

The Importance of Freedom of Association and Collective Bargaining for Brands





INTRODUCTION

Freedom of Association (FoA) and Collective Bargaining (CB) are covered by two ILO core Conventions. Brands are expected to respect these rights and to ensure these rights are respected within their value chains. International guidelines, including the OECD guidelines for multinational corporations and the UN Guiding Principles for Business and Human Rights, have been established to monitor and safeguard these processes. Nevertheless, these standards are among the most violated around the world. The [annual country index of the International Trade Union Confederation](#) shows the challenges.

Although a great number of guidance materials have been developed by the initiators of socialdialogue.org (and others), brands still find it difficult to understand what this topic really means for them and how they can play a role. Suppliers often feel trade unions are not beneficial to their enterprise and a great deal of distrust exists. And for workers, these basic rights are not self-evident. Workers are often unaware of their rights and have little understanding of how freedom of association and collective bargaining benefit them.

[CNV Internationaal](#), [Mondiaal FNV](#), [Fair Wear Foundation](#) (FW), the [Ethical Trading Initiative](#) (ETI), [ACV-CSC](#) and the [Clean Clothes Campaign](#) (CCC), are all working to implement these important and enabling standards. They believe further country-specific information on the topic has been needed to provide brands with better guidance. This document is a basis for the country-specific fact sheets and it provides important background information and links for further reading. It will form the foundation of this one-stop shop and is based on information which has already been developed by the organizations. When readers would like to have more detailed guidance, this document provides links to already existing documents.

THIS DOCUMENT CONSISTS OF:

1. [Definitions to explain some of the most important terms](#)
2. [An explanation of the main international ILO standards](#)
3. [The benefits of FoA and CB for all stakeholders \(workers, brands, and suppliers\)](#)
4. [How the business model forms an obstacle to freedom of association](#)
5. [Differences between a trade union and other type of workers' organizations](#)
6. [Levels of maturity of workers representation](#)
7. [An explanation of the link between gender and unionization](#)
8. [The most common interferences/ violations around the world](#)
9. [The monitoring of FoA and the role of audits](#)
10. [An overview of ways brands can support FoA and CB](#)
11. [An overview of international SD/FoA initiatives as a source of information for brands](#)

1. DEFINITIONS

What is a Trade Union?

Trade unions are independent, membership-based organizations of workers, constituted for the purpose of furthering and defending the interests of workers (ILO). They represent and negotiate on behalf of working people. Unions provide advice to workers who are often unaware of their rights, and they can also negotiate with employers to improve wages and working conditions. Trade union rights are defined as workers' freedom of association and the right to collective bargaining. These rights form the foundation of social dialogue and industrial relations to manage conflicts in the workplace.

What is Freedom of Association?

Freedom of Association (FoA) is the right of workers to join and form trade unions or organizations of their choosing. FoA is enshrined in the Universal Declaration of Human Rights. It includes the right to freedom of assembly, association, and trade union membership.

This means that:

- Workers can form and join trade unions of their own choosing.
- Unions have the freedom to function independently.
- Elections and the duties of union representatives are free of interference.
- Independently elected worker representatives should not fear intimidation, harassment, or reprisals. They are the measure of how freely workers can express and contribute to their industry or workplace through formal structures such as collective bargaining.
- Workers and employers can be formally represented in negotiations to arrive at solutions for improving working conditions.

FoA also applies to workers in the informal sector (those not working under employment contracts).

This document in particular refers to FoA as workers' rights. It is important to note that FoA also applies to an employer's right to join organizations of their choosing.

What is Collective Bargaining?

Closely linked to this is the right to Collective Bargaining (CB), which allows workers to freely negotiate their working conditions with their employers. These rights apply to all workers, regardless of their race, religion, gender, occupation, nationality, or political opinion. CB is the process of all negotiations between an employer or an employers' organization and one or more trade unions with the aim of developing a Collective Bargaining Agreement (CBA). CBAs outline work conditions at factory/workplace, regional, national, or sectoral level. These are written, legally binding contracts requiring employer and company compliance.

What is Social Dialogue?

Social dialogue is a process of dialogue between trade unions, employers, and the government about economic and social issues. The formal definition of the International Labour Organisation (ILO) describes it as "all types of negotiation, consultation, or simply exchange of information between, or among, representatives of governments, employers and employees, on issues of common interest relating to economic and social policy." (ILO, 2018). Social dialogue is based on the rights to CB and on FoA. It incorporates each country's historical, cultural, economic, and political setting. Therefore, social dialogue is adopted based on the local circumstances, and is diverse in its legal framework, practices, and traditions. Therefore, the process might vary from country to country.



Social dialogue is NOT:

1. General information sharing on working conditions between employers and their employees. For example, annual employee contract negotiations are considered standard business practice.
2. One-way communication. Social dialogue requires a two-way interaction between the parties involved. For example, if an employer proposes a new policy which requires employees to work a certain number of hours and they do not have the opportunity to respond to this request, there is no social dialogue.



2. WHAT ARE THE MAIN INTERNATIONAL ILO STANDARDS?

The rights to FoA and CB are laid out in binding international conventions, including:

Freedom of Association and Protection of the Right to Organise Convention (No 87), 1948. This Convention enshrines the right of workers to join a trade union of their choice, the right to independence from government and employer interference, and the right for trade unions to elect officials and organize their own affairs.

Right to Organise and Collective Bargaining Convention (No 98), 1949. This Convention provides protection against anti-union discrimination, protection of workers' and employers' organizations against acts of interference by each other, and measures to promote and encourage collective bargaining.

These Conventions are two of the eight fundamental Conventions of the ILO, meaning that all ILO Member States must respect, promote, and implement FoA and the effectively recognize CB, even if they have not ratified the relevant ILO conventions. This is laid down in the ILO Declaration on Fundamental Principles and Rights at Work. These standards set clear expectations for States to establish appropriate regulatory contexts to ensure that companies respect these rights in practice.

The ILO's Governing Body has identified eight fundamental Conventions:

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

For more definitions on international conventions and principles, see [ETI's webpage](#).

The vast majority of countries in the world have signed and ratified these conventions. Ratified means that national parliaments have approved these standards and are committed to ensuring that national laws reflect and protect these rights. The countries marked in yellow in the table below have not yet ratified both Conventions, despite being members of the ILO.

Labour standards set clear expectations for States to establish appropriate regulatory contexts to ensure that companies respect these rights in practice. However, even when States have not fully met their obligations, businesses have a responsibility to work towards meeting these international standards and respect human rights across their value chains. The UN Guiding Principles on Business and Human Rights are recognized globally as the authoritative framework for how businesses should prevent and address negative impacts on people.

MAIN GARMENT PRODUCING COUNTRIES	ILO CONVENTION 87 (FOA) RATIFIED	ILO CONVENTION 98 (CB) RATIFIED
Bangladesh	x	x
Brazil		x
Bulgaria	x	x
Cambodia	x	x
China		
Ethiopia	x	x
India		
Indonesia	x	x
Italy	x	x
Myanmar	x	
North-Macedonia	x	x
Mexico	x	x
Morocco		x
Pakistan	x	x
Poland	x	x
Portugal	x	x
Romenia	x	x
Sri Lanka	x	x
Tunesia	x	x
Turkey	x	x
Vietnam		x

Context specific country information can be found at:

- [ILO Helpdesk for Business on International Standards](#)
- [Fair Wear country pages and country studies](#)
- [Information on the relevant trade union rights violations or issues in all relevant countries worldwide by ITUC](#)
- [Business & Human Rights Resource Centre \(find the region and country pages\)](#)



3. WHAT ARE THE BENEFITS OF FOA AND CB?

Enabling rights

Trade union rights are often called “enabling rights”, meaning that respecting these rights can, in many cases, lead to the fulfilment of a number of other rights (e.g., adequate wages, reasonable working hours, and a healthy and safe workplace that is free from discrimination and harassment). Addressing risks to trade union rights is therefore important on its own but is also critical in addressing the root causes of many other workplace-related human rights impacts.

Benefits for workers

- It is a workers’ right to express their problems, concerns, and demands *without* fear of oppression or discrimination. Joining trade unions or other organizations, if the right to FoA is respected, offers workers protection against discrimination, interference, and harassment.
- It empowers workers as represented by a trade union, they are recognized as an equal partner in the production process and not viewed as a powerless production factor. It empowers workers to determine their own needs and priorities and to participate in decision making with management. It promotes the emancipation of the workers and self-respect
- It provides the possibility to negotiate and act collectively to realize an equal and fair power balance.

Stability

Suppliers that engage with unions find that they have fewer worker grievances to deal with, a more motivated workforce, as well as fewer strikes. Where there are strong trade unions with positive working relationships with management, they allow continuous resolution of problems as they occur, rather than letting them escalate and potentially become explosive media stories. Social dialogue is key to managing conflict in fair and stable workplaces.

Research done by Cornell University in the framework of the New Conversations Project and the Strategic Partnership for Garment Supply Chain Transformation, concluded that brands that produce at or buy from factories that have active, democratically operating trade unions, demonstrated better performances on labour rights. Find these conclusions in the research [reports](#).

Global buyers such as H&M, global unions such as IndustriALL and several NGOs promoted the development of social dialogue in the garment industry in Myanmar. Investments in training programmes, raising awareness of fundamental principles and rights at work and supporting social dialogue resulted in structures and processes helping to resolve workplace conflict. See this [social dialogue and economic performance review](#).

Increase in productivity and firm performance

The presence of unions contributes to sustainable business growth. Unions help build high-trust workplaces where workers are healthier, better skilled, happier, and more able to resolve grievances – all of which lead to a more committed and productive workforce. This, in turn, leads to less absenteeism, lower turnover, on-time delivery, and retained/new clients/orders.

In 2019, [Better Work Haiti](#) prioritized worker-management relations by introducing platforms for participation in social dialogue within factories. Such initiatives contributed to the promotion of more advanced HR management systems and demonstrated that worker-manager communication could be an essential competitive asset for factories. The [benefits of effective dialogue](#) at the workplace and improvements in working conditions and worker wellbeing translate into business gains: factories participating in the ILO/IFC Better Work programme see an increase in profitability by up to 25% as a result of their participation in the programme.

Efficiency

Unions provide a mechanism for dialogue between workers and employers, which helps build trust and commitment among the workforce and ensures that problems can be identified and resolved quickly and fairly. This brings significant productivity benefits for companies.

Recognizing a union also means that negotiating terms and conditions for workers, becomes more efficient for the employer and fairer than dealing with numerous workers individually.

Improve staff retention

By giving employees a voice, supporting them when they are unhappy at work, and improving working conditions, unions significantly improve staff retention and reduce absenteeism.

Save money

Early identification of problems in the workplace can lead to significant savings, for example, by reducing the costs employers face as a result of ill health (including reduced productivity, sick pay, temporary staff cover, and compensation payments for accidents). It also reduces staff turnover. Unions also have a strong record of working with employers to identify efficiencies and cost savings – both employers and employees have a shared interest in business success.

Make better business decisions

Informing and consulting with experienced union representatives can also – with input from workers – help companies take better informed business decisions, for example, in relation to shift patterns or the type of equipment to invest in.

Provide access to learning and skills: Helping members to access education and training is a key priority for unions. Having more highly skilled employees brings productivity benefits for employers.

Safe workplaces

Union representatives help to lower accident rates at work by promoting safe working practices and reducing stress-related ill health caused by, for example, working long hours, being bullied, or working in poor-quality environments.

Less non-compliances

Unions can play a key part in enforcing labour standards. They can survey their members about workplace conditions and coordinate efforts to monitor the effectiveness of new policies and procedures. Trade unions provide a route for workers to report non-compliance without fear of reprisal, and so it is more likely that violations of labour codes will be reported. This way worker representatives can also play a significant role in ensuring that salient risks, such as child labour and/or modern slavery, are identified and are not tolerated. By enabling workers to monitor and improve their own working conditions in a sustainable and empowering manner, trade unions can help reduce dependence on social audits.

Promote equality

Trade unions actively fight discrimination and help promote equal opportunities at work. Union representatives are well placed to identify incidences of discrimination and to work with employers to ensure that anti-discrimination policies are properly implemented.





4. HOW THE BUSINESS MODEL IN THE GARMENT SECTOR FORMS AN OBSTACLE TO FOA AND CB

Garment brands operate in a global business model that also influences how suppliers respect FoA and CB. The race to the bottom in the sector can lead to purchasing practices (sourcing decisions, contracts, production planning, etc.) that influence access to the rights of FoA and CB and the impact garment brands can have in addressing the systemic threats.

A key purchasing decision is related to the countries you source from. Sourcing from countries where FoA rights are not protected is an inherent obstacle to these rights being implemented.

The ILO did research on suppliers from different manufacturing industries, including garments, food, chemicals and metals, as well as the agricultural sector. The [ILO identified 5 major business practices](#) between buyers and suppliers that can influence wages and working conditions. These are contract clauses, technical specifications, order placement (and lead times), prices and market power, and requests for social standards.

- **Contract clauses.** A systematic absence of written contracts between buyer and supplier and lack of information in available contracts (for example, a specification about the responsibility of the brand and suppliers for costs when there are changes in orders or the minimum standards of working conditions). These inconsistencies may cause suppliers to not welcome unions and collective bargaining with more guarantees for workers. With unstable contracts from brands, suppliers don't offer stable contracts to workers. The lack of stable contracts is a major barrier for workers to unionize (unions are either are forbidden by law or workers will not risk it). (Read more in FWF [Brand Guide on FoA](#), p 48-50).
- **Technical specifications and product development.** Unclear technical specifications lead to excessive sampling and extra costs.
- **Order placement and lead times.** With shorter lead times, suppliers resort to overtime, casual labour, and outsourcing. Under this pressure, unions can be considered a nuisance to suppliers. Moreover, workers do not have time to participate in union activities (when working excessive overtime).

- **Market power and prices.** Being dependent on a very limited number of buyers can reduce the supplier's negotiating power and thus their ability to achieve higher prices. This leaves little space for collective bargaining about wages with trade unions.
- **Demands for social standards.** Demands, such as requiring buyers to obtain of a Code of Conduct from their suppliers, also influence the overall situations under which suppliers operate. Only a small percentage of suppliers receive support in terms of shared audit costs or technical assistance. And many suppliers receive no help.

Purchasing practices that exert pressure on suppliers in terms of timeline, prices, and delivery, can have direct effects on the suppliers' capacity to provide decent wages (reduced wages), working conditions (increased overtime), extend informal work, and can even put suppliers at a high risk for bankruptcy. The research showed that social dialogue plays a positive role in the form of higher wages and a lower number of hours worked.





5. DIFFERENCES BETWEEN A TRADE UNION AND OTHER FORMS OF ORGANISATION

Independent trade unions represent the ideal model for worker representation. Trade unions have legal protection, access to resources, the support of wider trade union networks, and are free from influence from the employer and the government.

Restriction of FoA

Where FoA is restricted by law and/ or (independent, democratically elected) trade unions cannot be formed because of (impossible) conditions for registration as a union, the next best available form of independent worker representation should be pursued. Alternative forms of representation can help build dialogue and develop worker and employer industrial relations skills.

Other committees

In many countries you will find workers participation committees, health and safety committees, or anti-harassment committees. These types of committees, sometimes required by law, can certainly be useful, although they are not an alternative to a trade union, mainly because they do not offer workers the same kind of legal protection and they do not have the right to participate in the collective bargaining process. Some exceptions exist, like in Myanmar, where these committees do have the legal right to participate. Further, these committees lack support beyond the enterprise level, meaning they are not supported by district and national trade unions.

Yellow unions

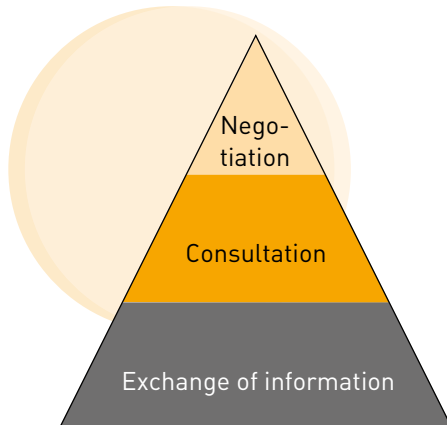
More subtle forms of interference include paternalism, where structures are created that may resemble unions, but are actually controlled by management in some form. For example, workers may be selected to be the representatives on workers' committees rather than being democratically elected, or company management may pay union fees, making the union less independent. You can also encounter alternatives for independent, representative trade unions, such as employee councils or unions that only act in management's interests ('paper' or 'yellow' unions).

By using the [CNV and FNV Checklist for companies on trade union freedom and social dialogue](#), you will get a better understanding of how trade union freedom is practiced.



6. DIFFERENT LEVELS OF MATURITY OF WORKERS' REPRESENTATION AND SOCIAL DIALOGUE

To develop an understanding of the consultation and negotiation processes on site, [Fair Wear's Brand Guide on FoA](#) (2020) has distinguished three progressive levels of social dialogue based on ILO definitions:



Negotiation is the most advanced form of social dialogue in which both parties have equal seats at the table.

Consultation is the process of actively seeking information from the other party, requesting their input or position on a topic.

Exchange of information refers to the giving of information from one party to another; it can be formal or informal information sharing.

For any level of social dialogue to take place, there must be an environment and structure that supports such social dialogue. First of all, strong, independent workers' and employers' organizations are needed, with sufficient technical capacity and access to relevant information to participate in social dialogue. Also, the political will and the commitment to engage in social dialogue on the part of all the parties is key for success. Respect for the fundamental rights of FoA and CB is also needed, and last but not least, there must be appropriate institutional support. For more information, see [Fair Wear's Brand Guide on FoA](#), 2020 (page 6). A brand should assess the kind of dialogue that is (or is not) taking place by asking questions or including specific questions in the auditing process. Mondiaal FNV/Shift has developed [a practical guide for business on trade union rights](#) with several diagnostic questionnaires on the level of social dialogue in your supply chain.

Examples of questions brands can use in their dialogue:

- Fair Wear's 'Supplier Questionnaire on FoA' outlines key questions for brands to ask suppliers and can be found in [Fair Wear's Brand Guide on Freedom of Association](#), p. 88
- The [CNV and FNV Checklist for companies on trade union freedom and social dialogue](#)

ETI distinguishes some entry points for mapping and developing a strategy on FoA for brands, depending on the maturity level of workers' representation:

- **Workers cannot voice their concerns freely and there is no worker representation**
Initiate conversations with suppliers. Promote the value of worker representation and communicate your requirements, vision, and intentions.
- **Workers have some recourse to dialogue with employers**
Evaluate the scope and depth of engagement between workers and managers, and where possible, invest in workers' and managers' skills development such as social dialogue techniques, presentation and consultation skills, or election processes.
- **Workers' needs are represented by trade unions or democratically elected representatives**
Develop an understanding of the site's consultation or negotiating processes, including when wage negotiations take place, the length and scope of collective bargaining agreements, or how workplace disputes are raised and addressed. Strengthen the relationship by investing in skills and knowledge and build relationships with unions in the industry.



7. GENDER AND UNIONIZATION

Garment workers are predominantly women (in Asian countries an average of 70–80% of workers is female), often in low-paying positions with little power. However, they are under-represented in social dialogue structures. Ensuring the right to FoA and CB is vital in order to allow workers' voices to be heard and support their bargaining power. Women often have lower rates of unionization and union leadership tends to be male; therefore, women's rights issues may not be well represented or considered to be important priorities.

Barriers to women's access to unions/ worker representation

- Women are commonly in atypical forms of work, such as temporary or part-time work, or home-based work. Workers in such precarious positions tend to unionize less.
- In addition to working at their jobs, women often do the majority of unpaid care work (at home), including housework, childcare, and elder care. Therefore, they have less time than men to dedicate to trade union activities.
- Religious and cultural norms and constraints around women in leadership and decision-making roles are prevalent.
- Trade unions have historically been male-dominated, which has often created an unwelcoming environment for women to break in to.
- Women may face restrictions on their movement or access to spaces where negotiations may occur due to gender-based security problems.
- Female trade unionists may face a higher risk of sexual violence or harassment.

[Fair Wear has developed Gender fact sheets](#) for 11 garment producing countries, which present overviews of relevant gender issues per country.

Why should women be included?

Including women in unions and allowing their voices to be heard when developing union policies and strategies and CBAs can have a significant impact on women garment workers. Women (might) have different needs, and in a male dominated industry, it is important for them to be able to work in a safe and secure environment and get the same opportunities and remuneration as men. Unions with adequate female representation will think more about childcare facilities, clean toilets, hygienic conditions, maternity benefits, anti-violence, and grievance and remediation mechanisms into your suppliers' company's labour strategies and collective bargaining agreements.

More detailed information on gender and social dialogue can be found at:

- [Social Dialogue handbook](#). Step-by-Step Guidance. Amfori, 2020
- [Gender Equality and Social Auditing Guidance](#). BSR, 2018
- Gender-responsive [Human Rights Due Diligence tool](#). Plan International, 2020
- [The Contribution of Social Dialogue to Gender Equality. The Global Deal](#)

When making field visits to do company audits, be sure to raise specific questions about female representation at management, supervisory, and work floor levels. For more information, see BSR and Amfori.





8. MOST COMMON INTERFERENCES / VIOLATIONS AROUND THE WORLD

The 2020, ITUC Global Rights Index demonstrated an increase in the number of countries impeding the registration of unions, denying workers both representation and rights. It also concluded a worsening trend by governments and employers of restricting the rights of workers through violations of CB, the right to strike, and the exclusion of workers from unions.

It is important for brands to be aware of any kind of interferences suppliers might use to prevent unionization in their factories, thereby violating the international standards brands are expected to comply with. The most common forms of interferences are summarized here:

Controlling, intimidating, threatening union workers

- Questioning employees about their support of trade unions and monitoring union activists.
- Creating blacklists of union supporters.
- Influencing employees on whether or not to join a union. For example, by threatening employees with a loss of income or dismissal.
- Not renewing labour contracts of trade unionists or offering them only temporary contracts.
- Subjecting union representatives to discrimination and disadvantages such as poor working terms and conditions, wage cuts, demotion, transfer, and not offering training.
- Harassing unions members.
- Devising and implementing anti-union campaigns.
- Using app-based technology for staff surveys for negative purposes --despite its opportunities, the technology can also be used to undermine unions.

Interference with union activity

- Companies may attempt to influence elections or the union's ability to represent the interests of its members.
- In other cases, managers may threaten to close their factory or move production to another site if their workforce unionizes.
- Creating legal and administrative obstacles to prevent the recognition of trade unions.
- Isolating employees (physically) from union representatives.
- Not providing adequate space or time for worker representatives to fulfill their duties (which is protected in international standards).
- Employers sometimes inhibit unions from being able to access the workforce and/or to communicate with the workers.

Export processing zones/ special economic zones

- Many governments seek to exclude trade unions from organizing within EPZs, even if workers are free to organize elsewhere in the country.

Refusal to recognize and bargain

- Pretending that FoA exists when in reality workers' rights are not guaranteed.
- Companies sometimes allow their workers to join unions and even recognize them, but then undermine their value by refusing to recognize or bargain with the union. Or they may spend six months negotiating the first clause of their CBA.
- By establishing the statutory committees (for example OSH and anti-sexual harassment committees), they may use these to discourage union organization, saying there are "too many committees" and that workers already have a voice and/or representation.
- In order to prevent trade union representatives from bargaining meaningfully, some employers refuse to provide them with appropriate information about the issues to be negotiated.
- Companies can use threats to unfairly inhibit the workers' bargaining position, for example, by threatening to move operations elsewhere.

In the worst cases, union members can even be physically threatened. Union representatives may be subjected to violence or murder. Trade union leaders are often denied promotion opportunities, are physically abused, arrested, or even murdered for standing up for their right to organize. Many trade unionists were murdered in the following ten worst countries for working people: Bangladesh, Brazil, Colombia, Guatemala, Egypt, Honduras, Kazakhstan, the Philippines, Turkey, and Zimbabwe (for more information go [the ITUC Global Rights Index 2020](#)). In 2018, the number of trade unionists killed was as high as 53. In Colombia alone, this number reached a shocking 34.



9. MONITORING FOA AND THE ROLE OF AUDITS

Brands in the garment sector use audits as the main instrument to monitor their suppliers and ensure they are following their suppliers' code of conduct. However, more and more stakeholders, including businesses, are seeing the limitations in trying to change working conditions in the supply chains on their own. Also Amfori, the primary agency for conducting audits for the sector, emphasizes that audits should be part of a larger, more comprehensive system of due diligence.

Audits have not proven to be completely effective in assuring brands that their suppliers are following the core standard for FoA and CB. Audits often fail to identify the absence of FoA/CB/SD. Auditors can accept a managers' word that they don't need a union, and believe them when they say their workers' needs are being met. Or they might accept documents, such as a CBA, as evidence that FoA exists, without checking whether both sides have actually ever met (source: interview).

Audit methodology concerns

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

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

Other concerns

- Suppliers complain about the number of audits they have to go through.
- Audit fraud: managers falsify records or install a 'yellow union'.
- Audits can encourage a 'compliance mentality'. Brands put pressure on suppliers rather than engaging with their suppliers or cultivating a longer-term relationship that can address systemic issues.

Source: among others [ETI Audits and beyond](#)

Brands should recognize that where specific problems are known to be endemic, "a clean bill of health from an audit may well be incorrect and put the business at risk." [Audits](#) can still be useful tools in the responsible business toolkit if used skilfully and appropriately. To attain real and sustainable improvements in global supply chains, brands should also:

- Engage directly with workers and their representatives in order to better understand which labour rights issues are common within a country and region.
- Engage with supplier management to ensure values and actions are aligned.
- Work with their peers to tackle the wider issues that can perpetuate poor standards.
- Ensure that auditors are trained and knowledgeable about FoA and CB.
- Conduct FoA specific or third-party audits to dig deeper and get more accurate information.
- Make sure workers are interviewed off-site during audits so that they feel more free to share true information without fear of reprisal.

Fair Wear Foundation currently reviewing its audit strategy. It will move from monitoring through audits to risk-based supply chain improvement cycles. Keep an eye on the updates!





10. WHAT CAN BRANDS AND THEIR SUPPLIERS DO TO SUPPORT FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING?

Even where States have not fully met their obligations to allow freedom of association and collective bargaining by law, businesses still have a responsibility to actively look for ways to meet these international standards and respect human rights across their value chains. The UN Guiding Principles on Business and Human Rights are globally recognized as the authoritative framework for how businesses should prevent and address negative impacts on people. This process is called due diligence. For further information on union rights in global supply chains and practical approaches for businesses, read the 2019 [report of FNV and Shift](#).

Retailers, brands, and suppliers are all responsible for ensuring that the right to FoA and CB are respected. In addition, all of them should be open to trade unions and their activities. Brands need to work with their suppliers and find constructive solutions for all of these issues and address them together when they see violations. The following steps can guide your brand in supporting FoA and CB, depending on the maturity levels as mentioned in [Chapter 6](#).

1 *Improve your awareness as a brand. Get organized and analyze the FoA situation in your sourcing countries*

- It all starts with realizing that sourcing from abroad means that FoA and CB are salient issues, and therefore, they must be prioritized. This is an important first step. First signal the importance of these issues and then start to create opportunities for dialogue, internally and externally.
- As part of your company's human rights due diligence, examine the entire value chain and identify operating and sourcing contexts that might pose heightened risks to trade union rights.
- Assess gaps and opportunities in high-risk markets, together with trade union counterparts and/or industry peers. It is important to be "place conscious." For brands sourcing from Bangladesh and Vietnam, please read the country-specific fact sheets for specific information about these countries. Try to understand the local union structure and closely follow (you, your vendor / local agent) new laws and decrees.

Check the [FNV SHIFT Guidance on Respecting Trade Union Rights in Global Value Chains](#), 2019, for diagnostic questions on p.25. The publication highlights a range of practical steps companies can take along this continuum, depending on the risk factors that are present.

2 *Policies*

Write your policy statement

- Good policy starts with a statement to uphold FoA and the rights to CB throughout the brand's operations and down the supply chains. Build an overall statement to show that your company respects the rights of both employees and workers in your supply chain to access and exercise their right to FoA and CB. This statement needs to carry authority from the highest level of management ([See ETI for more information](#)).
- Share this policy with your suppliers so they know you are strongly committed to these rights.

Supplier Code of Conduct

- Make sure you have FoA included in your Supplier Code of Conduct. It must be clear for your suppliers what you expect from them.
- Brands can formulate, for example, a provision stating that "an independent trade union is a must" in terms of FoA and CB while placing orders to the supplier's factories. Brands can pressure factory owners and management authorities to comply with national legislation. Remember that forming or joining a trade union is solely a decision for workers to make; management should not force or pressure them either way. However, suppliers must provide an



remediating issues related to their working conditions (e.g., ACT, Global Framework Agreement with a Global Union, RMG Sustainability Council).

- Do not push suppliers to establish a union. This should come from the workers. Be aware that participation committees or safety committees are not the same as unions. Brands need to verify that a union is not a yellow union, that there is an elected workers' representative, and whether collective bargaining takes place. Sometimes workers do not even know there is a union because management established one simply to accommodate their buyers. The [CNV and FNV checklist for companies on trade union freedom and social dialogue](#) can give brands a better understanding of how trade union freedom is practiced.
- See ETI for a Q&A on FOA, CB and worker representation indicators.

environment open to unions and can support workers with information sharing and to dialogue.

What can you ask your suppliers to do?

- Have a policy on trade union/industrial relations/ collective bargaining and make sure this policy complies with labour law. The FoA policy must include a nonretaliation clause to protect workers who decide to organize (see [the Template in Fair Wear's Brand Guide on FoA](#), p 90).
- Provide a CBA copy (to check if this not only complies with labour law, but also allows workers more benefits, for example, a higher wage than the mandatory regional minimum wage) and ask about the negotiation process.
- Ensure that these policies are communicated to workers and management, including new employees.

How to embed the policies in your organization?

- Build long-term relationships: Social dialogue will require investment from the supplier (both in terms of finances and time). This type of investment is not wise for them if they do not see stability and security for future orders. With a long term agreement, brands can reward their supplier. Financial support is also a possibility.
- Sign 'pay and stay' agreements with suppliers who commit to taking action towards FoA and CB. This means that brands commit to long-term production as long as quality and other production criteria are upheld (steady prices excluded). This can reassure suppliers that if costs increase, for example from a negotiated CBA, your brand also commits to covering some of those expenses.
- Direct agreements: It is best to engage with trade unions in direct agreements that seek to ensure worker participation in identifying, addressing, and

3 Risk assessment

In the context of FoA and CB, your brand should assess the risks and existing negative impacts. The most common FoA related risks that you might encounter in your supply chain are:

- A lack of binding global human rights protections and a consistent denial of access to rights. FoA and CB may not be allowed by law, or be restricted by national law.
- Systemic challenges, such as your own purchasing and due diligence practices; a lack of commitment, capacity and understanding at headquarters level of your brands; a limited influence of brands that are not directly employing workers; competition and long, diffuse supply chains undermining social dialogue; a large informal sector/ illegal outsourcing.
- The negative mindset of suppliers about the trade union movement.
- Lack of capacity of unions and the local management to have an effective dialogue.
- Lack of knowledge and awareness among workers about trade union rights (even more so for women)
- The union is not independent of the management.
- Lack of CB (agreements) or an agreement that repeats the national law.
- No effective dispute settlement when conflicts between workers and management arise.

For overviews of risks you might encounter, also see:

- [Red flags](#) as identified by ETI.
- Threats to FoA and CB as identified by Fair Wear in their [Brand Guide on FoA](#) (p 21-30)
- How companies can diagnose their risks, pp 26-31, [report of FNV and Shift](#).
- Based on answers to questions provided in the [FNV/ CNV checklist](#), your company can identify what risks are present in your supply chains.

Here you can find the risks per country. Information can also be found in the “Fair Wear country information on FoA and CB” (p 68-87 of [Brand Guide on FoA](#)).

4 Taking action

Once your brand has committed to longer term relationships with suppliers, then ask your supplier for:

- Stable contracts for workers, wherever products are made (including the outsourced work). If workers are temporary or on short term contracts, there is very little value for workers to even contemplate exercising their FoA, and in many cases, this right is not extended to non-permanent workers.
- Non-retaliation letters to be distributed periodically to all workers, guaranteeing that management will not retaliate against workers for forming or joining a trade union.
- An enabling environment, so workers can make preparations to create their union. For example, allow access to trade unions, create space and opportunity on the factory premises to hold meetings with the general workers and fill out membership forms, etc.



- Assurance that trade union members will not be subjected to negative treatment/discrimination/harassment; the supplier needs to be accountable to the brands that no one is subjected to mistreatment for joining a trade union and/or a collective bargaining process.
- Opportunities for brands to also promote establishing a multi-company CBA. See the following example:

MCCBAs in Indonesia and Vietnam

CNV Internationaal aims to promote and strengthen social dialogue and improve labour conditions through Multi-Company CBAs (MCCBAs) for garment factories and tea plantations in [Indonesia and Vietnam](#).

These MCCBAs, which include matters such as health and safety, working hours, and compliance with wage agreements, apply to several companies of the same sector within the same region. The major advantage of MCCBAs is that they improve both labour and productivity, while reducing social unrest and avoiding unfair competition. Possibilities for pilots are also being explored in other countries. During the process of creating an MCCBA, significant attention is paid to building mutual trust between the social partners and between the trade unions. Garment brands could become involved to promote constructive social dialogue and FoA within their supply chain.

For the example from Vietnam see this [video](#).

Work with local stakeholders

- Local trade unions and local non-governmental organizations, and labour research networks can help brands to better understand the local culture and root causes of the risks which have been identified. In turn, this works to promote social dialogue and freedom of association.
- Ask local stakeholders for their support and to provide input for your risk assessment. Share information and best practices or seek out opportunities for training.
- See the country's fact sheet for an overview of relevant local stakeholders

Training and continuous learning

- Strengthen the capacity of local actors, including your suppliers, workers, and unions. Stronger capacity leads to better industrial relations, less conflict, and more meaningful dialogue.
- Brands can support and finance workplace training for workers and management to build understanding of their rights and to increase their skills for engaging in social dialogue.
- Try to find other brands to connect with, ones that are also sourcing in the same country. Learn from each other, seek leverage, participate in (country specific) webinars (organized by FW, ETI, CNV, etc.).

Lobbying

The local laws and regulations in some countries create challenges to respecting trade union rights in practice. In some cases, brands try to influence the regulatory landscape around trade union rights. Whenever possible, use your brand's voice to halt violations of international standards on FoA and CB (ILO Conventions 87 and 98) and collaborate across the industry to address systemic challenges.

For example, Fair Wear joined Amfori, the Fair Labour Organization, the Ethical Trading Initiative, American Apparel and Footwear Association, and Social Accountability International in signing a targeted letter to the government of Cambodia regarding their restriction on freedom of association and the persecution of human rights defenders. A second letter, signed by more brands, was shared with members of the European Parliament and other politicians to encourage a high-level response and show the serious commitment of businesses to addressing these human rights issues. The EU will continue to promote policy improvements by the Cambodian government.

- Ensure workers are interviewed off-site during any audits, so they are more free to share true information without fear of reprisal. When their interviews are conducted in the factories, under the watch of management, workers are less likely to speak freely and openly.
- Try to include other monitoring instruments, such as sudden self-assessments, factory visits, third-party audits, evidence collection, direct communication with workers and the trade union of the supplier's factory. More information on third-party auditing can be found at [Fair Wear](#) (Fair Wear has local teams in the biggest production countries that can perform these audits).

In the end, the supplier has to be held accountable to the brands and show that no one is being subjected to obstruction/discrimination/harassment for joining a trade union or participating in collective bargaining processes.

5 Monitor implementation (audits)


Brands often rely on auditors to verify what is actually happening in the factories of their suppliers. In Chapter 9, we explained the limitations of auditing when it comes to verifying sensitive issues such as FoA. We recommend brands implement various measures to ensure audits are more effective.





- Make sure the auditors have the proper training and awareness to identify violations of FoA and make the right recommendations for improvement in a Corrective Action Plan.
- Check to be sure the auditors (are willing and able to) identify the structures that support dialogue and consultation between workers and managers. This aspect is extremely important.
- ETI recommends using an effective auditing checklist to strengthen and improve trade union representation in [their five step plan to FoA](#). Amfori provides guidelines regarding FoA for auditors, among others, in their system manual part III.
- Ensure auditing is part of a broader due diligence approach and use social compliance audits more strategically to identify red flags around trade union rights.
- Collect alternative reports and feedback from local stakeholders on practices of FoA and CB in the suppliers' factories to complement an audit report.






11. INTERESTING INTERNATIONAL INITIATIVES TO KNOW ABOUT

The organizations and initiatives in the table below play active roles in creating and promoting FoA and CB in the garment sector.

	MAIN FOCUS	COUNTRIES ACTIVE IN THE GARMENT SECTOR
STITCH 	<p>STITCH (Sustainable Textile Initiative: Together for Change), a Strategic Partnership 2021-2025, aims to create a new normal for the garment industry. "An industry where garment workers, most of whom are women, can exercise their right to freedom of association and have access to safe, dignified, and properly paid employment." STITCH is led by Fair Wear. Fair Wear has joined forces with the British Ethical Trading Initiative (ETI), the Center for Development and Integration in Vietnam (CDI), labour organisation Cividep India, and Dutch trade unions CNV Internationaal and Mondiaal FNV.</p>	<p>Bangladesh, Cambodia, India, Indonesia, Myanmar, and Vietnam.</p>
CNV Internationaal www.cnvinternationaal.nl/en 	<p>CNV Internationaal – together with the CNV Confederation and the CNV trade unions – contributes to Decent Work in developing countries through lobbying, policy, and awareness campaigns.</p> <p>With its expertise and network, CNV can advise brands on their work on FoA and connect them to local stakeholders in sourcing countries.</p> <p>CNV is affiliated with the International Trade Union Confederation (ITUC)</p>	<p>Vietnam, Indonesia, Cambodia.</p> <p>Tunisia.</p>
Mondiaal FNV www.fnv.nl/mondiaal-fnv 	<p>Mondiaal FNV is part of the FNV trade union confederation. Mondiaal FNV supports projects in over 100 countries located in Africa, Asia, Latin America, and Eastern Europe. The main actors are Mondiaal FNV-affiliated unions, FNV and their members. The FNV is an umbrella organization with 19 affiliated unions and 1.1 million members.</p> <p>FNV is affiliated with the International Trade Union Confederation (ITUC) and Global Union Federations (GUFs) of different sectors. In the textile sector, FNV partners with IndustriALL.</p>	<p>Bangladesh, India, Indonesia and Myanmar.</p> <p>Ethiopia, MENA region.</p>

	MAIN FOCUS	COUNTRIES ACTIVE IN THE GARMENT SECTOR
Fair Wear www.fairwear.org 	<p>FW is a multi-stakeholder initiative with teams in 11 production countries. They working with over 130 member brands towards a fairer and more ethical fashion industry.</p> <p>Fair Wear offers its members:</p> <ul style="list-style-type: none"> • Brand performance checks • Tools and training • Factory audits based on the FW Code of Labour practices • Factory training (living wage, gender-based violence) • Complaint helplines 	<p>Bangladesh, Bulgaria, China, India, Indonesia, North Macedonia, Myanmar, Romania, Tunisia, Turkey, and Vietnam.</p>
ETI www.ethicaltrade.org 	<p>The Ethical Trading Initiative is a multi-stakeholder initiative based in the UK. They work together to tackle the many complex questions about what steps companies should take to trade ethically and how to make a positive difference to workers' lives.</p>	<p>India, Bangladesh.</p> <p>Peru, Italy, East Africa, and China.</p>
Amplify	<p>Mondiaal FNV and CNV Internationaal have taken initiatives for making the production chain more social and sustainable at the request of Dutch clothing brands. They have united in the Agreement on Sustainable Garments and Textile Their project supports brands in promoting freedom of association among their suppliers, so that the workers and employers can engage in structural social dialogue about working conditions.</p>	<p>The Netherlands.</p>
ILO Better Work www.betterwork.org/ 	<p>Better Work – a collaboration between the United Nation's International Labour Organization (ILO) and the International Finance Corporation (IFC), a member of the World Bank Group – is a comprehensive programme bringing together all levels of the garment industry to improve working conditions and labour rights, and to boost competition among apparel businesses.</p>	<p>Bangladesh, Cambodia, Indonesia, Vietnam.</p> <p>Egypt, Ethiopia, Jordan. Haiti, Nicaragua.</p>
ACT www.actonlivingwages.com/ 	<p>Better Work – a collaboration between the United Nation's International Labour Organization (ILO) and the International Finance Corporation (IFC), a member of the World Bank Group – is a comprehensive programme bringing together all levels of the garment industry to improve working conditions and labour rights, and to boost competition among apparel businesses.</p>	<p>Bangladesh, Cambodia, Myanmar, Turkey.</p>

	MAIN FOCUS	COUNTRIES ACTIVE IN THE GARMENT SECTOR
Accord / RSC www.bangladeshaccord.org 	<p>The Bangladesh Accord on Fire and Building Safety is an independent, legally binding agreement between brands and trade unions to work towards a safe and healthy garment and textile industry in Bangladesh. The Accord covers factories producing Ready-Made Garments (RMG) and at the option of signatory companies, home textiles and fabric & knit accessories.</p> <p>The RMG Sustainability Council, or RSC, will take over all Accord operations by end of May 2020 and will inherit the Accord infrastructure and staff. The RSC will be governed by representatives of the BGMEA, global brands, and global and national trade unions and work in cooperation with the Government of Bangladesh to ensure the work of the RSC compliments the work of the Government Remediation Coordination Cell.</p>	Bangladesh.
Amfori BSC www.amfori.org 	<p>The Amfori Business Social Compliance Initiative is a business-driven platform for the improvement of social compliance in the global supply chain.</p>	
Fair Labor Association www.fairlabor.org 	<p>The US-based Fair Labor Association (FLA) is an international effort by companies, colleges, universities, and civil society organizations to improve working conditions in supply chain factories.</p>	Bangladesh, India, Turkey, Myanmar, Cambodia, Georgia.

USEFUL CONTACTS

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Fair Wear Foundation

For Fair Wear members, please contact your brand liaison for more support.

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