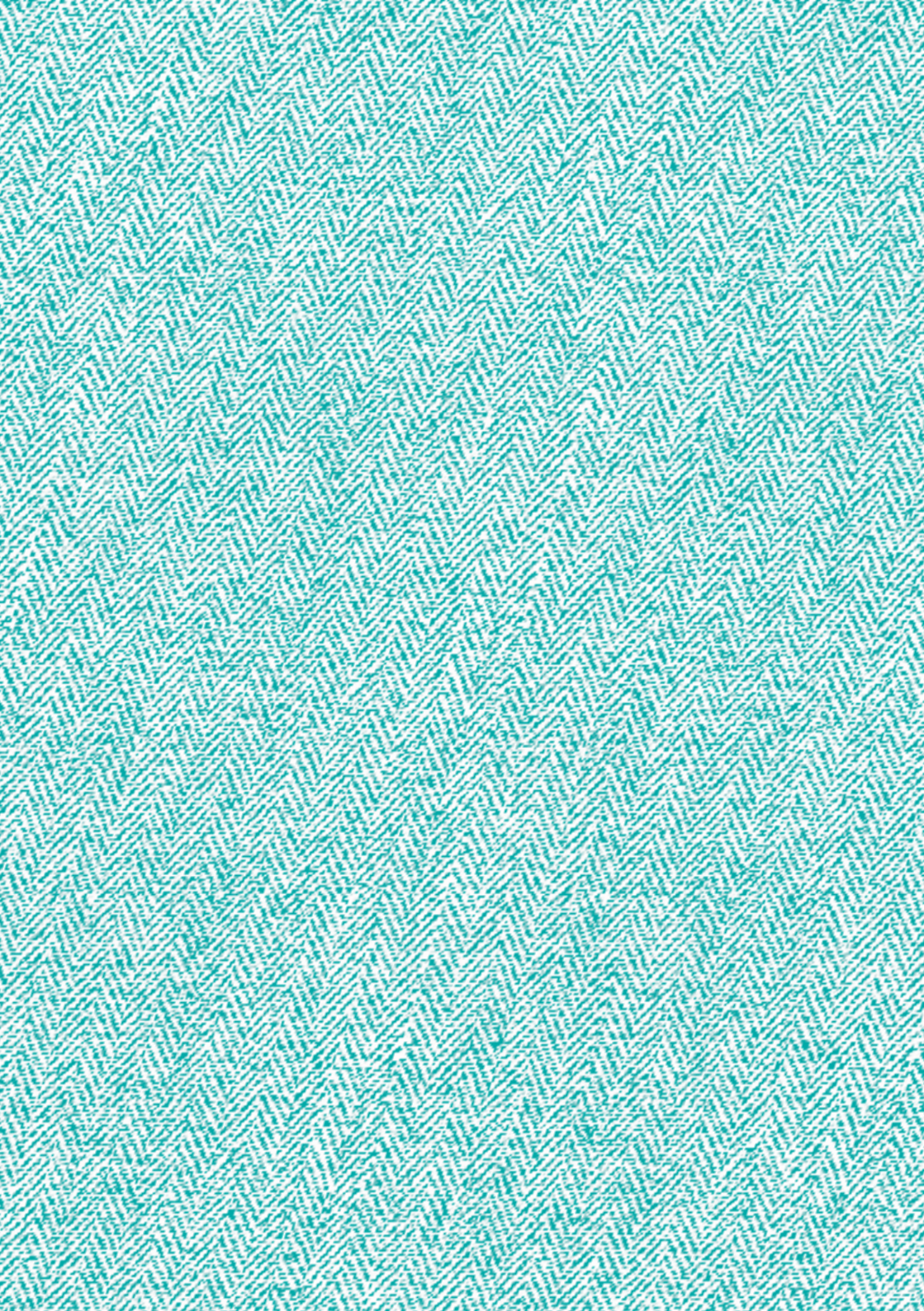


**Freedom of association
and the right to
collective bargaining**
/ a guide for brands



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Improved freedom of association and collective bargaining: what's in it for brands?

Improved freedom of association and collective bargaining rights benefit workers AND can have a direct benefit for your brand and partner production facilities.



1 Freedom of Association leads to **improvements on all other labour rights**! When these rights are in place, you are likely to see higher compliance on all other issues – including health and safety, wages and overtime.

› See callout box on page 13

2 Your actions have a direct and **positive influence for workers**. Your purchasing practices – such as sourcing decisions and contracting practices – directly influence whether workers can exercise their rights to freedom of association or collective bargaining. Supporting these rights and sharing your efforts transparently are good for your brand and reputation.

› See graphic on purchasing practices on page 35

3 Social dialogue is good for business. Research has shown that social dialogue is key to managing conflict for fair and stable workplaces and contributing to **improved firm performance and productivity gains**. These improvements (at your own brand or at the suppliers your source from) mean money saved for your suppliers and you.

› See callout box on page 47

Not sure where to start? We recommend you read through this guide, which provides context and key actions. Eager to **start taking action**?

See the **Six Steps** for Brands to promote freedom of association and social dialogue on page 36

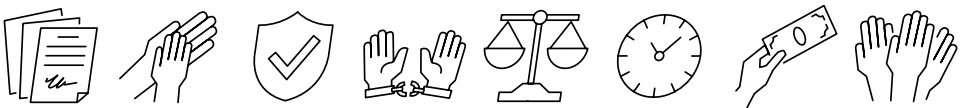
About this guide

This guide was written as a resource for you, Fair Wear member brands, to support the work you are doing to promote an enabling environment for workers' rights to freedom of association and collective bargaining and ensure they are respected in practice. Constituting part of the [Code of Labour Practices' standards](#) that your brand has committed to, these rights help safeguard an environment in which workers and management can communicate and negotiate working conditions. This guide is based on Fair Wear's 'Policy on Freedom of Association and Collective Bargaining,' which lays out the expectation of member brands, demonstrating what full compliance looks like.

Workers are best placed to advocate for their own rights, but, in order to do this, they need the freedom to organise themselves (to join or form unions), 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. Beyond this, freedom of association and collective bargaining are key human rights that facilitate ownership and give workers the possibility to express their voices and be heard.

This guide intends to offer practical guidance, outlining the steps that you can take to set and improve your own practices and policies, and to work with your suppliers to promote these rights for their workers.



This guide is based on a body of internationally agreed standards and recommendations, as well as the experience of Fair Wear, its member brands, and trade union, worker advocate, and business association partners.

Although this guide should act as a guideline, each supplier, country, and situation may require different approaches. You should be prepared to develop a unique approach, appropriate for the context of how your business is set up and where you source. Fair Wear, our member brands, and partners continue to learn through collaborative work—via research, stakeholder engagement, verification, and remediation—and correspondingly, this guide will continue to develop and grow as we evolve and situations change. For [each step](#) this guide mentions, we have also outlined the additional work that we, and our partners, plan to provide further guidance. **This guide is not exhaustive; there are likely other effective approaches emerging. However, this guide does provide a foundation for you, as a responsible brand, to expand your work on this important issue.**

In reality, workers’ ability to organise and bargain collectively depends on local and global factors that often are beyond the influence of any single brand. Nevertheless, brands still have a critical role to play in individual factories—as well as in global efforts that contribute to an enabling environ-

ment. For change to happen, there is value in having ‘examples’ for the rest of the industry to observe and replicate in order to bring about the collective action needed to shift the industry. This guide seeks to provide practical solutions for real-life situations.





Part I

The basics

THE STANDARDS

Fair Wear's Code of Labour Practices (CoLP) forms the foundation of collaboration between Fair Wear and our members. Fair Wear's CoLP is based on internationally recognised standards that have been set through tripartite negotiation (between representatives of governments, workers, and employers) at [the International Labour Organization](#) (ILO), which is the United Nations agency that specialises in labour.



Fair Wear's CoLP standard on 'freedom of association and the right to collective bargaining' is based on three fundamental ILO Conventions:

- 】 [ILO Convention 87](#) protects the right of workers to form and join the trade union of their choosing;
- 】 [ILO Convention 98](#) protects workers' right to bargain collectively with their employers and to remain free of employer interference and dominance; and
- 】 [ILO Convention 135](#) protects worker representatives from discrimination and recognises the right of worker representatives to access to workplaces in order to carry out their representation functions.

The international community is unambiguous in its recognition of these inalienable rights, which are enshrined in numerous international and regional agreements. The [Constitution of the ILO](#), as well as the ILO's [Declaration on Fundamental Rights and Principles](#) and numerous other Conventions and Recommendations, go a long way to defining and protecting freedom of association and collective bargaining. Furthermore, these fundamental rights are recognised in the [United Nation's Declaration of Human Rights](#), as well as UN Human Rights Covenants and the [OECD Guidelines for Multinational](#)

[Enterprises](#). This guide has been written to guide you in upholding and respecting these rights.

SOME DEFINITIONS – AND WHY THESE RIGHTS & PRINCIPLES ARE IMPORTANT

The rights to freedom of association and collective bargaining are enshrined in various international standards and the Fair Wear Code of Labour Practices, but really, why are they important? Essentially, these rights enable workers to join with others to have a collective voice in setting and monitoring their working conditions, neutralising the power imbalances in a traditional employer-employee relationship. If workers have these rights in place and are able to exercise them, they can speak out about conditions of work and grievances, such as working hours, equal pay, protection against violence and harassment, leave time, and benefits. In fact, if the rights to organise and bargain collectively are respected, it becomes easier to address all of the other standards of Fair Wear's Code of Labour Practices, as workers themselves can monitor their application and, if necessary, negotiate improvements. These rights give workers an effective collective voice.

So, what do these rights entail?

Freedom of association

[Freedom of association](#) refers to the right of workers and employers to form and join independent organisations without interference from others. In garment supply chains, this means that workers can form and join [trade unions](#) of their choosing, and equally, employers can form or join employers' organisations. This right enables workers and employers to be formally and collectively represented in negotiations to arrive at solutions to improve working conditions.

Although protected by international law, freedom of association is often violated and obstructed in many garment production countries. In such

contexts, workers—most of whom are women—do not feel free and safe to form or join trade unions and therefore have very little ability to collectively negotiate or defend their working conditions. Freedom of association is further undermined by the presence of so-called ‘unions’ that are not independent of the employer or the government and lack legitimacy in the eyes of workers themselves. Under such circumstances, discussions and negotiations with management would likely be severely limited (with workers representatives feeling under threat and without any recourse). Where collective agreements are in place under such a system, they can be ignored with impunity since workers have no means of enforcing them. Employers would also lose the benefits of knowledge feedback from workers that could help them not only to improve working conditions but also to impact workplace efficiency and performance.

Collective bargaining

Collective bargaining is the process of all negotiations between an employer (or employers' organisation) and one or more trade unions, with the aim of developing a collective bargaining agreement (CBA). It is recognised as a core labour right and is a key means through which employers and unions can jointly establish fair wages and working conditions for ongoing stability. CBAs clearly outline work conditions at a factory, regional or sectoral level and are agreed between employers and trade union representatives. These are written, legally binding, enforceable contracts that outline the terms and conditions of work for a specific period of time. Because they are legally binding, they hold more weight than a verbal or informal written agreement between workers and management.

The importance of CBAs should not be underestimated; when these legal contracts are in place, they constitute clearly defined and agreed upon conditions of work. For brands, these agreements can help you ensure that working conditions, such as reasonable wages, overtime regulations, social security measures, etc., are in place and enforceable by law at the factories in which

you produce (depending, of course, on the quality of the CBA and what it includes). CBAs may also address issues that are of particular importance to women workers, such as maternity leave, childcare, and gender-based violence, which can then lead to improvements in other areas. There is a more recent consensus that gender-based violence is an occupational safety and health risk, which can lead to lost productivity, absenteeism, stress, and further violence. Including articles specific to sexual harassment and gender-based violence as part of a CBA can help address these violations and subsequent effects. As discussed later, working with suppliers that have CBAs in place should be a priority in your sourcing strategy in order to help ensure the rights of workers are protected.

Freedom of association and collective bargaining: essential for implementation of all workplace standards

New research is emerging that crystallises how essential freedom of association and collective bargaining are for implementing all workplace standards. In his forthcoming book, *Private Regulation: Problems, Progress and Prospects* (forthcoming, 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 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 their right to bargain collectively. There is also little 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 and hopes this guidance document begins to outline the steps brands can take more concretely.

Trade unions and workplace committees

When speaking of the right of freedom of association, you'll see that we talk specifically about workers' ability to join or form **trade unions**, rather than referring to **workplace committees** or councils. Understanding the difference between the two is key to grasping the importance of these rights and the scope of what this guide covers.

'Trade unions' specifically refer to independent organisations of workers, who can be legally recognised and registered as the collective representatives of workers (at company, industry, or national level, for example). In international law, freedom of association is recognized as a fundamental principle and right at work and must be adhered to by all countries that are members of the ILO, regardless if they have ratified the relevant conventions or not. In most countries, trade unions are afforded legal rights and protections – meaning that their work and the collective bargaining agreements they negotiate are protected by law. Subsequently, those decisions hold more weight, and employers cannot simply choose to ignore those agreements. Additionally, trade unions are often part of a larger national or international structure supporting their work, that they, in turn, can influence. For example, receiving training and the support of a larger movement, a trade union can influence national law or international regulations (such as ILO Conventions).

'Workplace committees' or works councils can also be a very important tool or mechanism for workers to express their concerns or influence workplace policy. These committees are legally mandated in some countries and are often viable and successful ways for workers to engage in workplace dialogue with management. However, they do not offer workers the opportunity to join as a member and be part of that organisation, and their decisions are (usually) not upheld by law. Most often, workplace committees discuss issues such as health and safety, grievances, or anti-harassment policies; they do not focus on negotiating the terms and conditions of work (such as wages, hours of work, benefits, etc.).

Where workers have chosen to belong to a recognised trade union, the workplace representative will be the first point of contact between the worker and their union. Where no union is present at the factory, workplace committees, which include elected representatives of workers, can be a first step in building trust and opening the doors to the representation of workers by trade unions and more formal social dialogue initiatives. However, there can be a risk that, where such committees have no contact with an external trade union, they can easily become absorbed into the overall corporate culture, and workers' concerns can become subordinate to other aims of the company. This can weaken their independence from the employer and their effectiveness as a negotiation partner for tough issues. Where worker committees are in place, it is essential that you, as a brand, understand how the committees function, if they are genuinely independent, and how well they are able to ensure workers' involvement and their voices in the workplace. **It is also important to ensure that management does not use the fact that there is a worker committee in place to prevent union organising.**

In this document, we focus on how you, as a brand, can promote the rights to freedom of association and collective bargaining, specifically, to ensure that workers have the right to join or form trade unions who can then negotiate collective agreements. **Workplace committees and workplace dialogue can play an important role in giving workers a voice but are not a replacement for ensuring that these rights are respected in your supply chain.**

Key takeaways

Trade unions

- › are legally protected and are registered as the collective representatives of workers
- › can negotiate Collective Bargaining Agreements
- › are often part of a larger national or international structure supporting their work

Workplace Committees

- › are valuable mechanisms for worker input IF representatives are democratically elected and committee is independent (from management influence)
- › decisions not (usually) legally binding
- › can be used as a reason/excuse to prevent union organising

Social dialogue

Social dialogue is essentially a process of clear communications, open consultation, and/or fair negotiations between employers and workers (and government, where relevant). The International Labour Organization (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). Ultimately, social dialogue facilitates discussion and negotiations about the terms and conditions of work – either at the workplace level or through national structures and policies. If genuine dialogue is to occur, each party to the dialogue must be free to express an opinion without fear of reprisal and free from undue influence by the other parties. Workers and their representatives are particularly vulnerable to pressure from employers. This is why they have historically formed their own organisations – most commonly ‘trade unions’ – to defend their collective interests. As previously discussed, freedom to form and join such organisations is what is meant by ‘freedom of association.’ Freedom of association is, therefore, essential before genuine social dialogue can take place.

Social dialogue can take place at various levels and in various forms, for example:

Bipartite social dialogue

- › at the **factory level** itself, between workers’ representatives (unions) and management, e.g., the negotiation of a factory collective bargaining agreement;
- › at the **sectoral level**, representing a specific industry (i.e., apparel) and involving employer organisations and sectoral union federations (this could be national, regional, or global); and
- › at a **regional or global level**, through Global Framework Agreements between global unions and multinational companies – or globally enforceable Brand Agreements (e.g., Bangladesh Accord).

Tripartite social dialogue

- › at a **regional or national level**, e.g., setting a legal minimum wage for a province or country (either sectoral or confederal); and
- › at an international level, such as negotiations between representatives of governments, employers' organisations, and trade unions within the auspices of the ILO, OECD, UN Global Compact, or other inter-governmental bodies to set standards and to influence international policies affecting the world of work, for instance.

Tripartite 'plus' social dialogue

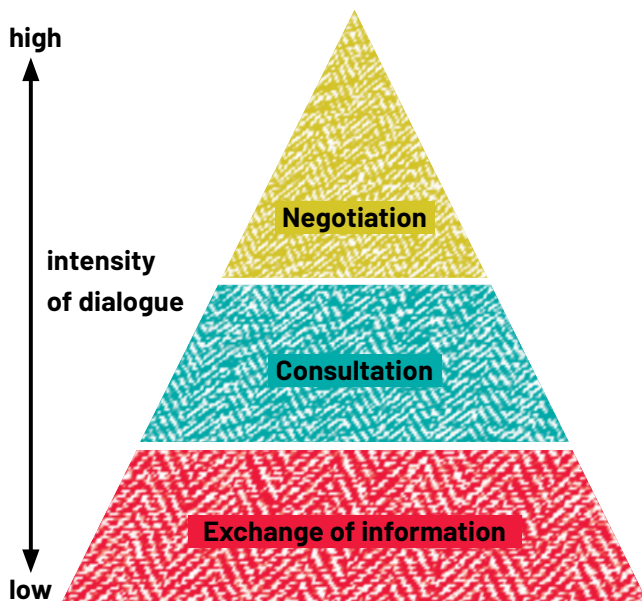
- › **most commonly at the national level**, where the 'traditional' social dialogue actors invite others into the dialogue - for example, civil society organisations which have specific expertise on a topic. An example of this is the National Economic Development and Labour Council in South Africa, which includes members of government, employers' associations, workers organisations AND civil society organisations in its structure as equal decision makers. The addition of the civil society organisations to the regular 'tripartite' dialogue adds additional knowledge and community input to national decisions.

Emerging forms of social dialogue

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 the complexity of supply chains, and that at a factory level there is not usually enough influence over the industry's financial resources, social dialogue structures must evolve to 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.** [Fair Wear's Approach to Social Dialogue](#) outlines some of these emerging models in more detail, and some of the approaches, such as the Freedom of Association Protocol in Indonesia, are further elaborated below. While all these approaches have limitations, they can each make significant contributions to the development of new robust, functional social dialogue structures, and Fair Wear will continue to support these approaches.

The negotiation and implementation of collective bargaining agreements (CBAs) is often the ultimate goal of social dialogue activities. Nevertheless, it is important to recognise the importance of other levels of social dialogue, including the 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. The consultation that takes place at a factory between elected worker representatives of a Works Council, for example, and the factory management, also constitutes social dialogue and can be a crucial platform for workers as long as it does not replace or imperil the exercise of the right to freedom of association in an independent trade union.

The different levels of social dialogue can be viewed as progressive steps which build upon one another, as illustrated in this figure:



Social dialogue triangle

- › **Exchange of information** refers to the giving of information from one party to another; it can be formal or informal information sharing. This is seen as the simplest form of social dialogue, which, although not yet a two-way exchange, forms the basis of further dialogue.
- › **Consultation** refers to the process of proactively seeking information from the other party/parties, requesting their input or position on a topic. An example of this would be management holding a meeting with worker representatives to receive feedback on a new workplace policy regarding health and safety in the workplace or engaging workers before making changes to work schedules or routines.
- › The most advanced type of social dialogue is **negotiation**, in which both parties have equal seats at the table and decide collectively on a policy or topic, ideally resulting in a collective bargaining agreement. Negotiation means that all parties' opinions and demands receive equal consideration in working towards a shared conclusion.

For any type 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 the 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.**

The above points constitute what Fair Wear considers an 'enabling environment' for social dialogue to take place. The steps recommended in this guide are what Fair Wear believes *brands* can do to promote this enabling environment.

Finding solutions where domestic law does not align with international standards

It is not uncommon for brand representatives to feel conflicted in cases where domestic laws limit workers' freedom of association. Yet, taken together, the standards and guidance of the UN, ILO, and OECD are unequivocal. Brands are obliged to comply with international standards on freedom of association wherever they source. **The failings of local laws do not excuse brands from upholding these standards.** As Fair Wear Board Member and President of the Workers' Group of the ILO Catelene Passchier explains: 'In cases where brands are confronted with restrictive domestic laws, OECD guidelines are clear that they need to find ways to respect workers' freedom of association as much as possible without violating national law.'

This is to say that brands are accountable for finding innovative ways to protect workers' rights and freedoms, despite local limitations. So, take for example, a case where workers in a factory in Bangladesh form a trade union, but the Bangladeshi authorities do not officially recognise it. In such a case, the brand and its supplier might interpret that such a decision by authorities is the end of the line for the trade union. Stopping here, however, would not align with the OECD call to companies to find creative ways to implement international labour standards as much as possible. In this case, it would not be against the law for the brand and its supplier to engage and consult with the workers' trade union of choice to improve workplace conditions. To the contrary, **according to international law, the brand and supplier have an obligation to engage with workers' chosen union.** And given Bangladeshi labour law may make it impossible to conclude an official collective agreement with a non-registered union, but does not ban other forms of engagement, the company has an obligation to respect the workers' choice of trade union, and in any case should not interfere directly or indirectly in the efforts of a union to register.

Fair Wear recognises that not all brands have the capacity to undertake such legal interpretations. It is here that Fair Wear can play a role in helping its members to find such solutions. In developing country-specific guidance for implementing freedom of association and collective bargaining, Fair Wear will integrate such creativity to ensure international standards are upheld wherever possible.

THREATS TO FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Freedom of association and the right to collective bargaining are fundamental for sustained, fair labour conditions. Nevertheless, in reality, **it is not uncommon for employers and governments to interfere with these rights. This opposition arises through fear of the potential organised power of workers – fear of the constraints that strong trade unions might place upon unfettered management prerogative, or, in the case of governments, fear of trade unions as an organising base to challenge political power.** Through our work, Fair Wear 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.

For you, as a brand, and collectively, as an industry, to challenge such violations head-on, it is important to understand them in context. In this section, we consider the threats to these rights that are systemic and the ongoing underground efforts to limit workers' right to organise and bargain collectively. We also consider specific anti-union behaviours that you may encounter in different factories where you source.

Systemic challenges

Lack of binding global human rights protections

The reality is that you and all other brands are operating at the global level, where regulation is at its weakest. Most garments are made in supply chains, where production and purchasing take place in different legal jurisdictions. Historically, manufacturers, retailers, consumers, and workers were often bound by a common legal framework at national level, making it comparatively straightforward for everyone to know and uphold their respective responsibilities to each other. In today's global economy, there is a multiplicity of laws and

regulations applicable depending on where the company is active, and – although there is at international level a common regulatory framework of principles and standards (such as ILO Conventions and UN and OECD guiding principles) – it is difficult to hold all supply chain actors to be accountable to the same set of laws and standards. Initiatives such as Fair Wear were originally formed to plug the large regulatory gap created by the globalisation of production in the absence of properly implemented and enforced 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

We know that freedom of association and collective bargaining are severely limited in many garment-producing countries. But even if those rights are in place, the obstacles are compounded by practical realities on the ground, where the capacity to engage in meaningful social dialogue is limited. This can be due to several factors, including, among others:

- 】 limited capacity and skills of employers and trade unions to engage in dialogue;
- 】 limited resources for building these skills;
- 】 lack of trust between the social partners; and
- 】 the non-existence of national social dialogue institutions (such as wage boards or social and economic councils).

So even where workers can join or form trade unions, they may not have the ability to then engage in a meaningful social dialogue. When social dialogue is not taking place, collective bargaining is not possible, and, therefore, workers are not protected by collective bargaining agreements. This then limits workers' and employers' opportunities to witness the benefits of social dialogue – and, in particular, collective bargaining. 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, and it may dampen workers' resolve to join or form trade unions.

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 seem an obvious point: you as a brand rarely own your production locations. You do not directly employ the workers who make your 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 your role as a brand 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. There certainly are steps you can take to make a real difference for social dialogue ([as outlined below](#)), but it is worth noting the reality that results from globalised 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 collections, placing considerable strain on supply chains that are already under pressure because of their length and diffusion. This is exacerbated by a lack of trust that typically accompanies such distance and disconnection. Some brands may spread production over 100 or more factories for a given season. Such production relationships tend to be short-lived, as brands scramble to meet the demand for new styles while hitting their profit margin targets. Additionally, most contracts between brands and production facilities are limited to orders per season or run; long-term contracts and business relationships are the exception, not the norm. This provides [a background of uncertainty and instability, which are real disincentives for employers \(your suppliers\) to commit to workers contractually or via CBAs](#). Instead, these sourcing models incentivise informal work, leaving suppliers more flexible and workers more expendable. Such high turnover also makes organising nearly impossible. Even though these examples may not be true of how

most Fair Wear brands operate, if/when other brands operate like this, it challenges workers and suppliers' ability to engage in genuine social dialogue, including at production locations that you share with other brands.

Women's participation in social dialogue

Garment workers are predominantly women, often in low-pay, low power positions, and are underrepresented in social dialogue structures. Even when there are active, independent unions present at a factory, union leaders tend to be male. Therefore, women's rights issues may not be well represented or considered to be important priorities. Women also often have lower rates of unionisation. Research has found that women who belong to a union earn 8.7% more than women of similar characteristics who do not (Metcalf, 2000). The garment industry has a significant gender pay gap, which can be addressed through social dialogue structures. Moreover, unions can also be powerful actors in the fight against gender-based violence. They can negotiate collective bargaining agreements that specifically set workplace obligations for employers on preventing and addressing violence and harassment, including the formation of workplace harassment prevention committees.

There are a number of barriers to women's access to the rights of freedom of association and collective bargaining, including:

- ▶ Lack of awareness about the advantages, due to recruitment being traditionally aimed at men and male-dominated occupations and industries.
- ▶ Women are commonly employed in atypical forms of work, such as temporary, part-time, or home-based work, which make them less visible or accessible for a union; also, these forms of work may be subject to restrictions in national law on organising in a union.
- ▶ Women do the majority of unpaid care work, including housework, childcare, and eldercare. While they generally work fewer paid hours, the combined unpaid and paid hours mean that they have less free time than men to dedicate to trade union activities
- ▶ There are religious and cultural norms and constraints around women in leadership and decision-making roles.
- ▶ Trade unions have historically been male-dominated, making it often an unwelcoming environment for women.

- › In some areas, women face restrictions on their movement or access to spaces where negotiations may occur.
- › Fear of reprisals from employers is especially threatening for women, as they often are in the lowest paid, lowest power positions. Moreover, they often work under precarious working contracts. Therefore, they are at a greater risk of being laid off.
- › Female trade unionists may face sexual violence or harassment.

It is important to understand how women are represented and included in the trade union or worker representative structures at the suppliers where you source and for you to promote women's involvement.

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 and a strategic level, but also on the ground – in factories and in supply chains. Some examples include:

Lack of state capacity to protect and enforce

Although in some production countries, the national law may contain clear impediments to freedom of association and collective bargaining (in violation of international standards), it is not uncommon for domestic laws in a host of countries to be fairly strong with regard to the general respect for rights of freedom of association and collective bargaining and other labour rights. The challenge is the implementation of the law. Often this is linked to a lack of political will to allocate resources for enforcement or overly complex restrictions on union formation and industrial action. Yet limited capacity is also a real impediment to freedom of association and collective bargaining (Kuru-villa, forthcoming 2021). In many countries, the capacity of labour administrations, including labour inspectors, is woefully underdeveloped and therefore they may be unable 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 employers and governments

All too often, workers face harassment or possible dismissal by their employers when they join or participate in unions at the workplace, despite the international prohibition of such behaviour. Even if they are not fired, workers can be moved or have their positions downgraded, and their pay docked. Furthermore, intimidation and violence against trade unionists and their families are on the rise globally (ITUC, 2019). Trade union leaders or elected worker representatives, in particular, face threats. In 2020, there were a number of scandals over government surveillance of trade union leaders, attempting to instill fear and put pressure on independent unions and their members (idem). For many workers, fear of such retaliation and of losing their livelihood stops them in engaging with or joining unions.

Governments' efforts to undermine unions can take on many forms. The [2020 ITUC Global Rights Index](#) ranks countries on a scale of 1-5 based on their overall respect for workers' rights. It is prudent to note that many of Fair Wear's production countries have a rating of 4 or 5, indicating some of the worst places for workers. The Index also noted that authorities impeded registration of unions in 61% of countries and that the number of countries that exclude workers from the right to establish or join trade unions increased from 92 in 2018 to 106 in 2020. This means that unions that should be recognized as legitimate (because they are formed or joined independently by workers) are unable to register and access the protection and rights afforded to registered unions. Brands should be aware that according to ILO Convention 87, it is not allowed to require authorisation for a union to exist, and therefore you should not refrain from engaging with unions simply because they do not (yet) have registered status. As we explained on [page 20](#), brands are still required to respect workers' freedom of association, even in countries where the law undermines these rights.

Anti-union behaviour can also take a more subtle form, such as restricting information about the right to freedom of association and collective bargaining. Often, workers are not aware of these rights or that forming or joining a union is an option for them. Workers' representatives or trade union representatives may not be allowed or free to talk to workers openly about organising or provide critical information on their rights. This may be the case in countries with strong government control or limited separation between state and private actors, where civil society lacks independence and may be underdeveloped. Or it may simply reflect an employers' lack of desire, or capacity, to inform and educate workers about their rights. Employers may also intentionally move very slowly in engaging in a negotiation process or refusing to start a dialogue. These are clear examples of where your brand could play a role in ensuring employers share information and engage in a dialogue process.

Informal, unregistered, and agency work

More than 60% of the world's employed population is in the informal economy (ILO, 2018). Vast numbers of workers of today's global garment industry rely on jobs that lack basic protections laid out for all workers. This is because they engage in informal or unregistered work or are hired on the basis of a short-term contract or via an agency as temporary workers. In the case of informal or unregistered work, workers take jobs without any employment contract. By keeping workers unregistered (that is, their employment is not reported to the government), managers and workers can avoid payroll taxes. In the case of refugee and migrant workers, work is informal or unregistered because they are undocumented and/or they lack a work permit or visa. Homeworkers are also often informal workers. In the garment industry, the informal workforce is significant and includes some of the most vulnerable groups, including women and migrants.

Yet even workers who may have some form of a contract still often face restrictions on their freedom of association. An increasingly common practice in

some garment-producing countries is to utilise short-term or temporary contracts. Factories work with agencies to supply workers. In some cases, domestic law prohibits agency workers or those on short-term/fixed-term contracts from forming or joining trade unions. Informal, unregistered, and ‘agency workers’ sometimes work for years for the same factory without the protection of the rights enjoyed by other contracted, documented, registered workers within that same location.

The peaks and troughs of production orders in the garment industry partly explain the industry’s highly informalised nature. Factory owners seek to limit their financial risk by minimising the size of their permanent staff. This means either hiring agency or temporary workers, who are banned from organising, or offering informal or unregistered jobs that are not protected by labour law. Without job security, these positions tend to have a high turnover. As mentioned earlier, the intermittent employment relationship of informal and temporary agency workers can make worker organising nearly impossible or outright illegal. 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 informalised work has paralleled the decline in trade union membership. In recent years, increasing attempts are made by unions in many countries and regions to reach out to informal workers, but – taking into account legal and other hurdles – it remains a major challenge.

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 (or government) 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). They can give the impression that a workplace has a union in place, when, in fact, it is not actually representing workers' interests. Because brands do not directly employ workers – or own and operate their production facilities – it can be difficult to have the access and judgment to determine whether a union present at one of your production facilities is legitimate. Therefore, when your brand is considering working with a new supplier, it is not enough to simply ask whether a union is active in the factory. You must find out more about its level of independence. Questions to ask your suppliers are included in [Tool 2: Supplier questionnaire on freedom of association](#).

Export Processing Zones

Export processing zones (EPZs) or Special Economic Zones are generally industrial zones which afford some special incentives (such as tax exemptions or duty-free exporting) for foreign investors to set up business in a specific country or area. The ILO estimates that there are over 3500 EPZs throughout the world, employing 66 million workers. Many governments choose to create these zones to encourage foreign investment in the expectation of a 'trickle-down' effect that they hope may create jobs, raise local skill levels, bring foreign technology into the country and boost the export sector. Sadly, these expectations are seldom realised.

Many EPZs have highly feminised workforces in the garment sector. According to the ILO, *'The vast majority of workers in the EPZs worldwide are women, with a share of 70% and in some cases 90% of the workforce, especially in the garment and electronics sectors. The reasons generally stated by employers for preferring female employees in the EPZs are that they are cheaper in terms of labour costs, show great endurance in the monotonous production work, and are less prone to organise in trade unions'* (ACTRAV, Trade Union Manual).

The right to freedom of association and collective bargaining is violated in almost all EPZs across the world. 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 unionised, 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. The violation of workers' rights in EPZs is primarily a violation of young women's rights (idem). This begs the question of whether production in such locations is possible for brands and suppliers committed to human rights.

The impact of COVID-19 on freedom of association and social dialogue

The COVID-19 pandemic has had an enormous impact on garment brands and their supply chains. This is an extraordinary situation that affects us all. While brands and retailers are closing shops and are struggling to keep their businesses afloat, on the other end of the supply chain, workers — the vast majority of them being women — are subject to massive layoffs and/or increased violations to their human and labour rights.

As the crisis has grown and continued, we see an increasing number of cases of workers and workers' representatives being targeted for layoffs due to their union affiliation, under the guise of COVID-19. A recent report by the Business & Human Rights Resource Centre, '[Union busting & dismissals: Garment workers during COVID-19](#)', highlights multiple cases where worker dismissals disproportionately targeted unionised workers, and where unionised workers were replaced by non-unionised workers after being fired. The examples and findings from their report suggest that apparel factories are using the pandemic as a cover to attack workers' right to freedom of association.

In addition to the direct discrimination, many workers now face a lack of employment, or have lost the stability of contracts and are working in very precarious employment situations. As is discussed further in this guide, stability of work and permanent contracts are key for workers to be comfortable claiming their rights to organise and join unions. The ILO estimates that in the fourth quarter of 2020, working-hour losses are likely to be in the order of 4.9% (equivalent to 140 million full-time jobs). This means that many workers will be forced into the informal economy, where the rights of freedom of association and collective bargaining are notoriously difficult to ensure.

COVID-19 has also highlighted the benefit and value of social dialogue and how it can help workers and employers recover from the crisis. For example, in Indonesia's garment industry, a number of trade unions and the employers' associations, APINDO, API, and APRISINDO, have come together to sign a joint agreement and take 'a collaborative approach to protect both employers and workers/labour from disease and reduce any escalation of the unemployment rate and the loss of income due to the COVID-19 pandemic'. In South Africa, the South African Clothing and Textile Workers' Union (SACTWU) reached an agreement to guarantee six weeks of full pay for 80,000 workers during the lockdown. Workers and employers alike have benefited from functional social dialogue structures during this crisis.

Part II

Brand responsibility and action

Fair Wear's 'Freedom of Association and Collective Bargaining Policy' outlines clearly the expectations of brands with regards to upholding your responsibility to ensure that the Code of Labour Practices standard on freedom of association and collective bargaining is respected. **A brand is only in full compliance with the standard in Fair Wear's Code of Labour Practices when freedom of association and the right to collective bargaining can be exercised in all facilities in a brand's supply chain.**

In the following sections, we lay out these steps again, with guidance on how to uphold them.

We acknowledge that there may be challenges for you and your suppliers, either real or perceived, as your brand begins, or continues, to work on this topic. There may be a lack of knowledge or understanding of these rights among different members of staff; 'fear' of unions based on stories or previous experiences; challenges navigating the complexities of structures in different countries and the various politics or competition between unions; concern towards increased costs related to collective bargaining; or simply not knowing where to start. **Fair Wear is committed to working with our members and stakeholders at large to overcome or debunk these challenges, and this guide is your starting point.**

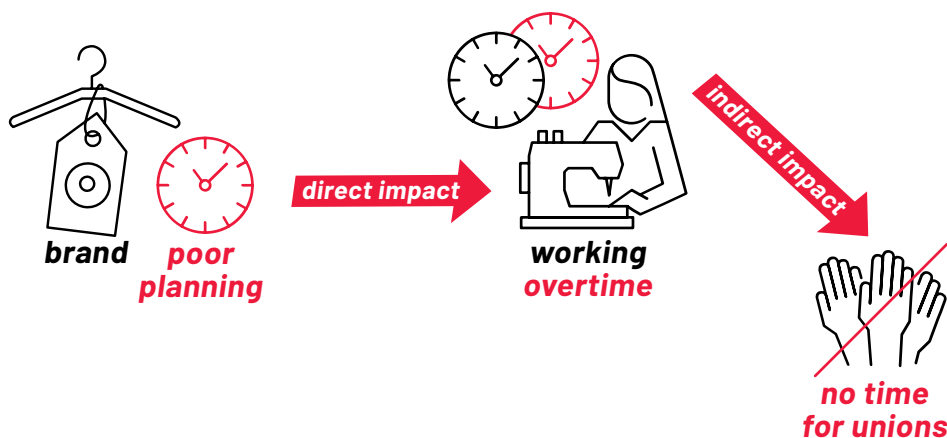
Your brand can take steps that have a significant impact on freedom of association and collective bargaining (and by extension, all workplace rights) in your supply chain and beyond. This requires understanding how your purchasing practices (sourcing decisions, contracts, production planning, etc.) influence access to the rights of freedom of association and collective bargaining and the impact you can have in addressing the systemic threats. In short, Fair Wear calls on members to take action at a number of levels. **By working to both address systemic-level and supply chain-level impediments to freedom of association, brands can play their part to promote these rights in a holistic way, improving the climate for harmonious social**

dialogue within their supply chains. These steps are not chronological but are designed to be taken up in parallel with one another.

Member brands' progress on these steps will be measured in the Brand Performance Check, starting from the financial year 2021. New indicators are currently under development; however, where requirements below are already included in current indicators, those are mentioned.

Internal alignment

It is important to remember that the sustainability department alone cannot ensure that all of a brand's practices align to support freedom of association and the right to collective bargaining in its supply chain. Often, they do not have the mandate to make changes in other departments. It is essential to build internal alignment around the importance and value of these rights, which means working with brand leadership and all relevant departments to understand freedom of association and collective bargaining as the most effective means to improve workplaces (Kuruville, forthcoming 2021). Fair Wear will continue to offer training to member brands on this topic, and we encourage colleagues from various departments and from leadership to participate. As a brand, you can lead by example, ensuring that top management guarantees its workers understand these rights and have the ability to organise.



6 steps for brands to promote freedom of association

Key steps at the systemic level

1. 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 bargain collectively.



2. Participate in direct agreements with trade unions that ensure worker participation in identifying, addressing, and remediating issues related to the conditions of their work.



3. Use your brand's voice and influence to encourage governments to promote and protect—and certainly halt violations of—international standards on freedom of association and collective bargaining (ILO Conventions 87 and 98).



Key steps for change in your brand and at your suppliers

4. Develop contractual agreements with suppliers in which 1) your brand commits to orders in the long-term (several years or more) to provide the financial stability/predictability needed for workplace dialogue and freedom of association to thrive; 2) suppliers contractually agree to offer all workers stable contracts; and 3) supplier and brand jointly distribute non-interference and non-retaliation letters to the workforce, underscoring workers' right to organise.



5. Urgently address violations of freedom of association and collective bargaining (from complaints, audit findings, or other sources), including a strategy for addressing the root cause of violations.



6. Support workplace training for workers and management to build an understanding of their rights and skills to engage in workplace dialogue and collective bargaining. Recognising that women garment workers are under-represented in union structures, extra emphasis should be placed on encouraging and supporting women in this process.



The following sections provide more robust guidance and tips on the steps above that brands can take to promote the right to freedom of association and collective bargaining.

KEY STEPS TO PROMOTE FREEDOM OF ASSOCIATION AT THE SYSTEMS LEVEL



1. **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 bargain collectively.**

When the basic rights to freedom of association and collective bargaining are not respected across a country or at a factory, real progress on social dialogue, or compliance on other labour issues, is difficult, if not impossible. In reference to freedom of association and collective bargaining, the [OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector](#) states that ‘the institutional and legal framework is likely to be the most important risk factor when assessing the likelihood and severity of impacts’ (OECD, 2017).

Choosing to source from countries and suppliers where freedom of association is respected may be the most important way your brand can implement its true commitment to these rights. As a brand, this means integrating this commitment into your overall sourcing strategy. In practical terms, this means:

Concentrate future orders in countries where freedom of association is respected by law and promoted in practice. This requires understanding the status of these rights in each sourcing country and mapping where improvements are possible, and where significant obstacles to these rights exist (your ‘due diligence’, assessed in Brand Performance Check indicator 1.4). Fair Wear calls on brands to weigh sourcing from locations where workers’ freedoms are limited against their stated commitment to these rights. As a brand, you

should do appropriate due diligence on this topic by:

- ▮ Assessing the risks: what is the probability of risks to occur and the subsequent impact on workers. [Tool 1: Fair Wear Country Information on Freedom of Association and Collective Bargaining](#) provides information per country to help assess these risks. This information is currently pulled from Fair Wear's most recent Country Studies, the ILO STAT database, and the International Trade Union Confederation Global Rights Index. As noted below, Fair Wear is committed to enhancing this information per country in the coming years.
- ▮ Determining your possible influence: do you have the ability, time, strong enough leverage, etc. to positively change these working conditions? In Tool 1, countries are grouped on a spectrum according to the potential to make progress on freedom of association and collective bargaining, taking into account the legal conditions as well as the practical situation and occurrence of violations. Considerations (including on time and resources) and suggested next steps are included for each grouping.
- ▮ Understanding the impact: what level of change can be achieved for the workers? Will it be possible to change laws that impede workers' rights, or the attitudes of employers? Are there examples of impact being made by other brands or initiatives? Your impact should be monitored and taken into consideration when you reassess sourcing locations.

Understand the status of freedom of association and collective bargaining at all existing suppliers through verification visits and communications with management, workers, and local stakeholders. This is part of your due diligence work and should follow the same basic steps listed above (and assessed in Brand Performance Check indicator 1.4). [Tool 2: Supplier Questionnaire on Freedom of Association](#) provides a short list of 'key questions' that brands should ask of all suppliers (existing or new) to inform decision making. This information is crucial for sourcing decisions and the ability to remediate violations of this right, which undermine other efforts at workplace compliance. Ensure your written sourcing strategy includes clear 'new supplier selection criteria,' where preference is given to suppliers where legitimate trade

unions are active and/or collective bargaining agreements are in place. In addition to Tool 2, to further analyse the situation, Fair Wear trade union partners CNV Internationaal and Mondiaal FNV have developed an extensive [list of questions](#) you can use to find out more from your suppliers. If you need support in assessing the independence of a trade union or the quality of a CBA, Fair Wear can provide support or connect you with appropriate local stakeholders.

As mentioned in the [‘threats’ section above](#), export processing zones often pose a threat to freedom of association and collective bargaining or restrict those rights completely. When the right to organise is hindered in an EPZ, this is a violation of Fair Wear’s Code of Labour Practices. As a brand, you should consider the risks of sourcing from suppliers in EPZs and include a policy on this in your sourcing strategy. At a minimum, brands currently sourcing from EPZs should actively look for ways to establish a worker-management dialogue in those facilities. However, such action is not considered a replacement for real freedom of association. Fair Wear brands committed to their position on freedom of association should opt against EPZs or anywhere this right is explicitly limited. Where you already source from an EPZ which restricts freedom of association, consider developing appropriate exit strategy steps.

Have clear criteria for a responsible exit from a factory based on certain violations to freedom of association. [Fair Wear’s Responsible Exit Strategy](#) provides overall guidance on the steps brands must take if they are exiting a factory. Repeated violations to freedom of association or structural unwillingness by factory management to cooperate (or even discuss the topic) and improve are valid reasons to end the business relationship with a supplier.

Integrate the points above into a written sourcing strategy that is understood by all departments and supported by top management. This may require additional internal training to understand the value and importance of these

rights and why they are fundamental to improving all other labour rights. Fair Wear and our union partners can support this training. We also encourage you to write this strategy with a gender lens to ensure that all workers are represented. If you would like help understanding this, Fair Wear can assist.

Be transparent by disclosing factories and sharing information on whether there are active, independent unions present (assessed in [Brand Performance Check indicator 6.2](#)). This information can serve to help other brands in their sourcing decisions and incentivise suppliers to comply and be recognised.



2. Participate in direct agreements with trade unions that ensure worker participation in identifying, addressing, and remediating issues related to the conditions of their work.

Work on freedom of association at the local level, e.g., in factories, is important for this fundamental freedom to take hold. Yet given the scale and diffusion of global supply chains, there is a need to find organising structures to meet the realities of today's global industry. Some mix of brands, trade unions, suppliers, governments, and civil society organisations – and quite possibly all of these – will need to collaborate to find lasting solutions. Today, there are a number of 'beacon' initiatives that offer some vision for what shape social dialogue could take to match today's global business structures. These types of agreements provide unique advantages to workers, unions, suppliers, and brands. For instance, they facilitate active dialogue between brands, suppliers, and trade unions on systemic issues, which helps brands identify location-specific risks that are likely relevant at other suppliers. In turn, the dialogue facilitates more cooperative remediation of violations and how to appropriately prioritise them (based on direct input from workers' representatives). These direct agreements may offer an independent grievance mechanism, whereby trade unions can file a complaint directly to the brand. Such agreements directly bring together stakeholders from across the supply chain to facilitate learning and better understand each other's unique challenges.

Some examples of these direct agreements include:

Freedom of Association Protocol agreements – in Indonesia and elsewhere

[The Freedom of Association Protocol for Indonesia agreement](#) was signed in 2011 between Indonesian textile, clothing, and footwear unions, major supplier factories, and major sportswear brands to ensure trade union rights were respected in Indonesian factories. In 2018, three Fair Wear brands joined the Protocol, committing to the principles and responsibilities outlined in the agreement. The Protocol outlines some basic principles that suppliers agree to abide by and ensures they work with trade unions to negotiate collective bargaining agreements. Brands commit to remaining with the supplier and supporting union and employer joint development activities. The Protocol also establishes a Supervision and Dispute Settlement Committee to ensure the commitments are upheld and that disputes are remedied appropriately.

Based on the Indonesian model, the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector encourages brands and their suppliers to enter into ‘freedom of association protocol agreements.’ According to the OECD, such a protocol agreement is made between a brand, supplier, and trade union, establishing a joint understanding and agreement to implement freedom of association. These agreements can be drafted between a single brand, its supplier, and a factory trade union, or may address a specific sector or region, such as the initiatives listed below. These protocols require commitments to be made by all parties involved, such as incentives from the brands to suppliers for compliance.

ACT (Action Collaboration Transformation)

[The ACT initiative](#) is an agreement between global brands and retailers and trade unions aimed to transform the garment industry and achieve living wages for workers through collective bargaining at the industry level. The idea is that by having a collective agreement at industry level within a country, workers can negotiate their own wages under the same conditions, regardless of which factory they work in or for which brand they produce. ACT members make commitments to the rights to freedom of association and collective bargaining, amongst others. Currently, ACT is working towards agreements in Cambodia, Turkey, Bangladesh, and Myanmar. Fair Wear is actively working with ACT to collaborate on promoting these principles.

Accord on Fire and Building Safety in Bangladesh (Accord)

The Accord on Fire and Building Safety in Bangladesh, initiated in 2013, following the Rana Plaza building collapse, has a clear focus on safety in garment factories. It also represents an unprecedented model for social dialogue – involving brands, trade unions (local and international), workers advocacy groups, and local industry/employers. The uniquely legally binding agreement, resulting from negotiations amongst these parties, represents a real step forward in terms of social dialogue and mechanisms for filling the regulatory gap that currently exists in the global garment industry. As of June 1, 2020, and following a transition period, a new RMG Sustainability Council (RSC) formally took over all the Bangladeshi operations, infrastructure and staff of the Bangladesh Accord on Fire and Building Safety.

Pilot approaches (with Fair Wear and others)

As the garment industry evolves and as Fair Wear and our members learn more from real-life experience, we continue to pilot and test new approaches. There may not be a ‘one size fits all’ solution for the complex challenges of freedom of association and collective bargaining, but Fair Wear believes that through research and piloting approaches, we can find credible solutions to share with the wider industry. Fair Wear is partnering with Dutch union organisations, international research institutions, consultancies, civil society organisations, suppliers, and local trade unions to learn and pilot programmes related to freedom of association, collective bargaining, and social dialogue. To develop or join a pilot programme, contact your brand liaison, or discuss possible options with other member brands.

Fair Wear is committed to supporting these types of direct agreements between brands, trade unions, and suppliers. As new initiatives emerge, Fair Wear will encourage (or require, such as with the Bangladesh Accord) brands to join such structures to support collective and systemic change.



3. Use your brand's voice and influence to encourage governments to promote and protect—and certainly halt violations of—international standards on freedom of association and collective bargaining (ILO Conventions 87 and 98).

Brands possess a significant amount of influence, both financially and through their public actions. In globalised garment supply chains, suppliers often listen when brands speak up—particularly when they speak in unison. Brands also have a unique position to engage their own governments and intergovernmental organisations and their consumers. Below are some suggestions on how you can address various stakeholder groups about your commitment to these rights and publicly support them.

Lobby production country governments

The governments of the countries from which your brand sources care what businesses think. They want to ensure economic growth and prosperity, which means keeping international companies sourcing from their factories. As such, brands, particularly collectively, may have considerable influence over the policies and practices related to their supply chains. When there is a clear and urgent violation of the right to freedom of association and collective bargaining by the government of a supplying country, for example in high barriers in local law for recognising a union, proposed changes to the law that further restrict trade union activity, persecution of union leaders or refusal to register legitimate unions, brands should take action by writing to or asking for a meeting with that government to express their concern and offer solutions that would encourage smoother trading relations. This is surely stronger when done in collaboration with other brands. Often Fair Wear, along with a network of other multi-stakeholder initiatives and civil society organisations, as part of the formally established MSI Emergency Response Group, will facilitate this process and ask member brands to add their name or voice to a letter or meeting. In some countries, there are also

local ‘brand groups’ that regularly discuss issues and formulate advocacy plans. As a member brand, if you learn about violations that are not in line with your commitment to this or other code of conduct standards, reach out to Fair Wear or other member brands to see what action might be appropriate. Fair Wear’s country teams can help provide guidance and support to ensure that your actions are helpful (and not harmful) and can help facilitate meetings or communication.

Case in point: letter to Cambodian government

In 2017, there were many indications that the space for civil society, including trade unions, to organise and function in Cambodia was shrinking dramatically due to government policy and action. A continuation of this trend would mean even less protection for workers and a restriction of the rights to freedom of association and collective bargaining. Representing our member brands, alongside the Fair Labor Association, Social Accountability International, Adidas, Puma, Under Armour, Mountain Equipment, Co-op, and Arena, Fair Wear [sent a letter](#) to Prime Minister Hun Sen expressing our concerns with recommendations for the government to address specific grievances. This letter was followed up with a [second letter](#), in 2019, in which more brands, including Fair Wear members Salewa, Schöffel, and Montane, signed on. Subsequently, the letter was shared with members of the European Parliament and other politicians to encourage a high-level response and show the serious commitment of business to address these human rights issues. The situation in Cambodia is still precarious, and serious steps have been taken by the EU to promote improved policy by the Cambodian government.

In this case, Fair Wear lobbied a production country government both on behalf of and with our members. However, member brands can also directly lobby production country governments or collaborate with others to do so. Fair Wear can help coordinate and facilitate these efforts.

Lobby your local and national government

‘Buying’ country governments (those countries where products are sold) can

play a large role in ensuring that the rights of workers who make products that are imported into their country are respected. Some European countries have already implemented national laws regarding some of these principles, including the French Duty of Diligence Law and the UK's Modern Slavery Act, and others are moving towards similar laws. These regulations put responsibilities on international brands to ensure certain provisions and monitoring take place in their supply chains. As a member brand of Fair Wear, you are already committing to many of the rights that these regulations aim to support, including freedom of association and collective bargaining. If other brands also had to abide by these principles in their supply chains, it would create a more level playing field for Fair Wear member brands and possibly make collaboration with other brands easier.

Writing to your local or national governments to confirm your commitment to the Fair Wear Code of Labour Practices standards, including the rights to freedom of association and collective bargaining, reinforces the message that brands and businesses support well-structured regulation. If you join trade missions with your country delegation, emphasise the importance of freedom of association to your delegate and in your discussions.

Engage consumers

As a member of Fair Wear, you are already showing this commitment to consumers; help educate them on your work even further by sharing your commitment to freedom of association and collective bargaining with them! You can help educate consumers on why these principles are important and how, when workers have these rights in place, they are more able to negotiate for their own improved working conditions, such as higher wages and less overtime. Social media has proven to be a powerful tool for engaging with consumers and other stakeholders; consider running a campaign about the principles you commit to, sharing stories of supporting freedom of association in your supply chain, sharing posts from Fair Wear and others on the topic, or holding a live

chat with consumers talking about relevant issues. If you are interested in working on joint campaigns with Fair Wear, reach out to your brand liaison.

Work through your business association

Many garment brands are members of business associations in their home country. These business associations often provide training, resources, or support to members and have a mandate to work on behalf of their members. Let your business association know that freedom of association and collective bargaining are important to you. Share your experience working on the topic. Ask them if you can speak at a member event about the importance of the topic. They may be able to arrange training on the topic for other members, thereby helping to spread the understanding of the issues and steps brands can take. Business associations also often lobby on behalf of their members to national or international governments. For example, there is a representative business association for each country that is part of the [International Organisation of Employers](#) (IOE). This group represents the viewpoint and interest of the businesses in that country at International Labour Organization (ILO) meetings and in decisions. In 2019, the delegates to the ILO, including business associations, voted on the new Convention on Violence and Harassment in the World of Work (C190). Ultimately, most business associations voted in favour of the convention, which was passed. It is certain that having companies lobby their business associations in favour of this influenced this vote. Speak up to ensure that your point of view and commitment is represented.

Social dialogue is good for business

We already know that the underlying rights of freedom of association and collective bargaining, which serve as the foundation for social dialogue, are fundamental human rights. But respecting these rights is not the only reason for employers to be conscious to engage in social dialogue. According to the [Global Deal](#), ‘research has demonstrated that in many instances social dialogue can be a strong driver of stability, equity, productivity and sustainable business growth.’ In their 2017 publication, *The Business Case for Social Dialogue*, the Global Deal shares seven insights on how social dialogue can contribute to business performance. They show that social dialogue is key to managing conflict for fair and stable workplaces and contributing to improved firm performance and productivity gains. Their research found that when worker representatives were involved in a dialogue on organisational changes, they better helped ensure the changes were implemented productively. Moreover, having the worker representatives at the table means employers gathered valuable insight from the workers themselves, who had innovative approaches to improve productivity. Ultimately, when workers and management are in strong communication and work more collaboratively, a more stable workplace emerges, with benefits for both workers and management.

Case study: an experiment in Turkey

Between 2011-2012, Fair Wear conducted an experiment with factory training to enhance social dialogue in Turkey. The project focused on intensive training and support for workers and management to learn the principles and skills to engage in social dialogue at the factory level. Among other results, some factory managers noted improvements to their business as a result of the new dialogue. One manager said this change in the atmosphere had facilitated a dialogue in which workers suggested to change the workflow to enhance productivity. Another manager observed that production speed and quality increased when workers felt they were being listened to (Fair Wear Foundation, 2013). Notably, businesses seemed most likely to benefit when workers fully participated in all training and when workers and management invested in building systems for grievance handling and worker representation.

KEY STEPS TO PROMOTE SOCIAL DIALOGUE IN YOUR BRAND AND AT YOUR SUPPLIERS

Efforts you make within your brand and supply chain are all linked to taking action in your brand's sphere of influence to ensure freedom of association and collective bargaining. Taking proactive steps to promote freedom of association and collective bargaining and supporting independent worker representation at the factory level is key. It may be in the form of training ([see point 6 below](#)) or by supporting the fair elections at the supplier. You may ask your supplier to invite a local union to share information with workers. During audits and in the development of CAPs, you can ensure that worker representatives are present and ask for follow up feedback from those worker representatives periodically. The exact steps to take will depend on the country and supplier context and their openness to the topic. Especially in countries where freedom of association is restricted by law, these steps should be made carefully and can be supported by Fair Wear, so as not to violate laws or customs.

The following steps focus on some of the most important actions you can take within your own supply chain and in partnership with your suppliers to support these rights.

- 4. Develop contractual agreements with suppliers in which**
- 1) your brand commits to orders in the long-term (several years or more) to provide the financial stability/predictability needed for workplace dialogue and freedom of association to thrive;
 - 2) suppliers contractually agree to provide all workers stable contracts; and
 - 3) supplier and brand jointly distribute non-interference and non-retaliation letters to the workforce, underscoring workers' right to organise.



Calling upon suppliers to clear a space for potential trade union activities can be a difficult pill for suppliers to swallow. They often associate trade unions with additional costs due to collective bargaining on wages and/or fear disruptions in production. Your brand can express its commitment to freedom of association and the right to collective bargaining by negotiating contracts with your suppliers which include longer-term commitments to production (by you), alongside commitments from the supplier to increase stable contracts for workers and to jointly distribute non-retaliation letters. The incentive of longer and stable contracts may give suppliers more security and comfort to then be able to offer similar stability to workers.

The idea is quite simple: If suppliers commit to taking actions that promote freedom of association (stable contracts and non-retaliation), your brand commits to prioritise that facility for sourcing over successive years. It is also important that your brand makes explicit that it will accept higher product costs that result from collective bargaining or other trade union action, so the supplier knows it will not lose orders due to these rights being realised. (Note: by using [labour minute costing](#), it is possible to calculate the total product cost of any workplace improvement – wage increases or otherwise. All parties can be assured of higher product costs that are really based on workplace improvement costs.)

Why do stable contracts make a difference?

Stable employment is critical to any kind of organising. As mentioned previously, workers who do not have contracts or stable employment (see [informal and unregistered work](#) above) are likely not willing to risk jeopardising their employment by joining unions or are legally not allowed to join. This is why it is critical for your brand to ensure that, as a rule, all sourcing locations provide workers with legal, permanent contracts. Indeed, Fair Wear's code requirement for legal contracts directly supports freedom of association (and

many other Code requirements). If the workers currently making your products do not have formal contracts – whether because they are hired as contractors, temp workers, or via agencies or subcontractors – this is one of the first places you need to start your freedom of association efforts.

It is worth noting that suppliers often turn to unregistered, informal, or temporary agency work to spread the risk of short-term, footloose contracts which they have with brands. So, while brands seek to reduce their risk by only committing to suppliers on a short-term basis, the suppliers mimic this behaviour and engage workers in precarious work. As a brand, if you reduce your risk through such practice, be aware that the workers who make your product may very likely be bearing this risk for you via informal and unstable work.

Part of the solution to precarious work lies in your brand finding more creative ways to mitigate risks in your supply chain while engaging in longer-term contracts with suppliers. Fair Wear does not prescribe a set number of years for a brand to commit but recommends long term collaboration and rewards relationships of over five years in the brand performance check. Member companies should have a policy in place or included in the overall sourcing strategy, with a commitment to long-term relationships with suppliers (under normal circumstances).

When workers see the supplier (their employer) and brand committing to these rights, they may feel more confident in exercising those rights without fear of retaliation.

Fair Wear recommends that brands work with management at each sourcing location to distribute non-retaliation letters to all workers. These letters would commit the supplier to abide by international standards of non-interference in organising and elections and assuring workers that they will not be discriminated against for joining unions. This letter should also be posted publicly in the factory where workers can see it. The brand can underscore

this message by helping to subsidise worker training and discussion about the letters (see more about training below).

Such a statement should be clear and simple (see [Tool 3: Sample Non-Retaliation Letter](#)). The statement should include:

- ▶ Commitment to freedom of association for all workers, that is the right of workers to form or join trade unions of their choosing, or other forms of worker representation.
- ▶ Commitment to the process of collective bargaining, that is that management is willing and open to engaging with trade unions in discussing and negotiating the terms of working conditions, including issues such as working hours and wages.
- ▶ That workers or workers' representatives will not in any way be discriminated against or punished for joining or participating in trade union or worker committees or any related activities.
- ▶ That workers can contact their worker representatives in the following ways:
{insert internal grievance mechanism procedures or contact process here}
- ▶ That workers can find the full company commitment and policy at:
{insert location where policy can be found}.



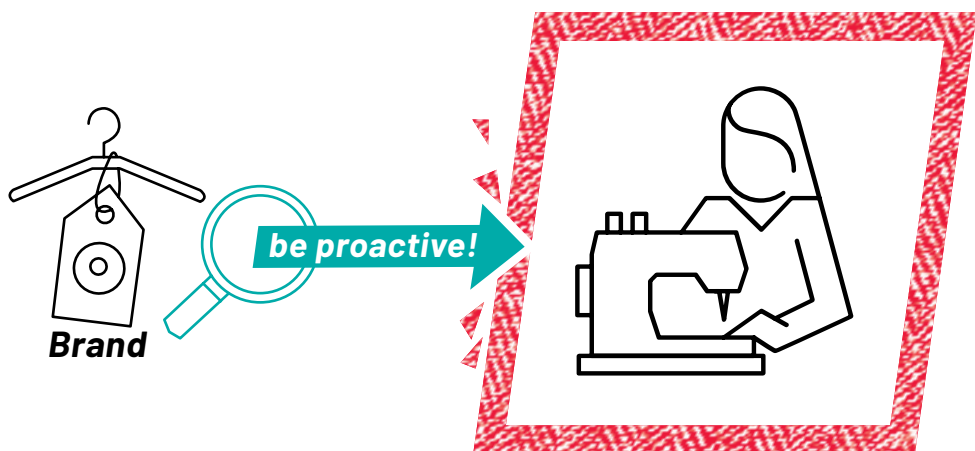
5. Urgently address violations of freedom of association and collective bargaining (from complaints, audit findings, or other sources), including a strategy for addressing the root cause of violations.

Like the vast majority of garment brands, you will almost undoubtedly encounter violations of the rights to freedom of association and collective bargaining in your supply chain – either through complaints, audits, or other due diligence efforts. When violations are found, your brand is responsible for supporting the remediation process. As member brands, you should be actively involved in (a dialogue on) remediation and actively encourage the

involvement of worker representation (assessed in [Brand Performance Check indicator 2.3](#)). In some cases, your brand may have a major role to play in the root cause of an identified problem. Fair Wear expects member companies to examine and remediate any problems to which they are contributing, including those in cooperation with other member brands (assessed in [Brand Performance Check indicator 2.8](#)).

The immediate remediation of violations is key, but these types of violations are likely to recur if the supplier's fundamental beliefs do not support freedom of association and the right to bargain collectively. It is important to note that violations of the rights to freedom of association and collective bargaining can be notoriously difficult to find in traditional audits. Similarly, workers might not raise this issue as a complaint (internally or through Fair Wear complaints hotline) if they either do not know about these rights or fear retaliation. This is why it is extremely important to **proactively** promote the understanding and value of these rights, not merely react when violations are found. Therefore, it is key that in supporting remediation efforts, you go beyond the immediate problem. This may be in the form of training (see point 6 below) or by supporting the fair elections at the supplier. You may ask your supplier to invite a local union to share information with workers. Ask about the gender representation in the union(s) or workers' representatives to see how/if women are appropriately represented. The exact steps to take will depend on the country and supplier context and their openness to the topic. Especially in countries where freedom of association is restricted by law, these steps should be made carefully and can be supported by Fair Wear, so as not to violate laws or customs. Further tools and resources for brands are being developed by Fair Wear and our partners ([see Fair Wear Next Steps](#) for more details).

Social dialogue at the factory level is an important and effective tool for remediating labour violations, including those violations related to freedom of association and collective bargaining. When working with your suppliers to support



remediation, you should actively encourage the involvement of workers and their representatives in the discussion, solution, and action steps (assessed in [Brand Performance Check indicator 2.3](#)) and ask for feedback from those worker representatives periodically. This may be the union representatives or the workers who have been elected to a works council or committee. If there are no worker representatives at the factory to engage in discussion, introducing this role is a clear step that you can encourage the supplier to take as part of the remediation efforts. Appropriate resolutions can only be found when all parties are involved and have their say, including workers.

Although there is no one-size-fits-all solution to these violations, we have compiled some examples of some of the most common Fair Wear audit findings and complaints on this topic and provided examples of root causes and brand action that could follow in [Tool 4: Violations, Root Causes and Examples for Brand Action](#). This is not exhaustive, nor is it meant to be followed verbatim in every situation. However, it provides an example of how, each violation and finding, your brand should examine what might be the underlying root cause and how to engage with the supplier in remediating and addressing those causes. As mentioned above, in all remediation actions, member brands should involve worker representation in the discussion, where at all possible.



6. Support and finance workplace training for workers and management to build an understanding of their rights and skills to engage in workplace dialogue and collective bargaining. Recognising that women garment workers are under-represented in union structures, extra emphasis should be placed on encouraging and supporting women in this process.

Training and capacity building across the supply chain are important investments that pay off in terms of better responses when problems are found and preventing many labour code violations from happening in the first place. Brands, factories, and agents can all benefit from training and capacity building work. In many places, workers are not aware of their fundamental rights at work, and, therefore, do not have the opportunity to exercise those rights. Similarly, factory management cannot support or enforce rights, such as freedom of association and collective bargaining, if they do not know or understand their value in the first place or start with a biased opinion. If management has a clear policy in place allowing freedom of association, yet workers are not taking the opportunity to organise or to arrange elections, it may be good for suppliers and brands to ensure that workers know about this right and opportunity. Lack of organising may mean that workers are choosing not to exercise the right, but it could also mean that they simply do not know about it or feel afraid of attempting to exercise it. Once these rights are known, workers and management may require training to learn how to systematically implement these rights, including developing internal systems for social dialogue and complaints handling, learning communication skills, understanding business processes, etc. It is important to ensure that women are adequately represented and participate in any training.

Training needs to begin at the top. No progress can be made unless management is first convinced that such a change will benefit the company in the long term. Fortunately, there is adequate evidence for the performance bene-

fits of freedom of association and social dialogue across the sector, and brands are in a good position to introduce factory managers and owners to that information to help induce a change in mindset around this issue. Once factory management buy-in has been obtained, it will be necessary to expose front-line managers and supervisors to the reasons for change and to new techniques of people-management. Supervisors are so often the least-considered element in creating genuine workplace change. Usually elevated directly from the ranks of line-workers on the basis of good performance, they do not necessarily bring with them ready-honed skills for managing their fellow workers. Therefore, a solid grounding in how to engage in a process of dialogue with workers and their representatives on a daily basis can reap dividends. It is not unusual for a language barrier to exist between management, supervisors, and workers. In this case, a neutral interpreter may be needed for the training and to support a subsequent dialogue. Training should also include the company's worker representatives to build professional skills in investigating workplace issues, gathering evidence, presenting a reasoned and clear case for a desired course of action, and, most importantly, for being accountable to the shop floor constituents who elected them to explain the results of discussion and negotiation.

Your brand can support this capacity building by encouraging your suppliers to enrol in pre-existing training (delivered by third party trainers to ensure neutrality) and helping to finance this training, or working with them (and Fair Wear) to develop a bespoke solution (assessed in [Brand Performance Check indicator 4.4](#)). Fair Wear plans to expand our piloting of training on this topic in the coming years. The following courses are examples which could be part of a training package:

Workplace Education Programme Communication Module

The [WEP Communication Module](#) focuses on improving worker-management interaction by developing communication skills with an emphasis on

collaborative problem-solving. Management, a group of workers, as well as a group of worker volunteers or representatives (where applicable), will be trained and engage in dialogue sessions.

The WEP Communication Module was piloted in 2018, and a revised version based on feedback is available in Vietnam, Myanmar, and Indonesia as of 2019. In addition, a Turkey-specific module is available. The module continues to be improved with input from local stakeholders and the impact is being monitored.

Training by local trade unions or labour NGOs

When trade unions are present at a production location or locally, they may provide workers with training and development. Often local trade unions are members of an international union and/or are supported by international organisations (such as Fair Wear partners CNV Internationaal and Mondiaal FNV) who offer capacity building for their members and provide financial support. Wherever possible, talk to the local trade union to see if they can either provide or support training workers. Fair Wear's country studies provide information, listed by country and region, on which unions are active. Labour NGOs, either local or international, may also have programmes focused on increasing workers' knowledge or skills, specifically related to freedom of association or building social dialogue skills. If Fair Wear's WEP programmes are not offered in your supplying country, or the modules are not appropriate for the specific situation, Fair Wear can support you in connecting with other local service providers to offer additional training. Not all training programmes are created equal and Fair Wear has developed basic criteria to assist brands in choosing or organising training. These criteria can be found in the [Member Guide](#) (p. 129). Fair Wear is continuing to engage with our partners and others to find and recognise training on this topic in all production countries. When interested in training, contact your brand liaison to discuss options.

Training should not be thought of as a one-time event that will automatically lead to change. Following any training or capacity building programme, your brand should work with their supplier to create a plan to ensure ongoing follow up and supplementary training (assessed in [Brand Performance Check indicator 4.5](#)). For example, if only 10% of the workforce were able to participate in training, you and your supplier should work together to determine how to either schedule other training for other workers or have trained workers hold internal training of their own. As part of a WEP Communication training, there are multiple follow-up sessions for workers and management to continue their dialogue. Your brand should ask for updates from these meetings (or join when asked) to monitor how the dialogue is progressing and encourage continued relations. The ultimate goal is to have functioning social dialogue structures operating at the supplier, which will most likely involve multiple training sessions and ongoing monitoring and support for the process.

Conclusion & next steps

Conclusion

Freedom of association and the right to collective bargaining are not only fundamental human rights but also the core tools that workers need to be able to freely negotiate for improved conditions of work. All people deserve to enjoy decent work and have a voice in determining how that is realised. For businesses, social dialogue (underpinned by the rights of freedom of association and collective bargaining) can promote inclusive business growth, where the development of people and products go hand in hand. Social dialogue can reduce labour unrest, leading to increased productivity. Particularly in times of crisis, such as right now with COVID-19, social dialogue can be a tool for developing policies and long-term solutions that protect the industry and the workers who make it run. For both workers and employers, the rights of freedom of association and the process of social dialogue can lead to improved conditions.

There is no quick and easy solution to ensuring that workers' rights to freely associate and bargain collectively are respected. In most countries, these rights have been under threat for many years. However, there are clear steps that you, as a brand, can take in both your purchasing practices and through your influence with suppliers and beyond to make a real difference. Your commitment to promoting and protecting these rights must be integrated into your overall business model and approach; it is a long-term commitment that will take a sustained, concerted effort. Fair Wear always promotes a step by step approach, and this guide should help you to determine a starting point from where you will continue growing as a brand.

On our end, Fair Wear commits to continue developing our resources on this topic and working together with you, member brands, as well as industry stakeholders, making progress cooperatively and supporting workers in attaining and exercising these rights.

Fair Wear's next steps

At Fair Wear, we know there is much more work to be done to ensure that the rights to freedom of association and collective bargaining are respected and practiced, including our work to provide more information and tools to our member brands to fully realise the steps outlined in this document. Below are the the key next steps that Fair Wear will take to ensure our members have the information and tools they need.

STEP 1

What we want to deliver

- › An informed and clear indication for brands on which countries most respect and practice freedom of association and collective bargaining
- › A 'ranking' or grouping of countries at different levels
 - › Indication of which countries we see possibilities for change vs. those where it is unlikely
- › More specific steps per country that brands can take based on the country and supplier situation

What we still need

- › A methodology for gathering and weighting different sources of information about country situations (either primary or secondary sources)
- › A tool/questionnaire for brands to gather key information on freedom of association from suppliers
 - › Integrate into the current supplier questionnaire?
 - › Align with MODINT's update of their questionnaire
- › A tool for understanding what steps to take per country based on country and supplier information
 - › Increased training for brands on the importance of freedom of association for structural change and the context per country

- › Materials for brands to share with suppliers on positive examples of freedom of association at the supplier level (business case)
- › Checklist/overview of how to organise and support fair elections
- › Assessment on status of freedom of association and collective bargaining in non-Fair Wear focus countries
- › More detailed information per country on EPZ/SEZ zones
- › Mapping of unions and labour rights organisations per country and their affiliation to international union federations or confederations

Actions we'll take next

- › With external support, develop methodology for weighting sources of information. I.e. – with ITUC, look at their specific indicators (of the total 97) that feed into their Human Rights Index that would be most useful and specific to brands. Develop a matrix of these indicators, alongside an analysis of 'possibilities for change'. *With union partners
- › Develop country 'fact sheets' that provide more detailed information and steps for brands to take. *Already included in CNV's Strategic Partnership workplan – will launch with two countries
- › Analysis of EPZ/SEZs per country, including key differences and 'ranking' (i.e., red, orange, green) based on the ability to exercise freedom of association and collective bargaining (check ILO content?)
- › This could be included in the country fact sheets mentioned above

STEP 2

What we want to deliver

- › A list of direct agreements that Fair Wear encourages brands to join
- › Examples of what direct agreements at supplier level look like

What we still need

- › Clear criteria for what makes a 'good' direct agreement (what makes them of worth)

Actions we'll take next

- › Work with external experts on analysis of current agreements and their impact (a lot of information and analysis has already been done, we just need to tap into it) which lead to clear criteria

STEP 3

What we want to deliver

- › Clear expectations for our brands on how and when to use influence and support advocacy efforts

What we still need

- › Better understanding of what motivates brands to speak up

Actions we'll take next

- › Discuss with Member Expert Group of brands on how to more structurally involve brands in advocacy efforts

STEP 4

What we want to deliver

- › Clarity on what length of contract incentivises or gives enough room for supplier to be able to change their contracts with workers
- › A 'rule of thumb' for member brands on what the maximum percentage of workers on short term contracts should be

What we still need

- › Understanding of the impact of long-term contracts (on ability to organise, but also other labour rights)
- › Best practice examples

Actions we'll take next

- › Research on link between long-term contracts and impact on labour rights (specifically freedom of association)

- › Research/analysis of what an ideal breakdown of worker contracts at supplier level that provide a strong enabling environment for workers to organise looks like
- › CNV noted that it might be possible to gather informally with union partners in-country
- › Some examples (good and bad) of the effects of this

STEP 5

What we want to deliver

- › Better understanding of union and labour rights organisation context in country (in order to support cooperation)
- › More approaches for how to remediate freedom of association violations

What we still need

- › Mapping of unions and LROs
- › Tool/country level fact sheets with further steps outlined (CNV development)
- › Collection of examples from Fair Wear complaints

Actions we'll take next

- › Partner with external org to do mapping of unions and LROs
- › Support further development of tool/fact sheet per country (with union partners)
- › Analysis of Fair Wear complaints of freedom of association and library/inventory of best practices

STEP 6

What we want to deliver

- › Linked brand and supplier training on freedom of association – brands are required to undergo training on the topic before asking/supporting suppliers to do so

- › List of ‘good’ training programmes per country (encompass both understanding of rights and value of these rights, as well as tools for practicing and implementing)
- › More scalable options – to move away from individual factory training to something more structural

What we still need

- › Criteria for determining what ‘good training’ is
- › Brand training programme (mandatory before having suppliers engage in WEP Comms Module)
- › Analysis and update of WEP Comms Module
- › Pilot project on multi-supplier training

Actions we’ll take next

- › Meeting of experts (in training) to develop criteria
- › Develop brand training programme (with external support and including TUs)
 - › Understanding of value of rights
 - › Necessity of integrating into business model
 - › How to talk to/support suppliers
- › Update WEP Comms based on evaluation and new criteria; introduce brand requirements
- › Work with external consultant and partners to develop training in 1-2 countries on multi-supplier training (i.e. – proposed Tunisia training programme with 5 Fair Wear brands)
- › Piloting of various forms of freedom of association, collective bargaining, and workplace dialogue training and capacity building programmes in order to determine the best fit for Fair Wear to grow with



Tools

Tool 1

Fair Wear country information on freedom of association and collective bargaining

Fair Wear members commit to source from suppliers where workers' freedom of association and right to collective bargaining are respected. However, in most garment-producing countries, these rights are at risk. Therefore, in line with Fair Wear's process approach, Fair Wear members are called upon to take concrete, verifiable action to advance these rights. A brand's greatest influence is through their sourcing decisions. As such, this tool is designed to help brands steer production to ideal locations, where freedom of association is fully respected, or, when the ideal is not possible, to locations where there is more potential to advance these rights. Where such possibilities are highly limited, it is difficult – if not impossible – for brands to stand by their commitments to these fundamental rights.

The following pages provide an overview of the current situation in Fair Wear's focus countries with regard to freedom of association and collective bargaining. The information is taken from:

- › the most recent Fair Wear Foundation Country Studies, which are developed in consultation with stakeholders in each country;
- › statistics from the [ILO STAT database](#) on trade union density and collective bargaining coverage on a country level (not specific to the garment industry);
- › the [2020 International Trade Union Confederation Global Rights Index](#) rating per country. This Index ranks 145 countries on the degree of respect for workers' rights, based on 97 indicators, many of which focus on freedom of association and the right to bargain collectively; and
- › the most common Fair Wear audit results and complaints received through Fair Wear's complaints hotline.



BANGLADESH

LAWS AND REGULATIONS

HAS ratified ILO C87, 98.

Has NOT ratified ILO C135.

- ▶ The Constitution of Bangladesh states that 'every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order.
- ▶ Minimum requirement of 30% of the factory workforce for a union to be registered (difficult in large factories with thousands of workers).
- ▶ Law protects trade union members from any discrimination by employers in recruitment, retention, promotion, and working conditions based on the trade union affiliation of the employee.
- ▶ Law requires that in factories where more than 20% of the workforce is female, 10% of the executive committee of the union be represented by women.

COUNTRY SPECIFIC STATISTICS

- ▶ Union density – Not available
- ▶ Collective Bargaining Coverage – 5% (2006)

ITUC GLOBAL RIGHTS INDEX RATING

- ▶ 5 – no guarantee of rights

STAKEHOLDER VIEWS ON RIGHTS IN PRACTICE

- ▶ Stakeholders expressed that there have been some improvements in terms of freedom of association in the Bangladesh RMG industry in the post-Rana Plaza era. However, the number of unions is still very low in terms of the size of the industry, the number of factories, and the number of workers that need representation.
- ▶ Lack of education and awareness of rights and benefits on the part of workers has been a major obstacle in increasing worker membership.
- ▶ Stakeholders expressed practical challenges of organising workers, as workers lack the time and capacity to be actively and constructively involved. It is also difficult to gather the mandated one-third participation within an establishment, and it requires significant financial resources.
- ▶ More women are participating in trade unions in the post- Rana Plaza context, but participation is still low, especially in leadership positions.

MOST COMMON AUDIT FINDINGS AND COMPLAINTS

- ▶ Almost all of the audited factories had a written policy on freedom of association and the right to collective bargaining.
- ▶ At the factories audited, there is no independent union or workers committee run by workers without management involvement.
- ▶ No Collective Bargaining Agreements (CBA) were observed during audits.
- ▶ Workers are not aware of their rights in terms of freedom of association.

BULGARIA

LAWS AND REGULATIONS

HAS ratified ILO C87 and 98.

- Has NOT ratified ILO C135.
- According to Art. 4 of the Labour Code, workers have the right, without permission, to freely form trade union organisations of their choice and to freely join and leave them, complying solely with their own rules of procedure.
- Legislation provides for collective bargaining on three levels: the industry level, the company level, and municipal level (where the terms and conditions of municipal employees are negotiated).
- There is a provision that where an industry agreement has been signed by all the representative unions and employers, the government can extend it to all employers in the industry at their request. Otherwise, only the workers who are members of the union that has signed the agreement are covered. Other workers can decide to join a CBA.

COUNTRY SPECIFIC STATISTICS

- Union density – 13.7% (2016)
- Collective Bargaining Coverage – 10.8% (2016)

ITUC GLOBAL RIGHTS INDEX RATING

- 3 – Regular Violations of Rights

STAKEHOLDER VIEWS ON RIGHTS IN PRACTICE

- The trade unions continue to experience obstacles created by employers whose workers want to establish trade union organisations. This issue is most severe in small and medium-sized factories.
- According to the management of the Federation of Independent Trade Union Organisations in the Light Industry (FITUOLI), there are serious problems for garment industry workers trying to exercise their right to freedom of association. There have been attempts by employers to eradicate trade union organisations, as well as an unwillingness to sign CBAs at both the industry and company levels. Moreover, even with signed CBAs, some of the main agreements are not being met.
- Due to the great difficulties faced by the garment industry invoked by the economic crisis as well as the extraordinary competition by mainly Asian producers, both the employers' and the industry's trade union organisations failed to sign an industry-wide collective bargaining agreement in the past several years.
- Workers are usually disinterested in joining trade unions, as they do not believe they would help them achieve more favourable conditions. In some of the smaller towns, trade union representatives are not even physically present, making it impossible for workers to join a trade union, even if they would like to.

MOST COMMON AUDIT FINDINGS AND COMPLAINTS

- In the past ten years, there has been no CBA in any of the audited factories.
- Usually, there are no independent union or workers' committees run by workers without management involvement.

CHINA

LAWS AND REGULATIONS

Has NOT ratified ILO C87, 98, or 135.

Article 7 of Labour Law stipulates that labourers shall have the right to participate in and organise trade unions in accordance with the law. Article 3 of the Trade Union Law repeats this provision, stating that all workers have the right to organise or join trade unions according to law, and organisations should not obstruct or restrict them.

- ▶ The Law also asserts that there is no minimum number of workers needed before a factory can become a union member.
- ▶ Although provisions seem to be given within the articles of the law, in practice, these laws do not protect the right to freedom of association. Article 11 of Trade Union Law regulates the establishment of trade unions, ensuring they need approval from the trade union organisation at the next higher level (ACFTU).
- ▶ There is no comprehensive national law on collective bargaining procedures but rather a plethora of regulations, paraphrased as 'collective contracts.'
- ▶ Articles 41, 51, 52, and 53 of Trade Union Law protect union members and leaders from unequal payment, humiliation, slander, injuries inflicted, interference in duties, or hindrance of their union activities.
- ▶ The right to strike was removed from the Constitution in 1982. The revision of the Trade Union Law has removed the term 'strike' and replaced it with both 'work stoppages' and 'go-slows.'

COUNTRY SPECIFIC STATISTICS

- ▶ Union density – 44.9% (2015)
- ▶ Collective Bargaining Coverage – 40.6% (2013)

ITUC GLOBAL RIGHTS INDEX RATING

- ▶ 5 – No Guarantee of Rights

STAKEHOLDER VIEWS ON RIGHTS IN PRACTICE

- ▶ China has been the subject of numerous complaints by the ITUC and others to the ILO's

Committee on Freedom of Association (CFA). For example, in a case before the CFA, the committee noted that it has said on several occasions that 'many provisions of the Trade Union Law were contrary to the fundamental principles of freedom of association and had requested the government to take the necessary steps to ensure that they were modified.'

- ▶ As the only legally recognised union in China, ACFTU acts more towards maintaining harmony and social stability, rather than as a representative of workers' rights and interests. To ACFTU leaders, harmony and stability mean no strikes or protests.
- ▶ In some factories where there are intense labour disputes, workers are aware of the need to elect worker representatives for collective bargaining. However, most production workers are not very aware of the importance and benefits of collective bargaining, how to conduct negotiations, and what their rights are.
- ▶ Most employers do not show an interest in collective bargaining, often avoiding negotiations with employees. It is also common for factory management to interfere in the election of a trade union leader or worker representatives, often fixing elections so that the trade union leader is also one of the factory managers
- ▶ Strikes are not allowed during collective negotiations
- ▶ Worker representatives can be fired if they are deemed to be violating an employer's rules and regulations.

MOST COMMON AUDIT FINDINGS AND COMPLAINTS

- ▶ Fair Wear auditors have found that each unionised factory was affiliated with the All-China Federation of Trade Unions (ACFTU). In most cases, auditors found union registration a formality that does not lead to social dialogue structures.
- ▶ The chairman of the union is frequently appointed by management or part of the management.
- ▶ Only in a few rare cases, are worker representatives democratically chosen.

INDIA

LAWS AND REGULATIONS

Has NOT ratified ILO Conventions 87, 98, or 135.

The right to freedom of association is guaranteed in the constitution.

- 1926 Trade Union Act prohibits discrimination against union members and organisers in the formal and informal sectors, without distinction.
- Minimum requirement of 10% or 100 workers, whichever is less, to form a union. Moreover, there is a proposed new law that would raise the minimum requirement to form a union to 75% of the workforce (not yet passed).
- Limit to the number of 'outsiders' (those not employed in the enterprise) allowed to sit on a union executive committee, adversely impacting the trade union's right to organise their administration.
- No compulsory recognition of trade unions and no compulsory collective bargaining imposed on the employers.

COUNTRY SPECIFIC STATISTICS

- Union density – 12.8% (2011)
- Collective Bargaining Coverage – Not Available

ITUC GLOBAL RIGHTS INDEX RATING

- 5 – no guarantee of rights
- In 2019, rating got 'worse,' moving from a 4 to a 5

STAKEHOLDER VIEWS ON RIGHTS IN PRACTICE

- The most common violations related to freedom of association involve police violence and the arrest and dismissal of striking workers and trade union leaders.
- Unionisation in Special Economic Zones is difficult because only employees can enter the SEZs and the right to strike is limited by means of a 45-day notice requirement.

MOST COMMON AUDIT FINDINGS AND COMPLAINTS

- Findings from Fair Wear audits from 2013 to 2015 show that 99% of audited factories had no trade union in their premises.
- Most common reasons given by management were:
 - fear that corrupted or politically allied trade unions would bring unrest to the factory; and
 - the belief that workers have no grievances or that they could voice them directly with the management.
- Factories in the south sometimes do have a collective bargaining agreement (CBA) policies. However, audits show that largely the CBAs did not exceed legal requirements and workers were mostly unaware of the agreement.



INDONESIA

LAWS AND REGULATIONS

- ▶ HAS ratified ILO C87 and 98.
- ▶ Has NOT ratified ILO C135.
- ▶ Law No. 21/2000 on trade unions, allows as few as ten workers to form a union and multiple unions are permitted to operate in a single workplace.
- ▶ The trade union law also forbids anti-union activities such as intimidation, campaigning against the formation of a union, termination or temporary suspension of employment, demotion or transfer, and withholding or reducing payment.
- ▶ The right to strike is guaranteed under Law No.13/2003 (with provisions).
- ▶ The right to engage in collective bargaining is guaranteed under Law No.13/2003, which states that union members must constitute more than 50% of employees or have the support of more than 50% of employees, for a union to have the right to bargain. If multiple unions are present, they may enter a coalition to reach the more than 50% requirement or form a team with proportional representation from each of the unions.

COUNTRY SPECIFIC STATISTICS

- ▶ Union density – 7% (2012)
- ▶ Collective Bargaining Coverage – 10% (2008)

ITUC GLOBAL RIGHTS INDEX RATING

- ▶ 5 – No guarantee of rights

STAKEHOLDER VIEWS ON RIGHTS IN PRACTICE

- ▶ While the ability to form an independent union continues to be a problem in some workplaces, the main areas of concern in factories within global supply chains focus on trade unions' capacity to freely represent their members in workplace-level processes, including collective bargaining rather than the right to form a union per se.
- ▶ A common issue is the reluctance of management to negotiate with unions where they exist. However, stakeholders also acknowledged that in some cases, many workers, including union members, may not see the need to engage in collective bargaining.
- ▶ Another barrier to effective negotiation is multiple trade unionism, even where all of the unions are bona fide, as management can play unions off against one another.
- ▶ Trade unions that succeed in negotiating a Collective Bargaining Agreement (CBA) on a factory level, regularly agree with provisions that are less favourable to workers than the prevailing law and regulations.

MOST COMMON AUDIT FINDINGS AND COMPLAINTS

- ▶ In all factories, workers were free to establish a union without interference from management.
- ▶ More regularly, Fair Wear finds that management does not discuss working conditions with unions or negotiate a Collective Bargaining Agreement.



MYANMAR

LAWS AND REGULATIONS

HAS ratified ILO C87.

Has NOT ratified ILO C98, 135.

The Labour Organisation Law (2011) and the Labour Dispute Settlement Law allow workers to organise and form trade unions and undertake lawful industrial action.

- ▶ The law stipulates that the employer shall recognise the labour organisations of its trade as the organisations representing the workers.
- ▶ At factory level, labour organisations need a minimum number of members of 30 workers 'in the relevant trade or activity' (or 10% of workers in the case of workplaces with less than 30 employees) to be legally registered.
- ▶ The law prohibits the dismissal of a worker for union membership and for the exercise of trade union activities or a strike, however, it does not clearly prohibit other forms of discrimination or retaliation, such as forced transfers (a common problem).
- ▶ The law does not provide clear protection to workers seeking to form a trade union, nor does it prohibit discrimination in hiring or blacklisting.
- ▶ The law states the rights of collective bargaining of the labour organisations, however, it does not mention the responsibility of employers on this matter. The law does not contain provisions on the duty to bargain in good faith, period for bargaining, first contract arbitration, levels of negotiation, extension of collective agreements, registration of collective agreements, or enforcement of collective agreements.

COUNTRY SPECIFIC STATISTICS

- ▶ Union density – 1% (2005)
- ▶ Collective Bargaining Coverage – Not available

ITUC GLOBAL RIGHTS INDEX RATING

- ▶ 4 – Systemic Violations of Rights

STAKEHOLDER VIEWS ON RIGHTS IN PRACTICE

- ▶ There is lack of knowledge among workers about the role of trade unions.
- ▶ Trade union representatives reported that the high turnover of workers impedes organising.
- ▶ Anti-union sentiments among employers and discrimination of union leaders and union members effectively hinder unionising efforts.
- ▶ Research by Action Labour Rights (ALR) found that union members and union leaders who raise complaints with management face discrimination in terms of payment and promotion and, in various cases, union involvement has led to the non-renewal of their employment contracts.
- ▶ Retaliation against workers who participate in actions to claim their rights is common, according to ITUC.
- ▶ 'Yellow unions' are common – one report claimed that 50% of workers interviewed who knew that labour unions existed expressed that they did not want to join one as the unions were controlled by the employer.
- ▶ Various clauses in the Labour Organisation Law have effectively put up barriers against joining and forming unions and engaging in collective action. ITUC lists the following restrictions and barriers (among many others):
 - ▶ To obtain permission for a strike, the organisers must provide information such as the date, place, time, period, number of participants. Strikes not in conformity with the date, place, time, period, number of participants, and manner for which advance permission was obtained may be declared illegal. Furthermore, the law prescribes that trade unions cannot go on strike without the permission of the relevant labour federation. This restricts workers and workers' organisations in their right to strike.
- ▶ Collective bargaining in Myanmar usually follows a labour dispute. Thus, CBAs often only cover the issue which the dispute was about. Therefore, they are often limited in scope.
- ▶ Women are underrepresented in trade union leadership positions.

NORTH MACEDONIA

LAWS AND REGULATIONS

HAS ratified ILO c87, 98, and 135.

- ▶ The Labour Relations Law protects the right to organise in trade unions without prior authorisation and prohibits discrimination based on trade union membership or activities.
- ▶ Employers are obliged to provide adequate facilities, including premises, for company-level trade unions.
- ▶ The Labour Relations Law allows unions to conduct their activities without interference. The law protects the right of employees to bargain collectively.
- ▶ According to law, two CBAs should be concluded at country level: a general CBA for the commercial sector, and a general CBA for the public sector. CBAs can also be concluded at branch level and/or at the level of the individual employer.
- ▶ The union and its associations at higher levels have the right to call a strike and mobilise to protect the economic and social rights of their members in employment.

COUNTRY SPECIFIC STATISTICS

- ▶ Union density – 28% (2010)
- ▶ Collective Bargaining Coverage – 49% (2013)

ITUC GLOBAL RIGHTS INDEX RATING

- ▶ 4 – Systemic Violations of Rights

STAKEHOLDER VIEWS ON RIGHTS IN PRACTICE

- ▶ The law guarantees freedom of association, however, the main problem is that many workers have lost faith in the unions over the last 15 years.
- ▶ Stakeholders say that workers are poorly informed and unaware of their right to form and join trade unions. Employees often wrongly believe that a factory union needs the employer's approval, and do not believe that the trade union can improve their labour conditions or protect their rights.
- ▶ According to SSM (the only official trade union in the garment sector), the number of members from textile sector is decreasing and the level of activity is also very low. The 2009 economic crisis and the ripple effects from 2011 to 2013 have affected trade union membership significantly.
- ▶ The UNASM union also points out that workers may be influenced as to which trade union they join. Workers are often unfamiliar with their right to choose between the different trade unions that officially exist in the country.

- ▶ Workers in the garment sector are afraid to organise because they think this may reduce their chance of keeping their jobs.

MOST COMMON AUDIT FINDINGS AND COMPLAINTS

- ▶ Audits generally show that workers at factories where Fair Wear member brands source from are not interested in becoming members of the trade union, although they do want to be part of workers' rights structures.
- ▶ Workers don't have the proper training to run these bodies of workers representation.
- ▶ Factory managers do not interfere with the workers' decision to establish these bodies.

ROMANIA

LAWS AND REGULATIONS

HAS ratified ILO C87, 98, 135.

- › The Law of Social Dialogue no. 62/2011, amended in 2012, sets provisions for both the right to join unions and collective bargaining.
- › At least 15 employees from the same unit or company are required to establish a trade union, and a person may belong to only one trade union at a time under the same employer.
- › Trade unions have the right to use specific means such as negotiations, dispute settlement procedures through conciliation, mediation, and arbitration petition, picket protest, rally, and demonstrate or strike, as established by law.

COUNTRY SPECIFIC STATISTICS

- › Union density – 25.2% (2013)
- › Collective Bargaining Coverage – 35% (2013)

ITUC GLOBAL RIGHTS INDEX RATING

- › 4 – Systemic Violations of Rights

STAKEHOLDER VIEWS ON RIGHTS IN PRACTICE

- › Studies show that fewer employees are becoming members of trade unions. This, along with a significant decrease in the number of employers' organisations, means that trade unions and business associations are unable to function effectively.
- › Since 2012, there is no possibility to negotiate collective agreements at the national level, and the Economic and Social Council only provides a procedural framework for social dialogue.

MOST COMMON AUDIT FINDINGS AND COMPLAINTS

- › Audit results show that some factories do have a CBA at factory level, but not always an updated version. In many Romanian factories, there is a lack of effective worker representation and workers at factory level are often unaware about the content of the CBA.

TUNISIA

LAWS AND REGULATIONS

HAS ratified ILO C87, 98, 135.

Both freedom of association and the formation of trade unions are guaranteed by the new Tunisian constitution (Art. 35). In addition, the union right, including the right to strike, is guaranteed (Art.36).

There are legal provisions for the right to join unions and for collective bargaining:

- › Each worker is free to join union without authorisation.
- › Trade unions are legally recognised, and there is always the freedom to form one.
- › Unionised employees, Company Consultative Committee members, and personnel representatives are protected by law. They cannot be fired without the agreement of the Direction of Labour Inspection and Conciliation.
- › Collective bargaining is protected by law, organised at the industry level. Every 3 years there is a collective bargaining process between trade union representatives and employer representatives.

COUNTRY SPECIFIC STATISTICS

- › Union density – 20.4% (2011)
- › Collective Bargaining Coverage – 56.9% (2014)

ITUC GLOBAL RIGHTS INDEX RATING

- › 4 – Systemic Violation of Rights

STAKEHOLDER VIEWS ON RIGHTS IN PRACTICE

- › -Recently, Tunisia ratified the tripartite consultation convention (ILO Convention No. 144) and the collective bargaining convention (ILO Convention No. 154). These ratifications are signs of deep conviction for promoting social dialogue and formal discussion.
- › However, in practice, most of the employers in the garment industry have a negative attitude towards trade unions. Trust can be an issue between trade unions and employers.

MOST COMMON AUDIT FINDINGS AND COMPLAINTS

- › In general, in the recently audited factories, there seems to be low union activity.

TURKEY

LAWS AND REGULATIONS

HAS ratified ILO C87, 98, 135.

- Under the Trade Unions and Collective Labour Agreements Act No.6356 of 18 October 2012, there are no restrictions on the right of workers (with a labour contract) to organise.
- There are articles in the law protecting workers from discrimination in recruitment, at work, and against dismissal based on union members.
- The coexistence of more than one collective agreement in a workplace or enterprise is prohibited.
- Only the most representative trade union, if it has eligibility (representing more than 1% of the workers employed in the textile sector) and competence (representing more than 50% of the workers on the payroll), is entitled to negotiate and conclude a legally binding collective agreement (this is referred to as a 'double threshold').
- Only members of trade unions have the right to strike, which means that almost 90% of the workers are unable to exercise this right.

COUNTRY SPECIFIC STATISTICS

- Union density – 8.2% (2016)
- Collective Bargaining Coverage – 5.9% (2016)

ITUC GLOBAL RIGHTS INDEX RATING

- 5 – No guarantee of rights

STAKEHOLDER VIEWS ON RIGHTS IN PRACTICE

- Trade unions revealed that the double threshold is a limitation against freedom of association and right to collective bargaining. In the committee of experts' report on the application of conventions and recommendations, ILO expressed the hope that the thresholds will be revised and lowered in consultation with the social partners.
 - Trade unions underlined unregistered employment as another challenge that keeps workers from enjoying their freedom of association and right to collective bargaining. It is estimated that approximately 60% of the workers in the industry are unregistered, and, therefore, exempt from union membership.
 - Trade unions also criticised the regulations regarding protecting union members from union related dismissals. They think that the current regulations are still not sufficient to provide this protection since the penalties for discrimination against union members and union related dismissals are not severe enough.
- ## MOST COMMON AUDIT FINDINGS AND COMPLAINTS
- Commonly, it is found that no independent union or workers' committee is run by workers without management involvement.
 - None of the factories audited (in 2017) had a current CBA.
 - Most complaints related to freedom of association refer to unfair dismissal of workers based on union affiliation.

VIETNAM

LAWS AND REGULATIONS

- ▶ HAS ratified ILO C98 (in 2019).
- ▶ Has NOT ratified ILO C87 (has committed to before 2023) or C135.
- ▶ The constitution grants the right to form associations and trade unions to protect the lawful rights and legitimate interests of workers. Enterprise-level workers have the right to establish, join, and operate the trade unions.
- ▶ However, as there is only one legally recognised trade union organisation (VGCL), workers DO NOT have the right to establish a union of their choice, and are often automatically enrolled in a trade union (no choice).
- ▶ Trade unions have the following rights: to represent workers' collective interests by negotiating, signing, and supervising the implementation of collective bargaining agreements; to litigate in court upon violations of CBAs; to cooperate with enterprises in formulating and monitoring the implementation of wage scales and tables; to guide and counsel workers on their rights and obligations upon signing and implementing labour contracts with enterprises; to represent workers in taking legal actions in court; to take part in the settlement of labour disputes together with the competent agencies; to organise and lead strikes as stipulated by law.

COUNTRY SPECIFIC STATISTICS

- ▶ Union density – 14.6% (2011)
- ▶ Collective Bargaining Coverage – Not available

ITUC GLOBAL RIGHTS INDEX RATING

- ▶ 5 – No guarantee of rights

STAKEHOLDER VIEWS ON RIGHTS IN PRACTICE

- ▶ There is only one legally recognised trade union organisation in Vietnam – the Vietnam General Confederation of Labour (VGCL)
- ▶ Workers have the right to join the union, however, the enterprise unions must be affiliated with the VGCL. Apart from the fact that

workers do not have the right to establish the union of their choice, this is an area of the most pervasive violations by employers in Vietnam.

- ▶ It is common for workers to be registered as union members without getting workers' consent. Union fees are automatically deducted from workers' salaries without written consent.
- ▶ Union reps are rarely democratically elected.
- ▶ It is common for high-ranking managers, such as HR managers or deputy directors, to serve as union leaders.
- ▶ Collective bargaining is widely regarded as a formality rather than the outcome of real negotiations between workers and employers. According to the VGCL informant, most workers do not know the contents of the active collective bargaining agreements (CBAs) in their companies.
- ▶ The most common non-compliance issues are employers who failed to inform workers about the CBA and the CBAs not approved by more than 50% of workers covered.

MOST COMMON AUDIT FINDINGS AND COMPLAINTS

- ▶ Fair Wear auditors find unionised factories where the factory is part of the official trade union and approximately 90% of the workforce is a union member.
- ▶ Workers are not allowed to form their own union. The chairman is usually appointed by the factory management and is part of the management (finding: the union is not independent from management).
- ▶ Even though auditors do find factories where the factory holds regular dialogue meetings, cases of workers actively negotiating their rights is rare. Commonly there is low awareness among workers on trade union and collective bargaining rights.

The information in this tool will be updated annually based on information available in Fair Wear's country studies and the other reference sources listed above.

Based on this synthesised information, Fair Wear has created a 'Continuum of Advancement of Freedom of Association,' which ranges from the low end, where workers are not free to organise or collectively bargain, to the high end, where these rights are realised. To help members, Fair Wear has grouped its focus countries into three categories that fall on this continuum. Group 1 includes countries where possibilities for advancing freedom of association and the right to collective bargaining are very limited, while groupings 2 and 3 offer progressively more potential for workers to realise these rights. It is worth noting that none of Fair Wear's focus countries have strong freedom of association (strong social dialogue and systems for collective bargaining are some of the main reasons Fair Wear rates countries as 'low-risk' and, therefore, does not include them amongst focus countries). Therefore, the continuum continues significantly beyond the three country groupings included in the graphic below.

Continuum of freedom of association (and potential to advance it)



The continuum represents the potential in various countries to progress freedom of association and collective bargaining. On the farthest left of the continuum workers would not be free to organise or bargain collectively; conversely at the farthest right of the continuum would be a country where workers are completely free to organise and collectively bargain. We have attempted here to group Fair Wear's focus countries on the continuum based on the possibilities of progressing freedom of association and collective bargaining.

Fair Wear calls upon its members to develop sourcing strategies that ensure that as much production as possible is taking place in facilities where workers are free to organise and collectively bargain. In this sense, brands should be seeking that their overall production falls as far down the continuum as possible towards the full realisation of these rights. Where production is unavoidable in countries from groupings 1, 2, or 3, additional action is required to compensate for the systemic obstacles to freedom of association that are in place in those production countries. Below, see the groupings and suggested action per grouping – based on Fair Wear’s freedom of association policy and six steps.

Grouping 1

China and Vietnam

In grouping 1, there are very limited possibilities of progressing freedom of association or collective bargaining due to restrictive laws or practices. It will likely be very difficult, if not impossible, to be in full compliance with freedom of association and collective bargaining. Nevertheless, you still have a responsibility to work with suppliers to ensure workers have access to independent representation. If you are sourcing here, your brand should consider:

Assessment:

- ▶ Given the risks, can you responsibly source here and commit to freedom of association and collective bargaining? Wherever possible, brands are advised to consider alternative sourcing decisions to support freedom of association. In this group, the restrictions are very high and the violations are severe.

Influence:

- ▶ If you are already sourcing there, do your supplier partners have an open attitude and willingness to engage on this topic? Do you have sufficient leverage or a strong relationship with them to influence their behaviour? If your supplier shows commitment to engaging and supporting democratically elected workers’ representatives, it may be possible to make (some) progress.

- » Do you have the resources (staff time and finances) to develop an approach per factory that could allow progress to happen? Because of the challenges in law and practice, working towards promoting freedom of association and collective bargaining will take a nuanced and careful approach in these local contexts. For example, a standardised training programme may not be suitable given the political and social climate. Some approaches may even be detrimental to workers. Developing a strategic approach will require time, staff, and financial resources.
- » If you are willing to work on the systemic challenges, this may mean engaging with other stakeholders or government to promote more inclusion of these rights. Without systemic changes in these countries, real progress of freedom of association and collective bargaining will likely be limited.

Impact:

- » Given the restrictive laws, will you be able to make an impact on the working conditions? If you can make progress with a supplier on promoting the rights of freedom of association and collective bargaining, will that translate into a change for the workers? In this group, the restrictive laws, supplier attitudes or beliefs, and, often, workers' fear to engage, in case of retribution, make the chances high that hardly any impact can be achieved.

When sourcing from a country with very limited possibilities and working towards promoting freedom of association and collective bargaining, Fair Wear would highly recommend that you work with locally-based stakeholders who have a clear understanding of the legal and cultural context. Fair Wear can support with developing strategies, in partnership with local stakeholders.

It is important to note that in 2019 Vietnam ratified ILO Convention 98: Right to Organise and Collective Bargaining and has committed to ratify ILO Convention 87: Freedom of Association by 2023. The Labour Code was also amended and now allows workers to form or join an independent worker representative organisation (WRO) of their choosing, which does not have to

How to move forward in China?

In principle, Chinese laws afford extensive trade union rights. However, given that the All-China Federation of Trade Unions (ACFTU) is not independent of the government and is the only recognised trade union body in China, all such laws are undermined by the reality that all other trade unions are subject to ACFTU. This does not necessarily mean that no independent trade unions are allowed, or that workers cannot freely elect their representatives, but it does prove a very challenging climate to exercise these rights.

In March 2019, Fair Wear, with ETI, held a seminar on 'Engaging Worker Representatives in China.' From that meeting, a list of recommended actions for brands was developed, and is included here:

- ▶ As the first step, it is advisable that brands assess the functionality of ACFTU's grassroots union and industrial relations in the factory. For instance, is there a union? Are the workers' representatives democratically elected? Is the union leader also HR manager? Does the union have meetings? What topics do they discuss? Do they offer feedback to the workers they represent?
- ▶ If there is a functional union, it is advisable to work with the existing one to build up their capacity to conduct a social dialogue.
- ▶ If there is none, or it is not functional, which is very likely in SMEs in supply chains, brands can help facilitate alternative methods of engaging workers, e.g. consultation and information sharing.
- ▶ It would be great to provide step-by-step guidance on organising elections. In a country where there is no election culture, it is worthwhile providing essential operational tips and dos and don'ts. *Note, Fair Wear has planned to develop a fact sheet on this in 2021.
- ▶ Given the current repressive climate, it is advisable to build up WC's capacity with a particular focus on two-way communication and equip them with skills and knowledge rather than jump to big terms like freedom of association and collective bargaining. This could include:
 - ▶ how to hold a meeting,
 - ▶ how to provide feedback to other workers,
 - ▶ how to negotiate,
 - ▶ how to track progress,
 - ▶ how to compromise,
 - ▶ how to record an agreement and track its implementation (for example, a collective contract, as a fruit of collective bargaining, needs to be registered to become legitimate. It is also monopolised by ACFTU).

be affiliated with the Vietnam General Confederation of Labour. These steps show a commitment and willingness by the Vietnamese government to increase space for workers to exercise these rights and allow new unions to be formed. It is a promising development, which may see an increase in possibilities for these rights to be realised. However, monitoring implementation over the coming years is key.

Grouping 2

Bangladesh, India, Myanmar, and Turkey

Grouping 2 is made up of a variety of countries where Fair Wear considers there are some (albeit in some cases limited) possibilities for advancing freedom of association. While there is significant divergence among the countries that fall into grouping 2, with some likely arguing that some of these countries actually align *de facto* with workers' freedoms in countries listed in groupings 1 or 3 (in reality, there are not clean lines between these groupings), Fair Wear has grouped these countries based on analysis across Fair Wear focus countries. If your brand decides to source in these countries, it is crucial to further understand the situation at the supplier and in the area where you work. In these countries, the laws generally protect the rights to freedom of association and collective bargaining, but in practice, the implementation is either weak or hindered in other ways. Here are some steps to take if you are starting to (or currently) sourcing from a supplier in one of these countries:

Assess:

- 1 Understand that there are deep-rooted challenges to trade union organising and collective bargaining. Be willing to commit to a long-term process to support the implementation of these rights.
- 2 Gather key supplier level information using the 'Supplier Questionnaire on Freedom of Association' and follow up on those responses. For example, if there is no union at a supplier, ask why there isn't, what has previously been

done by management to allow unions to engage with workers, whether there is another form of democratically elected worker representative, etc. If there is a CBA in place, ask what provisions in the CBA go beyond what is protected by law, ask how it was negotiated and how long it is valid for, etc. (See [Tool 2: Supplier Questionnaire on Freedom of Association](#) for more.)

- ▶ Ask about any previous complaints or audit findings related to freedom of association and collective bargaining. Try to engage with other brands sourcing there to address factory-level violations of these rights.

Influence:

- ▶ If there is not currently an independent union or CBA in place, consider whether you have adequate resources (staff time and finances) to develop an approach per factory that could create a more enabling environment for a workplace dialogue and freedom of association. This may require financing training, helping to facilitate dialogue, engaged follow up on CAPs and complaints, etc. If there is not an independent union or CBA, consider sourcing from a supplier where there is already an independent union and/or CBA in place.

Impact:

- ▶ Based on your assessment of the risks, will you be able to make an impact on the working conditions? Are there positive examples of workers' conditions improving because they have been able to exercise these rights? In this group, we see there are possibilities to make improvements and have an impact on workers. However, there are many factors per situation that can make this challenging.

Grouping 3

Bulgaria, Indonesia, North Macedonia, Romania, Tunisia

Grouping 3 is made up of a variety of countries where Fair Wear's analysis indicates there are generally decent possibilities of progressing and implementing freedom of association and collective bargaining. In these countries, there is likely a better climate for workers to organise and bargain collectively, however, it is by no means guaranteed or straightforward. There are still challenges based on mistrust or systems that are not functioning. Committing to promote these rights will still require time and effort, and the

six steps in the brand guidance all equally apply here. Here are some steps to take if you are starting to (or currently) sourcing from a supplier in one of these countries:

Assess:

- ▶ Gather key supplier level information using [Tool 2: Supplier Questionnaire on Freedom of Association](#) and follow up on those responses. For example, if there is no union at a supplier, ask why there isn't, what has previously been done by management to allow unions to engage with workers, if there is another form of democratically elected worker representative, etc. If there is a CBA in place, ask what provisions in the CBA go beyond what is protected by law, ask how it was negotiated and how long it is valid for, etc.
- ▶ Ask about any previous complaints or audit findings related to freedom of association and collective bargaining. Try to engage with other brands sourcing there.

Influence:

- ▶ If there is not currently an independent union or CBA in place, consider whether you have adequate resources (staff time and finances) to develop an approach per factory that could allow progress to happen. This may require financing training, helping to facilitate dialogue, engaged follow up on CAPs and complaints, etc. If not, consider sourcing from a supplier where there is already an independent union and/or CBA in place.

Impact:

- ▶ Monitor the situation at the factories where you source from to see if they are leading to improvements in working conditions for workers. Is the union able to truly negotiate on behalf of workers? Has a CBA been negotiated, and does it give workers rights beyond what is in law?

Fair Wear is aware that this listing is not exhaustive – it does not include some countries that are key production countries for members and other garment-producing brands. It also does not identify those countries that fall at the end of the spectrum that would signify a brand's fulfilment of its commitment to freedom of association. As noted above, Fair Wear is exploring part-

nerships to enhance its country-specific guidance in this regard. As a starting point for gauging freedom of association in countries not included here, Fair Wear points brands to the International Trade Union Confederation Global Rights Index rating per country. Ideally, brands would steer production to locations that receive as low a score as possible, based on that index. Please contact your brand liaison with further questions and watch this space for improvements upon these groupings and other suggested actions.

Tool 2

Supplier questionnaire on freedom of association

Below are the key questions that brands should ask all potential new suppliers before deciding whether to source from that location. These questions should inform your decision on whether or not to source from that supplier. Similarly, they should be addressed to all existing suppliers if the information is still unknown. The answers will provide you with more information to guide your next steps in working with your supplier in promoting these rights.

These questions were derived from the '[Questions on freedom of association and social dialogue](#)' checklist created by CNV Internationaal and Mondiaal FNV. The full checklist can be used as a further resource to find out even more about the situation at your production locations.

Questionnaire on freedom of association

Does the company have a written policy regarding freedom of association?

Does the company openly communicate with its workers on the rights related to freedom of association?

Are trade unions active in your company? If yes, which one(s)?

Are union representatives and leaders regularly elected? Precisely how were the union representatives elected? How were nominations for candidates sought and verified? Was the election undertaken as a secret ballot or a show of hands in the canteen overseen by the HR Director? Who organised ballot-counting if there was a ballot?

Does the union membership include managerial and supervisory staff?

Does your company recognise any trade union of its workers for negotiating purposes?

What percentage of your workforce have permanent contracts?

Does the company operate under a collective bargaining agreement? If so, how was it established, who were the parties involved? How often is it revised?

If there is a CBA, what does it cover? Does it represent an advance on standard statutory terms and conditions for the sector?

If the company does not have any collective agreement with a recognised trade union, does the company permit trade union representatives to have access to their members in the workplace?

Ask workers to name or point out their trade union representative and check whether they feel the union represents their interests.

Tool 3 Sample non-retaliation letter

Dear {name of worker here},

We, {Name of Supplier here}, commit to upholding the following statements regarding freedom of association and collective bargaining:

- Freedom of association and collective bargaining rights of the workers are under protection by both local law and international standards, including the Fair Wear Foundation Code of Conduct.
- Employers and management recognise and respect the right of workers to freedom of association and collective bargaining. All workers have a right to register or not to register with any union without the interference of employers or management. No worker can force others to register with any union.
- Management is willing and open to engaging with trade unions in discussing and negotiating the terms of working conditions, including issues such as working hours and wages.
- Workers won't be dismissed based on their union membership status.
- Workers and workers' representatives won't be subjected to any form of discrimination on hiring, compensation, promotion, demotion, job reassignment, and disciplinary actions based on their union membership status or union or worker representative activities.
- The presence of a union and/or a valid collective bargaining agreement in this workplace is appreciated by sourcing brand {insert name} and will not have any negative effect on the relationship between said brand and the factory.

Workers can find the full company policy on freedom of association and collective bargaining at {insert location where policy can be found}. If any of the above points are not upheld, workers may choose to access the factory grievance system to seek remedy by {insert grievance procedures here}.

If no remedy can be accessed at the factory level, workers can access the sourcing brand {insert name} through the Fair Wear complaints helpline {insert local number}.

Signed by

{Factory Management}

Name:

Date:

{Brand Management}

Name:

Date:

Tool 4 Violations, root causes and examples for brand action

Violation: Workers cannot freely form or join unions.

Possible root causes:

- › Workers may fear retaliation, may not know what the process is, may not know of any unions open to them.
- › Workers may be barred from joining trade unions, for example, if they are temporary workers (based on either national law, regional regulations, or supplier regulations).
- › Management may fundamentally mistrust unions and not allow workers to join freely, may not understand the value of freedom of association, may have had a negative experience with unions.

Examples of brand action

- › Ask management if they have a policy on freedom of association (if not, encourage them to develop one), ask them to distribute non-retaliation letters to workers, ask if they would be willing to post or share information for workers on options for unions.
- › Support and finance or co-finance training for the supplier on freedom of association and social dialogue. Management, supervisors, and workers should all be trained.
- › Engage with local unions and/or labour rights organisations to further understand the local context and see if facilitating dialogue is possible.
- › Encourage the supplier to join a Fair Wear supplier seminar, which brings together local stakeholders, including unions. Encourage them to interact with unions in this ‘neutral’ setting.

Violation: Management punishes, threatens, intimidates, or harasses workers or workers' representatives due to their union membership or their participation in union activities.

Possible root causes:

- Management does not trust unions, does not see the value in workers joining a union, fears that unionisation will lead to increase costs or disruption of production.

Examples of brand action

- Discussion with the supplier to explain the brand's commitment to this right and requirement of the supplier to not punish workers for joining unions or workers' representatives for their representative work.
- Regular follow up with supplier AND union to ensure actions have stopped and that any punishment to worker or workers' representatives has been compensated (i.e., moved back to the original workstation, monetary compensation for hours missed, etc.).
- Support and finance or co-finance training for the supplier on freedom of association and social dialogue. Management, supervisors, and workers should all be trained.
- Share best practice examples with the supplier on the business case for freedom of association and collective bargaining – why these rights are good for them.
- Encourage the supplier to join a Fair Wear supplier seminar, which brings together local stakeholders, including unions. Encourage them to interact with unions in this 'neutral' setting.

Violation: Workers are not aware of the function of union.

Possible root causes:

- Workers have not learned about freedom of association or unions, may have a negative impression of unions, the union is present but not active in factory.

Examples of brand action

- Support and finance or co-finance training for the supplier on freedom of

association and social dialogue. Management, supervisors, and workers should all be trained.

Violation: Union or worker representatives are not democratically elected.

Possible root causes:

- Workers are unaware of how to organise elections, fear retaliation, the union is state or factory-controlled.
- Management wants to retain some control, so nominates workers to committees, does not allow workers to campaign leading up to the election (or dismisses or threatens workers for trying), does not allow appropriate time or space for elections to take place (i.e., giving all workers paid time to vote).

Examples of brand action

- Ask how elections were organised, if there was an oversight from the Labour Department (or other independent organisation) during the elections.
- Leading up to an election, ask how workers are receiving information about the candidates and election, ask how secure voting is being ensured, ask if workers are receiving paid time off to vote (and offer to support in covering these costs), ask for an independent third party to oversee the elections (Fair Wear or another NGO could potentially take on this role or an independent union).

Violation: CBA is not implemented by management.

Possible root causes:

- Management doesn't take the CBA seriously, there are elements they do not know how to implement, they did not negotiate in good faith, and, therefore, don't intend to uphold the negotiations.
- Management felt forced into signing a CBA and does not see the benefit.

Examples of brand action

- Ask for a copy of the CBA and have conversations with both the union and the factory management on what elements are not being implemented and where suppliers might need brand support linked to their purchasing practices (ask for Fair Wear support if needed).

- › Re-confirm with the supplier your expectation that CBAs be implemented fully.
- › If the elements not implemented are linked to brand purchasing practices (i.e., payment of workers, overtime hours, etc.), examine what practices you can change to support them.

Violation: Management deducts union dues from wages not in accordance with national law.

Possible root causes:

- › Management is unaware of the national law, management deducts dues to retain control over the union activities, management is in fact ‘part’ of the union.
- › Workers are unaware of how union dues should be deducted and who should control them, workers do not receive detailed payslips, unions have not properly informed workers of their functions and fees.

Examples of brand action

- › Ask your supplier how union dues are deducted and where those dues go; ask if/why they control union dues rather than pass them along to appropriate sources; inform them of the national laws (Fair Wear can be a resource).

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For more information, please visit www.fairwear.org

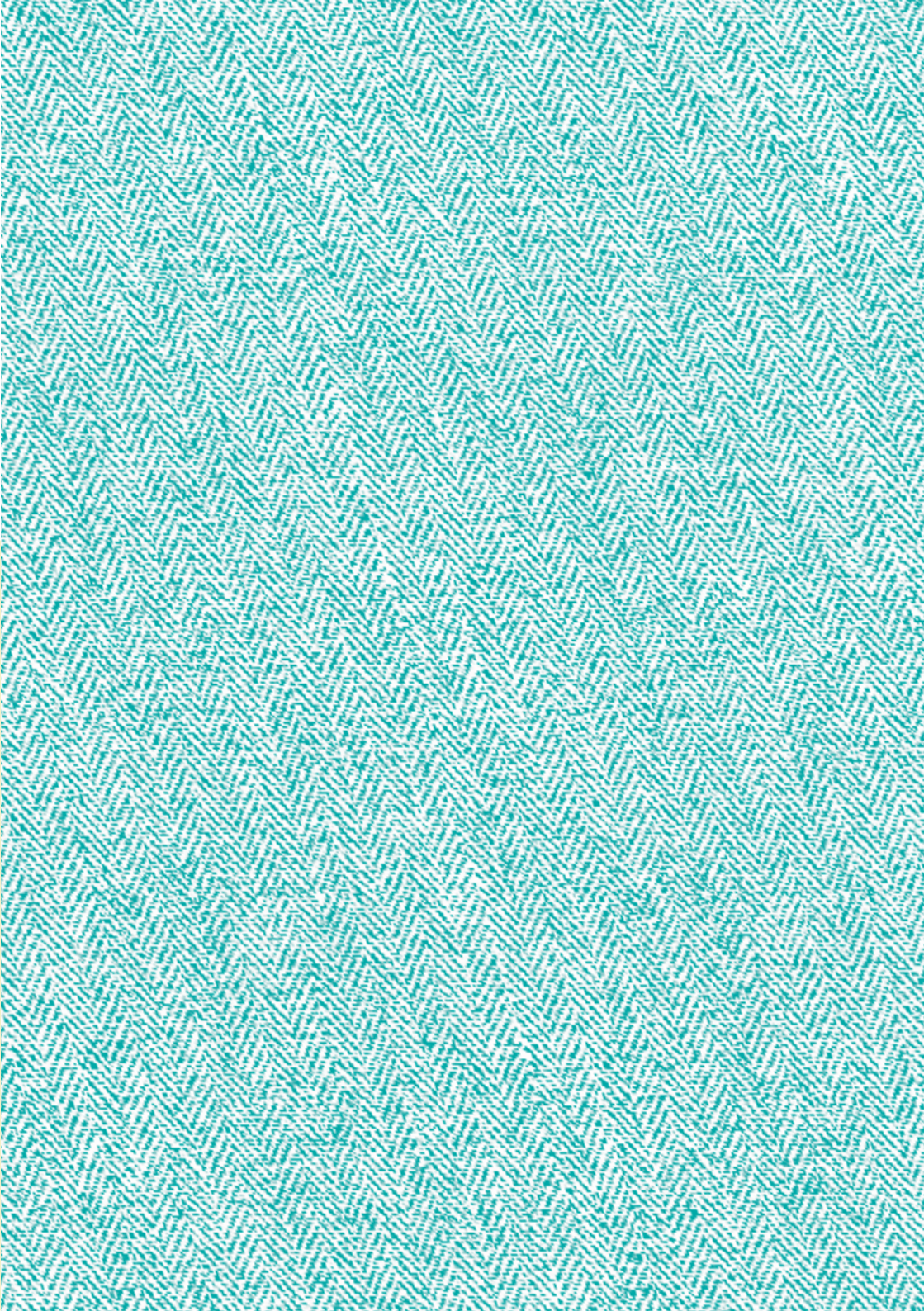
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