a select few internationally operating companies that have signed a global framework agreement (GFA) with the international federation that represents the world's garment workers, IndustriALL (previously the ITGLWF). This is a pioneering step.

Under the GFA, Inditex recognises its global trade union counterpart for workers employed in the production of textiles, garments and footwear. Both parties undertake to collaborate to ensure the sustainable and long-term observance of all international labour standards throughout the Inditex supply chain. The agreement places the right of workers to unionise and to bargain collectively with their employer at the heart of efforts to secure sustainable compliance with key labour standards on the part of Inditex suppliers.

The GFA's terms will apply equally to direct suppliers, contractors and subcontractors, including homeworkers. No subcontracting will be allowed without the prior written consent of Inditex. Suppliers allowed to subcontract will be responsible for subcontractor compliance.

Recognising the role of organised labour and collective bargaining, Inditex and IndustriALL will constantly review developments in the Inditex supply chain. Where they detect problems they will cooperate in finding solutions, including collaborating on management and worker training programmes.

In some countries the law prevents workers from organising unions independently of **government-sponsored syndicates**. This happens, for example, in Bahrain, China, Cuba, Jordan, Libya, Oman, Qatar, Syria, Uzbekistan, Vietnam and Yemen. (Egypt was among this group, but recent political changes give

hope of an opening for independent worker organisations.) Such direct government involvement negates the principle of freedom of association and makes any collective bargaining little more than a pretence (*Box 5.7*).

Box 5.7 State-controlled unions in China and Vietnam

In China and Vietnam the All China Federation of Trade Unions (ACFTU) and Vietnam General Confederation of Labour (VGCL) are respective arms of the single ruling party. They hold seats on their parties' central committees and are expected by law to lead and exercise financial control over their constituent regions and branches.

In both countries the deputy director of each company is also the director of the company's official ACFTU or VGCL union branch. Other members of the workplace union committee typically include supervisors, alongside a few workplace political 'trusties'. In this situation no independence is possible in company-level negotiations, although an ambiguous form of collective negotiation occurs in Vietnam.

As the Chinese and Vietnamese economies have grown, workers' social demands have risen in line with incomes, and mechanisms of mass control have come under pressure. In parts of China such as Guangzhou in the south, some recent workplace elections have resulted in committees chosen entirely by and from among shop-floor workers. Although the elections still need to be rubber-stamped by the regional hierarchy of the state union, they demonstrate a response to workplace pressure for change.

Rhetoric and practice in China are also changing with respect to collective bargaining. The term 'collective bargaining' only replaced 'joint consensus' with the introduction of local legal changes to bolster the application of collective contracts in the Shanghai region in 2009. These changes are largely a result of increasingly numerous strikes and challenges in the labour courts from informal groups of dissatisfied workers acting outside the ACFTU.

In Vietnam too, workers are now striking for better representation. In 2011 almost 1,000 separate strikes took place, involving many arrests, imprisonments and dismissals. A proposed new trade union law giving workers greater influence in the government-linked unions has made slow progress over the past three years.

How to respond to state intervention

The ETI Base Code calls for special action by member companies in countries where the rights to freedom of association and collective bargaining are restricted by law. Clause 2.4 of the code states: 'Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates and does not hinder the development of parallel means for independent and free association and bargaining.'

Does the Base Code's Clause 2.4 encourage companies to break national law? Not at all. It indicates how companies can operate in a national context that violates international freedom of association norms while supporting its workforce in choosing their own workplace representatives. Suppliers are obliged to accept the presence of the official trade union apparatus within their operations. But they can also negotiate with freely elected representatives of their workforce in internal committees dealing with such issues as health and safety, harassment or migrant workers' housing.

The longer-term aim is to build a culture of dialogue between workers and managers based on genuine representation. Company purchasing decisions need to weigh cheaper costs in some sourcing countries against higher risks of abuses against core labour rights. These abuses will require the company to work much more intensively with suppliers to meet minimum ethical requirements (Box 5.8).

Companies should not be too proactive in forming or promoting vehicles for worker representation, however. Facilitating the formation of worker committees is fine. But companies should not risk creating a paternalistic system of representation unsupported by genuine worker confidence. The criterion should always be whether workers want or embrace such opportunities and support them through their own involvement.

5.5 State-supported alternatives and worker committees

In many countries the law requires companies to create workplace committees or councils to discuss and sometimes negotiate workplace issues. In countries where the culture of

Box 5.8 A constructive alternative in China

The German retailer Tchibo has developed its Worldwide Enhancement of Social Quality (WE) programme in key sourcing countries. These include China, where the only legal union is the state-sponsored ACFTU.

A key aspect of this supplier development programme is to encourage a dialogue-based approach to managing change. In one kitchenware factory of 1,400 employees in the Shanghai region, an initial assessment showed huge communication gaps between workers and management. As part of the programme, workers freely elected their own factory committee representatives, who now meet regularly with managers to discuss workers' issues. Other communication channels established for workers through the WE programme include roundtable discussion groups, a suggestion system and worker participation in a factory health and safety committee.

An assessment of the programme has found as one of its main successes that management has actively changed its top-down style.

trade unionism was well developed before such legislation was passed, such as Germany, France, Italy and the Netherlands, unions usually operate through and alongside these bodies. Where the requirement has been introduced or imposed without the necessary supporting framework of mature trade unions, workplace worker committees have sometimes become barriers to genuine worker representation.

In Bangladesh, for example, worker participation committees are enshrined in law (although this law is often ignored). Managements almost universally hand-pick committee delegates, who are often supervisors rather than shop-floor workers. This provides the appearance of worker representation for purposes of social compliance with buyer codes but not the content.

The international community, global clients and consumers expect companies to support and realise rights to freedom of association and collective bargaining

Workers usually have no idea who their supposed representatives are and do not use these committees to represent their concerns.

This situation blocks the space for a genuinely representative union and, even more destructively, undermines workers' faith in representative bodies. It also provides an excuse for managers who oppose worker representation to claim that workers have no interest in such mechanisms. Many first- or second- generation industrial workers have no idea of the purpose and aims of trade unions, and their first experience of such workers' committees is discouraging. The resulting lack of true dialogue may lead to intermittent riots and violence as workers spontaneously express accumulated frustrations.

Denied an effective voice in negotiating pay and conditions by constant repression of their unions, in 2010 Bangladeshi workers resorted to smashing up factories, burning cars and blocking roads in a long and violent protest over wages and workplace deaths of workers. The ITUC reported 135 people killed and 11,532 injured in 2011 during political violence largely related to trade union attempts to organise.

How to respond to state-supported alternatives and worker committees

In Bangladesh a confusing array of organisations, including externally funded NGOs and politically led trade unions, claim to speak for the working population. It is difficult for an incoming buyer to decide which workers' organisations are genuine and independent. Whenever a company finds it difficult to identify genuine partners for dialogue, the best course is usually to consult the Global Union Federation (GUF) responsible for linking unions in the sector in which the company operates. For a list of GUFs, see Annex D.

Buyers experiencing difficulty in assessing local worker organisations can **consider these questions:**

- ▶ Did the workers freely set up this organisation?
- ▶ Do the workers independently elect the officers and board of this organisation?
- ▶ Does the company have any influence over the administration, funding or governance of this organisation?

The complexity of global industrial relations can be daunting for companies. Wide differences over union rights and responsibilities occur from country to country, and attitudes in some countries appear to be insuperable barriers to social dialogue. Companies sometimes respond by taking the view that international standards of freedom of association and collective bargaining have nothing to do with labour relations in certain countries, making it unrealistic to try to apply these standards in parts of the developing world.

Remember, however, that core labour standards are not unilateral. All the world's governments, employers' organisations and trade unions, assembled in the UN and in its specialist body the ILO, have negotiated them to advance industrial peace as a basis for social and economic development. The international community, global clients and consumers expect companies to support and realise rights to freedom of association and collective bargaining. International companies therefore have both opportunity and responsibility to ensure application of these rights as part of their ethical trading policy.

Shareholders and the public are increasingly sensitive to how companies demonstrate their respect for human rights in their global supply chains. Freedom of association is a pivotal right. By reaching out to trade unions and civil society groups, and working with them to achieve fuller realisation of this right in daily practice throughout its supply chain, a company can both attract stakeholders' confidence and lay the groundwork for more stable and non-conflictive growth. This is a win-win opportunity for companies and workers alike.

Annexes: Tools and resources

Annex A Sample policy commitment to freedom of association	38
Annex B Supplier self-assessment for freedom of association	39
Annex C Model recognition and procedural agreement	40
Annex D Sources of information online	43

Annex A Sample policy commitment to freedom of association

GAP Inc. has an extensive written policy on freedom of association,²⁴ reproduced here. Policy statements need not be as all-embracing as this but should indicate the culture driving the company's policy and the coverage of its commitment:

Summary: We support freedom of association and collective bargaining as part of our commitment to support the fair and equitable treatment of workplace workers.

As stated in our Human Rights Policy, Gap Inc. supports the United Nations Universal Declaration of Human Rights, which includes freedom of association and collective bargaining. Our Code of Vendor Conduct explicitly states that:

'Workers are free to join associations of their own choosing. Factories shall not interfere with workers who wish to lawfully and peacefully associate, organise or bargain collectively. The decision whether or not to do so should be made solely by the workers.'

The right to organise and bargain collectively allows those workers who so choose to find a common voice and provides a framework through which they can engage with management on their right to receive fair wages, sufficient benefits, and the ability to conduct their work in fair and decent conditions.

The extent to which these rights are upheld and respected varies from country to country. In many regions, social protections, civil society, and governmental institutions remain underdeveloped, and these systemic inequities can lead to exploitative labor practices. What's more, those who press for improvements can face daunting challenges and even personal risk, as they make a case for change and play a public role in negotiations.

Because workers around the world face such diverse challenges, depending on their location and circumstances, we use a wide range of approaches to ensure their rights are respected. One way in which we do this is to support open and productive dialogue between workplace workers and managers, two groups that have a history of mistrust and poor communication in many developing countries. We seek to help bridge this divide while ensuring that freedom of association is respected both in principle and in practice.

Another way that we demonstrate support for these rights is by partnering with workers' rights groups and trade unions. For example, we work with the Global Union Federation for the garment sector and the International Textile, Garment & Leather Workers' Federation (ITGLWF) to bring about positive communication between workplace workers, labor organisations and workplace management. We believe that collaborative dialogue among workplace management, labor groups and workers is critical to addressing issues when challenges arise. It also leads to improvements in other aspects of workplace conditions. In addition, we work closely with other workers' rights groups to protect freedom of association rights.

While our approach may sound simple on paper, it is often challenging to initiate a constructive dialogue among groups with sharply divergent points of view. Sometimes, it is a significant achievement just to get people together in the same room.

24. www.gapinc.com/content/csr/html/Goals/supplychain/our_program_in_action/freedom_of_association.html

Annex B Supplier self-assessment for freedom of association

1	Does your company have a written policy on freedom of association and collective bargaining? If so, please append a copy of your policy	Yes	No
2	Is this policy: <ul style="list-style-type: none"> included in or appended to workers' contracts of employment? included in your workers' induction training? included in your contracts with subcontractors such as labour agencies? provided to workers and posted where they can easily refer to it? 	Yes	No
3	Does your company have a published procedure for ensuring compliance with this policy within the company? If so, please append a copy of the procedure	Yes	No
4	Does your company recognise any trade union of its workers for negotiating purposes? If so, which trade union?	Yes	No
5	Does your company have a collective agreement with a trade union of its workers? If so, please append a copy of the agreement.	Yes	No
6	Is your company a signatory to any sector-level or national collective agreement with one or more trade unions? If so, please append a copy of the agreement	Yes	No
7	If your company does not have a collective agreement with a recognised trade union, does your company permit trade union representatives access to their members in the workplace?	Yes	No
8	Does your company have a written grievance procedure? If so, please append a copy of the procedure	Yes	No
9	Has your company been audited under any buyer code of social compliance? If so, please append on a confidential basis a copy of the two most recent audit reports	Yes	No
10	Does your company participate in any social compliance data exchange scheme such as Sedex?	Yes	No
11	Is your company a member of any social certification scheme such as SA8000?	Yes	No

Annex C Model recognition and procedural agreement

The following model agreement is very comprehensive to demonstrate the matters that may form part of such a contract. A much simpler format is also possible according to mutual agreement.

**Recognition and procedural agreement
between
[Company]
[Address]
and
[Trade union]
[Address]**

1 Definition of terms

In this Agreement:

'The Company' refers to [name of company].

'The Union' refers to [name of union].

'Employees' refers to all employees of the Company.

2 Date of commencement

This Agreement commences on [date].

3 Objectives

- 3.1 In making this Agreement, the Company and the Union recognise that the Company exists to [fulfil its aims and objectives].
- 3.2 The purpose of this Agreement is to determine trade union recognition and representation within the Company and to establish a framework for consultation, negotiation and collective bargaining.
- 3.3 The parties have identified common objectives. These are:
 - 3.3.1 To ensure that employment practices in the Company are conducted consistent with best practice.
 - 3.3.2 To enhance effective communication with all employees throughout the Company.
 - 3.3.3 To achieve greater engagement of all employees in the issues that arise from the regular operation and development of the Company.
 - 3.3.4 To ensure that equal opportunities are offered to employees or prospective employees and that the treatment of employees will be fair and equitable in all circumstances where a dispute or grievance may arise,

4 General principles

- 4.1 The Company and the Union accept that the terms of this Agreement are binding in honour upon them but do not constitute a legally enforceable agreement.
- 4.2 The Union recognises the Company's responsibility to plan, organise and manage the work of the Company in order to achieve the best possible results in pursuing its overall aims and objectives.
- 4.3 The Company recognises the Union's responsibility to represent the interests of its Members and to seek optimum conditions of employment for them.
- 4.4 The Company and the Union recognise their common interest and joint purpose in furthering the aims and objectives of the Company and in achieving reasonable solutions to all matters which concern them. Both parties declare their commitment to maintain good industrial relations.
- 4.5 The Company and the Union accept the need for joint consultation and collective bargaining in securing their objectives. They acknowledge the value of up-to-date information on important changes which affect employees of the Company.

5 Union representation

- 5.1 The Company recognises [Union name] as the Trade Union with which it will consult and negotiate in all matters set out in Clause 7.4 of this Agreement.
- 5.2 The Company accepts that the Union's members will elect representatives in accordance with their Union Rules to act as their spokespersons in representing their interests.
- 5.3 The Union agrees to inform the Company of the names of all elected representatives in writing within five working days of their election and to inform the Company in writing of any subsequent changes, each time within five working days of the change having taken place. Persons whose names have been notified to the Company shall be the sole representatives of the Union membership.

- 5.4 The Company recognises that Union representatives fulfil an important role and that the discharge of their duties as Union representatives will in no way prejudice their career prospects or employment with the Company.
- 5.5 The Company will inform all new employees of this Agreement and that they are free to join the Union if they so wish. As part of the regular induction procedure, all new employees shall be given the opportunity to talk to a workplace representative of the Union. The Company will supply union representatives with details to enable them to contact new employees.
- 5.6 The Company will undertake the check-off of trade union subscriptions for any employee requesting this facility.

6 Union meetings and other facilities

- 6.1 Meetings of Union members may be held on Company premises outside working hours in a facility provided for that purpose and there shall be no restriction on the frequency or duration of such meetings. Such meetings will be open to all employees who are members of the Union.
- 6.2 Union meetings may be held on Company premises inside working hours provided that prior consent for such meetings is obtained from the Company by the Union. The Union shall provide the Company with a timetable of regular Union meetings or give at least three working days' notice of the intention to hold a meeting.
- 6.3 The Company agrees to provide defined facilities to the Union representatives to enable them to discharge their duties including:
- provision of secure office space;
 - a notice board; access to confidential telephone, fax, internal mail and email;
 - reasonable use of equipment such as telephones, franking machines, photocopiers, and PCs;
 - reasonable accommodation for meetings and trade union education; and
 - reasonable access to administrative support and secretarial services.

- 6.4 Subject to the agreement of the Company, Union representatives will be granted special leave without loss of pay to attend training courses run by the Union or other appropriate bodies which are relevant to the discharge of their Union duties.
- 6.5 Union representatives will be permitted to take reasonable paid time off during working hours to enable them to carry out their duties under this agreement. Where such duties cannot be carried out as part of the normal working day, as much notice as possible will be given of the need to take time off. Any dispute shall be referred to the Joint Negotiating Committee for agreement.
- 6.6 Subject to reasonable prior notice and the consent of the Company, which shall not unreasonably be withheld, Union representatives will be permitted reasonable time off during working hours for the purpose of taking part in Trade Union activity.

7 Joint negotiating committee

- 7.1 The Company and the Union agree to set up a Joint Negotiating Committee consisting of representatives of both parties.
- 7.2 The Joint Negotiating Committee shall be governed by a written constitution, a copy of which is attached to this Agreement.
- 7.3 The functions of the Joint Negotiating Committee shall include:
- 7.3.1 Information: The Company undertakes to supply the Union with the necessary information for it to carry out effective consultation and negotiation. This shall include copies of the Company's employment policies and procedures together with any proposed amendments and additions.
- 7.3.2 Consultation: To enable proper consultation with employees and to facilitate feedback and discussion prior to decisions being taken that may concern matters directly affecting the interests of the Company's employees as set out under Clause 7.4 below.
- 7.3.3 Negotiation: To negotiate and reach agreement on all issues pertaining to the matters set out under Clause 7.4 below.

7.4 The following matters shall be the subject of consultation and negotiation:

Terms and conditions of employment

[Job descriptions]

[Hours of work]

[Holiday and sickness arrangements]

[Pensions]

[Overall salary structure]

[Pay awards]

[Health and safety]

[Equal opportunities policies]

[New technology]

[Training and recruitment]

[Employees' amenities]

[Redundancy and redeployment]

[Disciplinary and grievance procedures]

[Relocation of offices]

Any other item which both sides agree to refer.

[This list will vary according to the scope of any collective agreement that may result.]

8 Grievances and discipline

8.1 The Company recognises the Union's right to represent the interests of all or any of its members at all stages during grievance and disciplinary procedures.

8.2 The Company undertakes to inform the Union representatives immediately of the name of any of its members faced with disciplinary action to enable the Union to make appropriate arrangements for representation. This information will be limited to the name of the member only.

8.3 Union representatives will be permitted to spend reasonable paid time inside working hours to discuss grievance or disciplinary matters with affected employees, and to help prepare their case, in accordance with Clause 6.5 above.

8.4 In order to resolve collective disputes arising from a failure to agree in the negotiating forum, there shall be a timetable of meetings, involving representatives of the management committee, to seek to resolve any dispute. Both the Company and the Union will be entitled to have advisers at any dispute meeting, subject to the agreement of both sides.

9. Variations

9.1 This Agreement may be amended at any time with the consent of both parties.

10. Termination

10.1 The Agreement shall not terminate except by mutual consent.

Signed..... for [Company]

Signed..... for [Union]

Date

Date

Annex D Sources of information online

International standards

- ▶ International Covenant on Civil and Political Rights: www.ohchr.org/en/ProfessionalInterest/Pages/CCPR.aspx
- ▶ International Covenant on Economic, Social and Cultural Rights: www.ohchr.org/en/ProfessionalInterest/Pages/CESCR.aspx
- ▶ OECD Guidelines for Multinational Enterprises: www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm
- ▶ UN Global Compact: www.unglobalcompact.org
- ▶ UN Guiding Principles on Business and Human Rights: www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples
- ▶ Universal Declaration of Human Rights: www.un.org/en/documents/udhr/index.shtml

The ILO: www.ilo.org

There is a vast amount of information on the ILO's website. Finding what you are looking for can sometimes be difficult.

- ▶ Individual conventions, recommendations and links to aspects of labour rights supervision, such as reports of the ILO Committee on Freedom of Association, can be found at www.ilo.org/global/standards/lang--en/index.htm
- ▶ The ILO maintains a database of national labour legislation called NATLEX. You can search this by country and by subject, with links to legislation and other reports. Many of the legal texts are in the original language, such as Spanish: www.ilo.org/dyn/natlex/natlex_browse.home
- ▶ The NATLEX country profiles database brings together information on national labour law and the application of international labour standards in one portal: www.ilo.org/dyn/natlex/country_profiles.home?p_lang=en

- ▶ The ILO provides a summary of labour law for some countries, mostly in English and in a more coherent narrative form than on the NATLEX database (although a note on this web page indicates it is no longer updated): www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/lang--en/index.htm

Trade union reports and comments on core labour standards

- ▶ The ITUC produces useful individual country reports and comments on trade and labour standards: www.ituc-csi.org/trade-labour-standards.html
- ▶ It also publishes an *Annual Survey of Violations of Trade Union Rights*: survey.ituc-csi.org

Global Union Federations (GUFs)

The Global Union Federations (previously known as International Trade Secretariats, ITSs) group trade unions around the world by industry sector. They are excellent sources of country-by-country information. The GUFs' efforts are particularly directed at informing and achieving global framework agreements with multinational companies. Many GUF industry branches have merged in recent years, but the current situation is as follows:

- ▶ IndustriALL represents a wide range of industrial unions after a 2012 merger between the International Metalworkers' Federation (IMF), the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) and the International Federation of Textile, Garment and Leather Workers Unions (ITGLWF); its website identifies officers responsible for specific sectors: www.industriall-union.org
- ▶ International Union of Food Workers (IUF) – food, beverage, farm and hotel workers worldwide: www.iuf.org
- ▶ UNI Global Union covers a wide range of service sectors, including banking, insurance, retail, post and logistics, entertainment and the media: www.uniglobalunion.org

- ▶ International Transport Workers' Federation (ITF) – all transport workers (air, road, rail or sea), dock workers and tourism: www.itfglobal.org
- ▶ Building and Wood Workers' International (BWI) – building and building materials, wood, forestry and related industries: www.bwint.org
- ▶ Public Service International (PSI) – public services of all kinds: www.world-psi.org
- ▶ There are also GUFs for education and for journalists, entertainment and artists.
- ▶ GUFs cooperate within the context of the ITUC and Global Unions: www.ituc-csi.org and www.global-unions.org

Other organisations providing useful information on labour rights

- ▶ Business for Social Responsibility – private-sector led: www.bsr.org
- ▶ China Labor Watch – China specific: www.chinalaborwatch.org; hotline at www.chinalaborwatch.org/WorkerHotline.html

- ▶ Clean Clothes Campaign (CCC): www.cleanclothes.org
- ▶ Fair Labor Association (FLA) – mainly apparel and footwear: www.fairlabor.org
- ▶ Fair Wear Foundation (FWF): www.fairwear.org
- ▶ GoodElectronics – International Network on Human Rights and Sustainability in Electronics: www.goodelectronics.org/
- ▶ International Labor Rights Forum (ILRF) – strong on legal issues: www.laborrights.org
- ▶ Maquila Solidarity Network (MSN) – labour and women's rights; good links throughout Latin America: <http://en.maquilasolidarity.org/>
- ▶ Oxfam: www.oxfam.org.uk and www.oxfam.org
- ▶ Oxfam Australia – particularly active on labour affairs in the Asian region: www.oxfam.org.au
- ▶ Worker Rights Consortium (WRC) – strong links with US college campuses and a focus on the apparel sector: www.workersrights.org



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