



Understanding Fair Wear's Approach to Social Dialogue

**Seeking Effective Implementation of
Garment Workers' Rights to Freedom
of Association and Collective
Bargaining**

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Understanding Fair Wear's Approach to Social Dialogue

Introduction

Workers are best placed to advocate for their own rights. In order to do this, they need the freedom to organise themselves, express their voices, and defend their interests. This is where freedom of association and collective bargaining come in. These rights are 'enabling rights.' That is to say, if these rights are respected, they pave the way for garment workers and their employers to address and implement the other standards in Fair Wear's Code of Labour practices – often without brand intervention. Not only that, but they are key rights that facilitate ownership and give the possibility to workers to express their voices and be heard.

Efforts to implement these rights therefore need to cut across all of Fair Wear's workplace standards. Yet these rights have proven challenging to implement. Workers' ability to organise and bargain collectively depends on local and global factors that often are beyond the influence of any single brand or rights initiative. There are also legal and practical barriers to these rights. Actors at various levels of the supply chain misunderstand or are unaware of what social dialogue is in practice, resist changes to the power imbalances that are supported by suppression of these enabling rights, and/or may even create obstacles for social dialogue through their own practices.

In the face of such obstacles, Fair Wear and various workers' rights initiatives have made fairly limited progress on these fundamental rights. With a new approach to social dialogue, Fair Wear seeks to redress this reality. Building on its work with strategic partners, CNV, FNV, and the Dutch Ministry for Foreign Affairs, and together with stakeholders, Fair Wear seeks to keep social dialogue at the centre of everything Fair Wear does. The process of shifting to this approach will evolve over the coming year. For now, this document explains steps that Fair Wear is taking now in order to: a) participate in broader efforts to develop systems for worker organising and negotiation that meet 21st century realities; and b) lay a clear and practical path for member brands and their suppliers – and most importantly the workers who make members' products – to more effectively realise workers' freedom of association and collective bargaining.

As background, this document first briefly overviews the relevant standards and explains the realities threaten these rights and then summarises Fair Wear's current work to address these realities. Please

note that is a living document – one that will be refined in discussion with Fair Wear stakeholders as we improve Fair Wear’s approach to this complex, yet fundamental, set of rights. Fair Wear looks forward to your feedback and advice and the ongoing enhancements that result.

Background

THE STANDARDS UNDERGIRDING FAIR WEAR’S WORK ON FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Fair Wear’s Code of Labour Practices (CoLP) forms the foundation of collaboration between Fair Wear and its members. Fair Wear’s CoLP is based on internationally recognised standards that have been set through tripartite negotiation. One of the standards in the CoLP is ‘freedom of association and the right to collective bargaining’, which states:

- The right of all workers to form and join trade unions and bargain collectively shall be recognised (ILO Conventions 87 and 98)
- The company shall, in those situations in which the right to freedom of association and collective bargaining are restricted under law, facilitate parallel means of independent and free association and bargaining for all workers; and
- Workers' representatives shall not be the subject of discrimination and shall have access to all workplaces necessary to carry out their representation functions (ILO Convention 135 and Recommendation 143).

Fair Wear’s CoLP standard aligns with the rights enshrined in various international agreements, all of which underscore that these are fundamental rights and critical to functional industrial relations. The Constitution and various Conventions of the International Labour Organisation (ILO) – as well as the ILO’s Declaration on Fundamental Rights and Principles – go a long way to defining and protecting freedom of association and collective bargaining. These fundamental rights are further recognised in the United Nation’s Declaration of Human Rights, as well as UN human rights Conventions and the OECD Guidelines for Multinational Enterprises. The international community is unambiguous in its recognition of these inalienable rights.

This document assumes its reader's familiarity with the concepts of association, collective bargaining, and social dialogue. For further clarification of these concepts and their basis in law, please see Fair Wear's forthcoming member guidance on freedom of association and collective bargaining.

TERMINOLOGY MATTERS: SOCIAL DIALOGUE, FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Fair Wear's CoLP focuses on freedom of association and collective bargaining. These are the rights enshrined in numerous international agreements and are indeed 'fundamental rights.' The work Fair Wear and its partners have undertaken to promote these rights in recent years has often fallen under the title 'social dialogue'. The ILO defines 'social dialogue' as 'all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy' (ILO Guide: 'National Tripartite Social Dialogue', 2013).

Social dialogue fundamentals

Figure 1 illustrates the need for progressive steps in social dialogue. Negotiations (collective bargaining) between workers and management will probably not occur without first establishing a system for information exchange and consultation.



Figure 1: ILO social dialogue triangle

For any level of social dialogue to take place, there must be an environment and structure that supports it. The ILO states that for social dialogue to take place, the following must exist:

- Strong, independent workers' and employers' organisations with sufficient technical capacity and access to relevant information to participate in social dialogue;
- Political will and commitment to engage in social dialogue on the part of all the parties;
- Respect for the fundamental rights of freedom of association and collective bargaining; and
- Appropriate institutional support.

(ILO: [Social Dialogue > Finding a Common Voice](#), undated)

'Social dialogue' is often treated as an umbrella term for various actions linked to the exercise of freedom of association and collective bargaining. Yet is important to point out that **'social dialogue' has little meaning if participants are not freely engaging in such activities, that is, without freedom of association.** Likewise, the negotiation and implementation of collective bargaining agreements (CBAs) is often the ultimate goal of social dialogue activities. Nevertheless, it is important to recognize the other levels of social dialogue (which the ILO seeks to align with protections afforded to freedom of association and the right to bargain collectively), including exchange of information and consultation. These other activities, which are often seen as precursors of full implementation of collective bargaining rights, are particularly relevant in garment supply chains. Often garment

production takes place where the skills needed for collective bargaining are under development, or where appropriate collective bargaining partners, notably trade unions, are fledgling or not present at all.

Still, Fair Wear is aware that the term 'social dialogue' is often misunderstood and has been used – often unknowingly – to describe activities that do not actually fulfil the ILO's definition for social dialogue (see text box above). Often such usage ultimately serves to maintain the status quo, effectively undermining workers' efforts to exercise their rights. The bulk of Fair Wear's communications about such work will therefore speak more explicitly in order to focus on – and fully support – freedom of association and collective bargaining, which are well defined and codified human rights. This approach can hopefully enhance understanding of these fundamental rights.

Threats to Freedom of Association and Collective Bargaining

In developing Fair Wear's approach to freedom of association and collective bargaining, FWF has sought to understand the realities of the global garment system that have stood in the way of these rights taking root where garments are made. Fair Wear's forthcoming brand guidance will include a fuller analysis of these realities, which are caused by the system – that is, by global industry structures and practices – and on the ground in factories and local contexts.

SYSTEMIC CHALLENGES

In brief, there are systemic challenges to these fundamental rights, which Fair Wear observes will require collaboration and innovation to overcome. Some examples of systemic challenges to these rights include:

- **Lack of binding global human rights protections**

In the past, manufacturers, retailers, consumers and workers were often bound by a common legal framework, which made it comparatively straightforward for everyone to know and uphold their respective responsibilities to each other. In today's global economy there is no common regulatory framework that makes it possible for all supply chain actors to be accountable to the same set of standards and laws. Initiatives such as Fair Wear were originally formed in an attempt to plug the large

regulatory gap created by the globalisation of production in the absence of binding global regulation. Today there is a need for further innovation towards better implementation of fundamental human rights.

■ **Social dialogue is limited, or under-developed, and collective bargaining is rare**

This is an obvious statement to include in this publication. Yet it is important to recognise that these fundamental rights have been limited to such an extent that what might otherwise be a natural inclination (i.e. for workers and their employers to experiment with negotiation and dialogue) very often does not take place. Without seeing the benefits of functional social dialogue in practice, it is difficult for some stakeholders to justify the investment of the time, resources and political capital needed to get fledgling social dialogue systems off the ground.

■ **Brands do not employ workers directly**

In the context of discussions about social dialogue in the garment industry, it is important to highlight what might also seem an obvious point: brands rarely own their production locations. They do not directly employ the workers who make their products, which means less control over workers' everyday conditions of work. In traditional collective bargaining structures, this also means brands cannot negotiate directly with workers and their representatives. And ILO standards are clear: it is not the role of brands to organise workers. Nevertheless, the UN Guiding Principles and the OECD Guidelines expect brands to ensure measures are in place for these rights to be exercised. While Fair Wear is working to develop clear expectations for brands to support these rights (and there is certainly plenty to do – see more below), it is worth noting the reality that resulted from globalized supply chains: the diffusion of accountability and responsibility.

■ **Competition and long, diffuse supply chains undermine social dialogue**

The garment industry is notoriously competitive on price and delivery time. Indeed, garment consumers have come to expect cheap and ever-changing selections. To meet this demand, brands typically spread their production over 100 or more factories for any given season. Such production relationships tend to be short-lived, and most garment production is characterised by uncertainty and instability. These market behaviours are real disincentives for employers to commit to workers contractually or via collective bargaining agreements. Instead these sourcing models incentivize informal work, leaving suppliers more flexible and workers more expendable. Such high turnover also makes organising nearly impossible.

THREATS ON THE GROUND

There are also realities taking place on the ground that serve as direct and indirect threats to worker organising every day. These are realities that need to be addressed at both a global/strategic level, but also on the ground – in factories and in supply chains. Some examples include:

Lack of state capacity to protect and enforce

It is not uncommon for domestic laws in a host of countries to be fairly strong with regard to these and other labour rights. The challenge is implementation of the law. Often this is linked to a lack of political will to allocate resources for enforcement. Yet limited capacity is also a real impediment to freedom of association and collective bargaining (New Conversations Project, forthcoming 2020). In many countries the capacity of labour administrations, including labour inspectors, is woefully underdeveloped and may simply not be able to ensure that workers' rights are respected. Similarly, in countries without much history of industrial relations, simply setting up functional social dialogue structures or developing robust and enforceable legislation can prove difficult.

Anti-union behaviour by governments and employers

Efforts to undermine unions and unionisation take myriad forms. Workers can be fired for organising, but they can also have pay docked, positions downgraded or moved. And intimidation and violence against trade unionists and their families are on the rise globally ([ITUC, 2019](#)). For many workers, fear of such retaliation and of losing their livelihood stops them from engaging with or joining unions they otherwise would join. A more subtle form of undermining unions is also very common: simply the lack of information for workers to learn about their right or access the skills needed for effective organizing and negotiating.

FWF COMPLAINTS ANALYSIS

In a recent analysis of all Fair Wear complaints related to freedom of association and collective bargaining, most of them involved a case of termination or forced resignation based on union affiliation and/or discrimination based on union affiliation. Two examples from these worker grievances are:

"[The Confederation of Trade Unions of Myanmar] was organizing workers at the factory and assisted these to register a union at the township labour office. The factory dismissed the 11 workers, including the union president, the secretary, some other executive committee and active union members without advance notice or a reason given."

– Worker Grievance ID 217

"According to the [worker], he was dismissed for being a member of a trade union and speaking to a newspaper about the working conditions at the factory. Other workers have been intimidated by management not to join a trade union."

– Worker Grievance ID 379

■ Informal work

The peaks and troughs of production orders in the garment industry partly explains the industry's highly informalized nature. Factory owners seek to limit their financial risk by minimising the size of their permanent staff. Instead workers bear this risk, and turnover is typically high. As mentioned earlier, high turnover can make worker organising nearly impossible. As noted by the ILO's Bureau for Workers' Activities, "Trade unions have long ignored or underestimated the informal sector, considering it a transient phenomenon and too difficult to organise" (Visser, 2019). As observed globally, the rise of informalized work has paralleled the decline in trade union membership. There have been some promising examples of workers in the informal economy being organised (such as [Self Employed Women's Association](#) in India, who were admitted as a member of the International Confederation of Free Trade Unions [now the ITUC] in 2006), however the majority of informal workers lack the ability to organise effectively.

■ Employer-controlled unions

The terms 'company union,' 'white union,' and 'yellow union' all refer to cases where a trade union is set up and/or controlled by the employer to prevent the establishment of a genuine trade union (ITUC Glossary). These unions are contrary to international law, which states that unions should be free from

the control of employers (ILO Convention 98, article 2). Because brands do not directly employ workers – or own and operate their production facilities – they often lack the access and judgment to determine whether a union present at a production facility is legitimate.

■ Export Processing Zones

The right to freedom of association and to collective bargaining is violated in almost all EPZs across the world (ACTRAV, Trade Union Manual). On the assumption that EPZs without a trade union presence may attract more investment, many governments – even many that have ratified relevant ILO Conventions – have deprived EPZ workers of their right to organise. Where EPZ workplaces are unionized, trade unionists face harassment, intimidation, threats, discrimination and unfair dismissals. The level of bargaining capacity is very low and weak, with problems of recognition of trade unions as bargaining agents. This begs the question of whether production in such locations is possible for brands and suppliers committed to human rights.

New developments for Social Dialogue

RESEARCH FINDINGS: WHERE IMPROVEMENTS ARE NEEDED

New research is emerging that crystallises how essential freedom of association and collective bargaining are for implementation of all workplace standards. In his forthcoming book, *Private Regulation: Problems, Progress and Prospects* (anticipated Spring 2021), Cornell University professor and researcher Dr. Sarosh Kuruvilla shares his analysis of the unprecedented amounts of global garment supply chain data he accessed and processed. Among other fascinating findings, Kuruvilla provides a wealth of data to prove that workplace compliance is higher in the presence of freedom of association and collective bargaining. In fact, compliance tends to be highest in workplaces where a collective bargaining agreement is present. Kuruvilla reports finding little evidence of brands actively supporting or holding suppliers accountable for respecting workers' freedom of association and right to bargain collectively. There is also lacking evidence that multi-stakeholder initiatives have effective mechanisms in place for brand action and accountability around these rights. Fair Wear takes note of this research. This document and Fair Wear's forthcoming brand guidance are the first of various concentrated steps Fair Wear is taking (see more below) to address these critical gaps in collective efforts to promote garment workers' rights.

EMERGING STRUCTURES FOR FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

According to Fair Wear's [Research Agenda 2017-2020](#) (Fair Wear, 2017), social dialogue has naturally focused on the relations between employees (and their representatives) and their direct employers, and those relations must continue as the basis for impactful industrial relations. But given that at factory level there is not enough influence or control over the industry's financial resources, social dialogue structures need to evolve in order to enable factories to require brands to absorb or pass on the price of human rights compliance or bring brands to the negotiating table in some form. While there is not yet a fully formed model for 'triangular' social dialogue - involving brands, factories and trade unions - there are important initiatives already underway which address various parts of these problems. Researcher Jeroen Merk has developed a model which identifies five types of emerging social dialogue models for apparel supply chains:

- 1** Single-site bargaining, which focuses on preventing or (more commonly) remediating labour rights violations in a particular factory using brand leverage (Merk refers to this as the 'brand boomerang' approach);
- 2** Grassroots-driven supply chain bargaining, which attempts to construct transnational agreements with lead firms in supply chains (i.e., brands) that apply equally across an entire region, driven by local organisations (e.g., the Asia Floor Wage);
- 3** Reinvented national collective bargaining, where international union bodies and groups of brands (as lead firms in supply chains) come to an agreement covering individual production countries, (e.g., IndustriALL's ACT programme);
- 4** Spatial reach agreements, between an international union body and a single brand, covering all the production facilities in that brand's supply chain (e.g., Global Framework Agreements); and
- 5** Thematic Bargaining Agreements, agreements that focus on a particular topic (e.g., the Bangladesh Accord on Fire and Building Safety).

While all these approaches have limitations, they can each make significant contributions to the development of new robust, functional social dialogue structures. Fair Wear sees great value in sharing lessons with and from various types of initiatives covered under Merk's model. Fair Wear

members offer opportunities to test out ideas that could support the next generations of these and other related ideas.

Fair Wear's Approach

THE GOAL

Based on our understanding of the realities that block meaningful action on freedom of association and collective bargaining, as well as recent research findings and new innovations in organizing, Fair Wear seeks to develop an approach that is truly impactful for workers' freedom of association and right to bargain collectively. This requires:

- increased understanding of these rights and their potential as a sustainable instrument for achieving workers' rights throughout the garment industry
- support for efforts in the garment industry to develop new models for social dialogue, using supply chain knowledge and brand leverage
- adjustments in garment brands' purchasing practices to more effectively support healthy and impactful systems for social dialogue.

To do this, freedom of association and collective bargaining need to be at the forefront of all workplace rights efforts, and all of the actors that can have an impact on the root causes of violations of these rights (including brands, agents, buying country governments and even consumers, see figure 1.2) need to be involved.

Fair Wear aims to contribute to industry change for freedom of association and collective bargaining by:

- 1 Ensuring member companies work to protect and promote the rights to freedom of association and collective bargaining in their supply chains, both at the factory and the national level;
- 2 Working with other stakeholders, including trade unions, suppliers, other civil society organisations, and brands to create an improved 'enabling environment' for social dialogue; and
- 3 Researching and testing new or promising approaches.

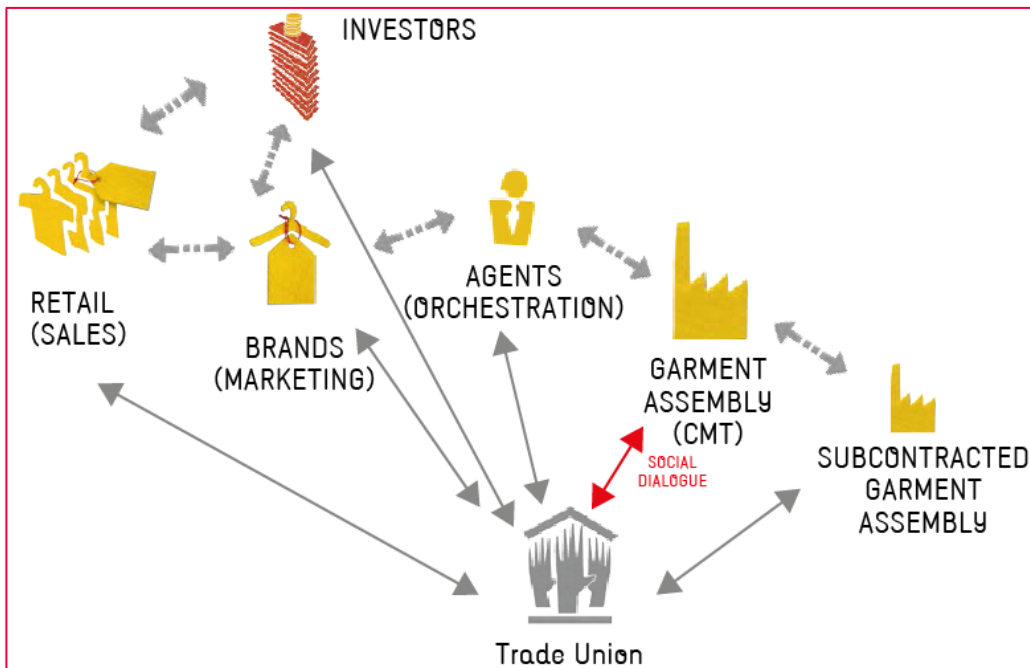


Figure 1 – Social Dialogue is influenced by various actors in the global garment supply chain

FAIR WEAR ACTIVITIES

Fair Wear realises that for freedom of association and collective bargaining to take shape globally for garment workers, all stakeholders in the global supply chain need to play a role. Our activities on social dialogue therefore directly target the role that Fair Wear members should play in shaping this change, and/or seek to contribute to a broader effort to develop an ‘enabling environment’ for meaningful social dialogue – whether at the level of the factory, sector, country or globe. An ‘enabling environment’ is one where workers and employers organisations have sufficient technical capacity and access to information to participate in social dialogue; there is political will and commitment by all parties to engage; the rights of freedom of association and collective bargaining are respected; and there is appropriate institutional support in place (ILO, undated). This means, in addition to improving our guidance and expectations for brands, Fair Wear is supporting and collaborating in leading efforts to reshape policy and research new approaches to implementing these fundamental rights. Below we outline this work, although what follows continues to evolve and is non-exhaustive (e.g., many of Fair Wear’s activities, for example relating to living wages, align with our social dialogue goals but are not covered below).

1. New Approach by Fair Wear Member Brands

Fair Wear members have committed to uphold freedom of association and the right to bargain collectively. But what exactly does this look like? Research indicates that social dialogue efforts to date are not adequate. Fair Wear therefore proposes an overhaul its social dialogue policy and

guidance for members. At the time of writing, Fair Wear staff is currently engaged in discussions with Fair Wear's Committee of Experts, member brands, and stakeholders with regard to the following proposed key steps for members:

Key steps for change at the systemic level

- 1** Brands commit to a sourcing strategy that privileges countries and suppliers where workers are free to choose to form or join a trade union and/or to bargain collectively.
- 2** Brands participate with trade unions in direct agreements that seek to ensure worker participation in identifying, addressing and remediating issues related to the conditions of their work (e.g., Indonesian Freedom of Association Protocol or ACT). Fair Wear can provide further guidance here.
- 3** Brands use their voice and influence to encourage source country governments to halt violations of international standards on freedom of association and collective bargaining (ILO Conventions 87 and 98). For example, Fair Wear and member brands collaborated with other brands and worker rights advocates on targeted letters to the government of Cambodia regarding their restriction on freedom of association and persecution of human rights defenders in 2017 and 2019.

Key steps for change at production locations, within brands and in supply chains

- 4** Brands sign 'pay and stay' agreements with suppliers that commit to take action on freedom of association and collective bargaining, meaning that brands commit to long-term production as long as quality and other production criteria are upheld (steady prices excluded). Social dialogue will require investment from the supplier (both in terms of finances and time). Such investment is not wise in the face of unstable and insecure future orders (see realities above for more).
- 5** Once a brand has committed to suppliers (step 4 above), then require from the supplier:
 - a. Stable contracts for workers wherever products are made. If workers are temporary or on short term contracts, there is very little value for workers to even contemplate exercising their freedom of association, and in many cases this right is not extended to non-permanent workers.

- b. Non-retaliation letters distributed periodically to all workers, guaranteeing that management will not retaliate against workers for forming or joining a trade union.
- 6** Brands establish clear due diligence strategy for social dialogue – most notably by urgently addressing complaints or audit findings of violations of these rights. Workers should always be involved in developing any remediation or improvement strategies. As with all due diligence work, brands are responsible for understanding supply chain risks to workers’ freedom of association and collective bargaining in order to target sourcing strategy, capacity building efforts, verification and public reporting effectively.
 - 7** Brands support and finance workplace training of workers and management to build understanding of their rights and skills to engage in social dialogue.

Meaningful Social Dialogue Starts at Home

While Fair Wear’s remit focuses on working conditions in garment brands’ supply chains, real action in supply chains on social dialogue will likely be difficult if brands’ employees, themselves, are unfamiliar with these rights and how they play out in practice. In this sense, top brand management need to ensure their own employees – at headquarters, retail locations, and distribution points – are aware of and can organise and freely negotiate the terms of their employment collectively. While these employees fall beyond the remit of Fair Wear guidance and auditing, it is critical for brands to uphold their commitments consistently across various spheres of influence. Supply chain-focused efforts are far more likely to thrive for brands that respect their employees’ rights at home.

2. Improvements Underway to Support Enhanced Member and Supplier Performance

In order to support brands in implementing the steps above, Fair Wear is working on various aspects of its brand support infrastructure, including:

Brand Guidance Document: Fair Wear is developing *Brand Guidance: Freedom of Association, Collective Bargaining and Social Dialogue*. The guidance document will launch in 2020, followed by training sessions for member brands. This step-by-step guidance provides brands with concrete tips on how to work with suppliers and other stakeholders to ensure freedom of association and the right to collective bargaining are respected in their supply chains.

Additionally, Fair Wear has detailed country studies for each production country where Fair Wear is active, which outline key risks related to freedom of association. For some countries, such as Myanmar and Bangladesh, additional enhanced monitoring and informational documents include information on specific freedom of association risks.

Brand Performance Checks: Every year, each Fair Wear member has a Brand Performance Check, which is a process whereby members' internal policies and practices are verified and evaluated. There are no indicators in the current Brand Performance Check that specifically evaluate a brand's work on freedom of association and collective bargaining. Many indicators do however take into account a brand's social dialogue work, notably: 1.4 (due diligence); 1.5 (systematic evaluation of compliance with CoLP); 2.3 (audit and CAP shared with factory and worker representation); 2.4 (resolution of CAPs); 2.7 (risk policies); 3.2 (informing management and workers about CoLP and complaints helpline); and 4.4 (participation in training programmes related to human rights). In 2021, specific indicators related to Fair Wear's new Brand Guidance for these rights will be included in the updated Brand Performance Checks.

Fair Wear's Systems for Auditing, Complaints, and Factory-level training

Fair Wear's verification teams and complaints handling are known for their depth and rigor. Indeed, Fair Wear's strong reputation is in many ways built upon the in-depth work and ongoing improvement by Fair Wear teams in production countries. Nevertheless, Fair Wear seeks to further improve how these systems support an enabling environment for social dialogue.

Audits: Fair Wear's audit methodology is currently being enhanced, including efforts to better ascertain the environment for workers to exercise their right to organise (violations of these rights have historically been under-reported in audits), as well as workers' and employers' knowledge of these rights. Improvements are recommended, also, with regard to workers' ability to engage in – and be kept abreast of – auditing and remediation efforts. The audit offers a unique opportunity for Fair Wear to engage directly with suppliers, so it is critical that Fair Wear make best use of this access point to support workers' ability to have voice and exercise their rights.

Complaints: Fair Wear seeks to collaborate with other initiatives and trade unions to scale up its well-regarded complaints handling system. Not only do some of the complaints Fair Wear receives relate to violations of freedom of association and the right to collectively bargain, but any sustainable

resolution of complaints must involve workers and their representatives in the remediation. Social dialogue is a key step in Fair Wears complaints handling procedure. Moreover, access to remedy is a fundamental to workers' ability to exercise their rights and freedoms. This system therefore offers many opportunities for Fair Wear to enhance its impact for freedom of association and collective bargaining.

Training: Fair Wear offers factory-level trainings at member production locations via its Workplace Education Programme (WEP), i.e. the WEP Basic and the WEP Communications modules. Both modules link to freedom of association and collective bargaining. WEP Basic provides an introduction to Fair Wear's CoLP as well as the Fair Wear complaints helpline and other grievance mechanisms. It is available in 9 countries. The WEP Communications module is currently available in 4 countries and focuses on improving the interactions between workers and management by developing their communication skills, with an emphasis on collaborative problem-solving. Communications skills are necessary when engaging in social dialogue and particularly during collective bargaining. Nevertheless, it is likely that workers and management in most garment factories would need additional capacity building support beyond this training to truly engage in collective bargaining. Fair Wear is currently exploring formats for providing such capacity building, most likely through partner organisations.

Supplier Seminars: Factories and their management are one of the key actors for social dialogue at the enterprise level. In order to engage in open and meaningful social dialogue, factory management must also be equipped with the knowledge and will to participate. Fair Wear holds seminars with suppliers of member brands in production countries, and in 2019 started focusing specifically on social dialogue. Factory management understanding the benefits of social dialogue for their workplace is essential to ensuring a conducive environment for it to take place.

3. Influencing State Policies and Practices that Impact Workers' Freedom of Association and Collective Bargaining

Fair Wear represents an influential segment of the global garment industry, considering its leading brand members, as well as the broad range of stakeholders and partners Fair Wear engages globally. This collaborative model offers an important platform for consolidated messaging about, and action for, social dialogue. Such collaboration takes the form of: lobbying of local governments in the face of state action to limit workers' freedom of association (e.g. in [Cambodia](#) – see details above); collaborating for improved labour laws (e.g. by providing input and evidence for the revision of the

Vietnam Labour Law in 2019); or consolidating research, data, and skills to support tri-partite processes in production countries (e.g. building negotiating partners' knowledge of the link between wages and pricing as critical – and unprecedented – input to minimum wage negotiations). Fair Wear is also engaged in efforts to develop 'buying country' legislation that aims to influence brands' sourcing decisions to favour countries and/or factories where social dialogue practices are strong. The aim is to scale up Fair Wear's work and influence in these areas as we move forward.

4. Fair Wear Support for Research and New Approaches

Collaboration with Cornell's New Conversations Project: Fair Wear has a two-year programme that is ongoing with the New Conversations Project at Cornell University's Industrial Labour Relations School. This project conducts root cause analyses of barriers to impactful social dialogue and will develop concrete recommendations for overcoming those barriers in the global garment industry. The partnership has three main goals:

- Identify and document the major barriers to healthy social dialogue in the global garment industry, and specifically in each of the project's ten focus countries;
- Identify root causes and possible interventions that can help overcome those barriers, in general, and specifically in each of the project's ten focus countries; and
- Identify and test interventions, including existing Strategic Partnership and other pilot projects with an eye to developing strategies that can be more widely applied.

Reports from the different phases of this project can be found online.

New Approaches: Both internationally and in some Fair Wear producing countries, Fair Wear and our partners are involved in testing new social dialogue structures. Wherever possible, Fair Wear engages with innovators to continue to work towards new models for social dialogue. Examples include:

- **FoA Protocol in Indonesia:** Fair Wear's Indonesian team is heavily involved in the FoA Protocol initiative, which provides guidelines to promote, defend and protect workers' freedom of association rights. Launched in 2008, the Protocol involves factories, brands and trade unions who all make commitments to ensuring freedom of association. Three Fair Wear member brands have joined the FoA Protocol, and Fair Wear continues to work with the FoA Protocol National Committee and stakeholders to improve the implementation of the initiative.

- **Multi-company CBAs:** Fair Wear's partner CNV International is implementing multi-company collective bargaining projects in Indonesia and Vietnam. The goal of these projects is to establish CBAs that span multiple companies so that workers at different factories are protected under the same agreement. This should make it easier for more companies to participate (without having to negotiate their own CBAs) and enhance the coverage of the agreements. The process involves strengthening trade unions and continuously involving production workers in the process. While the impact of multi-company CBAs on working conditions has not yet been identified, Fair Wear sees potential in this and other new forms of social dialogue.
- **ACT (Action Collaboration Transformation):** ACT (an initiative of global trade union federation IndustriALL) is an agreement between global brands and retailers and trade unions to transform the garment, textile and footwear industry and achieve living wages for workers through collective bargaining at industry level linked to purchasing practices. ACT is trying to ensure that there is a joint approach by all actors in a supply chain to ensure freedom of association, collective bargaining and living wages. Fair Wear is engaging with ACT by sharing our tools and knowledge, as well as supporting their in-country work.

Conclusion

Freedom of association and collective bargaining are complex and challenging rights to implement. But there is a great deal we have yet to implement – some of it quite straightforward – which can bring us many steps closer to our goal. Fair Wear is taking concrete steps to improve ways its members and its systems can lead the way to better accountability for, and implementation of, these rights. Yet we recognize that these efforts alone will not achieve real change. Fair Wear is committed to supporting research and new ideas and innovative structures for worker organising and negotiation that meet 21st century realities, and we will contribute Fair Wear's learning, knowhow, and influence towards such efforts. There is much to be done. And much that *can* be done. Let's all get to work.

References

ILO. [Guide: National Tri-partite Social Dialogue](#), 2013.

ILO. [National Tripartite Social Dialogue: An ILO guide for improved governance](#), 2013.

ILO. [Social Dialogue > Finding a Common Voice](#), undated.

ITUC. [ITUC Global Rights Index](#). 2019

ITUC. [Survey of violations of Trade Union Rights, Glossary](#), 2019.

ILO. [ILO Convention 98: Right to Organise and Collective Bargaining Convention](#), 1949.

ILO, ACTRAV Bureau for Workers' Activities. [Trade Union Manual on Export Processing Zones](#), 2014.

Kuravilla, Sarosh. Forthcoming, 2020.

Visser, Jelle. [Trade Unions in the Balance](#), 2019.

Fair Wear Foundation. [Research Agenda 2017 – 2020](#), 2017.

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