



Roadmap to implement Freedom of Association (FoA), Collective Bargaining (CB) and Worker Representation (WR)

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Revised by Stine Foss, Senior advisor, Ethical Trade Norway



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Introduction

Freedom of Association (FOA) It has been important to form the society we have in Norway today, and the benefits workers in Norway have. Just to mention a few; annual leave, maternity and paternity leave, pay increase, sick leave and the list goes on. This human right is not as strong all over the world, on the contrary it's even forbidden in some countries, or within some companies. With this in mind, and the complex global supply chains that companies are working with, FOA can be difficult to work with. This guide is intended to make a step by step roadmap to enable and progress on Freedom of Association (FoA), Collective Bargaining (CB) and worker representation in the supply chain.

More than 40 per cent of the world's population lives in countries that have ratified neither ILO Convention No. 87 on freedom of association nor Convention No. 98 on collective bargaining; and in many countries that have ratified them violations of these rights persist in law and practice.

Integrated Strategy on Fundamental Principles and Rights at Work 2017-2023 report

Enabling right

FOA is an enabling right and the key to unlocking other international labour standards. It is a complex yet fundamental concept, as it paves the way for workers to access other important workplace rights. In particular, it unlocks the door to collective bargaining and other effective mechanisms for worker representation. It involves raising awareness among workers of their rights, enables them to voice their concerns, and determines how disputes and grievances are handled in the workplace.

Freedom of Association, the right to form trade unions and collectively bargain, receives much less exposure and faces active opposition than other rights. Responsible business, through their commitment to human rights at work, recognise the absence of FOA, CB and worker representation is a salient risk to workers in their supply chains and affects the workplace in numerous ways.

Address and resolve workplace human rights impacts

Businesses should avoid infringing the human rights of workers in their supply chains and should act to help address and resolve any adverse human rights impacts unintentionally caused by their activities or through their business relationships. This obligation exists irrespective of the state's ability and/or willingness to fulfil its human rights obligations.

Furthermore, within due diligence mapping, freedom of association is a critical factor in assessing risk to workers, particularly in sourcing countries where the ability for workers to voice their concerns is suppressed and the legal framework, underpinning protection of worker rights, is weak or unenforced.

As a business sourcing product from the global marketplace, committing to meeting, promoting and supporting the right to freedom of association within your supply chains is part of being a responsible business. In sourcing countries where domestic

laws and regulations conflict with international standards, businesses should seek to honour similar principles and standards to the fullest extent possible, without violating domestic law, in order to respect universal human rights.

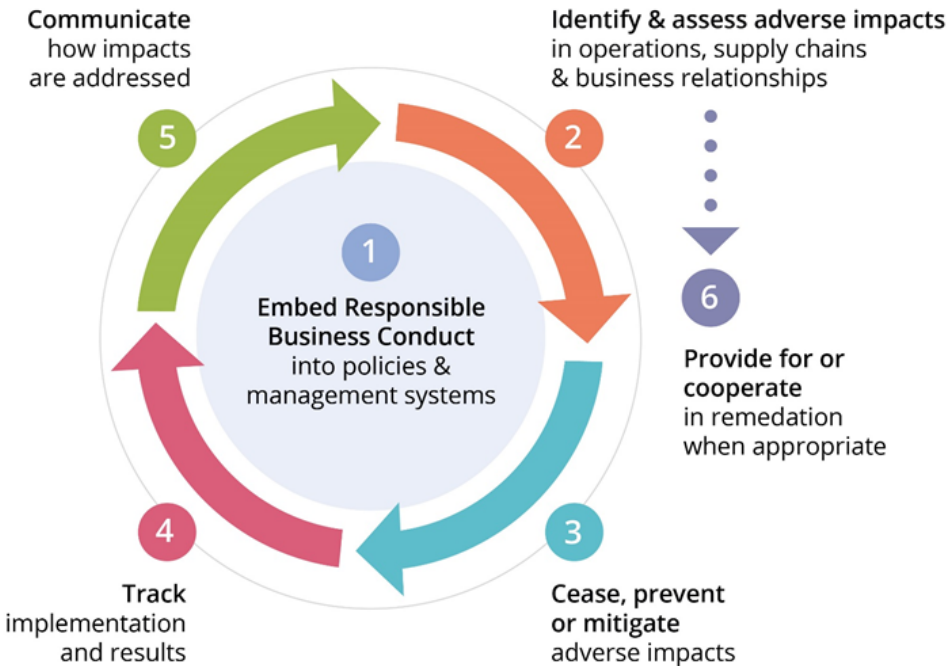
See more in attachment 1: Background and definitions

Due diligence with the FoA lense

The Ethical Trade Norway approach to due diligence is based on [UN Guiding Principles on Business and Human Rights](#) and [OECD Due Diligence Guidance for Responsible business](#). The purpose of this resource is to help companies implement clause two in Ethical Trade Norway's Declaration of Principles. This roadmap is built around the six steps.

- COMMITMENT AND GOVERNANCE (step 1)
- IDENTIFY RISK (step 2)
- MANAGE RISK, SEIZE OPPORTUNITIES AND REMEDY (step 3 & 6)
- TRACKING IMPLEMENTATION AND COMMUNICATION (step 4 & 5)

See the tool “Mapping and managing of Freedom of Association(FoA), Collective Bargaining (CB) and Worker Representation (WP)” that you can use throughout the process together with this guidance.



Source: OECD Due Diligence Guidance for Responsible Business Conduct

COMMITMENT AND GOVERNANCE (step 1)

This section highlights the importance of the policy you have regarding workers' rights, namely freedom of association (FOA), collective bargaining (CB) and worker representation (WR). Your company's governance structure is key to implementation and progress on FOA, CB and WR.

Recommended actions:

1. Policy review

- a. Review current policy either as part of a scheduled review or as a specific activity
- b. Assess whether wording on workers' rights and protections is clear
- c. Appraise the scope of worker representation in overlapping areas such as health and safety expectations, and projects and programmes
- d. Include women worker representation in codes of conduct
- e. Review policy position on collective bargaining and trade unions
- f. Consider strengthening:
 - i. Policy wording and expectation
 - ii. How implementation of the policy could be supported
 - iii. Examples of good practice within your supply chains
 - iv. Requirements for agents, suppliers and producers
 - v. Grievance mechanisms for reporting of breaches of policy or denial of workers access to basic workplace representation
- g. Consider integration of FoA in other policies

2. Implementation and governance

- a. Develop and action plan for how the policy will be implemented and managed
- b. Implement and monitor your action plan.
- c. Progress should be monitored and measured against goals

What should a policy say about FOA, CB and WR?

A clear policy is important as it expresses the organisation's respect for workers in their supply chains, values workers' welfare, voice, rights and protections. The policy articulates your business commitment and contribution to mature industrial relations by respecting the collective formal voice of workers and to upholding, supporting and protecting workers' rights.

Freedom of Association (FOA) as the enabling right and the key to unlocking other international labour standards, needs particular attention when identifying risk to workers at a country level. A clear policy recognises the universal core labour standards, even in countries that have not ratified ILO Convention No. 87 on freedom of association nor Convention No. 98 on collective bargaining.

A worker-centred policy based on core labour standards should - at a minimum - respect the Ethical Trade Norway's Declaration of Principles, international legal and policy frameworks. It should act as key point of reference for the company's employees and business relationships on human rights at work, ethical business practices and human resources or industrial relations policy.

For members see the two templates "Policy for own business" and "Guidelines for supplier" (Code of Conduct) to achieve foundation level on [member website](#).

See more in attachment 1: Background and definitions

Along the way you might want to refine and upgrade your policy and code of conduct. This is why the step of commitment is at the core of the due diligence model, you have to come back to it again and again as more knowledge is obtained.

Policy wording

When developing, reviewing or refining your policy of FOA, CB and worker representation we recommend using the universally accepted wording in ILO conventions. Build an overall statement that your company respects the rights of both employees and workers in your supply chain to access and exercise their right to freedom of association and collective bargaining.

Promoting support for FOA, CB and WR as a fair and balanced mechanism for reaching agreements between workers and managers should include implementation clauses giving substance to the statement. In particular, we recommend:

- Freedom of association is the right of all workers, without exception, to establish and join organisations of their own choosing without prior authorisation and without interference from government or their employer.
- Collective bargaining is supported and recognised as a mechanism for reaching agreements on how the relations between a supplier and its workers will be governed.
- Workers' rights and protections extend to all tiers of the supply chain - where FOA is restricted and where unions cannot operate, the best available form of independent worker representation should be pursued.
- Where trade unions face significant challenges to carry out legitimate activity this should not be used as a reason to establish alternative forms of representation that frustrate or interfere with trade union access or engagement in the future.
- Comply with both national law and international instruments and standards on freedom of association and collective bargaining.
- Workers of all status be they permanent, temporary, contract or seasonal will have access to fundamental workplace rights and protections.
- Workers have the right to raise concerns without fear of intimidation or reprisal.

Additional wording could include:

- Support workplace social dialogue and consultative industrial relations based on respect for the worker's chosen trade union or elected representatives.

- Support for early dispute resolution, grievance mechanisms and remediation action plans agreed with freely elected worker representatives.
- Ensuring that trade union or freely elected worker representatives participate in the audit process, including to verify audit findings, as appropriate.
- Promote capacity-building for worker representatives and employers, in order to help them enter into dialogue, consultation or negotiations in a professional and effective manner.

Integration of FoA in other policies

Depending on the size of your company, you might have several policy-documentations. The universal nature of freedom of association, collective bargaining and worker representation lends itself to integration into all aspects of company supply chain policy commitments.

A review therefore could include adding expectations on freedom of association, collective bargaining and worker representation into other policies, such as:

- **Safety, health and well-being policy** – for example, the right of workers through their worker representatives or trade union committee, to raise collective concerns on matters pertaining to their safety, health and well-being. This could also be suggestions on improvements, participation in audits or continuous improvement initiative or systems.
- **Environmental performance or if integrated as Safety, Health and Environment (SHE)** – for example, similar to above but with specific focus on environmental safety such as use of hazardous chemicals but also on carbon reduction, water usage or energy savings.
- **Equality and diversity** – for example, the right of all workers, regardless of race, religion, gender or nationality, to access their rights and protections and be collectively represented through worker representation or a trade union. This could also apply to cross border or internal migration of workers.
- **Grievance mechanisms** - for example, elected worker representatives or the local trade union participate in the design and development of grievance mechanisms.

Wider policy considerations

As you expand the scope of the policy and set requirements for suppliers, we recommend keeping the following considerations in mind:

- Export processing zones - Many governments will seek to exclude trade unions from organising within export processing zones, even if workers are free to organise elsewhere in the country. We recommend supporting the right of all workers to be able to access and enjoy their rights and protections on site even where this goes above and beyond the local law.
- Recognising situations where unions face significant challenges to carry out legitimate activity exists - 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. On the contrary policy text ought to affirm that steps should be taken to help build social dialogue, develop worker and employer

industrial relations skills, support engagement with unions and build the relations that will enable full representation. This would be applicable when:

- Union access to the workforce is denied - Employers may inhibit unions from being able to communicate with the workers.
- There is interference with union activity - Suppliers may seek to influence elections or influence the ability of a trade union to represent the interests of its members. Removal of workers from registers reflecting lower density of permanent workforce required to form a trades union.
- Victimisation of union representatives or workers expressing desire to unionise – This may manifest in outward or obvious discrimination, intimidation and even violence or murder. It may also be subtle through, for example, relocation of workers.
- Refusal to recognise and bargain - Suppliers may allow their workers to join unions but undermine the value of workers' union membership by refusing to recognise or bargain with the union.
- Denial of information - To prevent trade union representatives from bargaining meaningfully, some suppliers refuse to provide them with sufficient information about the issues in hand.
- Threats that hinder bargaining - Companies can use threats to inhibit workers' ability bargain effectively, e.g. by threatening to move their operations to a prohibitive location.

Implementation and governance

A well thought through policy though goes beyond statements or broad stroke acknowledgement of worker's rights and protections - It should also include:

- How the policy will be implemented and managed
 - Internally managed and monitored, through, for example, management standards or a KPI system
 - Externally communicated and implemented through supplier training, independent projects and programmes such as the Social Dialogue programme or country working groups.
- The reach of the policy – for example, the supply chain tiers and types of worker covered, including whether it covers vulnerable workers (e.g. casual, seasonal, migrant or temporary workers).
- Expectation of new and existing suppliers. The policy commitment to freedom of association, collective bargaining and independently elected representatives should also be included in supplier self-assessment questionnaires (SAQs).
- Ownership and stewardship of the policy, for example, lines of accountability, reporting and review frequency, and how the commitment is supported.
- Where available, examples or reference to where your organisation has evidence of good practice or formal arrangements such as Global Framework Agreements (GFAs).
- Available complaints mechanism whereby breaches of policy on access to FOA, CB and worker representation can be reported.

Developing your action plan

Implement and monitor your action plan.

- In order to prioritise opportunities to improve freedom of association within your company's supply chain:
 - a. Verify that actions were conducted within the agreed period
 - b. Progress should be monitored and measured against goals
 - c. Monitor and assess progress at a corporate and supplier level. Many larger enterprises have developed systems of supplier audits to measure compliance with their required level of performance on social and environmental issues. While these systems can work well to monitor suppliers' performance on issues such as greenhouse gas emissions, they are typically less effective in monitoring human rights violations in the supply chain.
 - d. Consult and communicate your requirements and plans.
 - e. Businesses should communicate and disclose their due diligence steps and report on the actions taken to prevent and mitigate negative impacts to their stakeholders, including recognised trade unions.
 - f. Implement continuous improvements mechanisms for more effective monitoring.
- Ensuring suppliers' ongoing commitment to freedom of association and collective bargaining requires a process of continuous improvement and monitoring. Provide constructive feedback to suppliers on any changes required to managers' attitudes and practices.
- If all fails - discontinue your business relationship with the supplier. If after various attempts at remediation, a supplier is unwilling or unable to comply, companies should end their business relationship with the supplier in question in a responsible manner.

IDENTIFY RISK (step 2)

This section draws attention to the importance of identifying risk through the freedom of association (FOA), collective bargaining (CB) and worker representation lens. FOA as the enabling right and the key to unlocking other international labour standards, needs particular attention when identifying risk to workers at a country level.

Recommended actions:

1. Identify key risk to workers
2. **Country assessment:** Build understanding of the risk to workers in the sourcing or production country:
 - a. Legal compliance
 - b. Trade union verification
 - c. Campaigning information
3. **Site assessment**
 - a. Using the RED FLAGS for suppliers - map risks relating to suppliers throughout your supply chain, prioritising strategic suppliers. Additional consideration should be given to repressive countries.
 - b. Consult widely with trade unionists and other labour stakeholders.

Understanding risk – key salient risk to workers

Companies usually understand ‘risk’ as referring to commercial risks to the enterprise – financial, operational and reputational. However, human rights risks are equally as important, and all due diligence procedures should identify and address risks to workers. However, while FOA remains the key enabling right to delivering other critical workplace rights, it is often the most challenging to implement internationally.

[See attachment 1: Background and definitions for an understanding of risk and rights.](#)

Freedom of Association (FOA), the right to form or join a trade union and collectively bargain (CB), receives much less exposure and is at times subject to active opposition than other rights. Responsible business, through their commitment to human rights at work, recognise the absence of freedom of association, collective bargaining and worker representation is a salient risk to workers in their supply chains and undermines efforts to ensure they meet their commitments.

Therefore, identifying FOA as the key risk to workers, in countries where this is suppressed, needs special attention, action plans and a collaborative approach.

Assessing risk

Through your due diligence mapping, ensure that you understand whether workers can freely associate which means they can form or join a trade union of their choice. This is a critical factor in assessing the level of human rights risk facing workers in

your supply chain, particularly in sourcing countries where worker representation and trade union activity are suppressed, and where the legal framework underpinning protection of worker rights is weak or unenforced.

First you have to understand the wider context and do a country assessment, secondly a supplier assessment.

Recognising that there are situations where unions face significant challenges to carry out legitimate activity 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. While mapping “RED FLAG” for countries and individual suppliers, signs of denying workers their rights and protections – especially FOA – may be missed for an unexperienced auditor.

In the case of elected worker representatives, there should be evidence of worker nominations, secret ballots, terms of reference, worker meetings and meetings between workers and managers, through which worker concerns are raised.

Beyond audit

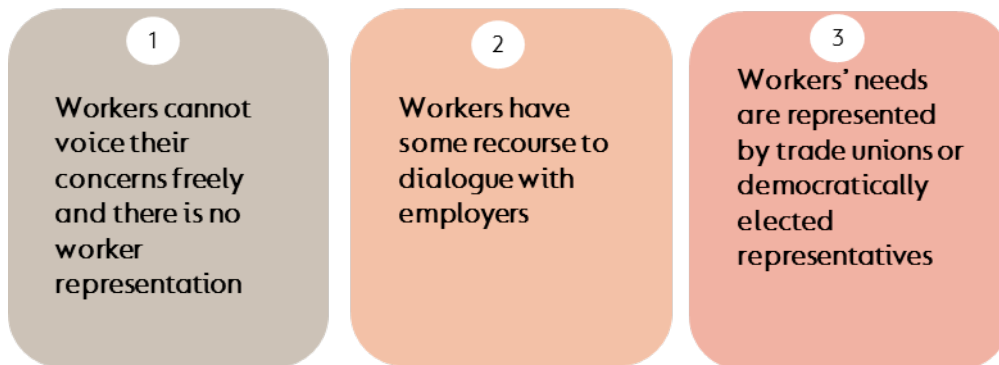
Using the audit process alone to understand whether workers have access to the rights of freedom of association (FOA), collective bargaining (CB) and worker representation can present distinct challenges. Companies have shared that the relevant audit box may be ticked or signed off as “all in order”, but the reality may be quite different.

FOA may be difficult to assess on site, as nuances of threats, harassment and intimidation of workers are easily masked on the production floor and create an environment where workers fear speaking out on issues that concern them. Collective bargaining through independent trade unions, however, should be visible through documented processes and records.

See more in attachment 4: Beyond audit

It is important to commission auditors with strong knowledge of freedom of association and collective bargaining, appropriate skills for determining whether workers have access to these rights, and who understands the risk to workers in the relevant sourcing country.

Suggested mapping entry points



See attachment 2: FOA, CB and worker representation indicators

See attachment 3: Entry points to worker representation, mapping and actions

See the tool “Mapping and managing of Freedom of Association(FoA), Collective Bargaining (CB) and Worker Representation (WP)”

Red flags for country assessments

Companies should investigate their own and their suppliers' operations to ensure that nothing they do – or fail to do – prevents or inhibits workers from accessing their core labour right of freely forming or joining trade unions, or from engaging in collective bargaining.

The legal and institutional framework of a country is an important risk factor when assessing the likelihood and severity of impacts on workers' human rights. In each sourcing country, businesses should identify the main trade union representing workers in the relevant sector, and 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.
- Obligation to join government-influenced unions
- Prohibitions on bargaining and industrial action in designated industries
- Differences in labour regulation between the national provision and 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 freedom of association, such as migrant, informal or other 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.

At the global or national level, freedom of association indicators may be categorised into two groups:

Statistical indicators

These could include trade union density rate, collective bargaining coverage, days lost due to strike action or lockout, and where there is labour court provision, the number and type of cases and appeals. It is also useful to underpin the core indicators with broader indicators such as types of employment (permanent, casual, seasonal and both internal and external migrants), industrial, agricultural or service workforce and the informal to formal economy ratio.

Legal indicators

This cover, for example, ratification of the fundamental International Labour Organization (ILO) conventions, and labour rights provision in local law, such as the right to organise and bargain collectively. It is important to establish whether there is a national law guaranteeing workers the right to join and form organisations for the protection of workplace interests and setting out trade union and agreement processes.

Legal indicators should also be considered in the context of whether workers can freely choose the trade union or independently elected representation group they join, or whether the state determines the role and activity of the trade union (as is the case in China, for example). Legal indicators typically translate well into and should guide and inform corporate policy, procedures and practice.

- Legal compliance:
 - Ratification of ILO conventions 87 Freedom of Association and Protection of the Right to Organise Convention, and 98, Right to Organise and Collective Bargaining Convention.
 - Workers' Representatives Recommendation, 1971 (No.143) – a recommendation concerning Protection and Facilities to be Afforded to Worker's Representatives
 - Transposition into national regulation including governance institutions – for example, a department of labour
 - Historical and current complaints raised via the ILO complaints mechanism
 - Country rating on ITUC global rights index.
- Trade union verification:
 - ITUC affiliations with national centres and federations

- Global union federation affiliations for sector specific trade unions aligned to ETI category groups.
- Food & farming: The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)
- Hard goods: Building and wood workers international (BWI)
- Apparel & textiles and manufacturing: IndustriALL
- Logistics and transport: International Transport Workers' Federation (ITF)
- Commercial, beauty and services: UNI global
- Campaigning information:
 - ITUC and global union federations (regional or campaign pages)
 - Labour NGOs and campaign organisations (for example Amnesty International, Banana Link and Justice for Colombia)
 - Human Rights Watch
 - Transparency International
 - Solidarity Centre.

Possible responses to common indicators on FOA, CB and worker representation.

[See attachment 2: FOA, CB and worker representation indicators](#)

Counting the cost of freedom - global rights index

Published annually, the is an interactive index of core labour standard violations. The report ranks countries against 97 internationally recognised indicators to assess where workers' rights are protected in law and in practice. It draws on reports from trade unions around the world to build a picture of how workers are treated. Countries are graded based on the extent to which workers have access to fundamental rights, including civil liberties. Overall, human rights abuses in the workplace remain an engrained and systemic issue globally, despite the efforts of many parties, including companies, to address this pressing issue.

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

Export Processing Zones (EPZs)

EPZs may be based within countries with acceptable labour rights and protections. However, within the EPZ, labour rights and protections may be eroded and weakened. EPZs are often characterised by poor working conditions and widespread violations of workers' rights, notably violations of freedom of association.

For example, Mauritius has experienced a period of rapid economic growth driven by exports of textiles, sugar, tourism, seafood processing and the introduction of EPZs. Ratification of the ILO's 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 per week plus 10 hours compulsory overtime in the EPZs, compared to 35 to 48 hours in non-EPZ sectors)

Employer-controlled work councils to discourage unionisation.

To compensate workers for the weakened labour regulations, the Mauritian government established a welfare fund to finance social services for EPZ workers and their children.

Dealing with systematic abuse

Consider the extent to which risk to workers is systemic; this could be consistent denial of access to rights and related to the location of the site, industry type, or sub-sectors such as home working or illegal outsourcing. Consideration must be given to:

- The extent to which any negative impacts can be rectified (e.g. through compensation, reinstatement, etc.)
- Whether it is possible to restore the right in question to the affected workers
- The extent to which intimidation of workers for forming or joining a trade union effectively denies workers the right to representation.

Red flags for individual suppliers /sites

When mapping suppliers (sub-contractors, processes, logistics and agents), or establishing a new ethical supply chain policy, seek evidence of compliance with the law and with international operating requirements. If the supplier has answered a self-assessment questionnaire or you have an audit report from the supplier, you would probably have most of the information.

- Are there corresponding policy commitments reflecting adherence to core labour standards?
- What proportion of the workforce is unionised?
- What proportion of the workforce belong to worker representation groups?
- Are worker representatives democratically elected by workers or selected by employers?
- Are there existing collective bargaining agreements (CBAs), including the name of the trade union?
- 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, gender mix?
- 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 a sector wage board or managers, and do they apply to all jobs regardless of the person employed?

MANAGE RISK, SEIZE OPPORTUNITIES AND REMEDY (step 3 & 6)

This section aims to give advice on how to manage risk and seize opportunities in implementing freedom of association, collective bargaining and worker representation in the supply chain.

Recommended actions:

1. Harmonize your *purchasing practice* vision and commitment for FoA, CB and WR.
2. Remediation towards workers should involve worker representation, to identify the means necessary for an acceptable remediation.
3. Model for progressing worker representation (see attachment 3)
 - a. **Recommendations where workers cannot voice their concerns freely and there is no worker representation**, for example CSR forums, suggestion boxes, audit interviews or worker surveys: Initiate conversations with suppliers, promoting the value of worker representation and communicating your requirements, vision and intent.
 - b. **Workers have some recourse to dialogue with employers**, for example worker participation committees, anti-sexual harassment committees, grievance mechanisms or OSH committees: Evaluate the scope and depth of engagement between workers and Managers
 - c. **Workers' needs are represented by trade unions or democratically elected representatives**: Develop an understanding of the site's consultation or negotiating processes, including when wage negotiations take place, the length and scope of collective bargaining agreements, or how workplace disputes are raised and addressed. Document through mapping, the site trade union including sector, national and global affiliations.
4. Strengthening and enabling *women representation* in the workplace
5. Seek collaboration on country level

Buying responsibly: harmonizing vision and commitment

In many organisations the challenge would be harmonisation between CSR, ethical or sustainability practitioners and commercial practices and drivers. Raising awareness and sharing of critical information from a due diligence mapping of FOA (assessing where FOA is established or not) to ensure commercial interests don't undermine activity in support of workers' rights and protections.

JETI's guide to buying responsibility draws on the findings of a collaborative supplier survey run in partnership between the joint ethical trading initiatives and the ILO, with support from SEDEX. The guide includes best practice examples and outlines the five key business practices that influence wages and working conditions.

Identifying opportunities to express your company's vision

Central to communicating effectively is being able to express a mutually beneficial agenda, through multiple dimensions, including both the business and moral case for action. It is important to help suppliers understand that mature industrial relations where workers can collectively raise concerns important to them without fear or intimidation goes hand in hand with boosting productivity, retaining skilled staff, and ultimately, making a profit.

Take every opportunity to express your company's vision and commitment towards upholding worker rights and protections - appropriate opportunities might include:

- **Pre-qualification of suppliers**
 - For example, is there a platform for workers to express their views, or how are workers consulted on pay or terms and conditions of employment?
 - Formal questions on trade union recognition, collective bargaining agreements or free and democratic worker representative elections should also be built into self-assessment questionnaires.
- **Changes to country employment regulations**
 - Suggest to suppliers how this could be communicated to workers and identify how you could help, by providing education materials, for example.
- **Supplier restructuring or increasing levels of automation**
 - Understand the implications for workers and ask how workers are involved in any consultation, decision-making or solution-finding processes.
- **Safety, health and wellbeing concerns**
 - This can range from initiatives to support workers' basic needs (e.g. safe water, hygiene, food) to more advanced programmes to promote health and safety (e.g. training on ergonomics or chemical safety). This is an important way to introduce worker consultation, training and education into a workplace. It also establishes a firm foundation for collective undertakings through committee work.
- **High staff turnover**
 - This is an indicator that workers are not happy and creates an opportunity to engage in discussions about options such as worker surveys, consultation and social dialogue approaches as positive ways for workers and managers to engage in finding solutions that meet workers' needs and reduce staff turnover rates.
- **Non-compliance reports**
 - Using the audit process non-compliance reports can be a useful source of information if collated and analysed internally.
 - Tracking of non-compliance on a site provides an additional benefit of identifying systematic or a culture of denying workers access to rights and protections.
 - However, experience tells us that typical social audits are not good at identifying workplaces where FOA is being blocked or denied. It does however present distinct challenges as ETI members have shared that the relevant box may ticked or signed off as "all in order", but the reality may be quite different.

Remediation for rightsholders

Wrong doings on human and worker rights require remediation towards the rights holders who had their rights taken away from them. Remediation towards workers should involve worker representation, to identify the means necessary for an acceptable remediation. A set up for worker representation and social dialog could be means to hinder negative impact in the future.

- Ensure suppliers' ongoing commitment to freedom of association and collective bargaining requires a process of continuous improvement and monitoring. Provide constructive feedback to suppliers on any changes required to managers' attitudes and practices.

Under the **United Nations Guiding Principles on Business and Human Rights (UNGPs)**:

I. The state has a duty to **protect** workers from human rights abuses by third parties, including business enterprises. They must also take the necessary steps to ensure that when abuses do occur, victims have access to effective judicial and non-judicial statebased grievance mechanisms.

II. Businesses have a fundamental responsibility to ensure **respect** for human rights throughout their supply chain. This includes the duty to avoid infringing on the rights of others, to address adverse impacts linked to business operations, products or services, and to provide effective remedy in cases where workers have suffered adverse impacts. The UNGPs require companies to take steps to respect workers' human rights, particularly through policies, mitigation of risks and due diligence. While it is the state's responsibility to uphold human rights within its jurisdictions, both SMEs and multi-national companies operating in complex environments benefit from robust grievance and remediation strategies to promote employee wellbeing and productivity.

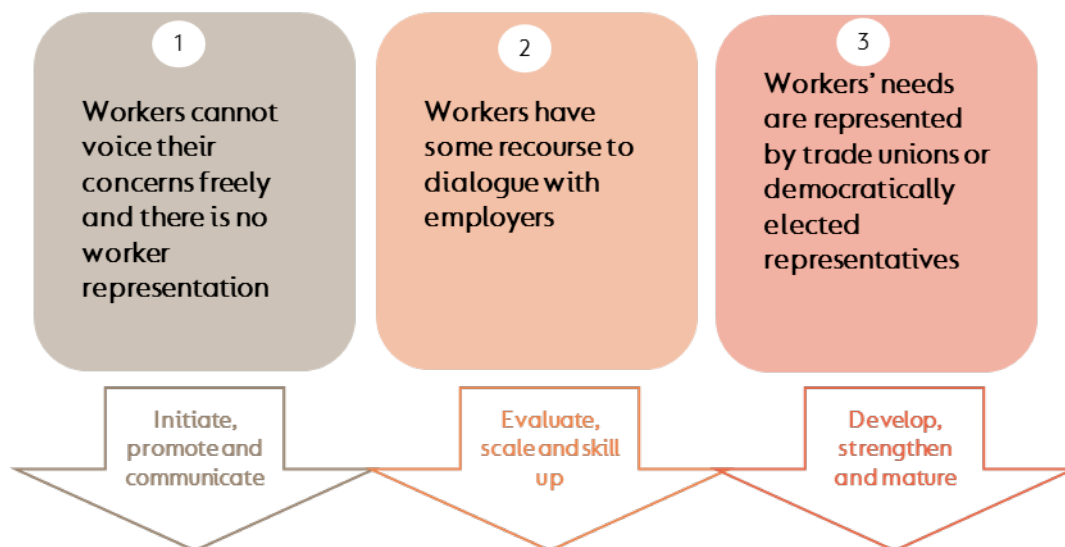
III. States and businesses have a collective responsibility to ensure that workers have **access to effective remedy** in relation to rights infringements or abuses of a judicial and non-judicial nature. Non-state-based grievance mechanisms, such as those within the workplace, should complement statebased mechanisms.

[See Ethical Trading Initiative's guidance on remedy.](#)

Model for progressing worker representation

There are three key entry points to enable mapping of working representation in supply chains, supported by suggested activities to progress independent and effective worker representation.

Developing the strategy and action plan



Taking into consideration your information on where workers are most at risk of not being able to access their rights and protections, and based on relationships (long-term, if possible), choose two or three factories and seek to understand the level of worker engagement.

[See full illustration attachment 3: Entry points to worker representation, mapping and actions](#)

Select factories:

- Where there is no voice or conduit between workers and management. This includes suggestion boxes and apps (one-way forms of communication).
- Where there is some form of worker engagement or dialogue on a regular basis – for example, safety groups, welfare groups, worker surveys, audit or site visit interviews with workers. This could also include production discussions or even types of training on offer. Consider whether the dialogue is formal (notes of meetings, regular discussion) or informal.
- Where there is a platform or committee with greater dialogue and/or an actual process of exchange and feedback – a determining factor is whether workers can raise an issue or whether the meeting agendas are set by managers (or a combination of both).

Contact the factories in writing or perhaps with a questionnaire, framed in a way that is relevant to the factory, e.g. focused on new local regulations, management standards (ISO etc), audit requirements or the business case.

1: Workers cannot voice their concerns freely and there is no worker representation

Action: Initiate, promote and communicate

We recommend initiating conversations with suppliers, promoting the value of worker representation and communicating your requirements, vision and intent. Through your continuous improvement activities, this could include reviewing onboarding processes and codes of conduct, particularly as regards the communication of expectations on valuing workers and worker representation. Requesting specific information on worker representation, as evidence of freedom of association, could be included in self-assessment questionnaires, third-party audits and factory visits.

Through your continuous improvement activities:

- a. Review onboarding processes and codes of conduct with clear communication of expectations on freedom of association, collective bargaining and worker representation
- b. Request specific information on how workers raise concerns, how this is remediated or fed back to workers; this could be included in self-assessment questionnaires, third party audits and factory visits
- c. Establish if there is worker participation in decision making or consultation on workplace issues that affect or impact workers
- d. Invest in education and training for suppliers

2. Workers have some recourse to negotiating with employers, e.g. through worker committees

Action: Evaluate, scale and skill up

Evaluate the scope and depth of engagement between workers and managers and make recommendations regarding how to overcome managers' resistance to full worker representation or the effectiveness of the worker representative, build trust and begin dialogue.

- i. To scale up and share with other sites in your supply chain, capture site evidence of the positive contributions of workers to the business, including improvements in and to the business (reduced absenteeism, increased production and/or reduced health and safety incidents and accidents).
- ii. Where there are existing forums or committees such as healthy and safety, anti-sexual harassment, welfare or participation committees, this is an excellent opening to invest in worker skills development such as social dialogue techniques, presentation and consultation skills or election processes.
- iii. Where there are active trade unions a) and b) could be developed in conjunction with them.

3. Workers' needs are represented by trade unions or democratically elected representatives.

Action: Manage, strengthen and mature

We recommend developing an understanding of the site's consultation or negotiating processes, including when wage negotiations take place, the length and scope of

collective bargaining agreements, or how workplace disputes are raised and addressed. Strengthening and maturing the formal worker and employer relationship could include, for example, investing in skills development, building relationships with sector trade unions, national federations and global union federations. For larger multinational companies where there is a global framework agreement (GFA), invest in educating and promoting the agreement among more sites or countries.

- a. Strengthen the formal worker and employer relationship through investing in skills and knowledge development – for example, global framework agreements (GFA), new or changes to local labour regulation and grievance mechanisms. For larger multinational companies where there is a GFA, invest in educating and promoting the agreement among more sites or countries
- b. Build relationships with trade unions or labour organisations and participate in industry or country interventions on worker rights, for example the ACT initiative, suppression of worker rights or harassment of trade union or elected representatives

Enabling women's representation in the workplace

Discrimination is a risk in global supply chains, also when it comes to worker representation. This might be risk of actual representation of the workforce. To enable women's representation in the workforce you could start by reviewing supplier company policies and collective bargaining initiatives to understand how the supplier helps women to engage with their elected representatives or trades union. For example, you could identify whether the policies state a clear position on women's equality and the role of trade unions in advancing gender-sensitive solutions to work-related issues.

- i. Build awareness among suppliers of women workers' rights and protections (eg. Equal pay for equal work and pay reflects the worker's role, experience and skill level, maternity leave and workplace consideration for pregnant women)
- ii. Promote the representation and participation of women through on-site visits and audit interviews
- iii. Invest in capacity-building of women worker representatives and/or dedicated committees.

[See more on gender sensitivity in attachment 1: Background and definitions](#)

Country collaboration

Previous STEPS in this suite of resources on [base code clause two](#) focuses on sites and workplaces in your supply chain. It is however important to recognise that acting on FOA and workers' rights at a country level needs a collaborative and collective approach to bring about change.

The international labour standards (ILS) are either conventions, which are legally binding international treaties when ratified by a country, or they are recommendations serving as non-binding guidelines. The eight core standards are conventions, therefore, to implement or raise a standard in a country needs corporate collaboration, advocacy and activity. This could include global and trade unions, industry bodies, international, local and/or sector labour and human right organisations and NGOs. Examples of this activity include:

- [Blended learning \(Bangladesh\)](#)
 - Upskilling workers and managers who are members of factory Participation Committees, both in factories with and without a trade union. In Bangladesh, these committees are required by law, but can often be ineffective. The JETIs have partnered with [QuizRR](#) offers digital training solutions included in the programme.
- [Cashew nut industry \(Vietnam\)](#)
 - The first social dialogue training course to be organized for the sector. The processors decided on key steps to improve their operations in relation to worker-management dialogue, grievance handling and trade union rights.
- [JETI working group \(Italy\)](#)
 - Collaborative working with trade unions, industry bodies and NGO on advocacy with the state to rewrite and improve regulation on migrant workers.
- ETI working group (South Africa)
 - Drawing together workers through local trade unions, labour NGO's, multi-stakeholder-initiatives, Government bodies, academics, producers and industry bodies to progress decent work and social dialogue in the fruit and wine sector.
- [FOA protocol \(Indonesia\)](#)
 - A historic agreement signed in 2011 regarding trade union rights in factories in Indonesia. The pact was signed by Indonesian textile, clothing and footwear unions, major supplier factories and the major sportswear brands, including Adidas, Nike and Puma.
- Sea food task force (Thailand)
 - Local and global network of Global Union Federations, industry, retailers, government, ILO and addressing worker exploitation fishing fleets and on-shore seafood processing sheds. That includes human trafficking and slave labour. This includes the [ILO good labour practices](#) also addressing child labour and forced labour in the Thai fisheries industry.
- [ACT \(Action, Collaboration and Transformation\)](#)
 - Addressing the structural barriers to living wages, ACT is an agreement between global brands and retailers and trade unions to transform garment, textile and footwear industry and achieve living wages for workers through collective bargaining at industry level linked to purchasing practices.

From project to practice

Mature industrial relations on a site with fully engaged workers and managers is good for business and contributes to the long-term sustainability and stability of the business. Actions that can be taken can could:

- Reviewing project work to evaluate whether it is directly or indirectly pertinent to your supply chain and addresses salient issues and risks to workers you have identified through your due diligence process.
- Identify and invest in partnerships with in-country expertise and experience. The workplace or sector trade union, national or global federation/s are key to success. Included in this could be a range of trade union, legal and cultural partnerships.
- Provide for the independent capacity building of independent worker representatives or trade union representatives through, for example, skills development, in order to enable a level playing field for dialogue or consultation.
- Commit to facilitate initial discussions (with suppliers) establishing ground rules to identify who should be involved and who is paying for the facilitation and training, and to promote the election of independent worker representatives.
- Invest in supplier key performance indicators (KPIs) that include worker representatives or their trade union and foster a mindset of continuous improvement.

TRACKING IMPLEMENTATION AND COMMUNICATION (step 4 & 5)

Tracking implementation and measuring results is key to progress, secondly there need to be communication on actions and results with suppliers and workers. This step of the roadmap also considers how to prepare a communication strategy on workers' rights and protections.

Recommended actions:

1. **Monitor actions** and implementations, is it working as expected?
 - a. Use statistical and legal indicators, as well as indicators at supplier
2. Review policy statements for setting the vision, expectations and requirements. This is also important:
 - a. for public communication if challenged in the media, or
 - b. in the event of an industrial dispute in the supply chains
3. Develop **communication strategy** towards suppliers, agents and other business partners
 - a. Identify opportunities to open dialogue or communication with agents, suppliers and producers
 - b. Develop a communication approach and strategy based on:
 - i. the benefits of FOA, CB and worker representation
 - ii. identifying risk to workers
 - iii. non-compliance indicators grievance mechanisms, and
 - iv. mapping worker representation
4. Grow your own supply chains evidence base by gathering information on the benefits of worker representatives or a trade union in high-performing workplaces. This can be internal knowledge or through collaborative research or information sharing initiatives

Reporting on FOA, CB and WR

With growing pressure on integrated company reporting a set of internal information or data can be used in multiple ways – equally, reports to Ethical Trade Norway can be used as evidence in other reporting requirements and visa versa. This saves both money and time.

In the case of elected worker representatives, there should be evidence of worker nominations, secret ballots, terms of reference, worker meetings and meetings between workers and managers, through which worker concerns are raised.

Legal indicators should also be considered in the context of whether workers can freely choose the trade union or independently elected representation group they join, or whether the state determines the role and activity of the trade union (as is the case in China, for example). Legal indicators typically translate well into and should guide and inform corporate policy, procedures and practice.

Trade union membership or independently elected worker representatives are the measure of how freely workers can express and contribute to their industry or workplace through formal structures such as collective bargaining. They do however need to be in workplaces without fear of intimidation, harassment or reprisals.

See [attachment 2: FOA, CB and worker representation indicators](#)

For members see Ethical Trading Norway's reporting template and [guidance](#).

Beyond audit

As described under step 3, using the audit process alone to understand whether workers have access to the rights of freedom of association (FOA), collective bargaining (CB) and worker representation can present distinct challenges. Companies have shared that the relevant audit box may be ticked or signed off as “all in order”, but the reality may be quite different. This is equally important to remember when measuring results. Stakeholders should be included in mapping and monitoring.

See [attachment 4: Beyond audit](#)

Communication approach and strategy

Communicating your commitment and requirements clearly with your suppliers on the business and moral case to protect workers' rights is central to progressing FOA, CB and worker representation. Communications around actions and results is equally important. This is especially the case where FOA is restricted and where unions are restricted through either regulation or resources. However, how you choose to communicate will depend on your context and relationship with suppliers. Below follow suggestions and recommendations, particular relevant for direct involvement with supplier.

Setting the vision

Prepare a compelling narrative to share with decision-makers, suppliers, factory owners, highlighting your vision to raise standards and outlining the business case for improvement. This could also be helpful in terms of responding constructively to instances of audit non-compliance on workers' rights, freedoms and protection. It could also extend to communicating in disputes or grievances, where for example:

- Workers are denied the right to freely associate or organise collectively
- There is interference in establishing a workplace trade union
- Trade union or elected representatives are threatened or intimidated
- There is a breach or undermining of a collective bargaining agreement

We therefore recommend strengthening your communications efforts by researching the cultural context of both the sourcing country and supplier. There is also the case to establish a basis for public communication if challenged in the media.

Transparency also plays an important role in all communications efforts. For example, the Danish Institute for Human Rights' report "[Doing Business in High-Risk Human Rights Environments](#)" suggests that when brands and retailers are transparent about the risk to workers in their supply chains and their policies and procedures for protecting workers' rights, this can help to reduce the risk of legitimising oppressive governments.

Preparing your communication strategy

Build a strong understanding of the political, social and economic context of your sourcing country, drawing on:

- Policy commitments and statements
- Due diligence mapping to identify risks to workers
- Non-compliance reports
- Grievance mechanisms or help line data, and
- Mapping of worker representatives

In particular, understanding the culture of dialogue of a country and gaining an insight into the worker - employer dynamic will help you to frame your communication strategy around the level of progress required to help workers access their rights and protections.

Ensure that your current human rights/ethical trade policy incorporates a worker engagement strategy that is clear on your position on FOA, CB and worker representation. It is also important to state how you will implement and support the policy, for example, through materials, training, supplier inductions or sector-level improvement programmes.

Central to communicating effectively is being able to express a mutually beneficial agenda, through multiple dimensions.

Improved working conditions

Highlight that partnering with workers through any process of change helps to support a more effective transition and reduces the risk of industrial conflict and worker unrest. It allows workers to understand what is at stake and how it will affect them at an earlier stage. Workers and managers may also develop a better understanding of each other's perspectives and a shared sense of responsibility.

An enterprise or sectoral collective bargaining agreement provides:

- A clear, formal and recognised channel for workers to contribute their expertise and experience to inform change.
- A means of reducing short-term unemployment by negotiation adjustments to wages and working time, in order to avoid redundancies thereby retaining needed skills and experience.

Improving employee health, safety and wellbeing delivers proven benefits for both workers and employers, with issues such as mental health rising up the global business agenda - a Warwick University study reveals a 12% increase in productivity among contented employees. At a basic level, adhering to acknowledged health and

safety standards is about saving and protecting life, ensuring supply chain stability and reducing operational, financial and reputational risk.

The TUC's Union Effect research report reveals that there are 50% fewer accidents in unionised workplaces. In the UK, union safety representatives have helped to reduce the time lost to occupational injuries and work-related illnesses by up to 616,000 days per year, while in turn reduces suppliers' costs.

Staff turnover and absenteeism

At a global level, 60% of businesses report a link between improving employee wellbeing and increasing staff retention. Additionally, companies with satisfied, engaged workers experience up to 65% lower employee turnover. Within the supply chain, recruiting and training new employees increases suppliers' costs, reducing profit margins, which are often already slim in competitive markets. There are 8,000-16,000 fewer dismissals every year in the UK thanks to elected union representatives. Unionised workers are also significantly less likely to resign, as they have access to dedicated grievance mechanisms.

In a group of 50 garment factories in Bangladesh, having worker representatives in place has reduced labour turnover, and reduced unauthorised absenteeism by 8%. An unexpected result with direct cost benefit, was improved re-work rates, from 4.5% to 0.9%.

As an employer, one of the advantages of dealing with a trade union is that it simplifies the negotiation process and the employer can be assured that they are talking with someone who represents the workforce. Establishing labour contracts enables suppliers to predict future operation costs more accurately for a fixed period, allowing them to manage costs, develop more effective product pricing strategies, plan for expansion and invest in new product development.

Dispute resolution

Investing in skills for elected trade union or worker representatives and managers and creating formal channels of communication with workers helps to achieve more structured, constructive workplace dialogue. ETI members' experience suggest that involving trained, elected worker representatives in early "on the spot" resolutions reduces the need to escalate disputes to formal grievances or even industrial action.

Since 2000, the OECD complaints mechanism has registered more than 400 cases concerning workplace issues in over 100 countries, with the majority (54%) concerning employment and industrial relations. Social dialogue has played a crucial role in resolving these cases, including the 25% of cases filed by trade unions.

Grow your own evidence base

As part of your efforts to continuously raise standards and improve suppliers' performance, gather information on the benefits of a trade union worker representation or in high-performing workplaces

Share examples and case studies with your supply base, supported by any data linking constructive workplace dialogue with improved productivity and profit. Request that direct suppliers share these examples with their suppliers, and so on.

Independently elected worker representatives are a tangible result of and intrinsically linked to FOA. Central to communicating effectively is being able to express a mutually beneficial agenda, through multiple dimensions, including both the business and moral case for action.

Empowering workers to achieve equal pay in safe, dignified conditions of work is a key tenet of Sustainable Development Goal 8 on sustainable, inclusive economic growth and decent work. It is also central to poverty alleviation and economic prosperity. Encourage suppliers to treat workers with the respect every human deserves, highlighting that improvements in employee wellbeing are linked to improved productivity.

ATTACHMENTS

ATTACHMENT 1: Background and definitions

ATTACHMENT 2: FOA, CB and worker representation indicators

ATTACHMENT 3: Entry points to worker representation, mapping and actions

ATTACHMENT 4: Beyond audit

See also the tool “Mapping and managing of Freedom of Association(FoA), Collective Bargaining (CB) and Worker Representation (WP)” that you can use throughout the process together with this guidance.

Background and definitions

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International standards: Freedom of association (FoA), Collective Bargaining (CB) and worker representation (WP)

Where do the core labour standards come from?

The Ethical Trade Norway's Declaration of Principles is built on international labour standards. The standards are also woven into codes of conduct, what companies audit against and in other, manage and monitor workers' rights in global supply chains.

The basic standards are derived from the International Labour Organization (ILO) providing a floor of both rights and protections for workers. They are treaties and legal instruments drawn up by the ILO's tripartite constituents of governments, employers and workers.

What are the fundamental international labour standards?

The ILO's Governing Body has identified eight conventions as "fundamental" - these principles are also covered in the ILO's Declaration on Fundamental Principles and Rights at Work (1998).

The eight fundamental Conventions are:

1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
3. Forced Labour Convention, 1930 (No. 29)
4. Abolition of Forced Labour Convention, 1957 (No. 105)
5. Minimum Age Convention, 1973 (No. 138)
6. Worst Forms of Child Labour Convention, 1999 (No. 182)
7. Equal Remuneration Convention, 1951 (No. 100)
8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

How do the conventions transpose into national regulation?

1. Global (Governments ratify)
2. Sector or Development initiatives (principles and standards)
3. National legislation or labour regulation
4. Company activity

The conventions are formulated and then agreed to by international actors (governments, business and trade union representatives at the ILO) – while they afford worker protections, they also aim to improve workers' terms and conditions of employment on a global scale. They are also there to ensure the world at work remains focused on improving human life and dignity.

International Labour standards are primarily tools for governments which, in consultation with employers and workers, then transpose and implement into national law and policy. For many states this process begins with a decision to consider ratifying an ILO convention.

However, the fundamental conventions apply whether an individual member country has ratified them or not.

The core of the Ethical Trade Norway's Declaration of Principles

Freedom of association is integral to the Ethical Trade Norway's Declaration of Principles, enabling social dialogue, collective bargaining and other legitimate worker representation mechanisms. It encompasses raising awareness of workers' rights, opportunities for workers to voice their concerns in the workplace, and the way in which disputes and grievances are handled on site.

Furthermore, when FOA and CB are in place this offers an effective way to identify and address other worker rights such as forced labour, safe working environments and equality..

Clause two in Ethical Trade Norway's Declaration of Principles:

2. Freedom of Association and the Right to Collective Bargaining (ILO Conventions Nos. 87, 98, 135 and 154)

2.1. Workers, without distinction, shall have the right to join or form trade unions of their own choosing and to bargain collectively. The employer shall not interfere with or obstruct, the formation of unions or collective bargaining.

2.2 Workers' representatives shall not be discriminated and shall have access to carry out their representative functions in the workplace.

2.3 Where the right to freedom of association and/or collective bargaining is restricted under law, the employer shall facilitate, and not hinder, the development of alternative forms of independent and free workers representation and negotiations.

Universal legal rights and protections

The ILO conventions surrounding freedom of association and collective bargaining (No. 87 and No. 98) conventions enshrine the right for all categories of workers, regardless of their gender, to form and join organisations of their own choosing. It is critical to ensure that women, who often represent the majority of workers engaged in less secure forms of work, such as temporary, seasonal, contract, part-time, migrant, self-employment and home-working, have access to these rights.

Structures for worker representation

What is a trade union?

A trade union is an organisation of workers that comes together to achieve common goals, represent those workers and protect members' rights. This may include safeguarding the integrity of their trade, improving workplace safety standards or

attaining better wages, benefits and labour conditions through collective bargaining with an employer.

While legal requirements vary from country to country, where trade unions are legally permitted, there is likely to be a process of recognition and formal registration of unions with the local authorities.

Union members form committees and elect leaders with a mandate to discuss the issues that matter to the membership. This may include the negotiation of wages, company rules, complaint procedures, rules governing the hiring, dismissal and promotion of workers, benefits and workplace safety and policies. It can also include productivity, quality and work planning.

Trade unions traditionally have a constitution that details how their bargaining unit (or may be called a workplace union) is governed, along with their affiliation to a sector or industry federation, or a national centre or confederation that represents workers' interests within the sector or nationally.

Infographic giving an overview of how trade unions work and how they are structured globally. Plus links to further information. https://www.ethicaltrade.org/sites/default/files/shared_resources/Trade%20Unions%20poster.pdf

Trade union members protection

No employee should be prejudiced in employment due to past or present trade union membership or legitimate trade union activities. Protection against acts of anti-union discrimination should cover: hiring, dismissal, and discriminatory measures during employment such as transfers, downgrading, reduced access to wage enhancements (e.g. bonuses or overtime) and other biased or discriminatory acts.

All practices involving the blacklisting of trade union officials or members constitute a threat to the free exercise of trade union rights. Governments are obliged to take stringent measures to combat such practices by laying down explicit remedies and dissuasive sanctions against acts of anti-union discrimination

Trade union representatives

Workplace representatives are elected at the workplace by members of a union. The Union Executive Committee in dialogue with the employer will determine the number of representatives, this will be agreed and be part of the collective bargaining agreement.

Representation is an important part of the union's role and will in most instances be written into the Union Constitution, stating to whom representatives are accountable, for example, a Branch Secretary, Treasurer or the Chair of the Executive Committee.

Negotiating an annual or bi-annual collective bargaining agreement on behalf of workers is often the tip of the iceberg for elected representatives. Their many other important day-to-day activities may include:

- Dealing with issues in the workplace ranging from sexual harassment to safety, pay or overtime discrepancies.
- Knowing the relevant occupational health and safety, environmental and gender equality laws, and monitoring implementation at the workplace.
- Representing members in collective or individual disputes, for example, if a member is threatened with dismissal or if managers want to make changes to the workplace that has an impact on workers without consulting the union or workers.
- Monitoring dispute procedures so they are implemented correctly. This could be following up compensation claims, monitoring the use of overtime or investigating accidents.
- Being accessible to members, listening to their concerns, answering their questions and keeping members informed of progress on negotiations or grievances.
- Educating the workforce on rights, responsibilities, protections, health and safety, equal opportunities and changes to working practices.
- Conducting formal and informal meetings to involve members in decision-making; preparing and giving reports and speaking in public on fundamental workplace issues.

Legitimate versus “yellow” unions

A yellow union, a workplace collective group or association sponsored, controlled and often financed by the supplier’s company or its managers, may appear to be structured to represent workers, but is not based on employees’ free choice. These may also be called ‘white unions’, ‘pocket unions’ or ‘paper unions’.

Although yellow unions usually take the form of associations within a single company, national unions in some countries may also work with employers to hinder or block the efforts of genuinely representative worker organisations. An employer may sign a collective agreement with one of these ‘non-aggressive’ unions without the workforce’s knowledge or consent.

Such ‘sweetheart agreements’ or ‘protection contracts’ generally involve the employer paying fees to the union and agreeing a minimum legal level of wages and working conditions, in return for the union guaranteeing not to intervene in the company’s affairs. The fees usually take the form of compulsory deductions from workers’ pay as ‘union dues’, without any consultation with workers.

Supplier deals with such sponsored and controlled unions prevent genuine unions from representing the rights and interests of the workforce effectively. ILO Conventions outlaw such arrangements and stipulate that the ability to freely choose a union is a fundamental worker’s right and not a matter for employers.

Management communications tools such as worker satisfaction surveys and suggestion boxes are no substitute for direct dialogue between workers and management.

Management-appointed ‘worker representatives’ are not an indicator or guarantee that workers are free to raise collective concerns and have no role in ensuring

freedom of association. Unless workers can freely choose their own spokespeople, the process lacks credibility.

Trade union membership

Trade unions represent the ideal model and structure for worker representation; independent unions have legal protection, access to resources and the support of wider trade union networks and are free from employers' influence. They are also the only genuine and measurable expression of the human right of freedom of association.

Where freedom of association is restricted and where trade unions are restricted through law or resources, the best available form of independent worker representation should be pursued. However, the longer term aim should be to help promote the conditions that will allow for normal union activity.

Companies should be aware that any alternative to trade unions requires a greater commitment to compensate for the lack of union status – for example, greater use of leverage to offset:

- Lack of legal protection
- Greater provision of capacity building support, such as access to information and training
- The lack of union networks and strict requirements for the employer to respect the rights of representatives to speak and act freely and equally in representing the workforce.

Alternate forms of representation

Recognising that there are situations where unions face significant challenges to carry out 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.

On the contrary, steps should be taken to help build social dialogue, develop worker and employer industrial relations skills, support engagement with unions and build the relations that will enable full representation. This not only helps workers access their rights but reduces the risk of disruption.

Workplace cooperation forums or committees

The ILO guidelines for worker participation or cooperation forums and committees are mainly found in its Recommendations – listed with links in the recommended steps in this document. While they can promote effective consultative and cooperative practices between employers, workers and trade unions, they are not a substitute for collective bargaining.

A critical difference between a workplace committee and a trade union is that committees have little or no decision-making powers in negotiations with employers and are not supported by the resources and guidance available from a trade union.

Trade unions seek to negotiate and agree resolutions on workplace and employment issues on an equal standing with employers. Committees can therefore make proposals or recommendations to managers on behalf of workers but may not be able to influence the outcome.

The role of social dialogue

The main goal of social dialogue itself is to promote consensus-building and democratic involvement among key stakeholders in the world of work. It provides a positive and constructive pathway to resolve workplace issues, or bring together diverse parties to commence dialogue and find solutions to challenges.

Social dialogue in the workplace is about establishing formal or informal processes that enable workers and employers to negotiate or consult collectively on issues concerning their rights and responsibilities and resolve conflicts peacefully and effectively. It enables workers and managers to “skill up” to be able to overcome barriers of communication and skills required to enable effective mature industrial relations.

Social dialogue 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.

Social dialogue is enshrined in the International Labour Organization’s (ILO) Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)¹.

Social dialogue in a workplace is dependent on respect for the fundamental rights of freedom of association and collective bargaining, independent workers' and employers' organisations and the political will and commitment to engage in social dialogue on the part of all parties.

Collective bargaining

The ILO’s Collective Bargaining Convention, 1981 (No. 154) defines collective bargaining (CB) as, “all negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations.” It typically only takes place where there is provision under law for trade union activity.

According to Convention No. 154, the term “collective bargaining” covers negotiations related to:

- Determining working conditions and terms of employment; and/or
- Regulating relations between employers and workers; and/or
- Regulating relations between employers or their organisations and a workers’ organisation or workers’ organisations.

In unionised workplaces, trade unions act as the formal representatives of workers for the purposes of collective bargaining. In the absence of formal unions, workers’ interests may be raised by elected worker representatives.

Scope of collective bargaining

The scope of collective bargaining – whereby worker representatives or trade unions formally negotiate improved conditions of employment with employers, on behalf of workers – includes all matters related to an employee’s pay, labour conditions and employment, such as wages, benefits and allowances, working time, annual leave, training, equal opportunities and trade union facilities.

Collective bargaining builds on freedom of association and is typically the practical focus of worker representation efforts. It is a fundamental workplace right, rooted in the ILO Constitution and reaffirmed in the ILO Declaration on Fundamental Principles and Rights at Work.

The formal process of dialogue between workers and managers:

- Enables workers to articulate and negotiate their terms and conditions of employment through their trade union
- Is a key means through which employers and worker representatives, ideally trade unions, can establish fair wages and working conditions
- Provides the basis for sound labour relations and early resolution of disputes.

Collective bargaining builds on freedom of association and is typically the practical focus of worker representation efforts. It is a fundamental workplace right, rooted in the ILO Constitution and reaffirmed in the ILO Declaration on Fundamental Principles and Rights at Work.

Collective bargaining agreements

Collective bargaining agreements may or should also address the rights and responsibilities of the supplier and elected worker representatives involved, in order to help achieve harmonious, productive industries and workplaces. Enhancing the inclusiveness of collective bargaining and collective agreements is a key means of reducing inequality and extending labour protection.

At the global level, international framework agreements (IFAs) – also referred to as global framework agreements (GFAs) represent the chief mechanism through which to manage trade union relationships.

Brands and retailers may enter directly into agreements with trade unions to facilitate worker engagement in the due diligence process and through grievance procedures.

Examples of direct agreements with trade unions include freedom of association protocols, global framework agreements (GFAs) and company agreements:

- IFAs/GFAs are agreements negotiated at a global level between a company and a global union federation. They serve to uphold workers’ rights across a company’s operations and supply chain by implementing standards on trade union rights, health, safety and environmental practices and quality of work principles, regardless of the standards existing in a country.
- Freedom of association protocol agreements establish a joint understanding and commitment between trade unions and companies regarding strategies to

promote freedom of association as part of improving industrial relations within a given context. They may be established locally between a single company, supplier and trade union, or at a regional or sector-wide level between a group of companies, suppliers and trade unions.

Beyond the efforts of individual companies, global sector agreements between a group of companies and trade unions may also be established to address specific-sector risks through collaborative initiatives.

Workplace representatives should be protected under national law from unfair acts or dismissals.

ILO Convention 135

Benefits of negotiation

The process of joint decision-making inherent to collective bargaining is distinct from other forms of governance such as government regulation, individual contracts and/or the unilateral decisions of employers. However, the value of good faith negotiations between trade unions and employers should not be underestimated. In the workplace, they can foster a commitment to help workers improve their skills, improve pay and conditions and provide greater employment security, which in turn boosts productivity and reduces the costs related to high staff turnover. Bargaining in good faith also means that each party should make every effort to avoid any unjustified delays in reaching agreements.

Employers should share relevant financial information about the company's economic position, in order to allow workers to engage in negotiations effectively. Agreements should be binding and implemented at a minimum throughout the term of the agreement. Failure to implement collective agreements undermines the principle of good faith.

A critical difference between a committee and a trade union is that committees have little or no decision-making powers in negotiations with managers, whereas trade unions seek to negotiate and agree resolutions on an equal standing on behalf of their members.

Agreements, protocols and research tools

Wage Indicator Foundation: database of collective agreements from 54 countries. Also includes sample agreements and country models.

Indonesian Protocol: A sector agreement on Freedom of Association.

IUF Global Union: database of Global Framework Agreements with multinational companies.

IndustriALL Global Framework agreements with multinational companies.

Country collective bargaining references

International centre for trade union rights (ICTUR) FOA and CB map (ICTUR is an international NGO that brings together a global network of expertise on international

law, trade union rights, human rights, and industrial relations): [Interactive decent work map](#)

Additional ILO resources: [Collective bargaining and a fair society](#)

Women, discrimination and worker representation

In emerging economies, women are typically the most vulnerable workers. Entrenched social and cultural perceptions of gender roles can result in discriminatory attitudes, with women often lacking access to education and training. And with a lower awareness of their rights and less support in their community, women often take on low-skilled, low paid work, with fewer or less workplace protections. For example:

- Globally, women represent less than 40% of employees, yet they represent 57% of those working on a part-time basis.
- Women are typically paid less for equal work. In developing countries, this has created a gender wage gap equivalent to US\$2 trillion in women's earnings, or the value of India's entire economy.
- Women are also more vulnerable to harassment and violence in the workplace. The ILO estimates that 35% of women globally have experienced direct violence at the workplace. Of these, between 40 and 50% were subjected to unwanted sexual advances, physical contact or other forms of sexual harassment.

Workplace discrimination

Similarly, when seeking to enable workers to associate freely and engage in collective bargaining, it is important to consider how best to ensure that women and men have equal opportunities to voice their concerns, particularly about sectors and types of work with large numbers of women workers. It is also important to establish who represents women workers and how their concerns are raised.

Women workers face barriers in participating in worker representation or taking on leadership positions. These include

- Gender stereotypes that cast men as leader and cultural bias that discourages women from aspiring to leadership positions or supporting women leaders.
- Limited opportunities to access with public spaces, travel or participate in social interactions, particularly men. This inhibits women's ability to attend meetings regularly and take prominent leadership roles.
- Domestic responsibilities make it particularly challenging to find the time, energy and alternative caring arrangements to engage in local worker representative work.
- Lack of awareness about the benefits of participation.
- Promoting the rights and protections of women workers in your supply chain helps to empower women to participate fully in their workplace and community

Gender equality, decent work and the sustainable development goals

In the context of decent work, gender equality can be defined as men and women having access to equal opportunities, being treated and paid equally, and benefitting equally from safe and healthy work environments. In particular, men and women should have equal opportunities to associate freely and engage in collective bargaining, develop their skills and progress in their careers, and enjoy a work-home balance. Women workers should also benefit from policies designed to protect pregnant women and new mothers.

Enabling women's representation in the workplace

Companies seeking to make progress on their ambitions and goals on diversity and gender equality in the workplace should help to ensure that freedom of association and collective bargaining activities are designed to include and support women. This can include the following:

- Reviewing supplier company policies and collective bargaining initiatives to understand how the supplier helps women to engage with their elected representatives or trades union. For example, you could identify whether the policies state a clear position on women's equality and the role of trade unions in advancing gender-sensitive solutions to work-related issues.
- Supporting women who begin organising and forge links with the trade union movement by raising awareness of the benefits of becoming union members.
- Promoting an inclusive environment through policy, codes of conduct, business relationships, awareness-raising and education initiatives, whereby women are free to:
 - Raise concerns without fear of reprisal
 - Gather freely to discuss collective concerns and ideas
 - Develop and participate their own programmes
 - Negotiate for pay, labour conditions and terms of employment and meet their needs.
- Investing in capacity-building programmes at worker, supervisor and management level, in order to help women advance in the workplace and voice their concerns to union representatives.
- Building the awareness and capacity of suppliers on the role of elected worker representatives - both men and women - to better understand and address gender issues in the workplace. For example:
 - Equal pay for equal work and pay that reflects the worker's role, experience and skill level
 - Maternity leave and workplace considerations for pregnant women (e.g. offering convenient shifts and avoiding tasks or situations that could be detrimental to her health, such as heavy lifting or long periods of standing).
 - "Return to work" policies and workplace arrangements - either after pregnancy or for women returning to work after a longer absence
 - Development and promotion opportunities for women
 - Sufficient provisions for health concerns, such as work-related issues relating to fertility, menstruation (including the provision of sanitary hygiene disposal facilities), menopause, breast cancer or hysterectomy.

- Policies to prevent sexual harassment and violence against women in the workplace
- Efforts to help women balance their domestic responsibilities with work.
- Encourage women-only spaces such as a women's committee within a mixed gender trade union, or a gender committee in the workplace, so that women can discuss the issues that matter most to them.

Training

Where there is a trade union or an independently elected worker representation group that is able to undertake training on workplace gender-related issues, this union or group can play a role in communicating with workers, educating the workforce and solving issues on the ground. They will also be able to collect information on recurring problems affecting women, such as sexual harassment or chemical safety. As elected representatives, they could help to design confidential surveys on workers health and safety concerns, and raise awareness of new initiatives and campaigns.

JETI's Social Dialogue Programme in Bangladesh holds pre-election awareness raising for women followed by additional women representative training.

Gender occupational safety and health

In the workplace, personal protective equipment and machinery are typically designed and sized for men. Gender Occupational Safety and Health (GOSH) is an approach to workplace health and safety that considers both male and female workers' needs. Elected representatives or the workplace trade union can help to educate the workforce on this approach, promoting and advancing gender-specific initiatives. This could include:

- Establishing whether there is a trade union or elected representative health and safety consultative structure in the workplace that covers all worker needs including part-time, contracted and temporary workers.
 - Is there a Sexual Harassment Complaints Committee?
 - If there is, are women's concerns regularly identified and discussed at this consultative forum?
 - Understanding whether health, safety and wellbeing risk assessments take account of the worker's gender and associated implications (e.g. are women workers engaged in heavy lifting)?
 - Assessing work stations, equipment and personal protective equipment through a gender lens.
 - Including women's wellbeing as a key topic for consultative forums, with elected representatives raising awareness of the importance of and negotiating with managers for new or improved facilities for pregnant women and new mothers (and their children).
 - Checking whether risks of violence assessed, including concerns about women working alone on or off site, or late into the evening, and whether they access to safe parking or transport home.
 - Asking the supplier whether they recognise that domestic violence affects workers' wellbeing in the workplace, and should be treated with sensitivity as a workplace health and safety issue?

Definitions

Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No.87)

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Such protection shall apply more particularly in respect of acts calculated to:

- make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
- cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Workers' and employers' organisations shall enjoy adequate protection against the acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Workers' Representatives Convention, 1971 (No. 135)

Convention concerning Protection and Facilities for worker representation. The convention outlines the protection of workers' representatives or union membership and defines who a representative is and their role:

- 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 in the country concerned.
- trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or
- 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 in the country concerned.

ILO Declaration on Fundamental Principles and Rights at Work (1998)

In 1998, the ILO adopted the recognizing that all member states, even if they have not ratified the relevant conventions, have an obligation to give effect to rights guaranteed in eight fundamental conventions.

The ILO Declaration on Social Justice for a Fair Globalization of 2008 & the Global Job Pact of 2009

The declaration is the ILO's mandate to promote social justice using all the means available to it, including the promotion of international labour standards. The Declaration institutionalizes the Decent Work concept developed by the ILO since 1999. Decent work involves opportunities for work that are productive and deliver a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (the MNE Declaration) provides guidance to MNE's, governments, employers' and workers' organizations in relation to employment, training, working conditions and life, and industrial relations. The declaration was updated in January 2017 and now includes in addition to an interpretation procedure a dispute resolution mechanism.

Consultation (Industrial and National Levels) Recommendation, 1960 (No.113)

The government is expected to promote effective consultation and cooperation; The processes for cooperation must be without discrimination against trade unions or any other persons; Consultation and cooperation does not act against or detract from Freedom of Association or the rights of trade unions to bargain collectively for workers; The Objective of consultation is to promote mutual understanding and good relations to improve conditions of work and living standards for worker's families and there should be laws to protect these rights,

Universal Declaration of Human Rights (1948) Article 20 (1)

Everyone has the right to freedom of peaceful assembly, association and the right to join a trade union.

International Covenant on Civil and Political Rights (1966) (ICCPR) Article 22

Provides that the right to freedom of association and includes the right to form and join trade unions.

Cooperation at the Level of the Undertaking Recommendation, 1952 (No.94)

The employer shall promote consultation and cooperation on matters of mutual concern that are not within the scope of collective bargaining for terms and conditions of employment; Cooperation can be established by voluntary agreements between workers and employers and the government can enact laws to promote the establishment of committees.

International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)

Article 8

Obliges state parties to ensure the right of everyone to form trade unions and join the trade union of his (or her) choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social. It also provides for the right to establish national federations or confederations and the right of the latter to form or join international trade-union organizations and the right to strike.

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR)

This is an international treaty that allows victims of violation of economic, social and cultural rights, to present complaints at the international level. When people cannot access justice in the courts of their country for violations of economic, social and cultural rights (ESCR), they can bring a complaint to the UN Committee on Economic, Social and Cultural Rights (CESCR). The Optional Protocol includes three procedures:

- A complaints procedure
- An inquiries procedure
- An inter-State complaints procedure

The UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights, applicable to all states and business enterprises, require states to protect human rights and fundamental freedoms against actions of non-state actors, including corporations. Companies are obliged to respect people by avoiding infringing on the human rights of others and addressing adverse human rights impacts they are involved in.

UN Global Compact

Principle 3: Businesses should uphold freedom of association and the effective recognition of the right to collective bargaining;

The OECD Guidelines for Multinational Enterprises

Chapter 5 on employment and industrial relations has 7 stipulations outlining organizational behaviour towards workers, one of which that that enterprises should respect the right of workers to join and establish trade unions and the right to collective bargaining;

Decent work and the Sustainable Development Goals

Goal eight of the 2030 Agenda calls for the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work. Key aspects of decent work are embedded in the targets of the other 16 goals of the SDG's. During the UN General Assembly in September 2015, decent work and the four pillars of the Decent Work Agenda became integral elements of the new 2030 Agenda for Sustainable Development.

Just transition and environmental sustainability

The concept of a Just Transition builds on the Decent Work principles and viewed through an environmental sustainability lens. The narrative addresses the impact of climate change on workers in view of extreme weather patterns, migration, natural disasters and technological interventions.

Useful resources

- [ILO web portal for Freedom of Association](#)
- [The benefits of international labour standards](#)
- [ILO web portal for the SDGs and Decent Work](#)
- [Ergon Associates report on Freedom of Association and development](#)
- [Working for the economy: The economic case for trade unions \(Greenwich Universi...](#)
- [Achieving Decent Work and Inclusive Growth: The Business Case for Social Dialog...](#)
- [Advantages of labour organisations for small businesses](#)
- [Hazards “The Union effect”](#)
- [Tripartism and the scope of harmonious industrial relations \(Bangladesh\).](#)

FOA, CB and worker representation indicators

Following is indicators for FOA, CB and worker representation. If you have done some mapping or risk assessment (desk top risk assessment, self-assessment questionnaires or audits) before, you probably have much of the information. The information you have about countries or suppliers could be organized in Excel-sheet or other systems.

See the tool “Mapping and managing of Freedom of Association(FoA), Collective Bargaining (CB) and Worker Representation (WP)”

Country information

Has the sourcing country ratified the ILO conventions on FOA, CB and worker representation?

YES: There ought to be local law governing how workers elect and represent themselves.

NO: Do workers have any other means of voicing their concerns?

Are trade unions restricted under law in the sourcing country?

YES: On site, how do workers represent themselves and are there formal or informal ways of raising concerns with employers?

NO: Local law outlines how trade unions are constituted, the percentage of workers needed to form a union, and the rules for collective bargaining. Is there a history of disputes and conflict?

YES: What sort of conflict has there been and how has the issue been resolved? Is this a repeat conflict related to recognition of a worker representative group, breakdown of negotiations related to a bargaining agreement, or employer interference with elected representatives or trade union officials?

NO: It would be useful to research media and labour NGO reports and verify the findings with workers and trade union networks off site. Evidence of harmony and open dialogue will be reflected in records of issues raised and resolution, minutes of meetings and worker testimony.

Site / supplier information

Is there a published policy on freedom of association and collective bargaining for the supplier/site?

YES: How is this measured, monitored and governed? Is there detail of the recognised trade union and are workers' rights referenced in the supplier's annual or CR reports?

NO: Invest in awareness-raising and supplier training on the benefits of allowing workers to freely associate, along with the business value of independently elected representatives.

Does the supplier/producer raise awareness of labour rights and protections?

YES: Establish how is this done (posters, e-applications, pocket cards etc) and request evidence.

NO: Identify opportunities to highlight the benefits of workers knowing their rights and protections. Invest in encouraging and educating suppliers on the types of media and resources available.

Have workers contributed ideas and solutions to production practices that have improved the workplace?

YES: How has this been communicated? Is there a process for dialogue?

NO: Suggest a survey of workers to explore processes or conditions to introduce the idea of worker participation and consultation on site.

Do managers and workers meet to discuss workplace policy and practice?

YES: How often and is this formal or informal – is there a record trail for evidence purposes? What sort of topics are covered and do workers contribute to the agenda?

NO: Consider introducing the supplier to initiatives and programmes such as the ETI Social Dialogue programme for factories or, for example, the ILO Score initiative. Share your findings from other sites and initiatives.

Are there worker forums or committees on site?

YES: How are they constituted? What do they discuss? Who decides what is to be discussed? Are the workers selected by management or elect by the workers? Is there a mechanism or process on site to train workers on workplace practices – such as health and safety practices and policies?

NO: Encourage the practice of elected rather than selected worker reps. How do workers engage or raise issues with management or supervisors? Consider encouraging a mechanism or process on site to train workers on workplace practices – such as health and safety practices and policies?

Does the supplier/producer have a trade union agreement or if unions are not permitted by law, a relationship with elected worker representatives?

YES: There should be an audit trail for:

- Name and affiliations of the trade union
- Whether the representatives were elected or selected
- Frequency of elections
- Worker education process
- Whether there has been a secret ballot or a “show of hands”

- Number of representatives per worker
- Gender balance
- Number of workers who voted.

NO: Consider introducing and encouraging education and awareness-raising around workers' rights, in order to promote workers' right to freely associate and choose peers to represent their concerns.

Are workers free to form or join a trade union of their choice?

YES: Does this cover ALL workers or only certain categories – e.g. women, men, contract, seasonal, local and foreign migrant workers.

- The percentage of workers belonging to the union
- The name of the union
- Affiliations: independent, national or sector federation, or global union federation.

NO: This will depend on the legal provision in the sourcing country and whether the site is situated in an economic processing zone.

Where permitted by law, raise awareness of the benefits of workers accessing their rights and protections.

Is there a collective bargaining agreement?

YES:

- How is this communicated to the workers?
- When is it negotiated?
- What period does it cover?
- Whom does it cover?
- What percentage of workers is covered by the CBA?
- What is the scope of the agreement (pay, terms and conditions, dispute resolution etc)?

NO: If there is an elected trade union on site but no agreement, it could indicate a fraudulent claim. Investigate further with, affiliations to local trade union groups, national TU centres, the ITUC, other global union federations and local labour NGOs

How often do you hold meetings with trade unions or worker committee representatives in your workplace?

YES: What type of issues are discussed and is there a documented continuous improvement process and a record of decisions made?

NO: If there is no regular meeting, there will be scope to introduce the idea of regular meetings. Including worker representatives, invest in developing an agenda for meetings and explain the importance of notes and decision records for audit purposes.

Do worker representatives have paid time off for union duties?

YES: This will be verified through conversations with the representatives and should be included in the bargaining agreement.

NO: The business case for worker representatives will be pertinent to this discussion. It would also be useful to determine roles and responsibilities – this will give an indication of the time worker representatives may require for their duties.

Do worker representatives receive training?

YES: What sort of training – for example, does it cover local labour law, grievance procedures or health and safety? Practical skills on time management, dispute resolution, and presentation may also be included.

- Training may also be available from a recognised trade union or worker committee support group.

NO: In respect of maturing industrial relations, it would be an investment to develop the skills of elected workers so that they can represent members effectively.

- Where there are no representatives, there is also a case for developing overall training on basic issues such as election processes, setting agendas or health and safety.

Are union meetings held during working hours and on the premises?

YES: If the audit trail of agendas, collective bargaining agreements or minutes of meetings confirms that meetings are held, it may be useful to establish if they are free from interference or surveillance from managers and supervisors.

NO: It would be good to establish from the worker representatives why this is the case, where meetings are held, how documented and if this is their choice.

- If there is an indication of fear or harassment, this should be raised with the supplier in a sensitive way, and an action plan established to remediate.

Have worker representatives brought forward solutions that have been implemented and monitored? (For example, suggestions to address absenteeism, manage change, or improve safety or productivity).

YES: Gather data on the effectiveness of worker representation and the value they bring to your supplier's business. The findings can be used to promote good practice among other suppliers.

NO: Are there opportunities to involve worker representatives in future discussions? Opportunities could include new production methods, changes to local regulation or even restructuring.

- Number of disciplinaries or grievances raised by workers in the last 12 months?
- How many of these were resolved? How do workers raise a grievance or concern?
- If a pattern of grievances emerges or no action is taken, investment in developing a corrective action plan that involves workers and their representatives should be proposed.

Has there been any industrial action over the last 12 months?

YES: Is there a process in place to avoid action? What was the cause? How was it resolved?

NO: If there is a record of industrial action with no resolution, there must be an investigation into the matter and an investment made in remediation or dispute resolution, involving worker representatives or trade unions.

Entry points to worker representation

There are three key entry points to enable mapping of working representation in supply chains, supported by suggested activities to progress independent and effective worker representation.



2. Freedom of Association and the Right to Collective Bargaining
(ILO Conventions Nos. 87, 98, 135 and 154)



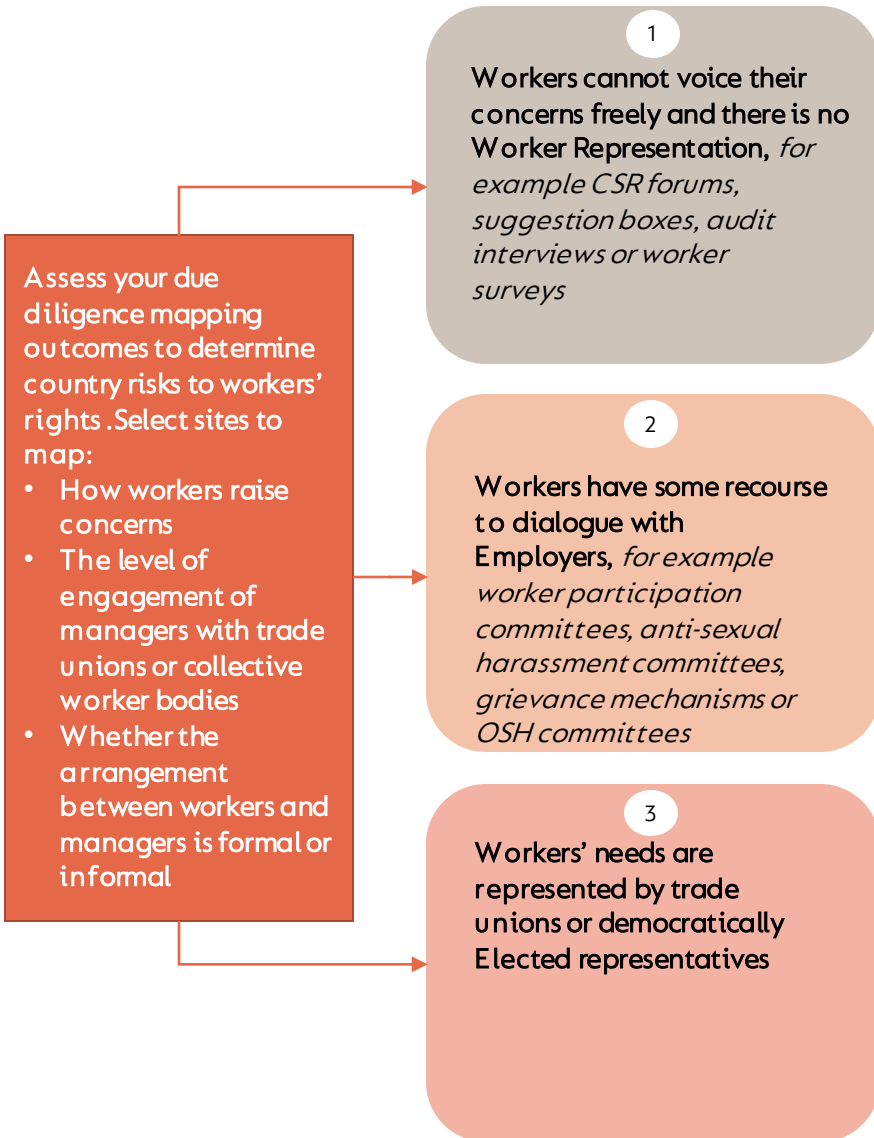
For workers' rights. For better business.



Suggested mapping entry points and indicators

What this means	Where you may find this	What this could look like on site
<p>1</p> <p>Workers cannot voice their concerns freely and there is no worker representation</p> <p>The agenda for events or interactions led solely by employers is typically set without staff or elected representative input, or consultation. They are not designed to address specific workplace or industrial relations matters. There is no legal protection nor anything binding in their terms of reference. Accountability is often assigned to the event convener and in some instances, there is little or no policy audit trail. Worker engagement efforts (despite their limited nature) may be part of an umbrella policy linked to indicators on sustainability, non-financial reporting, social impact of business and transparency</p>	<p>Stakeholder engagement, auditing and verification, selfassessment questionnaires and CR or sustainability forums.</p>	<p>Whether worker representatives are elected, or staff are selected to attend. The agenda for meetings is developed by managers (or higher levels). Meeting facilitation may be conducted by external experts.</p>
<p>2</p> <p>Workers have some recourse to dialogue with employers</p> <p>Typically, these are informal, even philanthropic in nature, with an agenda designed without staff or elected representative input or consultation. There may be legal or regulatory requirements for this to be done (for example, in relation to factory safety) but there is no binding mechanism protecting workers from reprisal. Workers may be selected to participate or may be asked to volunteer. Engagement takes place based on the principle of good will. There is little or no accountability feedback loop to prioritise worker wellbeing, pay or employment terms and conditions. There is an element that could be used as window dressing. In some instances, where fundamental worker rights are not acknowledged, companies may develop policy and mechanisms to engage formally with the workforce.</p>	<p>Standalone grievance mechanisms, worker surveys, participation committees, workplace committees for safety, health, equalities and learning.</p>	<p>Whether representatives are elected, or staff are selected to attend. Little or no ownership or accountability. Little or no feedback loop. Decisions made do not change workplace practices or conditions. No evidence of preconsultation.</p>
<p>3</p> <p>Workers' needs are represented by trade unions or democratically elected representatives</p> <p>This is based on accessing globally accepted workers' rights (ILO conventions), protocols and goals (e.g. SDG 8 with particular reference to pay, terms and conditions in workplace). A newly established process will typically feature implementation of freedom of association, collective organising in a workplace with free elections of officials. Agendas will be developed and determined by workers on matters pertinent to them and formal documented meetings will be established with managers. Collective bargaining agreements may include any and/or all elements of the worker experience - ranging from pay and productivity arrangements to employment status. Agreements should apply to all workers contributing to workplace production (permanent, agency, seasonal and temporary).</p>	<p>Social dialogue initiatives, worker representation committee and/or trade union meetings, bargaining or safety committees.</p>	<p>Signed agreements between worker bodies and managers. Formal arrangements for meetings, election processes, registration of the worker group, bargaining agendas, wage consultations, decrease in staff turnover, decrease in industrial action, better health and safety performance. Effective conflict resolution.</p>

Developing the strategy and action plan



Initiate, promote and communicate: Initiate conversations with suppliers, promoting the value of worker representation and communicating your requirements, vision and intent. Through your continuous improvement activities:

- Review onboarding processes and codes of conduct with clear communication of expectations on freedom of association, collective bargaining and worker representation
- Request specific information on how workers raise concerns, how this is remediated or fed back to workers; this could be included in self-assessment questionnaires, third party audits and factory visits
- Establish if there is worker participation in decision making or consultation on workplace issues that affect or impact workers
- Invest in education and training for suppliers

Evaluate, scale and skill up: Evaluate the **scope and depth** of engagement between workers and managers

- Capture site evidence of the positive contributions of workers to the business, including improvements in and to the business (reduced absenteeism, increased production and/or reduced health and safety incidents and accidents). Share internal evidence you gather with other sites in your supply chain
- Where there are existing forums or committees invest in worker and managers skills development such as social dialogue techniques, presentation and consultation skills or election processes
- Where there are active trade unions the above could be developed in conjunction with them

Develop, strengthen and mature: Develop an understanding of the site's consultation or negotiating processes, including when wage negotiations take place, the length and scope of collective bargaining agreements, or how workplace disputes are raised and addressed. Document through mapping, the site trade union including sector, national and global affiliations

- Strengthen the formal worker and employer relationship through investing in skills and knowledge development – for example, global framework agreements (GFA), new or changes to local labour regulation and grievance mechanisms. For larger multinational companies where there is a GFA, invest in educating and promoting the agreement among more sites or countries
- Build relationships with trade unions or labour organisations and participate in industry or country interventions on worker rights, for example the ACT initiative, suppression of worker rights or harassment of trade union or elected representatives

Beyond Audit

Companies, if they are to manage risk, need to have confidence in the working conditions of the people who produce the goods they sell. Audits can help with this, but their scope is limited. To meaningfully improve labour standards, audits must be used other tools to identify and manage negativ impact on people and planet.

Since the mid-1990s, retailers and brands have commissioned audits of their suppliers' workplaces in a bid to prove to consumers, investors and campaigners that their products are 'ethical'. Yet standards vary and outcomes can be questionable.

Huge amounts of money and time are spent on audits by brands and their suppliers, which business representatives themselves have agreed can be "duplicative and not necessarily lead to change".

We still see workers bullied and harassed – and having to work long hours for very low wages. Audits can also miss key issues such as discrimination against minority groups or management resistance to allowing workers their right to freedom of association.

In particular, audits can become a box-ticking exercise if they are driven by the desire to certify a site for sourcing, rather than genuinely trying to assess the situation for workers. Time and again, we hear of audits having little 'real' involvement with workers, and the companies that commission them not investing in high quality follow up.

Ethical Trade Norway is not an auditing organisation. We do not offer stamps of approval. Rather we ask members to evidence their clear commitment to improving ethical trade in their yearly reports to us – and to demonstrate continuous improvement over time.

Audit methodology concerns

Audits alone can fail to reveal a full or true picture of what working conditions are like. It is important to note that:

- Audits represent a snapshot of a given point in time – they may not represent normal working conditions, particularly if they are pre-announced. In other words, audits give companies a one-dimensional view, when human rights risks are, by their very nature, complex and not likely to be revealed willingly.
- Standard audits rarely dig deep enough to discover the root causes of workers' rights violations, nor assess the risk of future violations. A typical audit might highlight a lack of personal protective equipment (PPE), but the reasons why may not be revealed. Yet such understanding is essential to identify the actions required to ensure better take up.

- The worst forms of human rights violations such as child labour or modern slavery are well understood to be ‘hidden crimes’ and are highly unlikely to be picked up by audits.
- Suppliers too, complain about the amount of audits they have to go through. Anecdotally, we have heard of some factories being audited up to 14 times in a single month by different brands. This has contributed to so called audit fatigue, resulting in a lack of engagement.
- There are also concerns about audit fraud: of managers falsifying records on wages paid and hours worked – sometimes with the connivance of unscrupulous auditors; or of workers trained to provide the ‘right’ answers when asked how they are treated.
- What’s more, if audits are primarily technical in nature, they encourage a compliance mentality. Brands put pressure on suppliers, rather than acknowledge their obligation to engage with supply chains responsibly or adopt a longer term relationship which can address systemic issues.

The primacy of due diligence for responsible business conduct

Due diligence for responsible business practice goes beyond simple compliance. The Ethical Trade Norway approach to due diligence is based on [UN Guiding Principles on Business and Human Rights](#) and [OECD Due Diligence Guidance for Responsible business](#). They demand that business finds out about the risk to human rights by investing in a more inclusive due diligence approach i.e. through understanding, prioritising, mitigating and reporting on risk.

Brands, which are most successful in improving labour standards, always use due diligence supplemented by well-run high quality audits. This helps companies understand the action they need to take, and is better for workers and for businesses.

For new products or new geographies, an inclusive due diligence process is also the best way for gathering baseline data, or as a starting point when a company is at the beginning of its ethical trade journey.

Depending on what is found through detailed analysis, there may be a need for specific support to improve systems. Although, when a situation is one where a supplier has good conditions, strong systems and a high level of transparency, then an ongoing audit approach may be adequate.

However if the baseline is weak, then lasting change requires work at a range of levels. It means grounding any action on improving labour standards, corrective and otherwise. It also includes, but is not limited to:

- Examining buying practices e.g. the prices and lead times companies give to suppliers;
- Helping suppliers build effective management systems, and;
- Encouraging suppliers to recognise and engage positively with trade unions, as a key enabler for improving workers’ rights more broadly.

The bigger picture

To drive sustainable improvement in their supply chains, companies must think about the bigger picture and not just take corrective action on specific issues.

They must engage with workers and their representatives directly to understand what labour rights issues are common within a country and region. They must also engage with supplier management to ensure values and actions are aligned and, on occasion, work with their peers to tackle the wider issues that can perpetuate poor standards.

It certainly means recognising that where specific problems are known to be endemic, a clean bill of health from an audit may well be incorrect and put the business at risk.

In short, audits can be a useful tool in the responsible business toolkit if used skilfully and appropriately. But, like any toolkit, there needs to be other tools appropriate for other tasks.

The skills auditors need

Based on our members' experience, good auditing teams should have:

- Male and female members — it is particularly important to embed diversity and that inspection teams include women where the workforce is predominantly female
- Knowledge and understanding of the production process, the materials used and how production records are kept
- An understanding of wage systems and record keeping
- Knowledge and understanding of the ETI Base Code, relevant local and international labour standards, applicable laws and regulations
- Knowledge and understanding of the local situation, including relevant local culture or customs
- Knowledge and understanding of health and safety standards and practice, including industry-specific standards and best practice
- The ability to speak the language/s used by the workers concerned
- The ability to record and report in a transparent and professional manner
- The ability to conduct effective interviews — particularly important with worker interviews
- The ability to detect non-verbal cues from interviews (for example, body language, facial expressions)

[The Supplier Ethical Data Exchange \(SEDEX\)](#) and the [Consumer Goods Forum](#) respectively have best practice guidance on how to choose auditors and guidance on assessing audits.