

Submission by the Ethical Trading Initiative to the UN Working Group on Business and Human Rights on Human Rights Defenders and Civic Space

1. The [Ethical Trading Initiative](#) (ETI) is a membership organisation bringing together companies, trade unions and NGOs to improve the lives of workers in global supply chains. All corporate members agree to adopt and report against the ETI Base Code of labour practice, our globally recognised code of conduct based on the standards of the ILO. We currently have 88 corporate members including major retailers and brands based in the UK and abroad.
2. ETI works to promote the implementation of the UNGPs, focusing on labour rights, with a primary emphasis on the corporate responsibility to respect human rights through multi-stakeholder engagement and robust due diligence processes. Workers' access to freedom of association is a critical element of ETI's approach to due diligence, as it enables workers themselves to negotiate their own terms and conditions of work, and provides a structured mechanism through which grievances can be assessed and access to remedy secured.
3. ETI also provides a platform for corporate members to work with our trade unions and NGO members to collectively advocate with governments and policy makers to meet their responsibilities to protect workers and their representatives from exploitation or abuse. Our policy and advocacy work is premised on the requirement that governments play their part in protecting human rights defenders (HRDs), to create an enabling environment for workers and their representatives to be protected from exploitation and abuse, and to ensure that they have access to remedy through state judicial systems.
4. In accordance with the UN Declaration on Human Rights Defenders, ETI supports the definition of a "human rights defender" as anyone who, individually or with others, acts to promote or protect human rights, regardless of profession, gender, age or status, or whether they are carrying out their activities individually or jointly, as part of an informal group or a non-governmental organization (NGO), or whether they act in a voluntary capacity or professionally. This may include lawyers, trade unionists, staff of national human rights institutions (NHRIs), journalists, medical professionals, public servants or students.

Responsible Business Conduct, Human Rights Defenders and the ETI Approach

Recommendations:

- **Companies should be urged to adopt specific public policies demonstrating support for freedom of association in their operations and supply chains.**
- **The rights of HRDs to exercise freedom of association, freedom of peaceful assembly and freedom of expression, as an individual and in association with others, should be factored in to businesses' ongoing human rights due diligence processes. Companies should publicly report on the steps they are taking to identify and respond to actual and potential risks to the rights of workers, including trade unionists and other HRDs.**
- **Company policies, statements and reports should be backed up by strategic action plans focused on ensuring respect for human rights in their operations, relationships and in the services that a company uses, with monitoring and evaluation tools deployed to track progress on fulfilling these rights.**

- **Where HRDs are targeted or attacked, companies should adopt a clear, consistent and principled position, setting out that such conduct is unacceptable. Clarity of message is essential, particularly where multiple companies and different stakeholders are involved, and where messages may be translated into different languages.**
 - **Companies should, where feasible, insist that harassment of HRDs end if a dispute is to be amicably and successfully resolved, and if the business relationship is to be continued. Future protection of HRDs should form a fundamental part of any settlement agreement.**
 - **Companies should accept a degree of collective responsibility to provide redress where attacks against HRDs have been linked to their operations, products or services, such as in their supply chains, even where they have not contributed directly to those negative impacts.**
5. Responsible business actors recognise that the lack of freedom of expression and association, the narrowing of civic space and the targeting of HRDs is not just harmful to human rights, but also weakens the rule of law, which deteriorates the enabling environment for responsible business conduct. Without respect for labour rights, workers who have serious grievances lose the channels they would usually use to express concerns of human rights abuses. The central role of freedom of expression should also be seen as a fundamental human right and a basic component of a democratic society that needs to be continually protected by all responsible actors in society.
 6. It is in the long-term interest of responsible business actors to ensure respect for HRDs who speak up about potential or actual negative business impacts. Not only is this a necessary and important contribution business can make to sustainable development; there can also be legal, financial and reputational consequences if enterprises fail to meet their responsibility to respect human rights. Therefore, identifying and acting on human rights issues can be expected to converge strongly with the need to mitigate risks to their businesses.
 7. In line with the UNGP's, and through the promotion of our own [Human Rights Due Diligence Framework](#), ETI encourages companies to mitigate the risk of potential attacks on HRDs by adopting an approach to human rights due diligence that is comprehensive, multi-stakeholder and puts workers right to voice and representation at the heart of prevention, mitigation and remedy strategies. ETI regards the right to freedom of peaceful assembly as a pre-requisite to effective protection of labour rights and mature industrial relations. We recommend that companies factor in respect for human rights, including a clear focus on freedom of association, when assessing the operating environment for existing or potential investment and sourcing markets. Whilst companies already factor in the rule of law and sound financial systems when reviewing the protection of assets in new markets, so too should they be clear that their ability to meet their human rights obligations is contingent on their ability to operate in an environment that protects and defends human rights, and enables workers to negotiate their own terms and conditions of work.
 8. ETI requires its corporate members to identify and address actual and potential risks to human rights in its business operations, relations and in the services that it uses. This includes risks connected with the business 'footprint', where there may be no direct business relationship, but where risks can be linked to supply chains. Assessing respect for the rule of law, protection of human rights and HRDs should include assessment of multiple tiers of a business's supply chain and not be restricted to core operations. Suppression of voices and the shrinking of civil space in supply chains can potentially undermine business due diligence strategies.
 9. Individual companies, particularly smaller corporates, face particular challenges where they lack sufficient leverage to mitigate harm. ETI therefore works to facilitate and develop collective leverage through our multi-stakeholder membership. We call on our member companies to engage in collaborative action such as advocacy with governments and other stakeholders to protect HRDs. Examples of this approach follow:

9.1. In July 2017, ETI wrote to the Madagascar government, with the support of a number of its corporate members, to raise concerns about the [unfair dismissal of 43 dock workers in the port of Toamasina](#) (also known as Tamatave) for union activity. In April 2017, the SYGMMA (the dockworkers' union), the International Transport Federation and the International Trade Union Congress submitted a complaint to the International Labour Organisation on behalf of the dockworkers. The workers had joined SYGMMA in the hope of improving the precarious and often unsafe working conditions at the port. In response, they faced intimidation and unfair dismissal by their employer. ETI along with its members sourcing from Madagascar wrote to express support for the sacked workers, and called on the government to uphold basic labour rights. ETI and its members expressed concern that action against legitimate union activity will deter investor confidence in Madagascar as a future sourcing market, setting out that companies do wish to continue sourcing from Madagascar, but equally, must consider their obligation to comply with international human rights standards. This serves as example of companies engaging in advocacy to protect HRDs in their supply chains, where they have not directly contributed to the harm.

9.2. In December 2016, ETI co-signed [a letter from NGOs, companies and trade unions](#) to express concern over Thailand's use of criminal defamation laws to prosecute human rights defenders. The letter stressed that progressive reforms to labour laws may be eroded if whistleblowers and rights activists are not protected under law, and that certain companies may continue to misuse the law to prosecute those working to end labour rights abuses unless activists are better protected. The letter stated that a Thai court's decision to proceed with the case against Mr Andy Hall and other activists he was working with sent a signal to international brands and retailers that the current environment in Thailand may not be conducive to ensuring ethical sourcing, and that it may also embolden future prosecution of HRDs who report on illegal and unethical practices. Because of the number of different businesses and other stakeholders involved, effective engagement required clear and consistent messaging by all actors in this case. ETI members also set out that judicial harassment of HRDs must end if the case is to be successfully resolved; this became a fundamental part of negotiations around a settlement agreement.

9.3 In 2014, ETI, worked closely with local experts to help convene conversations between some 30 international brands and global trade unions, led by IndustriALL, in response to widespread industrial action and violence in the Cambodian garment sector. In January 2014, military police responded violently to protests for an improved minimum wage, leading to the death of at least four workers and serious injuries to many more. ETI and its members sent a letter to the Cambodian Prime Minister expressing concern, stating that whilst there was support for the Cambodian garment and footwear industry, there was also a need to address various issues, including the fair treatment of HRDs, in order to create a suitable environment for future investment. In May 2017, Cambodian courts convicted the 25 men and boys who had been arrested and tried after the protests, however, all 25 were given suspended sentences, which meant an immediate release for those that were being detained.¹ In 2015, ETI member companies joined forces again to lobby the Cambodian government to strengthen the draft of the Law on Unions of Enterprises and to ensure it complied with international labour standards. Our members stated that for the success of the garment industry in Cambodia to continue, such growth needs to be built on the strong foundations of mature industrial relations and a trade union law that is aligned with international conventions.

Corporate Engagement and Due Diligence

Recommendations:

- **Companies should ensure that workers and their representatives can access their rights to freedom of association in practice, and that they are not impeding respect for rights by inadvertently contributing to an environment in which workers, trade union officials or civil society representatives are likely to be targeted by either governments or employers.**

¹ The Office of the United Nations High Commissioner for Human Rights (OHCHR) and the ILO Country Office for Thailand, Cambodia and Lao PDR [issued a joint statement](#) welcoming the release, whilst raising concern about the criminal convictions, in view of the apparent procedural shortcomings in all three trials and the lack of evidence.

Companies should therefore be encouraged to engage in advocacy around developing conducive national legal and administrative frameworks. This might include contributing to consultations on new laws and policies, on National Action Plans on Business and Human Rights, or the development of new government strategies. Domestic legal, administrative and institutional frameworks should contribute to creating and consolidating a safe and enabling environment in which HRDs are protected, supported and empowered to carry out legitimate activities.

- **Connecting acts of corruption to violations of human rights, including attacks on HRDs, can create new possibilities for action, where for example, those acts of corruption can be challenged using different national, regional and international mechanisms that exist to monitor compliance with human rights.**
- **Company commitments to respect human rights, to prevent and mitigate harm to workers and HRDs, delivered through policies and public actions, should be seen as a necessary part of a business's social licence to operate. Refusal to engage in cases where attacks on HRDs are directly linked to a business's operations through a supply chain should be deemed as tantamount to complicity.**
- **Large multinational companies, which often carry significant influence and leverage, can and should be at the vanguard of efforts to protect whistle-blowers and to safeguard human rights; however, strategies and responses should be coordinated with local actors and must be tailored to the local context.**
- **Companies can play a critical role in supporting HRDs and other victims of human rights violations, and preventing repetition. Where businesses and their partner organisations have worked to improve the visibility of HRDs, and respond to cases where they have been attacked, they should be recognised for having done so.**

10. The case examples above illustrate that there is no single, uniform approach to responding to attacks on HRDs, and responses must always be aligned with the needs of local stakeholders and the HRDs in question. Actions and responses need to be well planned and carefully calibrated to different country context and circumstances to avoid potential further harm being done. Where possible, actions should be coordinated with local organisations and experts, and potentially other businesses operating in the sector. Responses should be designed through a human rights lens and approach, with attention focused on people who are particularly at risk, factoring in a gender perspective.
11. Large multinational companies with a significant presence in a country may have significantly more leverage than local NGOs or trade unions. Companies should recognise that they may be in a unique position to influence, and use their leverage responsibly. ETI works to ensure that advocacy efforts and related actions are coordinated closely with local actors – often affiliates of our trade union members, or civil society partners of our NGO members.
12. ETI and its members have taken direct action in numerous cases to defend activists and to join campaigns for workers' rights and civil freedoms. Where practical, action in response to threats or attacks should be accompanied by public communications around the need to support HRDs, so that businesses demonstrate an ongoing commitment to respect rights. Public communications may be aimed at business partners or governments depending on the context and offending party, and help demonstrate that threats and attacks will not be tolerated. Through this work, ETI and its members are challenging the notion and public perception that multinational companies tend to only consider human rights issues when their future profits or reputation are at stake.
13. ETI champions an inclusive approach whereby our corporate, union and NGO members often work collectively to address threats to and attacks on HRDs. However, much of this work is done through private negotiation and advocacy. There is often reticence about conducting this type of work publicly. ETI recognises that in many circumstances, private, direct communications and advocacy, particularly when it

is aimed at governments who may need to demonstrate public support for local industries, can be less confrontational and therefore a more effective method to solve disputes. Companies have also expressed concern about setting a precedent whereby intervention is expected, but where the company feels it is unable to respond or to improve the situation due to the specific context. In addition, certain companies are more effective than others at publicly communicating strategies and actions. As a result, companies can be perceived by consumers, the media or by HRDs themselves as being inactive, when they have in fact taken proactive steps to successfully mitigate or remedy harm.

14. ETI also notes that in campaigns and media coverage of labour rights abuses and disputes that may feature or be led by HRDs, actions taken by companies are often disregarded or under-reported. Unbalanced and inaccurate reporting of corporations' actions may undermine the valid and important work undertaken to address threats or attacks to HRDs. Where such actions have been insufficient, criticism may be warranted. But where companies have made efforts, committed resources and taken steps to prevent harm, mitigate risks and to support HRDs, responsible reporting is required to ensure that such actions are recognised, that consumers, investors and others are provided with an honest interpretation of the facts, and that company policies and practices feed into the public discourse on the protection of HRDs. Companies who do work towards supporting HRDs or providing remedy for harm done should be recognised as having done so, so as not to discourage other companies from taking similar steps.
15. Under new legislation and regulations such as the UK Modern Slavery Act,² the new French Duty of Care Law ("Devoir de vigilance des entreprises donneuses d'ordre"), the EU's Non-Financial Reporting Directive (2014/95/EU), and the revised ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration), companies *must* undertake mandatory human rights due diligence and public reporting. This includes identifying and taking measures to prevent the occurrence of human rights abuses in their supply chains. Companies are therefore being encouraged, and in some cases compelled, to take action where HRDs are being targeted. Improved transparency should allow for greater scrutiny of company strategies, and also more constructive feedback and support from independent actors.
16. The UN Declaration on Human Rights Defenders (1999) includes anti-corruption activists within this list of individuals that must be protected. Journalists may be acting as a HRD when they investigate and report on corruption cases linked to business operations. Activists, journalists or human rights advocates can be accused (often falsely) of accepting bribes or misrepresenting their finances. Companies should recognise the direct and strong link between corruption and human rights abuses, and ensure their internal policies and practices do not allow for incidents of corruption.

Trade Unions and HRDs

Recommendations:

- **Dialogue, engagement and cooperation with trade unions, through both local unions and global federations, should be strongly encouraged in government National Action Plans on Business and Human Rights, and through laws and regulations on corporate human rights due diligence procedures.**
- **Guidelines, regulations and other equivalent communications produced by governments, inter-governmental bodies and trade federations that focus on corporate respect for human rights should explicitly set out that active trade unionist and other worker representatives must be treated as HRDs and be provided with the necessary legal protections.**
- **The UN Working Group could contribute to efforts to explain to businesses how unions operate, how their own businesses will benefit from mature industrial relations and how a unionised workforce can benefit suppliers' businesses.**

² ETI and its members, working with partner organisations, successfully advocated for the adoption of the Transparency in Supply Chain component. See <http://www.ethicaltrade.org/resources/eti-submission-tisc-consultation-modern-slavery-act>

- **Responsible business actors should encourage government's to ratify and implement the ILO's Core Labour Conventions, particularly Conventions No. 87 (Freedom of Association) and No. 98 (Collective Bargaining), which would empower migrant workers to protect themselves from employer abuses.**
17. The treatment of trade union officials in global supply chains continues to prove particularly challenging. ETI regularly receives reports of union officials being harassed, jailed and attacked. The ITUC's 2017 Global Rights Index shows that attacks on union members have been documented in fifty-nine countries in the past year alone. A culture of fear and mutual suspicion between unions and employers remains in various countries in which ETI members operate, with the latter often seeing unions as wanting to destroy their businesses – and vice versa. Independently elected worker representatives also reflect the broader context in which they live and exist as participants of society. Accessing the right to form trade unions and bargain collectively is founded on the rights to freedom of association, free movement, free speech and assembly and legal due process.
18. However, it remains relatively rare that companies speak out against or take action to tackle the targeting of unions officials. The examples above demonstrate that leading corporates are willing and able to engage in direct action and in collective advocacy. Such actions and any positive impacts gained from them need to be supported, promoted and endorsed where appropriate (with the prior consent of the stakeholders involved). Multi-stakeholder initiatives (MSIs) such as ETI provide independent mediation between unions and companies, and work to build confidence in negotiation processes, helping to break down barriers, facilitate communication and to serve as an honest broker to achieve agreement. Union officials should be seen as key partners of responsible business actors; and therefore, an attack on a union leader should be regarded as an affront to a company's industrial relations and stakeholder engagement strategy.

Multi-stakeholder Approach

Recommendations:

- **Where companies lack sufficient leverage to engage in advocacy or other activities around the protection of HRDs, they should seek to work with other businesses and/or multi-stakeholder organisations to develop leverage to prevent further harm and to ensure remedy is provided.**
 - **Improved guidance could be developed to assist companies and industry associations decide when and how to engage in advocacy in response to attacks on HRDs, whether to do so alone or collectively, publicly or privately, and when to appeal to their home government to lead on or contribute to the intervention. Future guidance should highlight the importance of engaging with different groups of stakeholders, and where necessary, the value of working with MSIs or other neutral, independent third parties to help settle disputes between businesses and HRDs.**
 - **Investors should include assessment of businesses' respect for human rights and corporate responsibilities in decision making processes.**
 - **Major trade federations, associations and industry bodies should be encouraged to publicly endorse the UN Declaration on Human Rights Defenders and to pledge protection of HRDs and the safe and enabling environment needed to carry out research, education and advocacy.**
 - **Companies should also be encouraged to support local and multilateral organisations that support HRDs where attacks are frequent and where the rule of law is weak. These might include National Human Rights Commissions or civil society organisations supporting HRDs. Engagement with and support for human rights organisations that focus on labour rights can help demonstrate support for mature industrial relations, for a stable business environment and for HRDs.**
19. ETI works with its tripartite membership to improve leverage and to facilitate collective action around various worker rights issues. MSIs such as ETI can draw smaller or more reluctant companies into advocacy work. Individually, businesses may not want, and often lack the necessary leverage, to act unilaterally on an issue.

MSIs can take the lead in facilitating advocacy and engagement on issues, allowing individual companies to play a less-confrontational and more supportive role. MSIs can also help facilitate a degree of peer pressure where other brands involved in an issue, potentially souring from the same supply base, can be encouraged to act and to engage in collective advocacy.

20. Through effective human rights due diligence processes that includes multi-stakeholder engagement, companies should continually monitor compliance with human rights standards and then respond to attacks against HRDs in countries where they have a presence or from where they source. This must include judicial harassment. Particularly where the rule of law is weak, companies should be encouraged to liaise with human rights NGOs, UN agencies, embassies or other independent organisations to obtain information on judicial processes and judicial harassment.
21. National and international organisations and mechanisms, such as independent National Human Rights Commissions or UN Special Procedures, are often constrained by a government's lack of political support, adequate resources or the mandate and authority to uphold standards or comprehensively implement recommendations. Businesses, through their policy commitments and public and private advocacy, can play a valuable and positive role in terms of the public discourse on such issues, to help generate increased political will and public support for organisations and mechanisms designed to protect HRDs.
22. ETI members are recognizing the value of engagement with local organisations, particularly NGOs working on labour rights issues in supply chains, who often play a vital role in effective due diligence. Broad, stakeholder consultations contribute to and form a key part of assessing actual and potential risks, and developing mitigation strategies. Attacks on HRDs undermine local NGOs' ability to contribute to these processes, and ultimately harm a company's' chances of discovering potential issues in their supply chain. Suppression of these voices will undermine their ability to assess whether business activities and relationships have adverse impacts, and may ultimately have negative impacts on business operations later down the line.
23. Companies and investors should recognise that investments and business models are increasingly being judged not only on market share indexes, but also on the moral as well as commercial impacts of corporate operations, and the credibility, effectiveness and sustainability of the business models. Initiatives such as the Corporate Human Rights Benchmark (CHRB), backed by investment firms and human rights organisations, facilitate assessment of firms' policy commitments, human rights due diligence practices, grievance mechanisms, human rights practices, responsiveness to serious allegations and transparency. It includes a specific provision on the commitment to respect the rights of human rights defenders. Only three of the 98 companies assessed against this indicator had made public commitments not to interfere with the activities of HRDs, and had expressed to their business partners that they expect them to make the same commitment. Civil society, investors, the public and governments are increasingly able to hold companies to account for the failure to respect human rights and to protect defenders. The CHRB demonstrates that companies can do a lot more individually and collectively to drive change in the protection of human rights. This includes ensuring companies have the right systems to conduct due diligence, have established clear benchmarks and KPIs for change, and ensuring that boards and CEOs are holding their staff responsible for ensuring that changes are made and that progress is continuously tracked.