



For workers' rights. For better business.

ETI CODE VIOLATION PROCEDURE

Introduction

This procedure provides a formal avenue for raising and addressing breaches of the ETI Base Code in the supply chains of ETI Member companies.

The best way to address such breaches is through a well-functioning system of industrial relations that allows employees and their representatives the confidence to raise and resolve issues with their employers. Unions, NGOs and member companies are encouraged to work together to proactively promote such systems.

However, where an employer in the supply chain of an ETI member company fails to adequately address code violations, then ETI member companies have a responsibility to seek to address such violations. Informal approaches to ETI member companies raising and seeking to resolve such situations are encouraged.

Where such informal approaches may not be appropriate in the circumstances, or have failed to satisfactorily address the issue, this procedure provides a formal avenue for raising and resolving a complaint under the auspices of the ETI.

The process aims to foster cooperation and trust between parties to resolve disputes under the ETI Base Code in a fair way. All parties to this procedure are encouraged to demonstrate good faith, especially by engaging in a timely and transparent manner.

About this procedure

What can a complaint be filed about?

Complaints can be filed about alleged violations of the ETI Base Code in the supply chains of ETI member companies.

Who can file a complaint?

Only an ETI member can file a complaint. However, an organisation which is not an ETI member may approach an ETI member to secure its support to take a complaint forward. A worker, or workers, wishing to file a complaint can do so with the assistance of the relevant Global Union Federation, other trade union organisation, or NGO member. ETI can assist with contacting the relevant members.

Who are the "parties" to a complaint?

In the first instance, the parties to a complaint are the complainant and the relevant ETI member company. However the procedure will seek to involve other parties

including the direct workforce, the supplier/s and site/s in question and other companies or organisations, where relevant.

What are the responsibilities of ETI member companies and their suppliers under this procedure?

The procedure draws on the relevant UN Guiding Principles on Business and Human Rights which define the responsibilities of all businesses to respect the human rights of all those affected by their activities or business relationships.¹ In the ETI context this includes the supply chains of member companies and the human rights contained in the ETI Base Code.

Such a responsibility has two aspects:

- Firstly, it requires that a company causing or contributing to a violation of the Base Code needs to address such a violation. In practice this means that, if a company changed its activities, the violation could be remedied.
- Secondly, a company should seek to prevent or mitigate violations of the Base Code that are linked to its operations, products or services through its business relationships, even if it has not caused those violations. In such situations, the member company should use its leverage to seek to change the practices of the supplier. Where such leverage is insufficient, usually because of an indirect business relationship or through the low volume of trade with a supplier, then the company should seek to increase its leverage by engaging other relevant actors.²

To be clear, this procedure applies to all supply chains of ETI member companies in accordance with the UN Guiding Principles. However this does not mean that other ETI obligations, such as annual reporting or the calculation of membership fees, will apply to those parts of a company's supply chain that are not covered by its ETI membership.

What role does ETI play?

The role of the ETI secretariat is to administer and oversee this procedure, as set out in the four stages below. At any stage of the process, any party can request the assistance of ETI to:

- (i) facilitate contact and communication between the parties;
- (ii) identify and engage other parties relevant to the complaint;
- (iii) assist with additional evidence gathering; or
- (iv) otherwise assist with the resolution of the complaint.

Is the complaint confidential?

¹ See Guiding Principles 13¹ This includes the Guiding Principles under "Pillar 2: The corporate responsibility to respect", of the UN Guiding Principles on Business and Human Rights, at: <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>

² For additional guidance on the steps companies should take to meet their "Responsibility to respect" human rights under the UN Guiding Principles see: http://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf
<http://business-humanrights.org/en/un-guiding-principles> <http://www.shiftproject.org/>

To build confidence in this process and between the parties, all information received by ETI from each party will be provided to the other parties to the complaint. Unless explicitly agreed such information should not be shared with any other party, even if they are related to the complaint. If there is sensitive information, then the preferred course of action is for all parties to agree on how to deal with this. For example, to assist with the resolution of a complaint the parties may agree to keep the contents of mediation confidential.

How can the risk of victimisation be reduced?

As much detail as possible about an allegation should be supplied to all parties. However, there can be a danger that workers making complaints may be victimised. In such circumstances the complainant can withhold the names of workers where the allegations do not require them. Where the allegations require a worker to be named, then ETI will be sensitive in handling this information especially when there is a risk of victimisation.

When informing a supplier that an allegation has been made, the ETI member company must commit to and make it clear to the supplier that there is a “no victimisation” policy in place in relation to workers who may be named in the complaint. Furthermore, it should be made clear to all parties to a complaint that any victimisation will be regarded as a serious breach of the Code and will call into question the supplier relationship.³

Reporting on Complaints Received by ETI

The complaints received by ETI and the progress on complaints heard under this process will be routinely reported to the ETI Board at its quarterly Board meetings.

At the conclusion of a complaint, the ETI will publish a statement or a short summary of the complaint and the outcome on its website.

Complaints Procedure

This procedure has four distinct stages:

1. Stage 1: A complaint is filed, and the company responds. Where the parties agree, the complaint then progresses to stage 2; Where the parties are not in agreement ETI will attempt to develop agreement through a process of mediation, stage 3.
2. Stage 2: A remediation plan is jointly developed and implemented.
3. Stage 3: Mediation seeks to place the parties in a position where they can agree on developing a remediation plan.
4. Stage 4: Where mediation fails, ETI will issue a recommendation on the complaint. Any of the parties can request that such a recommendation be reviewed by a tripartite sub-committee of the ETI Board.

At any stage under this procedure the parties can agree to conduct an investigation into the issue, with a view to determining the facts raised by the complaint. A mediator

³ For guidance on victimisation see: http://www.worksmart.org.uk/rights/what_is_victimisation

or ETI can also commission an independent investigation where mediation is unable to resolve disagreements between the parties.

Stage 1: Complaint filed and company response

Under this stage:

- (i) A complainant should complete and submit the “Alleged Code Violation Complaint Form”, (see Appendix 1) describing the alleged code violation and remedy sought.
- (ii) ETI will review this form and may ask the complainant to provide additional information to enable the complaint to progress. ETI can also seek to involve other parties that have an interest in the complaint. ETI may also reject a complaint where this code violation procedure is not applicable, or if not found to be substantive and related to one or more elements of the Base Code.
- (iii) The ETI member company will then file a response to the complaint using the “Company Response Form” (see Appendix 2).

Companies will have 10 working days to investigate and respond to the allegations in the complaint and the remedy sought. However, if the breach is very serious, particularly where a delay would worsen the situation, or if the matter is straightforward, then the complainant can request that the company reply sooner. ETI will encourage companies to respond promptly in such situations.

Conversely, the company can also request more time where obtaining information is difficult. In such circumstances it must provide an interim update on all information gathered to date within the 10 working days period and commit to completing its response within an agreed timeframe. Parties to the complaint are expected to use common sense with respecting deadlines. However, if there are unreasonable or excessive delays, then either party can request that the matter move straight to mediation under Stage 3.

Once the response has been made, the parties can then choose to proceed to Stage 2 to develop a joint remediation plan. Prompt action is encouraged, particularly where the parties largely agree on the facts and the remedy being sought or are in a position to resolve any minor disagreements.

Where the parties substantially disagree over the facts and/or the remedy being sought, then the complaint may need further investigation if agreed by all parties, or may proceed to mediation under Stage 3. Either party can elect to go to Stage 3.

Stage 2: Developing a joint remediation/mitigation plan:

What is remediation?

Remediation refers to measures taken to restore what was lost, or what harm was experienced by workers as a consequence of breaches of the Code. This can include but is not limited to: apologies; rehiring wrongfully dismissed workers; restoring positions of wrongfully demoted workers; payment of back pay or unpaid wages; social security payments; medical attention or other forms of restitution; pay increases; trade union recognition; recognising an employment relationship; and contributions toward the rehabilitation of child labourers.

What is mitigation

Mitigation involves altering practices that are leading to breaches of the Base Code and replacing them with practices that are consistent with it and that reduce the risk of future abuse. This might include identifying and acting on changes to working practice, enable workers to access their right to freedom of association and collective bargaining, provide training and capacity building on worker-management communication and negotiation, engage / collaborate with others (eg other companies, trades unions, government agencies, NGOs, experts, multi-stakeholder initiatives to affect the policy environment, establish / revise grievance and remediation systems, providing guarantees of non-repetition of the breach.

What is a remediation/mitigation plan?

A remediation/mitigation plan is a time-bound agreement between the ETI Member Company and the complainant, that engages the supplier and the affected workforce. Generally the remediation plan is implemented by the supplier, supported by the ETI member/s but some forms of remediation may be made directly by the ETI Member Company.

The development, implementation and monitoring of the remediation plan should involve and secure the support of those affected by the breach of the Code. Work in the location of the code breach will therefore nearly always be required.

This procedure is concluded where the remediation and/or mitigation provisions agreed in the plan are successfully implemented. However the issue should be kept under review by the ETI member company in its annual monitoring or in accordance with any follow-up procedure included in the plan.

Where parties are unable to reach agreement on the development, implementation or conclusion of a remediation/mitigation plan, either party may request mediation under stage 3.

At any stage under this procedure the parties can agree to conduct an investigation into the issue with a view to determining the facts raised by the complaint or to better develop a suitable remediation/mitigation plan. (See details under stage 3)

A remediation/mitigation plan should contain, but may not be limited to:

- Details of the parties;
- A description of the code breaches being addressed;
- The remediation to be undertaken to redress any harm;
- The mitigation actions to be taken including the practices that will be stopped or changed and the actions to assist affected workers;
- The resources required to implement this plan;
- A clear allocation of responsibilities for implementing and resourcing remediation and mitigation actions;
- A timeline for the all actions; and
- A process for tracking and reporting on the implementation and outcome of the plan.

- Proper systems and controls should be put in place to prevent future breaches of worker's rights.

Once agreed, the plan should be put in place and progress closely monitored. It is expected that ETI would receive regular reporting on the plan's implementation.

Stage 3: Mediation

Mediation

Mediation is a formal process seeking to resolve the differences between the parties over the allegations and/or remedy being sought. It seeks to bring the parties to a point where they can commit to developing and implementing a remediation plan (stage 2).

Mediation can be conducted by ETI, or the parties can agree to appoint an independent mediator.

The mediator and the parties should agree terms of reference for the mediation which can include the method and processes to be used.

Where mediation fails, the mediator may be asked to provide input to the ETI director as she/he develops recommendations to resolve the complaint. At this point either party can request to proceed to stage 4.

Investigation

The parties may agree to conduct an investigation into the issue with a view to determining the facts raised by the complaint, or better determining appropriate mitigation and remediation actions. A mediator or ETI can also commission an independent investigation where mediation is unable to resolve disagreements between the parties.

The investigation will be undertaken using clear terms of reference agreed by all parties that outlines the key facts to be determined, and the methods and processes for determining them. The investigation will usually involve a site visit, interviews with management, workers and worker representatives (on site and off site where relevant), interviews with other relevant actors, and review of documentation. The investigator will issue a report on the findings and recommendations to all parties involved in the complaint, unless, in the judgment of the mediator, the report should be amended to reduce the risk of victimisation.

The investigation will be conducted by an independent third party, overseen and contracted by ETI typically with the costs to be met by the ETI member company. An ETI member company may however also choose to share, or recover the cost from the supplier, reflecting the shared responsibility.

Stage 4: Continued failure to reach agreement.

Where the parties are still unable to reach agreement, the ETI Executive Director can issue a recommendation either for the complaint to be dropped or for the members to commit to a remediation plan. Parties to the complaint will have up to 10 working days to respond to this recommendation. The Executive Director will judge whether the

response is substantive and may request a review by a three member tripartite review committee of the ETI board stating his/her reasons.

In addition, either party may request a review of the recommendations by a three-member tripartite review committee of the ETI Board, established by the board chair. This request must be made in writing within 20 working days of the recommendation being issued. Any Board member who has participated in the process or has a potential conflict of interest will not be entitled to sit on the review committee.

The party requesting the review shall submit reasons for such a review which might include that they consider ETI Executive Director's recommendations are unreasonable or that the process arriving at the recommendation was not executed according to the ETI complaints procedure.

The Review Committee will request any information that they consider necessary to review the recommendation, and the procedural fairness afforded to the parties. Furthermore, the committee may request parties to the complaint to meet with them as part of the review process.

This review committee can decide to uphold the Executive Director's recommendation, or remit the decision back to the Director, with instructions on how to rectify any error or procedural unfairness. The review committee's decision will be by consensus.

The ETI has an established and separate procedure for enforcing membership obligations which can be invoked by the review committee if in their opinion there are grounds for believing the member concerned has failed to meet the required level of commitment to the implementation of the ETI Base Code. Furthermore, the failure to adhere to this code violations procedure will be grounds to invoke the ETI's membership obligations procedure.

END