

Freedom of association and collective bargaining

Freedom of association and collective bargaining are fundamental human rights guaranteed by major international human rights instruments, including the International Bill of Human Rights and fundamental ILO conventions, specifically the [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#) and the [Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#). These rights are essential for the exercise of other human rights. Freedom of association is most frequently understood as the right of workers “[to join organisations of their own choosing without previous authorisation.](#)”

The freedom of association is therefore a prerequisite to collective bargaining, which is defined as “[negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.](#)” In other words, “[a way for workers and employers to reach agreement on issues affecting the world of work.](#)”



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The rights to freedom of association and collective bargaining are also a prerequisite for many other fundamental labour rights. For example, the ability of workers to organise freely allows them to use their collective power to achieve improved labour rights, health and safety at the workplace, the right

not to be discriminated against and freedom from forced labour. Freedom of association and collective bargaining are also critical in ensuring an adequate standard of living for workers and their families.

While the international standards are clear, major challenges to applying the principle of freedom of association are still present. In some countries, certain categories are not allowed to unionise and in other cases independent trade unions are illegal. In some cases, trade unionists are arbitrarily arrested or killed.

A company can negatively impact this right, for example by refusing to recognise legitimate workers’ organisations or unions, by not entering into dialogue with them, or in the worst cases, threatening union members or those trying to form a union, or being directly linked to threats to them. In other cases, companies allow and prefer workplace-specific workers groups. While that may be an appropriate approach where trade unions are outlawed, companies should always strive to guarantee the right to form trade unions rather than company-specific organisations and workers groups, when that is possible. Furthermore, it is important for companies to recognise that grievance mechanisms cannot substitute for collective bargaining processes.

Steps taken by companies to ensure freedom of association and collective bargaining throughout their supply chains are still too few and far between. Yet, there are good examples (some mentioned below), such as entering into [International Framework Agreements](#). These agreements are developed between companies and a Global Union Federation, and strive to “ensure that the company respects the same standards in all the countries where it operates”.

▼ Links to SDGs and targets

The SDGs emphasize the need for decent work (SDG 8), reduced inequalities (SDG 10) and effective, accountable and inclusive institutions (SDG 16).

Progress on these goals can be made e.g. when companies have identified a lack of freedom of association in their supply chains and decided to provide training to their management and staff on the freedom of association and collective bargaining. Through company-sponsored awareness-raising, businesses can create environments conducive to employees negotiating a living wage, thereby contributing to income growth for the poorest workers (10.1). The same actions can also contribute to increased social benefits and creating a safe working environment (8.8). Businesses can also engage with governments and use their leverage to advocate for local laws that support workers’ rights to organize, which can contribute to effective, accountable and transparent institutions (16.6).

These are merely examples of ways in which actions to respect freedom of association and collective bargaining can contribute to certain SDGs and is not an exhaustive list of such links.

Cases on Freedom of association and collective bargaining

Case brief	Goals	Targets	Due diligence
<p>Businesses affirm role of human rights defenders</p> <p>The Business Network on Civic Freedoms and Human Rights Defenders, an informal network of companies supported by the Business & Human Rights Resource Centre, The B Team and the International Service for Human Rights (ISHR), released a statement in January 2019, in which it affirmed the "crucial role" of human rights defenders and the network’s commitment to the protection of civic freedoms. The business network includes members from a broad range of industries - consumer goods, mining, apparel & footwear, banking, and jewellery sectors – and is made up of Unilever, adidas, Primark, ABN AMRO, Domini, Anglo American, Leber Jeweler and the Investor Alliance on Human Rights.</p> <p>This network stated that its members, and businesses in general, “have a duty to respect human rights and human</p>	<div><div>8</div><div>DECENT WORK AND ECONOMIC GROWTH</div><div></div></div> <div><div>16</div><div>PEACE, JUSTICE AND STRONG INSTITUTIONS</div><div></div></div> <div><div>17</div><div>PARTNERSHIPS FOR THE GOALS</div><div></div></div> <div><div>10</div><div>REDUCED INEQUALITIES</div><div></div></div>	<div><div>8.8</div><div>16.1</div><div>16.10</div><div>17.16</div><div>17.17</div><div>10.2</div><div>10.3</div></div>	<div><div>Corporate commitment</div></div> <div><div>Integrating and acting upon findings</div></div> <div><div>Stakeholder engagement</div></div>

Case brief	Goals	Targets	Due diligence
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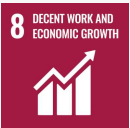
rights defenders” in order to be aligned with the UN Guiding Principles on Business and Human Rights. Fulfilling this duty, the statement says, “enhances the private sector’s ‘social license’ to operate”.

In particular, in the statement, the various businesses commit to partnering with defenders to identify problems in their businesses and encouraging due diligence and in the case of harm, access to remedy; exploring how their policies can be strengthened in order to protect human rights defenders; encouraging governments to protect civic freedoms and human rights defenders, as well as prevent abuse, harassment, intimidation, physical attacks, or limitations to the freedom of speech, assembly, association and movement of these defenders; and working to find how businesses can positively contribute to threatened human rights as they relate to human rights defenders. According to the statement, the network itself can be used to exchange information between members as well as to take collective action to address systemic issues, thereby increasing the members leverage to address identified negative human rights impacts on human rights defenders.

Apparel companies support labour reform in Mexico

In 2017, fourteen [international apparel companies](#) that source and manufacture clothing in Mexico – including Adidas, American Eagle, Fruit of the Loom, Gildan, New Balance, Nike and Puma – [informed the Ministry of Labour in Mexico](#) of their support for labour reform and expectation of an implementation that would ensure and ultimately better protect the basic rights of freedom of association and collective bargaining for workers within the country.

The proposed reform to Mexico's labour laws was supported by the companies in a statement that they were "hopeful that the new legislation will guarantee Mexican workers the right to be represented in collective bargaining by a union of their free choice and where all procedural rules, particularly the right to democratically elect the union and union representatives of their choice and to vote on any collective bargaining agreement before it is registered, are observed and respected".



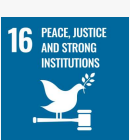
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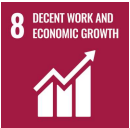
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Corporate
commitment

Communicating
and reporting

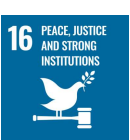
Footwear association moves to protect trade unions

The American Apparel & Footwear Association – an American trade union for hundreds of clothing and footwear brands – and the Fair Labour Association publicly supported the passing and swift execution of [labour law reform](#) in Myanmar to reflect the fundamental conventions of the International Labour Organisation. It includes provisions to include defence and protection of trade unions against external pressure and to reinforce dispute resolution procedures for workers.



8.5

8.8






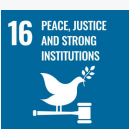

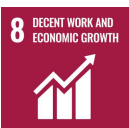

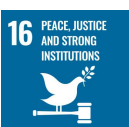

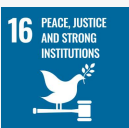
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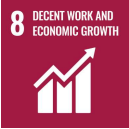

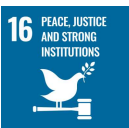



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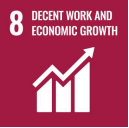


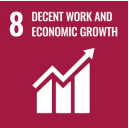

Corporate
commitment






Communicating
and reporting



Access to
remedy

Case brief	Goals	Targets	Due diligence
<p>Industry initiative produces enforceable agreements</p> <p>In 2015, following the 2013 Rana Plaza factory collapse, international brands, retailers and trade unions in the garment industry launched the ACT (Action, Collaboration, Transformation) initiative in order to “transform the garment and textile industry and achieve living wages for workers through industry-wide collective bargaining linked to purchasing practices”. What is said to be one of the most significant components of the ACT is the industry-wide collective bargaining between employers and unions of registered and legally enforceable agreements at the national level. The collective bargaining feature was added to ensure that “workers in the garment and textile industry within a country can negotiate their wages under the same conditions, regardless of the factory they work in, and the retailers and brands they produce for”. [case study]</p>	   	<div>1.1</div> <div>8.5</div> <div>8.8</div> <div>10.1</div> <div>10.4</div> <div>16.10</div>	<p>Integrating and acting upon findings</p>
<p>Retail company gets behind collective bargaining for workers in its supply chain</p> <p>In 2016 German retail company Tchibo and IndustriALL signed a framework agreement that would empower and strengthen the rights of workers in countries where Tchibo sources its merchandise to bargain collectively for wage increases, social benefits, and working hours throughout their roles in the company. The agreement was intended to affect all workers in the operations of the multinational company and aims to significantly improve the freedom of association and level of worker involvement throughout the company's workforce. As of 2018, the global framework agreement is still in place.</p> <p>According to a 2017 report, Tchibo (among others) pulled out of the Dhaka Apparel Summit due to deteriorating labour rights in the Bangladeshi garment industry. The same year, the Global Deal Partnership produced a thematic brief that highlighted the unique instance of a trade union at an Ethiopian factory of Turkish Ayka, one of Tchibo’s textile suppliers. The report states that Tchibo had helped to create an environment conducive to trade unions.</p> <p>A 2018 "lessons learned" report from the ILO notes that the framework agreement signed by Tchibo includes provisions that require the company to work on issues of minimum wage, working hours, occupational health and safety, etc. both with their suppliers and their subcontractors.</p>	   	<div>1.1</div> <div>8.5</div> <div>8.8</div> <div>10.1</div> <div>10.4</div> <div>16.6</div> <div>16.10</div>	<p>Assessing impacts</p> <p>Integrating and acting upon findings</p> <p>Access to remedy</p>
<p>Request to government for labour law reforms and protection of trade unions</p> <p>On behalf of numerous apparel brands with manufacturing operations in Cambodia (such as Gap, H&M and ASOS) the American Apparel and Footwear Association (AAFA), amfori – Trade with Purpose, the Ethical Trading Initiative (ETI), the Fair Labor Association (FLA), the Fair Wear Foundation (FWF) and Social Accountability International (SAI)</p>	 	<div>8.5</div> <div>8.8</div> <div>16.6</div> <div>16.10</div>	<p>Corporate commitment</p> <p>Integrating and acting upon findings</p> <p>Communicating and reporting</p>

Case brief	Goals	Targets	Due diligence
<p>expressed concern to the government of Cambodia about several contentious labour laws and repressive activity against unionists and activists. In particular, they asked the government to reform the 2016 Trade Union Law, and to “further strengthen” the Arbitration Council, an institution trusted and used by both workers and employers in resolving disputes, which saw a significant decline in cases after the introduction of the 2016 law.</p>			Access to remedy
<p>Brands, suppliers and unions enshrine workers' rights and freedom of expression in a protocol</p> <p>In 2011, Indonesian textile, clothing and footwear unions, major supplier factories, and major sportswear brands including Nike, Adidas and Puma signed the Freedom of Association Protocol. This protocol recognises workers' right to form trade unions and requires that a collective bargaining agreement must be produced within six months of a union's formation. The protocol additionally sets out to ensure that workers have the ability to voice their concerns and freely negotiate working conditions, such as wages and job security, without any form of intimidation or harassment by employers.</p> <p>According to Puma's 2017 Annual Report, the company responds to anti-union sentiment in its supply chain by providing freedom of association training for factory management. Also in 2017, Puma signed a letter addressed to the Cambodian government urging them to respect workers' rights, including freedom of association. Furthermore, in Puma's Sustainability Handbook on Social Standards the company guarantees that all employees of its manufacturing sites have the right to freedom of association and the right to organise, while also recognising employees' right to not join unions or employee associations.</p>	  	<div>8.5</div> <div>8.8</div> <div>10.4</div> <div>16.10</div>	Corporate commitment Integrating and acting upon findings Access to remedy
<p>Global cross-sector organisation improves conditions for ready-made garment workers in Bangladesh</p> <p>The Ethical Trading Initiative (ETI) is a global organisation comprised of companies, corporations, suppliers, trade union bodies, labour rights organisations, and development charities from the UK, Australia, Germany, Spain, Sweden and the US. Members of ETI adopt the ETI Base Code of Labour Practice in their own actions, work directly with workers around the world to support increased advocacy and awareness of labour rights, and participate with other actors within the labour supply chain in order to influence decisions that can benefit workers within the supply chain.</p> <p>In 2013 ETI started a project in Bangladesh where it began to develop a scalable workplace social dialogue model that will establish structures and processes for workers and employers in the garment industry to negotiate rights collectively, to resolve conflicts peacefully, and to ensure</p>	  	<div>8.5</div> <div>8.8</div> <div>10.4</div> <div>16.10</div>	Integrating and acting upon findings Stakeholder engagement Access to remedy

Case brief	Goals	Targets	Due diligence
<p>that basic frameworks for fair working hours and working conditions are established. Thus, the initiative aims to promote and defend the rights of workers in Bangladesh to express and voice concerns around their employment. The programme also includes capacity-building and rights-based training of factory workers and management across ten pilot factories.</p> <p>To date, 35 factories have participated in the Social Dialogue Programme. In 2017, after the completion of its second pilot phase and an external evaluation, ETI identified three areas for development: the training of mid-level managers and supervisors, know your rights awareness courses for workers, and refresher courses. Primark has engaged with its factory workers, as well as local experts and NGOs, to ensure that the company's code of conduct is easily understood by all workers.</p>			
<p>Collective bargaining towards living wages for tea workers in Malawi</p> <p>Various groups along the Malawian tea value chain convened in 2015 to solve problems surrounding worker wages. The Malawi Tea 2020 Revitalisation Programme is a coalition of tea producers that works in conjunction with the government to review the wage-setting process. It allows more flexible collective bargaining between workers and employers and ensures that worker perspectives are part of determining fair wages and standards of labour. Malawian tea plantation workers now receive 40% more than the country's minimum wage as a result of the programme. [case study]</p>	 	<div>8.5</div> <div>8.8</div> <div>10.4</div>	<p>Corporate commitment</p> <hr/> <p>Assessing impacts</p> <hr/> <p>Integrating and acting upon findings</p> <hr/>
<p>Clothing retailer implements industrial relations strategy to achieve living wages</p> <p>H&M enacted a Fair Living Wage Strategy in 2013. The strategy includes workplace dialogue and industrial relations programmes that seek to promote positive communication between workers and employers around wage negotiation, working hours, labour conditions, trade unions and freedom of association. The strategy defines a living wage as “a wage which satisfies the basic needs of employees and their families and provides some discretionary income such as savings”. [case study]</p> <p>Beyond workplace dialogue, the main components of the strategy include: the Fair Wage Method for sustainable and holistic pay structures, strategic and industry-wide collaboration, and government engagement. As of 2018, 450 factories working with H&M – 52% of H&M product volume – have democratically-elected worker representatives. Additionally, 227 factories working with H&M – 40% of H&M’s product volume – have transparent wage management systems in place.</p>	  	<div>1.1</div> <div>8.5</div> <div>8.8</div> <div>10.4</div>	<p>Corporate commitment</p> <hr/> <p>Assessing impacts</p> <hr/> <p>Integrating and acting upon findings</p> <hr/> <p>Stakeholder engagement</p> <hr/> <p>Access to remedy</p> <hr/>

Case brief	Goals	Targets	Due diligence
<p>Brands support global garment and textile worker initiative</p> <p>Global brands and retailers in the garment and textile industry came together with IndustriALL to form the Action, Collaboration, Transformation (ACT) initiative. Comprising 17 brands, ACT stands as a global trade union federation that represents garment and textile workers worldwide and holds the rights of freedom of association, collective bargaining, and living wages to be paramount in the global supply chains of modern industry. [Shift case study]</p> <p>ACT helps retailers examine their own practices, as ASOS states under their Ethical Trade Strategy: "We're undertaking an independent review of our purchasing practices within the framework of the Action, Collaboration, Transformation (ACT) initiative on living wage [sic] as well as our own focused research through surveys and interviews with buying and merchandising teams. This will help to highlight gaps in our practices so we can agree actions for improving our purchasing mechanisms".</p>	  	<div>1.1</div> <div>8.5</div> <div>8.8</div> <div>10.1</div> <div>10.4</div>	<p>Corporate commitment</p> <hr/> <p>Integrating and acting upon findings</p> <hr/>
<p>Collective action and workplace dialogue to address sub-standard work environments</p> <p>In 2013, seventy-five European clothing retailers with production factories in Bangladesh and a coalition of global and local trade unions agreed to the Bangladesh Accord on Fire and Building Safety in response to the deadly Rana Plaza factory fire in Bangladesh that killed more than 1,100 garment workers.</p> <p>In 2017 it was announced that the accord would be renewed and strengthened. The 2018 accord extended provisions to give workers the ability to voice concerns about unsafe working environments. In order to make collective bargaining more viable for workers and allow for more effective union formation and maintenance, "[s]ignatory companies shall require their suppliers to provide access to their factories to training teams". The training "shall cover the importance of Freedom of Association and the role of industrial relations in [...] protecting workers' health and safety." The accord is also set out to improve dispute resolution efforts between retailers and unions.</p> <p>The accord has, since 2013, reached more than two million workers in Bangladesh through such cooperation and efforts. From a signatory's point of view, Adidas had this to say in 2013: "What we find particularly attractive is the Accord's multi-stakeholder format, its commitment to support and involve workers in addressing factory safety and its commitment to transparency".</p>		<div>8.5</div> <div>8.8</div>	<p>Corporate commitment</p> <hr/> <p>Integrating and acting upon findings</p> <hr/> <p>Stakeholder engagement</p> <hr/> <p>Access to remedy</p> <hr/>
<p>Technology company turns down discriminatory facial recognition sales</p>		<div>5.1</div> <div>10.3</div>	<p>Corporate commitment</p> <hr/>

Case brief	Goals	Targets	Due diligence
<p>In April 2019, Microsoft announced its decision to not sell its facial recognition technologies to California law enforcement due to human rights concerns. The company has cited that the use of this technology in law enforcement would lead to discriminatory enforcement. The artificial intelligence used by many large technology companies such as Microsoft has been reported to often be trained on mostly light-skinned men, and thus frequently mistakenly identifies women and minorities. As Microsoft President Brad Smith publicly explained at a conference on the future of artificial intelligence at Stanford, this decision follows previous Microsoft concerns about privacy and human rights; in the past, Microsoft has also declined to install facial recognition on cameras in an unnamed capital city that the Freedom House deemed not free, based on concerns over negative impacts on the freedom of assembly. In a 2018 statement, Microsoft also urged governments to enact regulation of this technology and discourage the widespread use of facial recognition technologies for surveillance. Microsoft’s President spoke on these issues alongside Michelle Bachelet, the United Nations High Commissioner for Human Rights. The two of them urged technology companies to consider the human rights impacts of emerging technologies.</p>		<div>16.10</div> <div>16.b</div>	Assessing impacts
			Integrating and acting upon findings

DISCLAIMER The case briefs featured on this site are not an endorsement of a particular company, their approach to human rights as such or their business model in general. Case briefs serve only as isolated illustrative examples for inspiration. The case briefs do not reflect all commitments or actions by any given company. In developing the case briefs DIHR has NOT evaluated the actual human rights and developmental outcomes or impacts of mentioned policies and activities. As such cases have been included for their ability to conceptually illustrate the link between human rights due diligence and sustainable development, not due to their verified impacts.