

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 making contact with 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. 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; and
- (iv) Otherwise assist with the resolution of the complaint.

Is the complaint confidential?

To build confidence in this process and between the parties, all information received from each party will be provided to the other parties 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.

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:

Progress on complaints heard under this process will be routinely reported to the ETI Board.

At the conclusion of a complaint, the ETI will publish a statement agreed by the parties or a short summary of the complaint and the outcome. The ETI will communicate, via its website, how many complaints it has received, the parties involved, and the outcomes of complaints.

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 relation to workers who may be named in the complaint. Furthermore it should be made clear that any victimisation will be regarded as a serious breach of the Code and will call into question the supplier relationship.³

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;
2. Stage 2: A remediation plan is developed and implemented. Where the parties are unable to agree on developing a plan, the complaint will progress to mediation under stage 3;
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, either party can request an ETI 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.

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 may also reject a complaint in the case that this code violations procedure is not applicable. It

³ For examples of “no victimisation” policies see:

can also seek to involve other parties that may have an interest in the complaint.

- (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 the remedy being sought then the complaint may need further joint 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 plan:

Under this stage the parties will seek to develop a joint remediation plan. 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. (See details under stage 3)

A remediation 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 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 actions;
- A timeline for the remediation actions; and
- A process for tracking and reporting on the implementation and outcome of the plan.

Once agreed, the plan should be put in place and closely monitored. ETI would expect to be party to regular reporting on its implementation.

What is remediation?

Remediation involves altering practices that are leading to breaches of the Base Code, and replacing them with practices that are consistent with it. Remediation also refers to measures taken to restore what was lost to workers as a consequence of breaches of the Code.

This can include such examples as: apologies, rehiring wrongfully dismissed workers, restoring positions of wrongfully demoted workers, payment of back pay or stolen wages, social security payments, other forms of restitution, pay increases, trade union recognition, recognising an employment relationship, providing guarantees of non-repetition of the breach, as well as contributions toward the rehabilitation of child labourers.

A remediation plan is a time-bound agreement between the ETI Member Company, the supplier, the complainant and the affected workforce. Generally the remediation plan is implemented by the supplier, but some forms of remediation may be made 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.

Where a code breach is remedied this procedure is concluded. The issue should be kept under review by the company in its annual monitoring or in accordance with any follow-up procedure under the plan itself.

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

Stage 3: Formal 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 will issue suggested recommendations to resolve the complaint. At this point either party can request to proceed to stage 4.

Investigation

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

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 the ETI with the costs to be met by the ETI member company. The ETI member company may choose to share, or recover the cost from the supplier.

Stage 4: Continued failure to reach agreement.

Where the parties are still unable to reach agreement, the ETI Director can issue a recommendation either for the complaint to be dropped, or for the members to commit to a remediation plan.

Either party may request a review of a recommendation by a 3 member tripartite review committee of the ETI Board. This request must be made within 10 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 why it believes the ETI Director's recommendations are wrong or that the process arriving at the recommendation was unfair.

The ETI Director will submit any information he/she considers necessary to support the recommendation, and the procedural fairness afforded to the parties.

This review committee can decide to uphold the 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 decision of the review committee stands unless the ETI Board agrees to reconsider the matter itself.

The ETI has an established and separate procedure for enforcing membership obligations. The failure to adhere to this code violations procedure will be grounds to invoke the membership obligations procedure.

Appendix one: complaint form [To be formatted]

Complainants are encouraged to file a complaint with the following information:

Name, address and contact details of supplier and employer: the normal trading name of the supplier company, and as much information as possible to assist with identifying the specific location.

Link with ETI member company (or companies): e.g. direct supplier or agency; the relevant product being supplied to the ETI member company.

Alleged code breach(es) and supporting information: The code provision(s) being breached, including a description of the facts and supporting evidence supporting that allegation.

The scale of the alleged breach(es): i.e. does it relate to a few employees, or a large proportion of the workforce? Is there immediate physical danger? How great is the breach of the code?

What remedy is being sought to address the breach(es)? What is the ETI member company and supplier being asked to do (see remediation plan below) to address the violation? Have the employees affected by the alleged code violation expressed their own preferences for a solution?

Contact point: Complainant's name and contact person/details. Can it be contacted directly by the ETI member company?

What is the relationship between the organisation filing the complaint and the affected employees? Is this being brought directly by the workers concerned? What mandate does the complainant have to speak on behalf of the workers concerned?

Next steps for the company(ies): A company will normally be required to respond to this complaint within ten working days. However if the breach is serious, particularly where a delay would worsen the situation, the complaint can request that a company reply sooner, or take urgent steps to remedy the breach such as meeting with the complaint and/or supplier as soon as possible.

Is the complaint being pursued by other means? Is there a union on site that has taken up the grievance? Is there any industrial action? Has a court case been filed? Is any other type of advocacy under way?

Other relevant organisations. Are there any other organisations who it would be useful to contact during the investigation?

Are there any local complexities that the ETI member company should be aware of before sending in investigators? E.g. ethnic or political issues that have a bearing on the alleged code violation, competition between different unions for membership coverage, military suppression of worker organising activities, etc.

Appendix two: Company response [To be formatted]

On receipt of the complaint, the company is encouraged to open communication with the complainant with a view to addressing the allegations raised. At a minimum, the company should provide a response to the complaint normally within 10 working days, including the following information:

Relationship to the supplier: the nature of the supply relationship

Contact point for the company:

Response to the allegations: the response should address each alleged breach of the Base Code stating clearly whether or not the company agrees with or denies the allegation in question. Evidence should be provided, particularly where allegations are contested including information on who carried out the investigation; When it was done; What methods were used (in sufficient detail to give the reader an understanding of the investigation process); What the coverage of the investigation was (i.e. what proportion of the employees and the work site was covered).

Response to the remedy being sought by the complainant:

Timelines: under this procedure companies will ordinarily get 10 working days to reply unless the complainant has requested an earlier response. The company can also request more time where obtaining information is difficult. In such circumstances it should still give an interim update on all information gathered to date.

Request a role for ETI?: At this stage the ETI could (i) facilitate contact and communication between the parties (ii) help in engaging other ETI member companies on the issue where relevant; and (iii) facilitate talks between the company and the complainant with a view to resolving disagreements.