

ETI Forum



# FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

ETI Seminar, 9 March, 2005

## About ETI

The Ethical Trading Initiative (ETI) exists to identify and promote good practice in the implementation of codes of labour practice, including the monitoring and independent verification of code provisions. We are an alliance of companies, trade union organisations and non-government organisations (NGOs) committed to working together to achieve that aim. Our ultimate goal is to ensure that the working conditions of workers in companies that supply goods to consumers in the UK meet or exceed international standards.

The ETI Base Code is founded on International Labour Organisation (ILO) Conventions and has become a model on which other codes are based. ETI's Base Code can be seen in full on our website ([www.ethicaltrade.org](http://www.ethicaltrade.org)).

We were established in 1998 as an independent, not for profit organisation. We are funded by member contributions and a grant from the UK Department for International Development (DFID).

## About ETI Forum

ETI Forum reports on the key issues discussed at one of our events. ETI events – members' roundtables, public seminars and conferences – focus on ethical trade issues of topical interest or which have proved to be particularly challenging to our members. For example, we have held events on corporate social responsibility, homeworkers, corrective actions in code compliance, HIV/AIDS in the workplace and the role of temporary labour providers in the food and agricultural industry. These events give members and others the opportunity to learn from guest speakers and from each other, and to debate practical responses to the issues raised.

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# 1 Introduction

On 9 March 2005, ETI held a roundtable event for its members to discuss how companies can implement ETI Base Code Article 2: 'Freedom of Association and the Right to Collective Bargaining are Respected'. Nearly 50 participants attended the roundtable, comprising representatives from NGOs, trade union organisations, the ETI Secretariat and over 20 ETI member companies.

To coincide with this event, the ETI trade union caucus produced a guidance document on freedom of association and collective bargaining (*ETI Briefing: Freedom of association and collective bargaining guidance document, March 2005*). The document explains what the two rights mean, what typical abuses are, how companies can monitor them and what companies can do to promote them in countries where free and independent trade unions are prohibited by law. We recommend that this roundtable report is read in conjunction with the guidance document (see **Section 5: Further information**, below, for how to obtain a copy).

The report is structured as follows:

- **Section 2** explains why respect for the rights of freedom of association and collective bargaining are important, and why we decided to hold a roundtable discussion on the issue;
- **Section 3** highlights the main points made in the presentations;
- **Section 4** summarises discussions around key challenges for companies in implementing this Base Code article; and
- **Section 5** provides sources of further information.

## 2. Background and purpose of this event

'Against the power of employers, the individual worker has no bargaining power'<sup>1</sup>. Creating an enabling environment for workers to join together and negotiate for themselves is the most effective way of improving their conditions. It is the role of government to provide this environment. When they fail to do so, codes of labour practice that include the principles of freedom of association and the right to collective bargaining can help.

And the benefits of respect for the rights of freedom of association and collective bargaining are not limited only to workers. It can enhance business performance by improving worker satisfaction, decreasing staff turnover and improving productivity. In contrast, when freedom of association and collective bargaining are not respected, productivity is often low, quality can be poor and delivery schedules often unmet.

At the national level, research has demonstrated that respect for these rights helps promote sound economic development by ensuring that the benefits of growth are shared equitably and by promoting productivity, adjustment measures and industrial calm.

But what role should sourcing companies play in helping ensure the protection of these rights in their supply chains? How and to what extent should sourcing companies support good industrial relations within their supply companies? How can they find out if workers are free to join unions in cases where a workplace is not unionised? How can they tell a genuine

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<sup>1</sup> *ETI Briefing: Freedom of Association and Collective Bargaining Guidance Document*, p2.

*'The fundamental objective of the ETI Base Code and other ethical trading codes is to ensure respect for the dignity of workers throughout the supply chain.'*

ETI Briefing: Freedom of association & collective bargaining guidance document.

worker organisation from one that has been imposed by company management? What should their response be to managers that say ‘our workers are happy – they don’t need to belong to a union’?

We organised our roundtable event on *Freedom of association and collective bargaining* to provide a forum for listening to trade union experts, debating some of these tough questions and sharing experience in how companies have tackled them. The event helped answer some key questions about the extent of companies’ responsibility towards facilitating freedom of association and collective bargaining in their supply chains and, equally importantly, how they can go about fulfilling this responsibility.

## 3 Key points from presentations

### 3.1 Introduction

The roundtable was introduced and chaired by Tony Young, ETI’s trade union co-ordinator. Speakers from ETI were Neil Kearney, General Secretary of the International Textile, Garment and Leather Workers’ Federation (ITGLWF), Michael Pennant-Jones, then of Premier Foods, and Maggie Burns, ETI NGO co-ordinator and representative of Women Working Worldwide.

Manley M. Kwaala and Daines K. Lupande of the National Union of Plantation and Agricultural Workers (NUPAW) in Zambia also gave a presentation. They were visiting London as part of a delegation to the UK co-ordinated by Women Working Worldwide to build support for a Collective Bargaining Agreement (CBA) for the horticulture and floriculture sectors in Zambia.

The key points made in these presentations are summarised in the rest of this section.

### 3.2 Freedom of association and collective bargaining: an overview

**Neil Kearney, General Secretary, ITGLWF**

#### 3.2.1 Introduction

“It never rains but it pours” is an appropriate description of abuses of workers’ rights. Child labour, forced labour, discrimination, and poor health and safety conditions never happen in isolation: they are always clustered. Child labour goes hand in hand with bad working conditions and with health and safety hazards; discrimination with low wages and long working hours; and forced labour with every other abuse.

But, examined up close, all are linked and stem from the absence of freedom of association and of collective bargaining. Where freedom of association and collective bargaining exist it is rare to find child labour, forced labour, excessive working hours or wages below the legal minima.

#### 3.2.2 Freedom of association – an essential key

Freedom to associate with those of one’s own choosing, to achieve common ends, is a precious, invaluable right, nowhere more valued than where it is denied. While it is not always fully appreciated by democrats it is always fully understood by the enemies of

democracy. It is invariably their first target on the road to power, as witnessed by recent attacks on trade unions in Zimbabwe and Nepal.

Freedom of association is proclaimed in the Universal Declaration of Human Rights. It sits at the heart of international labour law through ILO Convention N°. 87 and is a requirement of the ETI Base Code. The importance of this right has been made very clear by the ILO since its inception and specifically in the 1919 Preamble to the ILO Constitution, the 1944 Declaration of Philadelphia, and finally, the 1998 Declaration on Fundamental Principles. This indicates that “all member states have an obligation to respect, promote and to realise in good faith, freedom of association and the effective recognition of the right to collective bargaining”.

(See Section 3, ILO Core Conventions and Section 4, ETI Base Code, in *ETI Briefing: Freedom of association and collective bargaining guidance document, March 2005*)

### **3.2.3 So what, in practice, do ‘freedom of association and collective bargaining’ mean?**

Article 2.1 of the ETI Base Code states: ‘Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively’. It also states: ‘Workers’ representatives are not discriminated against and have access to carry out their representative functions in the workplace’.

These rights apply to all workers without exception. And the use of the term ‘workers’ rather than ‘employees’ is important, as it means that these rights do not depend on the existence of formal employment contracts.

So, all workers have the right to establish and join trade unions of their own choosing so they can further and defend their own interests. Employers are also prohibited from preventing workers from belonging to the union of their choice.

As far as collective bargaining is concerned, ILO Convention N°. 98 requires the promotion of voluntary collective bargaining. Workers are entitled to bargain collectively, through their trade union representatives, with employers, and to reach agreement on terms and conditions of employment.

*“Employers should be prepared to bargain collectively with trade unions which represent significant groups of workers. And ‘significant’ does not mean it has to be the majority of the workforce. Artificial thresholds for recognising trade unions are contrary to the principles of the ILO Conventions”.*

Employers should be prepared to bargain collectively with trade unions which represent significant groups of workers on all matters relating to their terms and conditions of employment including pay, working hours, conditions of work, and other matters. Note that ‘significant’ does not mean that a majority of the workforce is required and artificial thresholds for recognition are contrary to the principles of the ILO Conventions. In addition, employers should provide sufficient information to union representatives to enable them to bargain collectively.

Denial of access to workplaces to trade union representatives represents a serious violation of freedom of association.

Many countries give additional rights or protection to trade unions and/or their workplace representatives including access to information and consultation on health and safety. However, despite these international standards and national laws, barely half the world’s

working population live in countries that respect freedom of association and less than half of the working population is covered by collective bargaining agreements.

(See Section 5, What do these rights mean?, in *ETI Briefing: Freedom of association and collective bargaining guidance document, March 2005*)

### **3.2.4 What is the impact of lack of freedom of association and collective bargaining?**

With half of the world's working population lacking the protection of these rights, the results are dire. Around the world, typical abuses are summed up by the 'three D's' – discrimination, dismissal and disinvestment. Examples of these abuses include lack of access for trade union members to employment or promotion opportunities; laying off trade union members from work, or closing down unionised factories. Below are just three examples of the impact of the lack of freedom of association and collective bargaining:

In the Bangladesh garment industry, the minimum wage, unchanged for more than ten years, now stands at about £12 a month. This is half what it was when first fixed. Twelve hour, seven-day working weeks are common and average labour turnover is huge. Health and safety hazards are enormous. Hundreds of workers have died in factory fires in recent years. Productivity is low and there has been limited economic development.

In Sri Lanka, most of the clothing industry is located in Export Processing Zones where the exercise of freedom of association is almost impossible. As a result, workers cannot afford to buy the products they themselves produce. Again, there has been very limited economic development.

In China, free trade unions are forbidden. The result is an economy based on low wages, long working hours, health and safety abuses and de facto forced labour. Productivity levels are low and labour turnover is high. One factory reported recently that only 43 percent of its workforce had returned to work after the Chinese New Year.

(See Section 6, Typical abuses, in *ETI Briefing: Freedom of association and collective bargaining guidance document, March 2005*)

### **3.2.5 Dispelling the myths**

Despite all these examples, it is still argued that the implementation of these rights:

- distorts the market
- impedes free commerce
- hinders economic development
- runs contrary to local culture.

Employers who are opposed to freedom of association and collective bargaining always begin by saying "We are not opposed to trade unions, but ...". Then all the objections come tumbling out. For example "trade unions are political!" is a common refrain in Sri Lanka and Turkey. "Trade unions are corrupt!" is frequently heard in Bangladesh. "Trade unions want to destroy enterprise!" is heard often in Sri Lanka where a common management fear is that the presence of a vigilant trade union in a workplace would end some of the cosy illegal

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arrangements entered into by the same management. “Our workers don’t want a union!” is heard almost everywhere.

When confronted with these arguments it is necessary to establish if they truly reflect the views of the workforce in question. How do we do that? The approach must be systematic. You need to establish the local climate on freedom of association and collective bargaining. What is the usual attitude of employers? You need to discuss this with employers and also with local trade unions and NGOs. Discuss attitudes with the workforce – preferably outside the factory. Avoid leading questions. Let workers speak for themselves. For example, you could ask ‘Was there ever an attempt to form a trade union? What was the outcome? What happened to the leaders?’

Frame questions around the ‘three Ds’: discrimination, dismissal and disinvestment. For example, as far as disinvestment is concerned, ask if there were ever threats to close the factory or reduce the workforce if freedom of association was exercised.

Where collective agreements are in existence, check their authenticity. What are the contents? How do they compare with minimum legal requirements? How frequently are the contents reviewed? What is the process for review? What information is provided to negotiators to enable genuine bargaining to take place?

So, what is actually needed to ensure compliance with freedom of association? Workers must be accepted as a key component of the workplace. The employer must determine to abide by national labour law and international labour standards as an absolute minimum, and better this where possible. Training for managers and workers is essential and employers need to commit to developing social dialogue.

### ***3.2.6 Five key elements in promoting FOA & CB***

- Commit to zero tolerance of breaches of any of the core labour standards. Accordingly, insist on full compliance with international labour standards relating to:
  - Freedom of Association and Collective Bargaining
  - Forced Labour
  - Child Labour
  - Discrimination
- Adopt an open and positive attitude to worker organising
- Insist on the provision of facilities for organising
- Ensure prompt recognition of trade unions
- Provide the necessary background information to enable the negotiation and conclusion of a collective agreement as soon as possible after the recognition of a trade union.

For full presentation notes please contact [adil@eti.org.uk](mailto:adil@eti.org.uk)

### **3.3 Establishing a collective bargaining agreement on horticultural farms in Zambia**

**Manley M. Kwaala, Deputy General Secretary and Daines K. Lupande, Regional Co-ordinator, NATIONAL UNION OF PLANTATION AND AGRICULTURAL WORKERS, ZAMBIA**

#### **3.3.1 Introduction**

There are 26 farms currently producing flowers and vegetables for the European market, including 7 main producers. A total of 70 percent of vegetables from Zambia are exported to the UK market. Under Zambian law, an employer with more than 25 workers has to enter into a collective bargaining agreement with a trade union. Unfortunately this usually does not happen and in some cases there is either open hostility to any interaction with trade unions, or watered-down agreements which give workers minimum protection.

#### **3.3.2 Key issues for workers**

Prior to this delegation to Europe, a workshop was held in Lusaka to enable workers and organisers to identify key issues on the farms. All of the main issues could be tackled with the introduction of freedom of association and a collective bargaining agreement. The issues identified were:

- Lack of a living wage. Average wages are not enough for the Ministry of Labour's 'food basket average'.
- Compulsory overtime.
- Lack of secure employment. Most workers are employed on a casual and seasonal basis.
- Lack of protection from pesticides, resulting in health problems. Re-entry periods not adhered to. Inadequate protective clothing, particularly for women. Polluted drinking water.
- Lack of freedom of association.

Some employers are hostile to union organisation and unions are only allowed to operate on a minority of farms. In all cases, employers are reluctant to enter into collective bargaining negotiations. The consensus was that if they had the right to organise and were able to negotiate a good collective bargaining agreement, unions could work to improve their conditions through dialogue with their employers.

#### **3.3.3 The situation with regard to collective bargaining**

A collective bargaining agreement exists between NUPAW and the Zambian National Farmers Union. However, this was established for small farmers supplying the domestic market and is weak on many issues, such as wage levels. It is not seen as appropriate for export production. Despite this, farmers still use this as a basis for arguing that they are abiding by a collective bargaining agreement.

#### **3.3.4 What is needed?**

NUPAW believes that a collective bargaining agreement needs to be developed specifically for export farms, that properly reflects the key issues in the export sector (see 3.3.2 above). NUPAW urges ETI member companies sourcing vegetables from Zambia to support this process by encouraging their Zambian suppliers to enter into discussion with NUPAW on developing such an agreement.

For further information contact Angela Hale, Women Working Worldwide or Sue Longley, IUF.

### **3.4 ETI member company case study: Premier Food's approach to promoting freedom of association and collective bargaining**

**Michael Pennant-Jones, then Technical Audit Manager, PREMIER FOODS**

#### **3.4.1 Trade unions**

Trade unions are the legitimate representatives of the workers. To understand a sector or industry you have to understand the characteristics, strengths and weaknesses of trade unions. Where there are strong and constructive trade unions operating you usually find the best labour standards. Trade unions are a good source of information and essential when undertaking audits and remedial work. This is even more the case when workers are vulnerable. If working effectively, trade unions allow continuous resolution of problems as they occur, rather than the usual three-year snapshot. As such, they are the ultimate auditor. Companies that avoid engaging with trade unions in ethical work can undermine their credibility in the workplace.

#### **3.4.2 Initiating work with trade unions**

- Do your homework. This means understanding the country, politically, socially and economically.
- Work through ETI trade union contacts to determine who and what resources are available on an international, national, regional and site basis. Find a level at which interaction is positive for unions, suppliers and you. I recommend meeting with the global trade union regional advisor (eg IUF) and keeping in touch afterwards. To build trust it will take more than just one visit. We also need to remember that their job is not to help ethical auditors and that a two-way relationship is required.
- Meet with the site or branch official and be transparent about who you are meeting. Offer them ETI annual reports and contact information and explain the tripartite structure and discuss union-employer mechanisms for resolving issues. Getting a feel for how the union operates will help you in future.

#### **3.4.3 Working with unions in East Africa**

We made contact with the representative of the International Union of Food Workers (IUF) in Geneva through ETI. In turn, he provided contact details of the IUF regional office in Nairobi. The IUF organised and facilitated a meeting with the General Secretary of the Plantation Union. Thereafter we met with the IUF representative a number of times over four years at their office and received practical advice and further contacts in other countries such as Tanzania, Uganda, Kenya. We updated them regularly, including providing them with ETI annual reports and newsletters on Premier's ethical programme.

Examples:

Supplier 1 had strong local and central organisational connections. Both the regional and the site union officials were very capable and aware of gender issues. Managers and union communicated frequently and the union was included in most site and company activity. *Unsurprisingly, Supplier 1 had excellent standards of compliance.*

At Supplier 2, the union official had weak support from central and regional union offices and was mostly marginalised from any site activity. No formal communication channels were available between the company and union. *Unsurprisingly, this site had abysmal standards throughout.* After an interview with the union shop steward it

was apparent that his knowledge was excellent and had previously brought up issues with management. An interview with the manager revealed a good attitude and knowledge. Unfortunately, he was constrained by a number of operational issues. We included both the manager and the shop steward in our concluding meeting and empowered them to work together to resolve outstanding issues. A significant improvement in standards was seen within one year and local formal systems were put in place to ensure future issues are discussed and resolved.

Examples of working with unions in India were also given – see full presentation notes.

#### **3.4.4 Working with trade unions – a fine balance**

It is not a company's job to improve the capacity or strength of trade unions and we have to tread a fine line between being a customer and working with suppliers and getting involved with union activities. However what we can do is to improve interaction and attitudes at the local level by encouraging formal interaction, such as site-specific works councils and including union officials on committees and in training. In summary:

- Remember, unions are the legitimate representatives of workers
- Do your homework and know the sector
- Work down through the correct channels
- Develop relationships and go out of your way to do so
- Be transparent
- Include unions in audits
- Include unions in structures that are put in place to facilitate change.

For full presentation notes please contact [adil@eti.org.uk](mailto:adil@eti.org.uk)

### **3.5 How can NGOs support the facilitation of freedom of association?**

**Maggie Burns, Trustee, WOMEN WORKING WORLDWIDE**

#### **3.5.1 Introduction**

If we are to ensure the protection of workers rights and conditions in global supply chains, two key areas need to be addressed:

- Workers must enjoy their rights to organise and bargain collectively and labour law must not be weakened to attract foreign investment or because there is pressure from the top of the supply chain to keep prices low.
- Labour law must be fully implemented in line with international labour standards.

We need to recognise that even in the UK, workers rights are abused. You only have to look at ETI's work on homeworkers and temporary workers to understand this.

#### **3.5.2 What is the role of NGOs in supporting trade union rights?**

- NGOs at a local level can support trade union efforts in organising workers by providing information, education etc.
- NGOs can lobby governments to ensure implementation of the core labour standards on trade union rights
- NGOs can campaign when workers' trade union rights are abused

- NGOs can publicise workers issues to give a voice to workers concerns.

**BUT we need to be clear that NGOs cannot represent workers – this is the role of trade unions.**

For full presentation notes please contact [adil@eti.org.uk](mailto:adil@eti.org.uk)

## 4 Key discussion points

### 4.1 Introduction

The workshop sessions aimed to provide participants with the opportunity to explore together some of the specific problems and challenges encountered with regard to freedom of association and collective bargaining. The following is a summary of the different views put forward by participants:

### 4.2 How can companies identify whether these rights are respected?

- You need to understand the culture of the organisation and the country concerned. For example, in India only five percent of the textiles and garment sector is unionised.
- A factory visit alone will not find out if rights to freedom of association and collective bargaining are protected. You need to talk to local groups, local unions and NGOs about the whole climate of the country, inside and outside the premises.
- It is difficult to find out whether workers are free to form or join unions when there is no union. If you find a workplace where this is the case and workers say they don't need or don't want to be in one, you should be suspicious. It usually means they've been briefed to say this by managers, and/or they've been told that if they say the wrong thing, the factory will lose its order.
- It is important to check the *legitimacy* of the union. Watch out for 'yellow' or 'white' unions (see *ETI Briefing, Freedom of association and collective bargaining guidance document*). Also, companies can formally recognise trade unions but they may refuse to sit down and negotiate with them or they may spend six months negotiating the first clause of the agreement.
- Be aware of paternalistic managers who are good to their workers but will not allow the formation of a union, as they believe that they are already 'on the side of the workers'.
- On the whole, company auditors are not asking the right questions. They need to give more emphasis to freedom of association and collective bargaining, and improve their line of questioning.

### 4.3 How do we encourage respect for freedom of association where there are apparently no trade unions?

- It is important to remember ETI's policy that companies should only support the development of parallel means for worker organisation when the government prohibits the operation of free trade unions. This is only true in very specific circumstances – for example, China, Burma, Vietnam, Syria, Cuba and most of the Gulf States.
- Companies should encourage their suppliers to be open to unions and facilitate their creation/operation but should not interfere with them or try to do their job for them.
- Companies, particularly when working together, can lobby governments to say 'we encourage trade unions'. For example, in Kenya, the government made such a statement

and within a couple of weeks, more than 20 thousand workers had signed up for union membership.

- Discuss labour standards up front, when negotiating a contract with a new company.
- Collect anecdotal evidence and use positive case studies and testimonials as tools for persuasion, (although the business case can be very different from one company to another).
- Develop an agenda of what a good worker education programme would look like, and show that to suppliers – in other words, facilitate worker training/education without actually doing it yourself.

(See also Section 8, Parallel means, *ETI Briefing, Freedom of association and collective bargaining guidance document*)

#### **4.4 How can we overcome supplier fear of trade unions in production sites?**

- Fear of the unknown is a real concern. Some managers are scared of being challenged about their own inadequacies. It is very important to understand power structures in the factory.
- Get briefed by trade unions. General union federations are usually willing to share information.
- It is important to explain to suppliers that if they don't promote freedom of association and collective bargaining, either your brand or theirs will be under constant threat.
- Suppliers can be terrified by the whole idea of trade unions. They need to be coached. It is important for companies to be given examples of good experiences of working with trade unions.

#### **4.5 What about Export Processing Zones (EPZs)?**

Special care needs to be taken in export processing zones where efforts are usually made by employers, some managers and even governments to exclude trade unions from organising and bargaining, even in countries where workers are free to organise and bargain elsewhere. It is often claimed that unions are not legally permitted in the zones. This is usually untrue. In many cases, for example, in Bangladesh, trade unions have not been prohibited in export processing zones though workers who attempt to organise or are elected to leadership positions do not have any legal protection. This is quite different from unions being legally banned. In almost every case there is nothing to prevent an employer recognising a union and bargaining with it.

## 5 Further information

*ETI Briefing: Freedom of association and collective bargaining guidance document, March 2004*

<http://www.ethicaltrade.org/Z/resrcs/subj/2-assoc/index.shtml>

*ETI Base Code and the accompanying Principles of Implementation*

<http://www.ethicaltrade.org/Z/lib/base/index.shtml>

*IUF/COLSIBA and Chiquita agreement on freedom of association, minimum labour standards and employment in Latin American banana operations*

Contact [adil@eti.org.uk](mailto:adil@eti.org.uk) for hard copies or visit [www.chiquita.com](http://www.chiquita.com)

*ILO Conventions relating to freedom of association and collective bargaining*

All conventions and Recommendations can be found in full on the ILO website at [www.ilo.org](http://www.ilo.org)

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