

# ENABLING WORKER REPRESENTATION

## Assessing risk to workers

### Applying a due diligence approach to freedom of association and collective bargaining

#### Introduction

Achieving the goal of mature labour relations - from the workplace to the global level - is the main governance tool for unlocking labour rights and supporting workers in your supply chain. Freedom of association (FoA) is the key enabling right. Yet placing respect for FoA at the heart of a supply chain requires action by employers if it is to become a reality.

As an ETI member, there is a commitment to support and promote FoA to workers in your supply chain. FoA is central to the Base Code, enabling social dialogue, collective bargaining (CB) and other legitimate mechanisms for worker representation. It encompasses worker awareness, worker voice and how disputes and grievances are handled in the work place.

Furthermore, within due diligence mapping, FoA is a critical factor in assessing risk to workers, especially in sourcing countries where worker voice is suppressed and where the legal framework underpinning protection of worker rights is weak or not enforced.

Trade unions (or freely elected independent labour organisations and representatives) are often the “face” of FoA and CB. As such, ETI members should engage with trade unions (or independent labour organisations where the formation of unions is illegal or repressed) across their supply chain as part of the due diligence process. Within this, meaningful engagement can only take place where all relevant business information has been shared with trade unions. That means giving unions the right to provide input prior to decisions being made and during on-site supplier assessments, in the development of action plans, and in the monitoring and design of grievance mechanisms.

### Quick Steps: Country Assessment

Build understanding of the risk to workers in the sourcing or production country:

#### Legal compliance:

1. Ratification of ILO conventions (##)
2. Historical & current complaints raised via the ILO
3. Country rating on ITUC global rights index

#### Trade union verification:

1. ITUC affiliations of National Centres & Federations
2. Global Union Federation affiliations for sector specific trade unions

#### Campaigning information:

- 1) ITUC and Global Union Federations (regional or campaign pages)

- 2) Labour NGO's and campaign organisations (for example Amnesty International, Banana Link & Justice for Colombia)
- 3) Human rights watch
- 4) Transparency International
- 5) Solidarity Centre

#### INFORMATION LINKS

ILO ratification of labour conventions  
ITUC global rights index  
ITUC country affiliations  
GUF affiliation pages:  
BWI  
ITF  
UNI Global  
IndustriALL

*International labour standards, social dialogue and labour market institutions are the main building blocks of a governance structure addressing working conditions in global supply chains. Country labour laws and labour inspections underpin the rights and protection of workers.*

Corporate members of ETI should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved throughout their own activities and business relationships. This obligation exists irrespective of the state's ability and/or willingness to fulfil its human rights obligations.

In some countries this responsibility may exceed what is required by national legislation. A conflict with domestic law does not result where the UNGPs provide for more robust protections; rather, a conflict exists when following the UNGPs would be illegal under domestic law. In countries where domestic laws and regulations conflict with the UNGPs, enterprises should seek ways to honour such principles and standards to the fullest extent which do not place them in violation of domestic law, or which offer alternatives to the Base Code requirement at least as good if not better than what the Base Code provides.

Corporate members must "avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts where they occur" and to "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."

- "Cause": A company causes an adverse impact if there is causality between the operations, products or services of the company and the adverse impact. Is an action of the company directly responsible for an adverse impact? Is the company's failure to act directly responsible for an adverse impact?
- "Contribute": A company contributes to an impact if the actions of the company cause, facilitate or incentivize another entity to cause an adverse impact.
- "Directly linked": Linkage is defined by the relationship between the harm and the company's products, services or operations through another company (i.e. business relationship).

## Purpose of this Guidance

The ETI approach to due diligence and the technical background is contained in the ETI info graph and guidance document. The purpose of the guidance is specific to Base Code clause two and its purpose is to:

- Demonstrate the pivotal role of FoA and CB in the due diligence process
- Raise awareness of the challenges and approaches to remedy for workers, and
- Provide resources and links to assist with mapping and assessments

## Why Base Code Clause two on FoA and CB matters

Companies usually understand 'risk' as referring to commercial risks to the enterprise – financial, operational and reputational. However, human rights due diligence refers to identifying and addressing risks to workers. Within this, risk to workers is framed under universal ILO core labour rights enshrined by the UN via the ILO's Fundamental Principles and Rights at Work. It is also enshrined in ETI's base code clause two. Yet, while FoA remains the key enabling right to delivering other rights, it is often the most challenged internationally as the ITUC Global Rights Index and the International Journal of Labour Research show.

### ONLINE CASE STUDY:

The video presentation is how the ITUC, TUC and Banana Link intervened in the systematic murder of trade unionists in Northern Honduras. With a backdrop of post-civil war, the trade union started the process of change through education and structural change in the way they approached negotiations and dealings with six farm owners in the ## district.

### FoA and due diligence road map

1. Review current policy, audit reports & action plans
2. Map national assessments and country categories
3. Undertake a supplier background assessment
4. Develop risk register with action plan for remediation

Published annually, the Global Rights Index is an interactive index of abuses against core labour standards. The report ranks countries against 97 internationally recognised indicators to assess where workers’ rights are best protected in law and in practice. It draws on reports from unions around the world to build a picture of how workers are being treated. Countries are then graded based on access to and respect for basic rights, including civil liberties. In broad terms, abuse against workers accessing their rights and protections is a catalogue of disturbing statistics. The Index offers a chilling reminder that despite the hard work being done to address abuses of rights and working conditions, too many people still face exploitation and violence.

The 2015 International Journal of Labour Research edition dedicated to decent work in supply chains identifies three categories of at risk countries: repressive regimes, state controlled or monopoly trade unions and politically unstable countries.

Across all country assessments, there may also be designated Export Processing Zones (EPZs).



### Specific “red flag” indicators when undertaking country assessments

This requires the company to investigate its own operations and the operations of its suppliers to ensure that nothing that it does – or fails to do – prevents or inhibits workers from accessing their core labour right of freely forming or joining trade unions, or from engaging in CB.

The legal and institutional framework of a country is an important risk factor when assessing the likelihood and severity of impacts on relevant rights. In each of the countries in which they operate, corporate members should assess:

- The extent to which civil and political liberties are protected
- The legal and institutional framework for rights and the extent to which legal protections are enforced through inspectorates and judicial system, and
- Identify the main trade union representing workers in the relevant sector

*Export Processing Zones (EPZs) may be based within countries with acceptable labour rights and protections. However, within the EPZ, labour rights and protections are eroded and weakened. EPZs are characterized by poor working conditions and widespread violations of workers’ rights, notably violations of FoA.*

*For example, Mauritius went through a period of rapid economic growth driven by exports of textiles, sugar, tourism, seafood processing and the introduction of Export Processing Zones. Ratification of the core labour conventions underpins a well-developed, but fragmented, trade union movement. While labour legislation applies in the EPZs there are no specific labour laws that allow for example:*

- longer working hours (45 hours a week plus 10 hours compulsory overtime in the EPZs compared to 35 to 48 hours in non-EPZ sectors).
- Employers can establish controlled work councils to discourage unionisation
- To compensate workers for the weakened labour regulations the Government established a welfare fund to finance social services for EPZ workers and their children.

## Indicators at a national or sector level could include:

- Requirement to join government influenced unions
- Prohibitions on bargaining and industrial action in designated essential industries
- Differences in labour regulation from national provision to export processing zone provision.
- Government interference in trade unions – dissolution of unions without legal recourse, imposition of burdensome union registration procedures, limitations on the formation of national unions, prohibition of multiple unions within a single plant
- Exclusion of certain categories of workers from FoA, such as migrant, informal or precarious workers
- Restrictions to unions' legitimate political activities
- Lack of access to remedy for anti-union discrimination and dissuasive sanctions against employers
- Imprisonment, sanctions and violence against union leaders/members or retaliatory measures against striking workers without effective response by government
- Defects in government's worker complaint processes, such as excessive delays or expense, light penalties, or non-punishment of offenders
- Lack of government action to combat labour-related corruption, for example trafficking or bonded labour

## Individual Supplier Risks (including sub-contractors, processing, logistics and agents)

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. The following questions would guide either Self-Assessment Questionnaires or on-boarding questionnaires:

- Are there corresponding policy commitments reflecting adherence to core labour standards?
- What % of the workforce is unionised or part of collective groups?
- Are worker representatives elected or selected?
- Are there existing Collective Bargaining Agreements (CBAs)? (name of trade union and Official)
- How do worker representatives contribute to the business?
- What worker engagement platforms are in place (or, how do workers express concerns)?
- Are workers involved in any factory/farm decision making?
- Has there been industrial action in the last 12 months – why?
- What is the workforce composition – for example, temporary, seasonal or migrant?
- Which workers are members of the site Trade Union or Worker Committee – for example, gender mix, local and foreign migrants, contract workers, seasonal etc?
- Are pay, terms and conditions determined by sector wage board, management and are they the same for all jobs regardless of the person employed to do the worker?

### Other considerations pertinent to scale include:

- Extent to which risk to workers is systemic; this could be related to geography of the site, industry type or sub-sectors such as home working or illegal outsourcing. For example, no living wage law or policy.
- Extent to which the impact can be rectified (e.g. through compensation, reinstatement, etc.)
- Whether the workers affected can be restored to the prior enjoyment of the right in question
- The extent to which intimidation of workers for forming or joining a trade union will effectively deny workers the right to representation

It is also important to assess the relative urgency of workplace risks – we suggest assessing against three broad categories: violent repression, subversive control and alternate worker engagement. A simple risk or threat matrix could be used.

## Quick Steps: Supplier Assessment

Conduct a background investigation. Where supply chains are extensive, mapping exercises identifying higher risk suppliers might be necessary. **\*\*Additional consideration ought to be given to repressive countries\*\***

- Consult widely with trade unionists and other labour stakeholders
- Request evidence ranging from policy commitment, management standards, collective bargaining agreements, election processes, minutes of meetings
- Consider a workplace risk matrix (traffic light system)

VIOLENT REPRESSION	SUBVERSIVE CONTROL	ALTERNATE WORKER ENGAGEMENT
Violent response to worker initiatives and/or to expressing "voice" or accessing their rights	<ul style="list-style-type: none"> <li>Active union busting</li> <li>Fabrication of workers employed to undermine criteria for unionisation</li> <li>Threats and/or dismissals</li> <li>Agenda control of worker forums</li> <li>Subtle alienation of elected union representatives</li> </ul>	<ul style="list-style-type: none"> <li>Company establishes their own union</li> <li>Selection of worker representation</li> </ul>

### Developing an action plan

Once your company has set priorities, 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.

The undermining of workers' rights to join trade unions or elect independent worker representation where the law does not allow trade unions, will rise to the level of a salient issue. This is because impact is widespread and can have profound consequences for other rights.

The following measures should be considered when developing an action plan:

Prevent contributing to harm in the supply chain

Policy commitment, company behaviour and narrative can create an enabling dialogue on FoA. Avoid endorsing, legitimising or undermining workers' rights – particularly in countries where FoA and CB are denied.

Two actions in support of this are acknowledging any direct connections to violations, and if a company is indirectly connected to an oppressive government – acknowledge the state's poor human rights record.

### Implement internal measures to mitigate risks in the supply chain

Implementing internal measures to avoid or prevent adverse impacts. Could be done through:

- **Prequalifying suppliers** through a robust supplier assessment
- **Consolidate suppliers:** increase control over the supply chain and concentrate resources so as to prevent impacts with a limited number of suppliers
- **Know your suppliers:** long term relationships with suppliers and understanding the local operating context equips you to deal with systematic labour standards abuses
- **Establish business incentives:** leverage may be built with direct suppliers that perform well in relation to quality of production and responsible business conduct
- Use leverage to influence the supplier to prevent or mitigate harm – this is particularly relevant in preventing anti-union practices
- Support suppliers in preventing or mitigating adverse impacts through providing guidance or training; engagement with other stakeholders – global union federations – as well as company level unions
- Engage government:
- government engagement may include open letters, sharing information and/or dialogue, arbitration or conciliation brokered by ETI.

### Quick Steps: Developing the Action Plan

- Prevent contributing to harm in the supply chain
  - Implement internal measures to mitigate risks
  - Implement your action plan with monitoring programme
  - Consult and communicate your requirements and plans
  - Implement your continuous improvements mechanisms for monitoring
- If all fails - Disengage from the supplier**

### Implementing the action plan/tracking performance

Analysis of the information you obtain helps prioritise areas for improvement to FoA across your company's supply chain.

- Verify that actions were carried out in the agreed period
- Progress should be monitored and tracked against goals
- Monitor and assess own progress as well as that of their suppliers
- Many larger enterprises have developed systems of supplier audits for a range of issues. While these systems can work well to track data about supplier performance on issues like emissions, they are much less effective in monitoring human rights violations in the supply chain.

### Consultation/communicating

Corporate members should communicate and disclose their due diligence steps and report on the actions taken to prevent and mitigate impacts to their recognised trade unions and their shareholders.

### Disengagement from supplier

If after various attempts at remediation, disengagement from a supplier should be done in a responsible manner.

### Continuous improvement

Achieving supplier commitment to effective FoA and CB is not a one-off event. Feedback will inevitably raise issues that require changes in suppliers' management style and attitude. This implies an ongoing plan for breaches of your company policy.

### CASE STUDY: ETI MEMBERS APPROACH TO CHINA

At least 70 ETI members source from China with 35 running or having run at least 65 capacity building initiatives in country. To increase visibility and collaboration between members sourcing in China, ETI conducted a mapping exercise. **Key findings include:**

FoA is firmly on the agenda of many brands and they are not shying away from encouraging it. Many have engaged in creative ways to raise awareness and to enable FoA to be realized at the factory level to different degrees and scales.

Approaches vary but, in most instances, rollout has been staggered – i.e. pilot in one factory and use the KPIs and results to convince other factories to participate.

A typical pattern is to start with worker awareness programmes then build on this by introducing "worker voice". When working with suppliers, some brands have also built capacity to implement worker committees.

Brands who took the further step of facilitating worker representation in factories were able to demonstrate strong elements of worker participation, democracy and electivity.

The Ethical Trading Initiative (ETI) is a leading alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe. Our vision is a world where all workers are free from exploitation and discrimination, and enjoy conditions of freedom, security and equity.

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