Freedom of Association and the Right to Collective Bargaining;

Fair Wear Foundation guidance document for auditors and member companies

I Introduction

1. This document aims to clarify the obligations of suppliers and FWF member companies with regard to the right to freedom of association and collective bargaining and to give guidance for auditors what requirements and recommendations to make in a certain situation. Fairwear Foundation has consulted its Trade Union stakeholders on the contents of this document.

2. The aim of the Fair Wear Foundation (FWF) is to promote legal and humane labour conditions in the worldwide garment industry (see Principles & Policies).

3. Successful social dialogue structures and processes have the potential to resolve important economic and social issues, encourage good governance, advance social and industrial peace and stability and boost economic progress.
(http://www.ilo.org/public/english/dialogue/ifpdial/areas/social.htm)

4. Social dialogue is defined by the ILO to include 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. It can exist as a tripartite process, with the government as an official party to the dialogue or it may consist of bipartite relations only between labour and management (or trade unions and employers' organisations), with or without indirect government involvement.
(http://www.ilo.org/public/english/dialogue/ifpdial/areas/social.htm, referring to ILO Convention 144 and 154)

5. The International Labour Organization declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, among others the right to freedom of association and the effective recognition of the right to collective bargaining, ILO Declaration on Fundamental Principles and Rights at Work; 86th Session, Geneva, June 1998

6. The right to freedom of association and the right to bargain collectively form the cornerstone of effective and mature industrial relations. Respect for these rights is a pre-requisite for the sustainable improvement of labour conditions in the garment industry.

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

8. The FWF code of labour standards further states: The Fair Wear labour standards are based on the conventions of the International Labour Organisation (ILO) and the Universal Declaration on Human Rights. The code refers to specific conventions. Where clarifications of ILO Conventions are required, the Fair Wear Foundation follows ILO Recommendations and decisions and principles of the Committee on Freedom of Association of the Governing Body of the ILO.

9. FWF member companies and their suppliers should refrain from interference with workers who choose to exercise these rights. They shouldn't do anything that prohibits or dissuades workers from forming or joining independent organisations and from seeking to negotiate their terms and conditions of employment. But, even if an employer refrains from intervening, this does not ensure that workers genuinely enjoy the rights to freedom of association and the right to bargain collectively. Therefore, the question is whether FWF members and their suppliers have a responsibility to pro-actively enable these rights at the factory level. If so, what does this responsibility entail and how should it be put into practice?

10. To summarize what follows, FWF considers a factory to be in compliance with this labour standard if trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind, if there is an appropriate communication policy and an effective grievance procedure and if no signs of violations of the right to freedom of association and the right to collective bargaining are found.

11. Part II of this document describes pro-active measures and requirements that FWF prescribes to ensure that workers genuinely enjoy the rights to freedom of association and the right to bargain collectively.

12. Part III describes 14 possible situations of non-compliance summarizing the findings of FWF audit teams so far. An attempt has been made to rank the 14 situations by mounting magnitude of non-compliance and to clearly distinguish the impact of the 8 variables related to this labour standard.

13. Annex I gives an overview of the relevant conventions and recommendations of the ILO concerning freedom of association, the right to organise and the right to collective bargaining

and quotes the digest of decisions[1] of the Committee on Freedom of Association of the Governing Body of the ILO (see 58-61).

14. Annex II gives an overview of requirements and recommendations per aspect of this labour standard. The requirements and recommendations in the overview should not simply be copied into the corrective action plan. Every situation should be carefully assessed and analysed within the specific local context. Further corrective action should be phrased in language that is easily understandable and specific.

15. Specific guidance on how to assess the different aspects of the right to freedom of association and the right to bargain collectively is described in the FWF audit manual.

II Pro-active measures to ensure the right to organise and collective bargaining

16. While on all other labour standards the FWF only takes into account information regarding the current situation in the factory, with regard to FOA also the history of attempts to unionize in the factory is taken into account because past experiences of workers might have a direct effect on their current attitudes towards trade union organising.

17. In the FWF manual for member companies it says: 'If there is a workers' representative within the factory, s/he participates in the exit interview with the management. In this case the corrective action plan agreed between the member company and the factory will be displayed in the workplaces'.

18. With a view to the development of a **climate of mutual understanding and confidence** within undertakings that is favourable both to the efficiency of the undertaking and to the aspirations of the workers) management should **communicate** with the **workers and their representatives** about the subjects described in R129, art 15. (See 113-114): a-general conditions of employment, including engagement, transfer and termination of employment; b-job descriptions and the place of particular jobs within the structure of the undertaking; c-possibilities of training and prospects of advancement within the undertaking; d-general working conditions; e-occupational safety and health regulations and instructions for the prevention of accidents and occupational diseases; f-procedures for the examination of grievances as well as the rules and practices governing their operation and the conditions for having recourse to them; g-personnel welfare services (medical care, health, canteens, housing, leisure, savings and banking facilities, etc.); h-social security or social assistance schemes in the undertaking; i- the regulations of national social security schemes to which the workers are subject by virtue of their employment in the undertaking; j-the general situation of the undertaking and prospects or plans for its future development; k-the explanation of decisions which are likely to affect directly or indirectly the situation of workers in the undertaking; l-methods of consultation and discussion and of co-operation between management and its representatives on the one hand and the workers and their representatives on the other.

19. FWF requires that these subjects should at least be discussed upon recruitment. Relevant subjects should be included in the labour contract and/or the factory regulations. Workers should be given a copy of their contract and/or the factory regulations. **In companies with more than 50 workers** there should be a written communication policy and workers should

[1] http://www.ilo.org/ilolex/english/digestq.htm

be informed about the communication policy upon recruitment. The communication policy should describe who is responsible to inform and communicate with workers; how workers will be informed; on what subjects and with what frequency. **In companies with 25-50 workers**, the assessment whether a written and formal communication policy is required depends on the audit outcomes regarding the climate of mutual understanding.

20. The FWF complaints procedure enables workers or their representatives in garment factories which supply members of FWF to make a complaint to FWF about their working conditions and the way the code of conduct is implemented in these factories. Complaints from workers or their representatives against their employer should however preferably be handled within the company. Therefore, FWF requires the creation of internal communication and consultation channels between employees and management. These must include a procedure for handling complaints. Only if the internal procedure does not exist or does not function can workers or their representatives use the FWF procedure.

21. FWF requires that every factory has **an appropriate and effective grievance procedure** in place, such as described in R130 (see 115): the grievance procedure should be in conformity with national law or practice, adapted to the conditions of the country, branch of economic activity and the undertaking concerned, should be so formulated and applied that there is a real possibility of achieving at each step provided for by the procedure a settlement of the case freely accepted by the worker and the employer. Grievance procedures should be as uncomplicated and rapid as possible. Simply having a complaint box however, does not fulfil this requirement.

22. **Workers' organisations** or the **representatives of the workers** in the undertaking should be associated, with equal rights and responsibilities, with the employers or their organisations, preferably by way of agreement, in **the establishment and implementation of grievance procedures** within the undertaking, in conformity with national law or practice and, the worker concerned should have **the right to participate directly** in the grievance procedure **and to be assisted or represented** during the examinations of his grievance by a **representative of a workers' organisation**, by a **representative of the workers in the undertaking**, or by any other person of his own choosing, in conformity with national law or practice (see 115).

23. Different forms of worker involvement in communication and consultation bodies can exist at the level of the undertaking, either with a legal basis or informally, and either democratically elected or appointed:
1.-Convention 135 defines ***workers' representatives as*** persons who are recognised as such under national law or practice, whether they are-- trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned (see 78).
2.-A **works council** (comité d'entreprise[2]) is a body of elected representatives established at the level of the undertaking according to legal requirements[3]. It may have the right of

[2] (see http://fr.wikipedia.org/wiki/Comit%C3%A9_d%27entreprise)

information, consultation and/or co-decision making in certain areas defined by law. In Tunisia for example the labour law requires the existence of a consultative committee in every company with more than 40 workers, which is consulted on a number of issues.
3.-In some countries the labour law prescribes the existence of a **committee** with a limited mandate for example an occupational health and safety committee, a canteen committee or a labour dispute mediation committee etc. The national labour law may require that workers in these committees should be freely elected or may stipulate that they can be appointed by management.
4.-**Solidarist associations** are legal entities that aim to achieve the promotion of justice and social peace, harmony between employers and workers and the general advancement of their members and improve their members' social and economic conditions so as to raise their standard of living and enhance their dignity. Solidarist associations are associations of workers, which are set up dependent on a financial contribution from the employer. Their deliberative bodies must be made up of workers, though an employers' representative may be included who may speak but not vote. (see 90-93).

24. The Background study of each country includes information about provisions of national laws and regulations and/or collective agreements regarding the functioning of trade unions and requirements regarding the establishment of consultative bodies at the level of the undertaking. In the factories that have been audited so far, FWF has not encountered solidarist associations.

25. FWF interprets the above as such that:
a-In case there is a trade union in the factory, the trade union should be involved in the establishment and implementation of grievance procedures;
b-In case there are other kinds of worker representation such as for example a works council, an Occupational Health and Safety committee and a welfare committee, the most appropriate representatives should be involved in the establishment and implementation of grievance procedures;
c-In case there exist no worker representatives nor consultative body while the law prescribes the establishment of a consultative body at the level of the undertaking, this body should be established and involved in the grievance handling procedure.
d-If there exist no elected worker representatives nor a consultative body and the existence of a consultative body is not required by law, FWF **recommends** that representative of the workers in the undertaking are elected and involved in the grievance procedure.

26. Appropriate measures should be taken to ensure that grievance procedures, as well as the rules and practices governing their operation and the conditions for having recourse to them, are **brought to the knowledge of the workers**. (2) Any worker who has submitted a grievance should be kept informed of the steps being taken under the procedure and of the action taken on his grievance (see 115).

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[3] A form of industrial democracy found primarily in European countries consisting of plant level committees of workers or both workers and management. Committees are involved with issues ranging from the basic rights of employees to plans relevant to employee welfare, to full co-determination in areas such as personnel. broadway.sfn.saskatoon.sk.ca/business/sdlc/uz.html

27. Steps should be taken to **train** those concerned in the use of communication methods and to make them, as far as possible, conversant with all the subjects in respect of which communication should take place (see 113).

28. While communication and consultation are important components of effective labour relations and may be part of a package to promote labour relation systems, such practices cannot replace the exercise of the right to collective bargaining. Thus, elected worker representatives who fulfil a role in the grievance procedure or consultation system cannot perform activities, which are recognised as the exclusive prerogative of trade unions in the country concerned. Activities, which are recognised as the exclusive prerogative of trade unions in the country concerned, are determined by national law and/or collective agreements.

III Guidelines for auditors and FWF member companies per situation

Possible situations of non-compliance based on a combination of the aspects A-H								
	-A- Climate of mutual under-standing	-B- Grievance procedure	-C- Elected representatives	-D- Trade union	-E- CBA	-F- Signs of interference	-G- Acts of anti-union discrimination	-H- Legal restrictions
1	?	?	+	+	+	?	?	-
2	?	?	+	-	?	?	?	-
3	?	?	+	-	?	?	?	-
4	?	?	+	-	?	?	?	-
5	?	?	-	+	?	-	?	-
6	+	-	-	-	?	-	?	-
7	-	-	-	-	?	?	?	-
8	?	?	-	+	?	-	?	-
9	?	?	-	+	?	+	?	-
10	-	?	?	?	?	+	+	-
11	?	?	?	?	?	?	?	+
12	?	?	?	?	?	?	?	+
13	?	?	-	-	-	?	?	+
14	?	?	?	?		?	?	+

1) There exist in the undertaking both trade union representatives and elected representatives and there is a collective bargaining agreement.

29. The audit team should assess whether representatives of the trade union are freely elected by the workers of the undertaking in accordance with the trade union constitution, its rules for nomination and electing their leaders, provisions of national laws or regulations or of collective agreements. It should also be assessed whether the functions of elected representatives do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned (see 76-80).

30. Further the team should assess whether appropriate measures are taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives. If management uses the elected representatives to undermine the position of the trade union it should be concluded that management **interferes or interfered** in the in the establishment, functioning or administration of the trade union (see 88, 89, 99). Remarks from local unions could give additional about signals in this company or in the region that the representative body is set up to keep unions out.

31. In case of interference in the establishment, functioning or administration of the trade union by management, both the audit team during the exit meeting as well as the FWF member during follow up visits should explain to management the importance of a climate of mutual understanding and confidence within undertakings that is favourable both to the efficiency of the undertaking and to the aspirations of the workers. The company should, to repair possible damage regarding the right to organise and bargain collectively, explicitly

state the willingness to negotiate with workers collectively and that it is the company's responsibility to make sure workers know they are free to organise themselves (as phrased in the parallel means clause of SA 8000, guidance document page 59[4]). Training of management, staff and workers about the grievance procedure, the right to freedom of association and collective bargaining and the FWF complaints procedure, in consultation with FWF and its local partners is required. **Recommendation:** Under the guidance of trainers, and in consultation with local labour law specialists and union representatives, a secret vote could be organised amongst all workers to see whether they would like to become unionised and what would be the union of their choice.

32. Further the audit team should assess whether the **collective bargaining** agreement is concluded with representatives of the workers duly elected and authorised by them in accordance with national laws and regulations; whether the representatives have **access to the information** required for meaningful negotiations; whether the employer bargained in **good faith;** and whether the employer did not cause any **unjustified delay** in the holding of negotiations (see 94-105).

2) **There exist no trade union representatives in the undertaking but there are elected representatives, the representative body in the undertaking is not required by law.**

33. The audit team should assess whether representatives are freely elected by the workers of the undertaking (see 29); whether management did establish the elected representatives as a workers' organisations under the domination of the employer (see 88, 99); and whether representative bodies function properly. In case the audit team concludes that the representative body is set up to keep unions there is a situation of interference and requirements as under (31) should be made.

3) **There exist no trade union representatives in the undertaking but there are consultative bodies with elected representatives, the elected representatives do not function properly, the consultative body is required by law but is not a works council.**

34. The company should respect national law regarding requirements to establish **consultative bodies** such as for example an occupational health and safety committee.

35. If representative bodies exist they should function properly. If elected representatives don't function properly their existence is regarded as a sign of interference. In case the audit team concludes that there is a situation of interference, requirements as under (31) should be made.

4) **There exist no trade union representatives in the undertaking, there is a works council, but the works council does not function properly.**

36. If national law requires the existence of a **works council** all official positions in such councils should, without exception, be occupied by persons who are freely elected by the workers or employers concerned (see 80).

37. The audit team should investigate whether the works council performs all functions as required by law (and why not). Try to be as specific as possible. Also in this situation the

[4] http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageID=732

audit team should make sure that management does not use the elected representatives to keep unions out and that the works council does not perform functions that are the prerogative of trade unions. In case the audit team concludes that the representative body is set up to keep unions out or that the works council performs functions that are the prerogative of trade unions, and thus there are signs of interference, requirements as under (31) should be made.

5) **There exist in the undertaking trade union representatives but the trade union does not function properly due to internal reasons.**

38. Auditors should assess whether management interfered in the establishment, functioning or administration of the trade union. It is possible that management has picked one union amongst different recognised unions to organise the factory or agree a CBA. This should be assessed within the specific context of the country/region and should be an issue of consultations with local stakeholders (see 71, 75, 81). In former communist countries the cause of the ineffectiveness of the union might be that workers regard the existence of the trade union as a mere formality.

39. The company has no responsibility for the effectiveness of the trade union. On the contrary, the company should refrain from **interference** in the functioning of trade unions (see 88). If the trade union does not function properly due to internal reasons, no requirements are made. If the trade union does not function properly due to interference, requirements as under (31) should be made.

6) **In a small company with less than 25 workers there is no trade union representatives nor elected representatives and there is no effective policy of communication, there is however a climate of mutual understanding.**

40. In general, FWF requires that companies have an appropriate **communication policy** and effective **grievance procedure** in place (see 19, 21, 22, 25, 26, 27). In a small company with less than 25 workers, with a good relation between management and workers, however, it might not be necessary to set up formal structures. The assessment whether a formal procedure for grievance handling is necessary strongly depends on the outcomes of the workers interviews (see 115).

41. In smaller companies with a good relation between workers and management the requirement of having a procedure for grievance handling can be fulfilled if it is clear who can be approached in case of a grievance, how grievances are dealt with and if workers are verbally informed about this informal procedure upon recruitment.

7) **There exist in the undertaking no trade union representatives nor elected representatives and no effective policy of communication nor a grievance procedure and there is no climate of mutual understanding.**

42. FWF requires that companies have an appropriate **communication policy** and effective **grievance procedure** in place (see 19, 21, 22, 25, 26, 27).

43. In this situation both the audit team during the exit meeting as well as the FWF member during follow up visits should explain to management the importance of a climate of mutual understanding and confidence within undertakings that is favourable both to the efficiency of the undertaking and to the aspirations of the workers. All appropriate measures should be taken to guarantee that irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of

violence, pressure, fear and threats of any kind. To repair possible damage regarding the right to organise and bargain collectively, due to the bad relation between management and workers FWF requires that the company explicitly states its willingness to negotiate with workers collectively and that it is the company's responsibility to make sure workers know they are free to organise themselves. The decision to set up a worker's organisation, however, should be left to workers (as phrased in the parallel means clause of SA 8000, guidance document, page 59). Further, training of management, staff and workers about the grievance procedure, the right to freedom of association and collective bargaining and the FWF complaints procedure, in consultation with FWF and its local partners is required. In case of an acute **labour dispute** the corrective action plan will include steps to use the national conciliation machinery to settle the dispute. (see 111). **Recommendation:** Under the guidance of trainers, and in consultation with local labour law specialists and union representatives, a secret vote could be organised amongst all workers to see whether they would like to become unionised and what would be the union of their choice.

8) There exist in the undertaking trade union representatives but the trade union does not function properly because the employer does not fulfil his responsibilities

44. The audit team should assess whether there is a situation of interference, if so requirements as under (31) should be made.

45. In cases where the employer and the union have shared **responsibilities with regard to the functioning of the trade union and to collective bargaining**, the employer should make sure that things are done properly on his own account (see Annex II). Worker representatives should have the appropriate **facilities** (time off from work, pay, access to all workplaces, information, means to communicate to workers) that enable them to carry out their functions promptly and efficiently (see 76, 102, 107-110, 114). The employer should respect the right to collective bargaining as summarised under (32). Trade union representatives should be involved in the establishment and implementation of grievance procedures (see 25).

46. In case of 100% membership the audit team should assess whether membership is voluntary and in case union contributions are deducted automatically, whether workers have signed in agreement.

9) There exist in the undertaking trade union representatives but the trade union does not function properly due to interference in the establishment, functioning or administration of the trade union by management.

47.Acts, which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of **interference** (see 71, 75, 81, 88). If there is a situation of interference, requirements as under (31) should be made.

10) There are indications of acts of anti-union discrimination

48. Management is required to refrain from any activities that stops workers from organising and where possible steps should be included in the corrective action plan to correct earlier violations of the right to organise and bargain collectively. Further, the same requirements as under (43) should be made.

49. A union attempts to organise the factory, or workers attempt to form a union. If management argues against unionisation without any threats, nor any intimidation, nor runs against legal provisions there is no need for requirements.

11) Countries where freedom of association and the right to collective bargaining is restricted, due to legal restrictions that place substantial obstacles in the way of workers wishing to form trade unions of their own choosing and to bargain collectively.

50. In this situation auditors should check whether management uses the law to obstruct worker to organise. If so, the company should refrain from doing so (see 70) and the same requirements should be made as in a situation of interference (see 31).

51. If we look at Turkey specifically, future requirements and recommendations will depend on the outcomes of the Jo-In project.

12) Countries where freedom of association and the right to collective bargaining is restricted because the government grants a monopoly to a labour organisation that it effectively controls and independent trade unions are prohibited.

52. Examples of countries where this situation exists and where FWF is operational are: China, Vietnam and Laos.

53. The assessment whether the situation of a trade union monopoly and the fact that the trade union is linked to the state or the state interferes with trade union policy restricts the right to freedom of association and collective bargaining to such an extend that the facilitation of parallel means (see 7) is required can be based on the indicators mentioned below:

a- Policies of that state
To what extent do workers trust the state to act on their behalf? Does that state take the interests of the workers seriously? Indicators can be:

- the level of protection that labour legislation gives to workers;
- the level of workers' awareness about their legal rights;
- workers' vulnerability visa vis the employer as a result of housing arrangements and migrant status;
- the efforts of the state to enforce compliance;
- the extent to which workers can refer to state institutions in case their rights are violated and the extent to which workers really do this;
- the extend to which a workers or their representative's can debate and influence state policies on labour issues?

b- The level of respect for civil liberties as defined in the Universal Declaration of Human Rights (see 89).
Indicators can be:

- the level of repression against activists;
- the right to freedom and security of person and freedom from arbitrary arrest and detention;
- freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;
- freedom of assembly;

- the right to a fair trial by an independent and impartial tribunal;
- the right to protection of the property of trade union organisations.

c- The possibility for shop floor worker representatives to be genuine representatives of the interests of their colleagues within the company, within or outside the existing trade union structures.
Indicators can be:

- can workers establish a form of worker representation?
- can workers elect their representatives?
- how much room do these representatives have to make their own decisions?
- can representatives engage in collective negotiation with management and ultimately: do they have the right to call a strike de jure and de facto?
- are there structures and rights to guarantee that these representatives can pursue policies without being victimized?
- if these representatives are part of the existing trade union structure, do they have a possibility to influence trade union policies at higher level?
- are trade union policies debated?
- is trade union membership mandatory or voluntary?

d- The possibility for unions to be genuine representatives of the interests of workers in a certain industry.
Indicators can be:

- are there linkages between the representatives of different companies within one sector?
- is the trade union allowed to link up with international trade union bodies?
- is there an open debate on trade union policy?

54. For example, if we look at China specifically it should be noted that the law provides that workers may elect representatives to negotiate collective contracts with management in the absence of a union. The law states that collective contracts should specify working conditions, wages, and hours of work (see Trade Union Law of the People's Republic of China, 2001 and Decree 22 of the Regulations on Collective Contracts, 2003 and see 98-100). Laos and Vietnam have similar legislation allowing workers to elect their representatives in the absence of a trade union.

55. FWF interprets the code obligation regarding the facilitation of parallel means of independent and free association and bargaining as such that even where these **rights are restricted under law**, the company needs to make clear to workers that they are willing to engage workers in collective dialogue through some representative structure and that they are willing to provide them with the opportunity to do so, if workers so wish'. They shall enable workers (if they so choose) to develop forms of collective representation and to engage in collective negotiation with management. Even in these cases, management shall not seek to influence or interfere with workers' discussions, voting processes or related activities. The company should have in place a policy and documentation of actions taken to communicate these opportunities in a clear, non-manipulative, manner to workers' and 'regardless of national laws and practice companies must be willing to negotiate with workers collectively and it is the company's responsibility to make sure workers know they are free to organise themselves. This communication might consist of a clear outline from management and workers' rights and responsibilities in such a dialogue and the benefits to an ongoing

dialogue. The decision to set up a representative dialogue structure, however, should be left to workers (see 69-71, 75-82, 85-88, 94-101, 107-110).

56. The background study of countries with a trade union monopoly will include an assessment whether the facilitation of parallel means is required. If so, the same requirements as under (31) should be made.

13) Countries where freedom of association and the right to collective bargaining is restricted because free and independent trade unions are prohibited by law. Trade unions are banned completely.

a. FWF has not yet encountered this situation in practice. To be discussed when relevant.

14) Countries where freedom of association and the right to collective bargaining is restricted because of the absence of civil liberties.

57. FWF has not yet encountered this situation in practice. To be discussed when relevant.

Annex I Overview of the relevant international instruments

58. This overview is arranged by sequence of the digest of decisions of the committee on Freedom of Association of the ILO[5].

59. In addition to the standard-setting function of the ILO, (….) a special procedure was established in 1950-51 for the protection of freedom of association, supplementing the general procedures for the supervision of the application of ILO standards, under the responsibility of two bodies: **the Fact-Finding and Conciliation Commission on Freedom of Association and the Freedom of Association Committee of the Governing Body of the ILO**. Under this special procedure, governments or organisations of workers and of employers can submit complaints concerning violations of trade union rights by States (irrespective of whether they are Members of the ILO, or Members of the United Nations without being Members of the ILO). The procedure can be applied even when the Conventions on freedom of association and collective bargaining have not been ratified.

60. The Fact-Finding and Conciliation Commission on Freedom of Association is a permanent body and is the highest instance of the special machinery for the protection of freedom of association. … Its mandate is to examine any complaint concerning alleged infringements of trade union rights which may be referred to it by the Governing Body of the ILO. ….

61. The Committee on Freedom of Association (…) is responsible for carrying out a preliminary examination of the complaints submitted under the special procedure, and for recommending to the Governing Body (…)

62. …the experience acquired through the examination of over 1,800 cases in its 44 years of existence has enabled the Committee on Freedom of Association to build up a very full, balanced and coherent body of principles on freedom of association and collective bargaining, based on the provisions of the Constitution of the ILO and of the relevant Conventions, Recommendations and resolutions. …this Digest summarizes and brings up to date the decisions and principles of the Committee on Freedom of Association (…).

1. Trade union rights and

63. Constitution, preamble: Whereas universal and lasting peace can be established only if it is based upon social justice; and whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, …. recognition of the principle of freedom of association….; The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organisation.

64. Declaration concerning the aims and purposes of the International Labour Organisation, Paragraph 1: The Conference reaffirms the fundamental principles on which the Organisation is based and, in particular, that- (b) freedom of expression and of association are essential to

[5] http://www.ilo.org/ilolex/english/digestq.htm

sustained progress and Paragraph 3: The Conference recognizes the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve: (e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;

65. 1970 resolution concerning trade union rights and their relation to civil liberties (article 2) places special emphasis on the following civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise of trade union rights: a-the right to freedom and security of person and freedom from arbitrary arrest and detention; b-freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; c-freedom of assembly; d-the right to a fair trial by an independent and impartial tribunal; e-the right to protection of the property of trade union organisations.

66. Digest 33: On many occasions, the Committee has emphasized the importance of the principle affirmed in 1970 by the International Labour Conference in its resolution concerning trade union rights and their relation to civil liberties, which recognizes that "the rights conferred upon workers' and employers' organisations must be based on respect for those civil liberties which have been enunciated, in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights".

67. Digest 36: All appropriate measures should be taken to guarantee that irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind.

68. The International Labour Organization declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, among others the right to freedom of association and the effective recognition of the right to collective bargaining; Declaration on Fundamental Principles and Rights at Work; 86th Session, Geneva, June 1998.

2. Right of workers and employers, without distinction whatsoever, to establish organisations without previous authorization

69. C87, 2.[6]: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

70. C87, 8.: Workers and employers and their respective organisations shall respect the law of the land. The law of the land shall not be so applied as to impair the right to organise.

3. Right of workers and employers freely to establish and join organisations of their own choosing

[6] C87 Freedom of Association and Protection of the Right to Organise Convention, 1948

71. C87, 2.: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

72. Digest 321: A distinction should be made between union security clauses allowed by law and those imposed by law, only the latter of which appear to result in a trade union monopoly system contrary to the principles of freedom of association.

73. Digest 323: Problems related to union security clauses should be resolved at the national level, in conformity with national practice and the industrial relations system in each country In other words, both situations where union security clauses are authorized and those where these are prohibited can be considered to be in conformity with ILO principles and standards on freedom of association.

74. Digest 324: In certain cases where the deduction of union contributions and other forms of union protection were instituted, not in virtue of the legislation in force, but as a result of collective agreements or established practice existing between both parties, the Committee has declined to examine the allegations made, basing its reasoning on the statement of the Committee on Industrial Relations appointed by the International Labour Conference in 1949, according to which Convention No. 87 can in no way be interpreted as authorizing or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice. According to this statement, those countries - and more particularly those countries having trade union pluralism - would in no way be bound under the provisions of the Convention to permit union security clauses either by law or as a matter of custom, while other countries which allow such clauses would not be placed in the position of being unable to ratify the Convention.

4. Free functioning of organisations. Right to draw up constitutions and rules

75. C 87, 3. (1) Workers' and employers' organisations shall have the right to draw up their constitutions and rules…

5. Right to elect representatives in full freedom

76. C 87, 3. (1) Convention No. 87, Article 3, 1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

77. C135[7], 3. For the purpose of this Convention the term ***workers' representatives*** means persons who are recognised as such under national law or practice, whether they are-- trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.

78. Digest 351: It is the prerogative of workers' and employers' organisations to determine the conditions for electing their leaders and the authorities should refrain from any undue

[7] C135 Workers' Representatives Convention, 1971

interference in the exercise of the right of workers' and employers' organisations freely to elect their representatives, which is guaranteed by Convention No. 87.

79. Digest 352: Workers and their organisations should have the right to elect their representatives in full freedom and the latter should have the right to put forward claims on their behalf.

80. Digest 367: Since the creation of works councils and councils of employers can constitute a preliminary step towards the setting up of independent and freely established workers' and employers' organisations, all official positions in such councils should, without exception, be occupied by persons who are freely elected by the workers or employers concerned.

6. Right of organisations to organize their administration

81. C 87, 3. (1) Workers' and employers' organisations shall have the right to …organise their administration…

7. Right of organisations freely to organize their activities and to formulate their programmes

82. C 87, 3. (1) Workers' and employers' organisations shall have the right to … organise their activities and to formulate their programmes.

8. Right to strike

83. Digest 473: While the Committee has always regarded the right to strike as constituting a fundamental right of workers and of their organisations, it has regarded it as such only in so far as it is utilized as a means of defending their economic interests.

84. Digest 475: The right to strike is one of the essential means through which workers and their organisations may promote and defend their economic and social interests.

9. Right of workers' and employers' organisations to establish federations and confederations and to affiliate with international organisations of employers and workers

85. C 87, 5. Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

10. Protection against anti-union discrimination

86. C98, 1.[8](1) Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. 2. Such protection shall apply more particularly in respect of acts calculated to-- (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

87. C135, 1. Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a

[8] C98 Right to Organise and Collective Bargaining Convention, 1949

workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.

11. Protection against acts of interference

88. C98, 2. (1) Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. (2) In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

89. C135, 5. Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives.

90. Digest 772: An Act on solidarist associations provides that such associations may be formed by 12 or more workers, and defines them as follows: "Solidarist associations are bodies of indeterminate duration which have their own legal personality and which, to achieve their purposes (the promotion of justice and social peace, harmony between employers and workers and the general advancement of their members), may acquire goods of all kinds, conclude any type of contract and undertake legal operations of any sort aimed at improving their members' social and economic conditions so as to raise their standard of living and enhance their dignity. To this effect they may undertake savings, credit and investment operations and any other financially viable operations. They may also organize programmes in the areas of housing, science, sport, art, education and recreation, cultural and spiritual matters and social and economic affairs and any other programme designed legally to promote cooperation between workers and between workers and their employers." The income of solidarist associations comes from members' minimum monthly savings, the percentage of which shall be determined by the general meeting, and the employers' monthly contribution on behalf of his workers, which shall be determined by common agreement between the two sides.

91. Digest 773: Solidarist associations are associations of workers which are set up dependent on a financial contribution from the relevant employer and which are financed in accordance with the principles of mutual benefit societies by both workers and employers for economic and social purposes of material welfare (savings, credit, investment, housing and educational programmes, etc.) and of unity and cooperation between workers and employers; their deliberative bodies must be made up of workers, though an employers' representative may be included who may speak but not vote. In the Committee's opinion, although from the point of view of the principles contained in Conventions Nos. 87 and 98, nothing prevents workers and employers from seeking forms of cooperation, including those of a mutualist nature, to pursue social objectives, it is up to the Committee, in so far as such forms of cooperation crystallize into permanent structures and organisations, to ensure that the legislation on and the functioning of solidarist associations do not interfere with the activities and the role of trade unions.

92. Digest 774: The provisions governing "solidarity" associations should respect the activities of trade unions guaranteed by Convention No. 98.

93. Digest 775: The necessary legislative and other measures should be taken to guarantee that solidarist associations do not get involved in trade union activities, as well as measures to guarantee effective protection against any form of anti-union discrimination and to abolish any inequalities of treatment in favour of solidarist associations.

12. Collective bargaining

The right to bargain collectively

94. Constitution of the ILO, Declaration concerning the aims and purposes of the International Labour Organisation, III: The Conference recognizes the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve:(e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures.

95. C98, 4. Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary 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.

96. C 154[9], 2. For the purpose of this Convention the term ***collective bargaining*** extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for—a-determining working conditions and terms of employment; and/or b-regulating relations between employers and workers; and/or c-regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

97. R91[10], 2. (1): For the purpose of this Recommendation, the term ***collective agreements*** means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other.

Collective bargaining with representatives of non-unionized workers

98. C154, 3. (1) Where national law or practice recognises the existence of workers' representatives as defined in Article 3, subparagraph (b), of the Workers' Representatives Convention, 1971, national law or practice may determine the extent to which the term ***collective bargaining*** shall also extend, for the purpose of this Convention, to negotiations with these representatives. (2): Where, in pursuance of paragraph 1 of this Article, the term ***collective bargaining*** also includes negotiations with the workers' representatives referred to in that paragraph, appropriate measures shall be taken, wherever necessary, to ensure that the

[9] C154 Collective Bargaining Convention, 1981
[10] R91 The Collective Agreements Recommendation, 1951

existence of these representatives is not used to undermine the position of the workers' organisations concerned.

99. R91, 2. (2) Nothing in the present definition should be interpreted as implying the recognition of any association of workers established, dominated or financed by employers or their representatives.

100. Digest 785: The Collective Agreements Recommendation, 1951 (No. 91), stresses the role of workers' organisations as one of the parties in collective bargaining; it refers to representatives of unorganized workers only when no organisation exists. In these circumstances, direct negotiation between the undertaking and its employees, by-passing representative organisations where these exist, might be detrimental to the principle that negotiation between employers and organisations of workers should be encouraged and promoted.

The principle of bargaining in good faith

101. R163[11], 5. (1) Measures should be taken by the parties to collective bargaining so that their negotiators, at all levels, have the opportunity to obtain appropriate training.

102. R163, 7.(1) Measures adapted to national conditions should be taken, if necessary, so that the parties have access to the information required for meaningful negotiations. For this purpose—(a) public and private employers should, at the request of workers' organisations, make available such information on the economic and social situation of the negotiating unit and the undertaking as a whole, as is necessary for meaningful negotiations; where the disclosure of some of this information could be prejudicial to the undertaking, its communication may be made conditional upon a commitment that it would be regarded as confidential to the extent required; the information to be made available may be agreed upon between the parties to collective bargaining.

103. Digest 815: It is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties.

104. Digest 816: The principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided.

105. Digest 819: The Collective Bargaining Recommendation, 1981 (No. 163), enumerates various means of promoting collective bargaining, including the recognition of representative employers' and workers' organisations (paragraph 3(a)).

13. Consultation with the organisations of workers and employers

106. R113[12], 1. (1) Measures appropriate to national conditions should be taken to promote effective consultation and co-operation at the industrial and national levels between public authorities and employers' and workers' organisations, as well as between these organisations,

[11] R163 Collective Bargaining Recommendation, 1981
[12] R113 Consultation (Industrial and National Levels) Recommendation, 1960

for the purposes indicated in Paragraphs 4 and 5 below, and on such other matters of mutual concern as the parties may determine. (4) Such consultation and co-operation should have the general objective of promoting mutual understanding and good relations between public authorities and employers' and workers' organisations, as well as between these organisations, with a view to developing the economy as a whole or individual branches thereof, improving conditions of work and raising standards of living. (5). Such consultation and co-operation should aim, in particular-- (a) at joint consideration by employers' and workers' organisations of matters of mutual concern with a view to arriving, to the fullest possible extent, at agreed solutions…

14. Facilities for workers' representatives

107. C135, 2. (1) Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently. (2) In this connection account shall be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned. (3) The granting of such facilities shall not impair the efficient operation of the undertaking concerned.

108. R143[13], 10. (1) Workers' representatives in the undertaking are afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions in the undertaking.

109. R143, 12. Workers' representatives in the undertaking should be granted access to all workplaces in the undertaking, where such access is necessary to enable them to carry out their representation functions.

110. R143, 17. (1) Trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking.

Communication, Consultation, Conciliation (Not mentioned in ILOLEX digest)

111. R92[14], 1. Voluntary conciliation machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and workers. Article 2:Where voluntary conciliation machinery is constituted on a joint basis, it should include equal representation of employers and workers.

112. R94[15], 1. In accordance with national custom or practice…), 2. Appropriate steps should be taken to promote consultation and co-operation between employers and workers at the level of the undertaking on matters of mutual concern not within the scope of collective bargaining machinery, or not normally dealt with by other machinery concerned with the determination of terms and conditions of employment.

113. R129[16], 2. (1) Employers and their organisations as well as workers and their organisations should, in their common interest, recognise the importance of a climate of mutual understanding and confidence within undertakings that is favourable both to the efficiency of the undertaking and to the aspirations of the workers. (2) This climate should be

[13] R143 Workers' Representatives Recommendation, 1971
[14] R92 Voluntary Conciliation and Arbitration Recommendation, 1951
[15] R94 Co-operation at the Level of the Undertaking Recommendation, 1952
[16] R129 Communications within the Undertaking Recommendation, 1967

promoted by the rapid dissemination and exchange of information, as complete and objective as possible, relating to the various aspects of the life of the undertaking and to the social conditions of the workers. (3) With a view to the development of such a climate management should, after consultation with workers' representatives, adopt appropriate measures to apply an effective policy of communication with the workers and their representatives. 3.An effective policy of communication should ensure that information is given and that consultation takes place between the parties concerned before decisions on matters of major interest are taken by management, in so far as disclosure of the information will not cause damage to either party. 4. The communication methods should in no way derogate from freedom of association; they should in no way cause prejudice to freely chosen workers' representatives or to their organisations or curtail the functions of bodies representative of the workers in conformity with national law and practice. 5. Employers' and workers' organisations should have mutual consultations and exchanges of views in order to examine the measures to be taken with a view to encouraging and promoting the acceptance of communications policies and their effective application. 6. Steps should be taken to train those concerned in the use of communication methods and to make them, as far as possible, conversant with all the subjects in respect of which communication should take place. 7. In the establishment and application of a communications policy, management, employers' and workers' organisations, bodies representative of the workers and, where appropriate under national conditions, public authorities should be guided by the provisions of Part II below.

114. R129, II. Elements for a Communications Policy within the Undertaking 8. Any communications policy should be adapted to the nature of the undertaking concerned, account being taken of its size and of the composition and interests of the work force. 9. With a view to fulfilling its purpose, any communications system within the undertaking should be designed to ensure genuine and regular two-way communication—(a) between representatives of management (head of the undertaking, department chief, foreman, etc.) and the workers; and (b) between the head of the undertaking, the director of personnel or any other representative of top management and trade union representatives or such other persons as may, under national law or practice, or under collective agreements, have the task of representing the interests of the workers at the level of the undertaking. 10. Where the management desires to transmit information through workers' representatives, the latter, if they agree to do so, should be given the means to communicate such information rapidly and completely to the workers concerned. 11. Management should, in choosing the channel or channels of communication which it considers appropriate for the type of information to be transmitted, take due account of the difference in the nature of the functions of supervisors and workers' representatives so as not to weaken their respective positions. 12. The selection of the appropriate medium of communication, and its timing, should be on the basis of the circumstances of each particular situation, account being taken of national practice. 13. Media of communication may include-- (a) meetings for the purpose of exchanging views and information; (b) media aimed at given groups of workers, such as supervisors' bulletins and personnel policy manuals; (c) mass media such as house journals and magazines; news-letters and information and induction leaflets; notice-boards; annual or financial reports presented in a form understandable to all the workers; employee letters; exhibitions; plant visits; films; filmstrips and slides; radio and television; (d) media aimed at permitting workers to submit suggestions and to express their ideas on questions relating to the operation of the undertaking. 14. The information to be communicated and its presentation should be determined with a view to mutual understanding in regard to the problems posed by the complexity of the undertaking's activities. 15.(1) The information to be given by management

should, account being taken of its nature, be addressed either to the workers' representatives or to the workers and should, as far as possible, include all matters of interest to the workers relating to the operation and future prospects of the undertaking and to the present and future situation of the workers, in so far as disclosure of the information will not cause damage to the parties. (2) In particular, management should give information regarding-- (a) general conditions of employment, including engagement, transfer and termination of employment; (b) job descriptions and the place of particular jobs within the structure of the undertaking; (c) possibilities of training and prospects of advancement within the undertaking; (d) general working conditions; (e) occupational safety and health regulations and instructions for the prevention of accidents and occupational diseases; (f) procedures for the examination of grievances as well as the rules and practices governing their operation and the conditions for having recourse to them; (g) personnel welfare services (medical care, health, canteens, housing, leisure, savings and banking facilities, etc.); (h) social security or social assistance schemes in the undertaking; (i). the regulations of national social security schemes to which the workers are subject by virtue of their employment in the undertaking; (j) the general situation of the undertaking and prospects or plans for its future development; (k) the explanation of decisions which are likely to affect directly or indirectly the situation of workers in the undertaking; (l) methods of consultation and discussion and of co-operation between management and its representatives on the one hand and the workers and their representatives on the other.

115. R130[17], 2. Any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right-- (a) to submit such grievance without suffering any prejudice whatsoever as a result; and (b) to have such grievance examined pursuant to an appropriate procedure. 6. Workers' organisations or the representatives of the workers in the undertaking should be associated, with equal rights and responsibilities, with the employers or their organisations, preferably by way of agreement, in the establishment and implementation of grievance procedures within the undertaking, in conformity with national law or practice. 8. As far as possible, grievances should be settled within the undertaking itself according to effective procedures which are adapted to the conditions of the country, branch of economic activity and undertaking concerned and which give the parties concerned every assurance of objectivity. 10. (1) As a general rule an attempt should initially be made to settle grievances directly between the worker affected, whether assisted or not, and his immediate supervisor. (2) Where such attempt at settlement has failed or where the grievance is of such a nature that a direct discussion between the worker affected and his immediate supervisor would be appropriate, the worker should be entitled to have his case considered at one or more higher steps, depending on the nature of the grievance and on the structure and size of the undertaking. 11. Grievance procedures should be so formulated and applied that there is a real possibility of achieving at each step provided for by the procedure a settlement of the case freely accepted by the worker and the employer. 12. Grievance procedures should be as uncomplicated and as rapid as possible, and appropriate time limits may be prescribed if necessary for this purpose; formality in the application of these procedures should be kept to a minimum. 13. (1) The worker concerned should have the right to participate directly in the grievance procedure and to be assisted or represented during the examinations of his grievance by a representative of a workers' organisation, by a representative of the workers in the undertaking, or by any other person of his own choosing,

[17] R130 Examination of Grievances Recommendation, 1967

in conformity with national law or practice. 14. The worker concerned, or his representative if the latter is employed in the same undertaking, should be allowed sufficient time to participate in the procedure for the examination of the grievance and should not suffer any loss of remuneration because of his absence from work as a result of such participation, account being taken of any rules and practices, including safeguards against abuses, which might be provided for by legislation, collective agreements or other appropriate means. 15. If the parties consider it necessary, minutes of the proceedings may be drawn up in mutual agreement and be available to the parties. 16. (1) Appropriate measures should be taken to ensure that grievance procedures, as well as the rules and practices governing their operation and the conditions for having recourse to them, are brought to the knowledge of the workers. (2) Any worker who has submitted a grievance should be kept informed of the steps being taken under the procedure and of the action taken on his grievance.

Annex II Overview of requirements and recommendations per aspect

A-Climate of mutual understanding, free of violence, pressure, fear and threats

- All appropriate measures should be taken to guarantee that irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind (digest 36, see 91.)
- Employers should recognise the importance of a climate of mutual understanding and confidence within undertakings that is favourable both to the efficiency of the undertaking and to the aspirations of the workers (R129, see 137).
- This climate should be promoted by the rapid dissemination and exchange of information, as complete and objective as possible, relating to the various aspects of the life of the undertaking and to the social conditions of the workers (R129, see 137).
- With a view to the development of such a climate management should, after consultation with workers' representatives, adopt appropriate measures to apply an effective policy of communication with the workers and their representatives (R129, see 137).
- Appropriate steps should be taken to promote consultation and co-operation between employers and workers at the level of the undertaking on matters of mutual concern not within the scope of collective bargaining machinery, or not normally dealt with by other machinery concerned with the determination of terms and conditions of employment (R94, see 136).
- An effective policy of communication should ensure that information is given and that consultation takes place between the parties concerned before decisions on matters of major interest are taken by management (R129, see 137).
- The communication methods should in no way derogate from freedom of association; they should in no way cause prejudice to freely chosen workers' representatives or to their organisations or curtail the functions of bodies representative of the workers in conformity with national law and practice (R129, see 137).
- Steps should be taken to train those concerned in the use of communication methods and to make them, as far as possible, conversant with all the subjects in respect of which communication should take place.
- Both the audit team during the exit meeting as well as the FWF member during follow up visits should explain to management the importance of a climate of mutual understanding and confidence within undertakings that is favourable both to the efficiency of the undertaking and to the aspirations of the workers (FWF policy, see 45.).
- If there is no climate of mutual understanding, training of management, staff and workers about the grievance procedure, the right to freedom of association and collective bargaining and the FWF complaints procedure, in consultation with FWF and its local partners is required (FWF policy, see 48.).
- **Recommendation:** If there is no climate of mutual understanding a secret vote could be organised amongst all workers, under the guidance of trainers, and in consultation with local labour law specialists and union representatives, to see whether workers would like to become unionised and what would be the union of their choice (FWF policy, see 49).

B-Grievance procedure

- Any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result; and to have such grievance examined pursuant to an appropriate procedure (R130, see 139).

- Workers' organisations or the representatives of the workers in the undertaking should be associated in the establishment and implementation of grievance procedures within the undertaking, in conformity with national law or practice (R130, see 139).
- As far as possible, grievances should be settled within the undertaking itself according to effective procedures which are adapted to the conditions of the country, branch of economic activity and undertaking concerned and which give the parties concerned every assurance of objectivity (R130, see 139).
- As a general rule an attempt should initially be made to settle grievances directly between the worker affected, whether assisted or not, and his immediate supervisor. Where such attempt at settlement has failed or where the grievance is of such a nature that a direct discussion between the worker affected and his immediate supervisor would be appropriate, the worker should be entitled to have his case considered at one or more higher steps, depending on the nature of the grievance and on the structure and size of the undertaking (R130, see 139).
- Grievance procedures should be so formulated and applied that there is a real possibility of achieving at each step provided for by the procedure a settlement of the case freely accepted by the worker and the employer (R130, see 139).
- Grievance procedures should be as uncomplicated and as rapid as possible, and appropriate time limits may be prescribed if necessary for this purpose; formality in the application of these procedures should be kept to a minimum (R130, see 139).
- The worker concerned should have the right to participate directly in the grievance procedure and to be assisted or represented during the examinations of his grievance by a representative of a workers' organisation, by a representative of the workers in the undertaking, or by any other person of his own choosing, in conformity with national law or practice (R130, see 139).
- The worker concerned, or his representative if the latter is employed in the same undertaking, should be allowed sufficient time to participate in the procedure for the examination of the grievance and should not suffer any loss of remuneration because of his absence from work as a result of such participation, account being taken of any rules and practices, including safeguards against abuses, which might be provided for by legislation, collective agreements or other appropriate means (R130, see 139).
- If the parties consider it necessary, minutes of the proceedings may be drawn up in mutual agreement and be available to the parties (R130, see 139).
- Appropriate measures should be taken to ensure that grievance procedures, as well as the rules and practices governing their operation and the conditions for having recourse to them, are brought to the knowledge of the workers (R130, see 139).
- Any worker who has submitted a grievance should be kept informed of the steps being taken under the procedure and of the action taken on his grievance (R130, see 139).
- Management should communicate with the workers and their representatives about procedures for the examination of grievances as well as the rules and practices governing their operation and the conditions for having recourse to them (R130, see 139).
- In case there is a trade union in the factory, the trade union should be involved in the establishment and implementation of grievance procedures; In case there are other kinds of worker representation the most appropriate representatives should be involved in the establishment and implementation of grievance procedures; In case there exist no worker representatives nor consultative body while the law prescribes the establishment of a consultative body at the level of the undertaking, this body should be established and involved in the grievance handling procedure (FWF policy, see 21.,24.).

- If there exist no elected worker representatives nor a consultative body and the existence of a consultative body is not required by law, FWF **recommends** that representative of the workers in the undertaking are elected and involved in the grievance procedure (FWF policy, see 24.).
- Simply having a complaint box does not fulfil this requirement (FWF policy, see 20.).
- In a small company, a maximum of 25 workers) with a good relation between workers and management the requirement of having a procedure for grievance handling can be fulfilled if it is clear who can be approached in case of a grievance, how grievances are dealt with and if workers are verbally informed about this informal procedure upon recruitment (FWF policy, see 19., 43.).

C-Employer's responsibilities regarding worker representatives in the enterprise

- Workers' representatives who are recognised as such under national law or practice should be freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements (C135, see 101).
- All official positions in works councils should, without exception, be occupied by persons who are freely elected by the workers concerned (digest 367, see 104).
- Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements (C135, see 111).
- Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are taken, wherever necessary, to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives C135, see 113).
- Where national law or practice recognises the existence of workers' representatives whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned, national law or practice may determine the extent to which the term ***collective bargaining*** shall also extend, to negotiations with these representatives (C135, see 106; R91, see 121).
- Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently (C135, see 131).
- Workers' representatives in the undertaking are afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions in the undertaking (R143, see 132).
- Workers' representatives in the undertaking should be granted access to all workplaces in the undertaking, where such access is necessary to enable them to carry out their representation functions (R143, see 133).
- The communications system within the undertaking should be designed to ensure genuine and regular two-way communication between the head of the undertaking, the director of personnel or any other representative of top management and trade union representatives or such other persons as may, under national law or practice, or under collective agreements, have the task of representing the interests of the workers at the level of the undertaking .
- Where the management desires to transmit information through workers' representatives, the latter, if they agree to do so, should be given the means to communicate such information rapidly and completely to the workers concerned (R129, see 138).

- The representatives of the workers in the undertaking should be associated in the establishment and implementation of grievance procedures within the undertaking, in conformity with national law or practice (R130, see 139).
- In case there exist no worker representatives nor consultative body while the law prescribes the establishment of a consultative body at the level of the undertaking, this body should be established and involved in the grievance handling procedure (FWF policy, see 24.).

D-Employer's responsibilities regarding trade unions in the enterprise

- All appropriate measures should be taken to guarantee that irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind (digest 36, see 91).
- Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements (C135, see 111).
- Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives (C135, see 113).
- The Collective Agreements Recommendation stresses the role of workers' organisations as one of the parties in collective bargaining; it refers to representatives of unorganized workers only when no organisation exists (digest 785, see 124).
- Measures adapted to national conditions should be taken, if necessary, so that the parties have access to the information required for meaningful negotiations. For this purpose employers should, at the request of workers' organisations, make available such information on the economic and social situation of the negotiating unit and the undertaking as a whole, as is necessary for meaningful negotiations; where the disclosure of some of this information could be prejudicial to the undertaking, its communication may be made conditional upon a commitment that it would be regarded as confidential to the extent required; the information to be made available may be agreed upon between the parties to collective bargaining (R163, see 126).
- It is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties (digest 815, see 127).
- Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently (C135, see 131).
- Workers' representatives in the undertaking are afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions in the undertaking (R143, see 132).
- Workers' representatives in the undertaking should be granted access to all workplaces in the undertaking, where such access is necessary to enable them to carry out their representation functions (R143, see 133).

- Trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking (R143, see 134).
- The communications system within the undertaking should be designed to ensure genuine and regular two-way communication between the head of the undertaking, the director of personnel or any other representative of top management and trade union representatives or such other persons as may, under national law or practice, or under collective agreements, have the task of representing the interests of the workers at the level of the undertaking (R129, see 138).
- Where the management desires to transmit information through workers' representatives, the latter, if they agree to do so, should be given the means to communicate such information rapidly and completely to the workers concerned (R129, see 138).
- Steps should be taken to **train** those concerned in the use of communication methods and to make them, as far as possible, knowledgeable about all the subjects in respect of which communication should take place (R129, see 137).
- In case there is a trade union in the factory, the trade union should be involved in the establishment and implementation of grievance procedures (FWF policy, see 21,24.).
- In cases where the deduction of union contributions and other forms of union protection are instituted as a result of collective agreements or established practice, workers should have the individual choice to be a member or not, they have to explicitly agree with automatic deductions to pay for union dues and sign in agreement. Further, deductions should be documented (digest 324, see 98; FWF policy, see 52).
- If there is a workers' representative within the factory, s/he participates in the exit interview with the management. In this case the corrective action plan agreed between the member company and the factory will be displayed in the workplaces' (FWF policy, see 17).
- **Recommendation:** In case of interference or acts of anti-union discrimination, a secret vote could be organised amongst all workers, under the guidance of trainers, and in consultation with local labour law specialists and union representatives, to see whether workers would like to become unionised and what would be the union of their choice (FWF policy, see 57, 64).

E-Collective Bargaining

- Collective bargaining extends to all negotiations to determine working conditions and terms of employment; and/or regulate relations between the employer and workers; and/or regulate relations between the employer and a workers' organisation or workers' organisations (C154, see 120).
- Where national law or practice recognises the existence of workers' representatives whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned, national law or practice may determine the extent to which the term ***collective bargaining*** shall also extend, to negotiations with these representatives (C135, see 101; R91, see 121).
- The Collective Agreements Recommendation stresses the role of workers' organisations as one of the parties in collective bargaining; it refers to representatives of unorganized workers only when no organisation exists (digest 785, see 124).
- Measures adapted to national conditions should be taken, if necessary, so that the parties have access to the information required for meaningful negotiations. For this purpose employers should, at the request of workers' organisations, make available such information on the economic and social situation of the negotiating unit and the undertaking as a whole, as is necessary for meaningful negotiations; where the disclosure of some of this information could be prejudicial to the undertaking, its communication may be made conditional upon a

commitment that it would be regarded as confidential to the extent required; the information to be made available may be agreed upon between the parties to collective bargaining (R163, see 126).

- Both the employer and trade unions should bargain in good faith and make every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties (digest 815, see 127).
- Any unjustified delay in the holding of negotiations should be avoided (digest 816, see 128).
- While communication and consultation are important components of effective labour relations and may be part of a package to promote labour relation systems, such practices cannot replace the exercise of the right to collective bargaining (FWF policy, see 27).
- In case of a bad relation between management and workers, interference in the establishment, functioning or administration of the trade union, acts of anti-union discrimination by management or the use of law to obstruct workers to organise, the company should explicitly state the willingness to negotiate with workers collectively to repair possible damage regarding the right to organise and bargain collectively (FWF policy, see 16, 55, 62, 69, 76).

F-Interference

- Workers' organisations shall enjoy adequate protection against any acts of interference in their establishment, functioning or administration (C135, see 111).
- Acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference (C98, see 112).
- Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives (C135, see 113).
- It is the prerogative of workers' organisations to determine the conditions for electing their leaders without any undue interference (digest 351, see 102).
- If representative bodies exist they should function properly. If elected representatives don't function properly FWF regards it as an indication that they were established as a workers' organisations under the domination of the employer, and thus, as a sign of interference (FWF policy, see 30, 34, 37, 41).
- To repair possible damage regarding the right to organise and bargain collectively, due to interference in the establishment, functioning or administration of the trade union by management, the company should explicitly state its willingness to negotiate with workers collectively and that it is the company's responsibility to make sure workers know they are free to organise themselves (FWF policy, see 16, 55..).
- In case there is an acute **labour dispute** in the factory the company should take steps to use the national conciliation machinery to settle the **labour dispute** (R92, see 135; FWF policy, see 42).
- In case the audit team concludes that there are signs of interference, training of management, staff and workers about the grievance procedure, the right to freedom of association and collective bargaining and the FWF complaints procedure, in consultation with FWF and its local partners is required (FWF policy, see 35, 38, 56).

- **Recommendation**: Under the guidance of trainers, and in consultation with local labour law specialists and union representatives, a secret vote could be organised amongst all workers to see whether they would like to become unionised and what would be the union of their choice (FWF policy, see 57).

G-Anti-union discrimination

- Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment (C98, see 110).
- Such protection shall apply more particularly in respect of acts calculated to make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours (C98, see 110).
- Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements (C135, see 111).
- Management is required to refrain from any activities that stops workers from organising and where possible steps should be included in the corrective action plan to correct earlier violations of the right to organise and bargain collectively (FWF policy, see 61).
- To repair possible damage regarding the right to organise and bargain collectively, due to the active anti-union policy of the company, FWF requires that the company explicitly states its willingness to negotiate with workers collectively and that it is the company's responsibility to make sure workers know they are free to organise themselves (FWF policy, see 16, 62).
- In case there is an acute labour dispute in the factory the company should take steps to use the national conciliation machinery to settle the labour dispute (R92, see 140; FWF policy, see 65)
- In this situation both the audit team during the exit meeting as well as the FWF member during follow up visits should explain to management that acts of anti-union discrimination are a very serious violation of the code of conduct (FWF policy, see 60).
- If there are signs of acts of anti-union discrimination, training of management, staff and workers about the grievance procedure, the right to freedom of association and collective bargaining and the FWF complaints procedure, in consultation with FWF and its local partners is required (FWF policy, see 63).
- **Recommendation:** Under the guidance of trainers, and in consultation with local labour law specialists and union representatives, a secret vote could be organised amongst all workers to see whether they would like to become unionised and what would be the union of their choice (FWF policy, see 64).

H-Legal restrictions

- The International Labour Organization declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, among others the right to freedom of association and the effective recognition of the right to collective bargaining(ILO declaration on Fundamental Labour Rights, see 5).

- The following civil liberties, as defined in the Universal Declaration of Human Rights, are essential for the normal exercise of trade union rights: a-the right to freedom and security of person and freedom from arbitrary arrest and detention; b-freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; c-freedom of assembly; d-the right to a fair trial by an independent and impartial tribunal; e-the right to protection of the property of trade union organisations (the 1970 ILO resolution concerning trade union rights, see 89).
- The law of the land shall not be so applied as to impair the right to organise (C87, see 94).
- The company shall, in those situations in which the right to freedom of association and collective bargaining are restricted under law, facilitate parallel means of independent and free association and bargaining for all workers. Workers' representatives shall not be the subject to discrimination and shall have access to all workplaces necessary to carry out their representation functions (FWF code of conduct, see 7).
- The company needs to make clear to workers that they are willing to engage workers in collective dialogue through some representative structure and that they are willing to provide them with the opportunity to do so, if workers so wish (SA 8000, guidance document page 59).
- Employers shall enable workers (if they so choose) to develop forms of collective representation and to engage in collective negotiation with management. Even in these cases, management shall not seek to influence or interfere with workers' discussions, voting processes or related activities' (SA 8000, guidance document page 59).
- The company should have in place a policy and documentation of actions taken to communicate these opportunities in a clear, non-manipulative, manner to workers' and 'regardless of national laws and practice companies must be willing to negotiate with workers collectively and it is the company's responsibility to make sure workers know they are free to organise themselves. This communication might consist of a clear outline from management and workers' rights and responsibilities in such a dialogue and the benefits to an ongoing dialogue. The decision to set up a representative dialogue structure, however, should be left to workers (SA 8000, guidance document page 59).
- If there are signs that the law is used to obstruct worker to organise (FWF policy, see: 16, 68, 69, 70, 71)

- both the audit team during the exit meeting as well as the FWF member during follow up visits should explain to management that obstructing workers to organise is a serious violation of the code of conduct;
- FWF requires that the company explicitly states its willingness to negotiate with workers collectively and that it is the company's responsibility to make sure workers know they are free to organise themselves;
- training of management, staff and workers about the grievance procedure, the right to freedom of association and collective bargaining and the FWF complaints procedure, in consultation with FWF and its local partners is required.

-Recommendation: a secret vote could be organised amongst all workers, under the guidance of trainers, and in consultation with local labour law specialists and union representatives, to see whether they would like to become unionised and what would be the union of their choice (FWF policy, see: 31).

- In case the situation of a trade union monopoly (and the fact that the trade union is linked to the state or the state interferes with trade union policy restricts the right to freedom of association and collective bargaining to such an extend that the facilitation of parallel means is required (FWF code of conduct, see 7; FWF policy, see 16, 76, 77, 78, 79):

- both the audit team during the exit meeting as well as the FWF member during follow up visits should explain to management that obstructing workers to organise is a serious violation of the code of conduct;
- FWF requires that the company explicitly states its willingness to negotiate with workers collectively and that it is the company's responsibility to make sure workers know they are free to organise themselves;
- training of management, staff and workers about the grievance procedure, the right to freedom of association and collective bargaining and the FWF complaints procedure, in consultation with FWF and its local partners is required.
- Recommendation: a secret vote could be organised amongst all workers, under the guidance of trainers, and in consultation with local labour law specialists and union representatives, to see whether they would like to become unionised and what would be the union of their choice (see 31).