

Social dialogue and worker consultation

This briefing note aims to provide clarity on what social dialogue is and how it is used to build trust, establish common goals, and progress Decent Work (SDG8). It also aligns to our guidance on ETI Base Code clause two, freedom of association, collective bargaining, and worker representation.

Context

The impact of COVID-19 on global supply chains has had direct implications on formal industrial relations, human resources management and worker dialogue forums, with negative impacts on worker pay, terms and conditions. Where workplaces have established trade union agreements or worker consultation forums these have played a significant role in areas such as Occupational Safety & Health, repurposing production, or changes to work processes and negotiated changes to shift patterns. Collective bargaining agreements in certain sectors have supported workers financially and secured livelihoods during the crisis.

The pandemic, as we know, is a shared experience in all four corners of the globe and whether at international, national or workplace level, social dialogue between partners has played a critical role in finding solutions to the challenges we face.

The intent of social dialogue

Effective social dialogue is key to sound and productive employment relations and decent work. It is a vital mechanism through which common interests can be identified and divergent interests reconciled, thus also contributing to labour peace, social stability, and leading to mature industrial relations.

Whether in the corridors of power, on a factory floor, in a fishing vessel or on a farm the principles of social dialogue apply and can deliver solutions to the very complex situations in which workers and employers find themselves.

Structured communication & dialogue

Social dialogue is enshrined in the International Labour Organization's (ILO) Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)¹, and is defined by the ILO to "include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. It can exist as a tripartite process, with the government as an official party to the dialogue or it may consist of bipartite relations only between labour and management (or trade unions and employers' organisations), with or without indirect government involvement".

The role of social dialogue is any form of information, consultation or negotiation between workers' organisations and employers' organisations. Collective bargaining is not only a form of social dialogue but is one of the fundamental principles and rights at work.

It refers specifically to the processes involved in industrial relations. This includes all types of negotiation, consultation, and exchange of information between or among representatives of governments, employers and workers on issues of common interest relating to economic and social policy. In its broadest terms, it refers to a process or dialogue between two or more actors in the labour market, including governments, representatives of workers (and their organisations) and representatives of enterprises and/or employers and their organisations.

Within the industrial relations context and where allowed in law, the tangible and measurable outcome of successful social dialogue would be a formal agreement. This could be either at an international level with the sector Global Union Federation, sector level with a Sectoral Bargaining Agreement, or at an enterprise (workplace) level with a Collective Bargaining Agreement (CBA).

Processes can be informal or institutionalised, and often it is a combination of the two. It can take place at the national, regional or at enterprise level. It can be inter-professional, sectoral or a combination of these.

Foundation for change management

Within a business context, mature industrial relations at its best can set the vision for a shared agenda that is good for the business and good for workers. Partnering in a structured and respectful way can facilitate and progress changeⁱ by:

- Overcoming staff resistance to change, providing space for worker buy-in, including improved and early information sharing that prepares the way for consultation, in order to avoid industrial conflict and disruption,
- Creating the environment and structure to share understanding of pressures and parameters for both employers and workers – this in turn provides a shared sense of responsibility,
- Having a structured and recognised channel for workers to contribute their expertise and experience to inform change,
- Improving co-ordination of collective bargaining arrangements across sectors or enterprises, which can help to reduce the impact of adverse shocks in the short-term by facilitating adjustments in wages, working time and new occupational safety measures.

Where social dialogue can be applied

In a national or country scenario the building blocks for sound industrial relations and social dialogue will be embodied in a country's laws, regulations, and institutions. These provide the overarching framework for workers' rights and protections.

At a sector or industry level there are various forms of formal social dialogue or high-level forums where governments, business or industry associations, and national trade union federations meet. It is, however, important to recognise that acting on workers' rights and protections at a country level needs a strategic, collaborative, and collective approach where all stakeholders are equally equipped with skills and information for meaningful dialogue.

At the workplace or sectoral level, the framework can be used to progress work on equality, safety, health and wellbeing, environmental modifications, repurposing manufacturing, and preliminary work on negotiations for wages, working hours, shift patterns and general terms and conditions of employmentⁱⁱ.

Mindful that workers should choose how they organise themselves for collective representation, in all instances independent trade unions represent the ideal model for worker representation as they are a tangible result of, and are intrinsically linked to, Freedom of Association. Trade unions have legal protection, access to resources, the support of wider trade union networks and are free from influence from the employer. Where Freedom of Association is restricted and where unions cannot operate, the next best available form of independent worker representation should be pursued in the short to medium term.

Where do we start?

Due diligence mapping on the key enabling right for workers, Freedom of Association, is critical for national, sector and workplace engagement.

1. The national contextⁱⁱⁱ would include researching whether there is ratification of core conventions and labour protections in law, followed by developing an understanding of whether these laws are upheld through enforcement (labour inspectorate) or whether they are suppressed, for example through alternate structures (such as worker participation committees), by state-controlled trade unions, oppressed by way of law, or the condoning of violence against human and labour rights defenders.
2. At an industry or workplace level it is important to identify the structures that support dialogue and consultation between workers and managers (see Figure 1 for reference). This would include:
 - a. Workers cannot voice their concerns freely and there is no worker representation
 - b. Workers have some recourse to consulting and negotiating with employers, e.g. through worker committees
 - c. Workers’ needs are represented by trade unions or democratically elected representatives.
3. There is a need to be proactive in engaging with women workers^{iv} and marginalised groups to ensure their collective needs are represented in social dialogue processes.
4. When there is a picture of how workers and managers consult and engage, social dialogue is a recommended framework for progression from basic dialogue between parties to the goal of full and independent worker representation.

National and industry workplace due diligence processes, including workplace mapping, can be undertaken simultaneously and not necessarily in silos or sequentially



Figure 1: ETI's model on [progressing worker representation](#)

Practical steps for workplaces

Where there is no recognised trade union or independently elected worker body, the basics of social dialogue in the workplace are a way of **starting a journey** to establish formal or informal processes. This enables workers and employers to consult collectively on issues concerning changes to work and to resolve conflicts peacefully and effectively.

Critically, at this time of recovery and change, it can also be a framework that supports innovation and finding solutions to complex workplace problems. It enables workers and managers to “skill up” to be able to overcome barriers of communication and develops skills required to enable effective mature industrial relations.

Contingent to this in the workplace are independently elected worker representatives. “Workers' representatives are persons who are recognised as such under national law or practice, whether they are: (a) trade union representatives, designated or elected by trade unions or by members of such unions; or (b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions.” [ILO Workers' Representatives Convention, 1971 (No. 135)].

In situations where unions face significant challenges to carrying out their legitimate activity, this should not be used as a reason to establish alternative forms of representation that frustrate or interfere with union access or engagement in the future. Rather, in such cases, steps should be taken to help build dialogue and develop worker and employer industrial relations skills. Companies should also support engagement with unions and emerging groups^v to build the foundations that will enable full and independent representation in the medium term.

Within a company operation, joining national dialogue platforms to further the right to FOA/CB and representation and, where appropriate, moving towards signing a Global Framework Agreement with a sector Global Union Federation would be good practice. Supporting your supply base would include promoting and encouraging them to participate in national forums where sector-wide bargaining arrangements are being negotiated.

Steps to progression

- **Preparation for dialogue**

Once due diligence mapping has been undertaken additional preparation includes identifying stakeholders. This could include local trade union officials, labour regulators, labour NGOs, specialists in worker engagement and soft skills experts. Additional background on collective bargaining processes, legal requirements and established agreements will guide initial discussions.



Figure 2: Implementing FoA/CB and worker representation. [A five-step plan](#)

At the preparation stage it is also important to consider:

- Specific ways to include vulnerable groups especially those not confident in speaking out, culturally allowed or fluent in the dominant language.
- Ways of developing trust between parties so that dialogue is fair and transparent.
- How dialogue will be presented, captured, or recorded. This could include, for example, visual aids and include cultural norms.
- Meeting venue and times that take into consideration neutrality of the venue and work-homelife balance of participants.

- **Dialogue phase**

At a workplace level this would begin by reaching out to trade union or worker representatives to discuss and share information on the impact of, for example, COVID-19 on the business and sector. Where there is no designated worker group this needs to be addressed - for instance, by establishing a forum (such as a working group/ committee) to start the journey towards representation.

Physical and, potentially, secure technology platforms ought to be provided for dialogue and should include an initial discussion about basic rules for engagement and discussion.

Establishing an initial agenda for discussion topics ought to be done collaboratively with equal weight to business and worker concerns. This would be followed by determining and agreeing common challenges together and commitment to finding joint solutions.

- **Consultation phase**

Consultation between workers and employers should consider how solutions could be implemented, or current operations & relationships modified. Space and time will be needed for all ideas, concerns, and solutions to be widely discussed and communicated with all workers.

This could include special arrangements for shift workers, seasonal or atypical working employees. Workers can also be consulted on how best to gather and report information that potentially impacts their families and the local community.

Trade union and/or worker representatives should be included in the creation and sharing of communications, awareness raising and related training.

- **Negotiation phase**

In view of the pandemic and recovery, where there is a collective bargaining agreement (CBA) the normal industrial relations processes need to be adhered to if there is impact on, for example, terms, conditions, working hours and pay. For a CBA negotiation, or in the event of no formal agreement between workers and managers, this will include issues such as:

- Where there is closure:
 - a) redundancy payments, assistance to access government schemes or health care provision
 - b) For migrant labour, assistance with repatriation or provision if they cannot return home
- Where the enterprise is still operational:
 - a) Changes to shift patterns and working hours
 - b) Payment of wages, for example, where this is a change related to the financial circumstances of the business or due to the introduction of extra shifts because of social distancing

- c) travel to and from work where there are restrictions
- d) Sick leave and sick pay in the event of COVID-19 infection
- e) Specific or statutory OSH requirements, for example, additional PPE where required (at no expense to the workers).

Case study: Building blocks of mature industrial relations

The trade union leaders and managers at the Sree Meenakshi Mills (GHCL Limited) in Madurai District, Tamil Nadu have provided insight into the building blocks needed for long-term sustainable industrial relations. The privately-owned mill is 100% unionised with four separate unions on site. Both management and union representatives expressed their pride that “the business would not exist without the union”. This relates to a history when the union members went without pay for 6 months to save the bankrupt mill (1980/90’s).

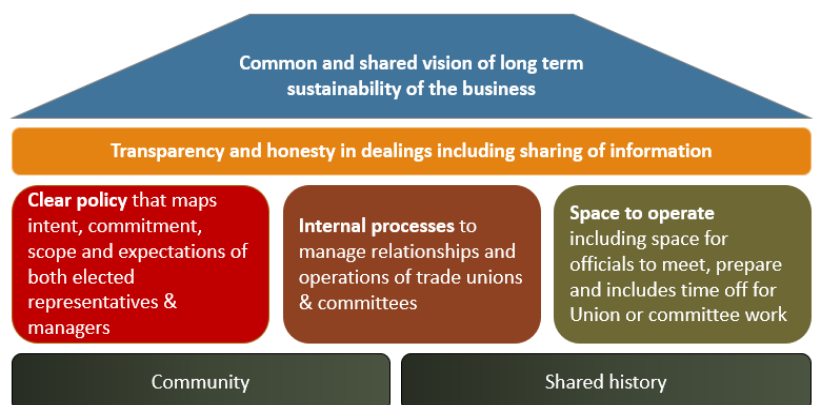
The union members at the time negotiated and convinced the liquidator to give the union a chance to turn around the profitability of the mill. The success of this activity over a six-month period led to the liquidator securing funding to continue production. Building on the mature relationship between the union and management they turned the factory around financially and have subsequently been through a process of modernisation. Today they employ 1300 permanent workers from the local community and experience very low turnover.

With the introduction of additional factory committees, as laid out under various statutes, the management and union members consulted on how the relationship between the committee structure and the union would work. The trade unions have seats on each of the factory committees and take up issues when they are not resolved by the normal functioning of the committee structure.

Common and shared vision of long-term sustainability of the business

Both the union and management confirmed that they work together when needed but also challenge when necessary. Together they mapped out the criteria they have for the mature and stable industrial relations in the factory. These include:

- The shared history of managing change and transformation underpins the long-standing relationship. This is also embedded in community relationships.
- Clear policy maps out intent and commitment from both sides, scope of consultation and expectations of both elected representatives and managers.
- The internal processes are well defined and established to manage the relationships, procedures, practices and operations of management and the trade unions.
- Importantly, there is space to operate. This includes space for trade unions to meet and prepare for meetings. Time off for trade union and committee work is guaranteed to all participants.
- Significantly both the trade union and the management expressed the overarching values of transparency and honesty in all aspects of engagement – including the sharing of financial and production information.



Further information and resources

- ETI [Implementing freedom of association - a five step plan](#) including [Entry points for worker representation](#)
- ILO [social dialogue in a changing world](#)
- Global Deal (OECD) 2018 report [Building Trust in a change world](#)
- Global Deal (OECD) publication [Business case for social dialogue](#)
- ETI study on [Good practices in horticulture, Colombia, Mexico, Peru](#)
- ETI [Bangladesh Social Dialogue Programme](#)
- ITUC Social Dialogue to achieve the SDGs – Formalising the informal economy
- Social Dialogue in the 21st Century ([synthesized report](#))
- Cornell University - [New Conversations project](#) in conjunction with CNV International, Mondiaal FNV and Fair Wear Foundation

Links correct at time of publication (December 2020)

ⁱ <http://smallbusiness.chron.com/advantages-labor-unions-organization-21119.html>

ⁱⁱ ILO Issue paper on COVID-19 and fundamental principles and rights at work, page eight – a negotiated agreement on OSH protocols covering 22,000 workers https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_757247.pdf

ⁱⁱⁱ STEP two, Identifying risk <https://www.ethicaltrade.org/resources/foa-worker-representation/step-2-identify-risk>

^{iv} Safe Spaces report and recommendations for creating the space for women to have a collective voice <https://www.ethicaltrade.org/resources/safe-spaces>

^v Social dialogue and trade union integration in the tea sector <https://thirst.international/2020/11/08/want-to-hear-some-good-news-about-women-workers/>