



Freedom of association in the electronics industry

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About this paper

Freedom of association is the right for workers to join and establish organisations of their choosing. Collective bargaining allows workers to negotiate their working conditions. Freedom of association and the right to collective bargaining makes it possible to promote and develop good working conditions and enables employers and employees to work together and achieve beneficial and productive solutions.¹ They are often seen as the most important labour rights, yet these are sometimes denied by law; and they are often denied in practice.

Since 2004, SOMO has been conducting research on labour conditions in the electronics industry. As part of this research, both SOMO and its partners have conducted interviews with factory workers. SOMO has also conducted interviews with factory management. This research shows that workers are categorically denied the right to associate freely and bargain collectively. Workers in electronics companies are usually not allowed to elect their own representatives; nor are they able to communicate, let alone negotiate, with management. The absence of these rights makes it almost impossible for workers to improve their working conditions.

These findings are in sharp contrast with reports from electronics brand companies, which claim that compliance of their suppliers with freedom of association and, in some cases collective bargaining, is high. For example, Apple reports 95% compliance with freedom of association over the year 2011 (including collective bargaining) among their suppliers, while the company reports 38% compliance on working hours and 69% on wages and benefits.² One of the companies SOMO interviewed for this briefing paper said that they have never understood the discrepancy between the concerns of labour rights organisations and trade unions and the audit results.

In this briefing paper, SOMO investigates the role of electronics brands in ensuring that freedom of association and collective bargaining is respected all along their supply chain. We are looking at the tools and actions of electronics companies in this respect to answer the question: *Are electronics brand companies playing a positive role in ensuring that freedom of association and collective bargaining is respected by their suppliers?*

The paper starts by looking at the standards that companies apply with regard to freedom of association and collective bargaining, through their codes of conduct. The paper will also describe how companies are

monitoring and auditing these standards, and whether they are putting other efforts into making sure that workers have the right to freedom of association and collective bargaining. The briefing paper will draw conclusions and make recommendations for companies in order to influence freedom of association and collective bargaining positively in their supply chain. Several country-specific cases show the issues and constraints that workers are dealing with when trying to organise.

China is by far the largest producer of electronics. It is particularly troubling, therefore that there is no freedom of association in China; there is only one legally recognised trade union, the All-China Federation of Trade Unions (ACFTU), which holds a monopoly on representation. The ACFTU is also an arm of the government, aimed at economic progress. Although challenging, there are possibilities for workers to elect their own representatives and negotiate with management. Training of both workers and management could facilitate this process. For this reason, we also address initiatives of companies on worker-management communication in this paper, with the understanding that these cannot replace freedom of association.

Methodology

For this briefing paper, desk research and findings from earlier reports by makeITfair and SOMO served as input. Contributions were also provided by CEREAL (Mexico), CIVIDEP (India), SACOM (China) and the GoodElectronics Thailand network. As well as looking at freedom of association and collective bargaining in practice, we also examined country-specific issues.

SOMO also interviewed nine electronics brands and two audit companies, mainly in late 2011: IBM,³ HP, Philips, RIM, Nokia, Samsung, Dell, Sony Mobile Communications, Motorola Mobility, and the audit companies SGS and Verité. In addition, SOMO looked at the sustainability reports from these companies and other electronics companies.

International rights

The right to freedom of association and the right to collective bargaining are among the core conventions laid down by the International Labour Organization (ILO). These rights are laid down in convention 87 and 98. 87 is the least ratified of the eight core conventions.⁴ Both conventions have low ratification rates compared to the other core conventions, which also holds true for the country examples in this paper (see Figure 1).

makeITfair

SOMO is part of makeITfair, which is campaigning to hold electronics brand companies to account so that they improve labour rights and environmental conditions along their supply chain. makeITfair's priorities for 2010-2012 include: production, e-waste, extractives, mobile network operators and public procurers. The campaign is calling for: a living wage for workers who produce electronics goods; freedom of association; and improved rights for contract labour and other short-term labour arrangements. SOMO is producing two briefing papers – one on freedom of association, the second on temporary agency workers. makeITfair and GoodElectronics are also producing a third discussion paper on living wages.

makeITfair believes that freedom of association and the right to collective bargaining for electronics workers around the world should be respected, as these are the most important tools for producing decent working conditions. Contract labour and other short-term labour arrangements, including migrant workers, should never be used to undermine workers' rights and working conditions. These short-term workers should have the same working conditions, rights and benefits as permanent workers, and the right to a permanent employment contract after a certain time period. Workers should be able to earn a living wage for their family within normal working hours (no more than 48 hours per week).

The core labour standards are regarded as fundamental principles that defend human rights; even when not ratified, all ILO member countries are bound to implement these rights. Freedom of association is part of the Universal Declaration of Human Rights.

The role of companies

The role of brand companies in this regard is not to replace governments. Their responsibility lies in making sure that workers in their company, their subsidiaries and those working for their suppliers can exercise their right to association, as well as their right to collective bargaining. This responsibility will require action on the part of the companies in general, and specific actions in different countries to address the differences in law and in practice.

Figure 1: Ratification of core ILO conventions⁵

| | Freedom of association and collective bargaining | | Elimination of forced and compulsory labour | | Elimination of discrimination in respect of employment and occupation | | Abolition of child labour | |
|--|--|----|---|-----|---|-----|---------------------------|-----|
| Convention | 87 | 98 | 29 | 105 | 100 | 111 | 138 | 182 |
| Thailand | | | X | X | X | | X | X |
| Philippines | X | X | X | X | X | X | X | X |
| Mexico | X | | X | X | X | X | | X |
| China | | | | | X | X | X | X |
| % countries (of 183 in total) that have ratified | 82 | 87 | 95 | 93 | 92 | 92 | 85 | 95 |

makeITfair has established a set of priorities for companies in the electronics industry, which include responsibility for their supply chain.⁶ Electronics companies at the top of the supply chain are responsible for implementing at least the minimum labour standards and environmental standards, as internationally accepted, down the whole supply chain. This includes freedom of association and collective bargaining. Companies should adopt a code of conduct and communicate the binding requirements to suppliers. They should also monitor the implementation of this code and make sure that the implementation is independently verified by a credible third party. There should be auditing on all issues, including freedom of association and collective bargaining, and workers' interviews should be conducted off-site.

Companies are also expected to take actions that go beyond merely auditing their supply chain. When violations are found, companies should endeavour to address these. There should be an efficient complaint mechanism for stakeholders along the supply chain. Working in a multi-stakeholder setting is very important in this regard. Civil society organisations and workers should be included in these efforts. Companies should be involved in further efforts, such as training for management and workers.

In this paper, SOMO will look at the role companies play and the effectiveness of their actions.

Interference with freedom of association

The right to freedom of association is often not recognised by companies. There are numerous ways in which employers might interfere with this right.

In its briefing on freedom of association, the Ethical Trade Initiative lists typical abuses:⁷

- 'Paper', 'tame' or 'yellow' unions, and paternalism. Companies may allow workers to be members of a union, but will make sure that the union does very little on behalf of those workers (e.g. employers could set up unions that act in management's interests).
- Export processing zones (EPZs). Many governments will seek to exclude trade unions from organising within EPZs, even if workers are free to organise elsewhere in the country. This is always a breach of the ETI Base Code.
- Access to the workforce. Employers may inhibit unions from being able to communicate with the workers.
- Interference with union activity. Companies may seek to influence elections, or influence the ability of the union to represent the interests of its members.
- Victimization. Union representatives may be subjected to discrimination, intimidation and even violence or murder.
- Refusal to recognise and bargain. Companies may allow their workers to join unions, but undermine their value by refusing to recognise or bargain with these unions.
- Denial of information. In order to prevent trade union representatives from bargaining meaningfully, some employers refuse to provide them with appropriate information about the issues to be negotiated.
- Threats that inhibit bargaining. Companies can use threats to undermine the workers' bargaining position (e.g. threatening to move operations elsewhere).

Temporary agency workers to prevent workers from organising

The 2011 makeITfair report – Phony equality: labour standards of mobile manufacturers in India – describes clearly how the contract labour system fragments the workforce into a privileged class of regular employees and an underclass of contract workers.⁸ In the Nokia factory, the workers were actually told that they could not join unions. In an interview with makeITfair researchers, one of Foxconn's managers said: 'We don't want a contract workers' union.'

Research in Thailand also found that that one of the important tactics to prevent workers from organising in a trade union is the use of flexible employment.⁹ One of the factories we researched, for example, has fewer regular workers than temporary agency workers and is using about 11 agencies. For more information on this issue, please refer to the briefing paper on temporary agency workers.¹⁰

Research carried out by SOMO and other organisations has shown numerous examples of interference with freedom of association from management. They have warned workers not to join unions; they have told workers they do not need a union; they have dismissed union members; and they have set up management-led unions. The question is: will brand companies notice these interferences when auditing, and will they pick up on non-compliance? There is a need for a clear code and auditing process that is sensitive to non-compliance in terms of freedom of association and collective bargaining.

Code of conduct

The interviewed companies are all members of the Electronics Industry Citizen Coalition (EICC) and/or the Global e-Sustainability Initiative (GeSI), two large sectoral initiatives working on sustainability. The EICC had 68 members in April 2012; GeSI had 30 members.

The EICC has adopted a code of conduct to be implemented by its members along their supply chain. The EICC code mentions freedom of association:¹¹ *'Open communication and direct engagement between workers and management are the most effective ways to resolve workplace and compensation issues. The rights of workers to associate freely, join or not join labor unions, seek representation, and join workers' councils in accordance with local laws shall be respected. Workers shall be able to openly communicate and share grievances with management regarding working conditions and management practices without fear of reprisal, intimidation or harassment.'*

Civil society organisations, including trade unions, have criticised the code for not including the right to collective bargaining, for using ambiguous language and for referring specifically to local laws, which could curtail the right to

association. There have been several code reviews organised by the EICC whereby civil society organisations, as well as companies, have taken the opportunity to ask for amendments. So far the members of the EICC have voted against specific changes that include collective bargaining. In the last 2011-2012 code review, there were a considerable number of suggestions regarding freedom of association and collective bargaining. Several submitters mentioned the importance of conforming with ILO standards, since the ILO is the relevant United Nations body. They also emphasised the importance of aligning with the UN Guiding Principles for Business and Human Rights, the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises.¹² However, these amendments have not been supported by the majority of members and have therefore not been included in the revised code.

Individual companies have gone further than the EICC. Several of the interviewed companies that have adopted the EICC code (a prerequisite for joining the EICC) have enhanced the code. They have included collective bargaining and, in several cases, they have added to the section in the code on freedom of association and have aligned it more to the relevant ILO conventions and the suggestions for the code review.

HP and Dell added language for countries where worker representation and collective bargaining are restricted by law, and where suppliers should facilitate open communication and direct engagement between workers and management as alternative ways.

Philips mentions that suppliers should recognise and respect the freedom of its employees to choose whether or not to establish or to associate with any organisation of their own choosing (including labour unions) without suppliers' prior authorisation.

Reviewing the EICC code

The International Metalworkers' Federation (IMF) submitted an amendment to the freedom of association paragraph during the 2008-2009 code review. Other civil society organisations made similar submissions in 2008-2009, as well as in the 2011-2012 code review.

'Participants are to respect the right of all workers to form and join trade unions of their choice and to bargain collectively in accordance with ILO Conventions 87 and 98.

In cases where freedom of association and collective bargaining are restricted by law, participants will facilitate parallel means of independent and free association and bargaining. Workers and their representatives shall be able to communicate openly with management regarding working conditions without fear of reprisal, intimidation discrimination or harassment.'

Dell, HP and Philips added that workers' representations should not be the subject of discrimination. And Dell and HP added that workers should have access to management and co-workers in order to carry out their representative functions.

Philips states in its code that suppliers should not interfere with or finance labour organizations, or take other actions with the objective of placing such organisations under the control of supplier.

Some companies that are not part of the EICC – such as Sony Mobile Communication and Nokia – have drafted their own code of conduct. Both companies have included collective bargaining. Nokia mentioned during the interview that they have deliberately adapted the code beyond the EICC standard as they feel *'it is better to deal with a functioning union than dealing with wildcat strikes or non-functioning unions'*. However, this positive attitude to unions is rare amongst electronics brand companies.

Several companies mentioned that the code of conduct is part of the contract/annex to their contract with suppliers. The supplier has to sign this as part of the contract, or they are asked specifically to sign up to the code. In general, suppliers will sign the code, although there may be hesitations on freedom of association, as one of the interviewed companies mentioned, especially with US-owned suppliers.

Auditing

Civil society organisations, as well as multi-stakeholder initiatives, have looked at the pitfalls of auditing. To make sure a code of conduct is implemented along the supply chain, companies will have to monitor and audit the suppliers through a third party. Ideally, this auditing will be done by experienced and well-trained auditors. They should set aside a reasonable amount of time for the audit, work with civil society organisations, including trade unions. And the audit should include off-site interviews with workers. Generally, however, this is not the case; most audits will be relatively short and encompass document reviews, site inspections, management interviews and interviews with workers in the factory. In any given year, only a small number of supplier companies are audited.

In 2009, the EICC and GeSI introduced the Validated Audit Process (VAP)¹³ in order to develop a collaborative approach towards auditing and to reduce the audit burden for suppliers. The audits follow the EICC code and external auditors should be trained by Verité, although not all auditors have followed the training.

Some EICC members will also monitor and audit their suppliers themselves. Not many VAP audits¹⁴ are carried out on a yearly basis (In 2010 the EICC completed 91 audits¹⁵), however, and companies do want to know, control or influence issues in their own supply chain. The EICC reported over the year 2010 that a majority of the members (89% of those that responded to a survey) are following the EICC code in terms of auditing, either through VAP, their own audits and third party audits. Most use the EICC audit checklist.

Establishing and using guidance for auditors is recommended, but these questions will not necessarily give a unified outlook on freedom of association in a certain factory, as there are numerous uncertain and differentiating factors, to name a few:

- Auditors will have different definitions and understandings of freedom of association; what is the point of departure, is there knowledge of the local situation. For example, what is the trade union situation in electronics factories in a certain country and what is the management attitude?
- Are workers being interviewed, and where are they being interviewed – in the boardroom, in the factory, off-site?
- Are the auditors trusted by the workers they interview?

Excerpts from the EICC code implementation guidance manual for suppliers¹⁶

Freedom of Association

A7.1 Does the facility communicate to workers their rights related to freedom of association?

The supplier cannot unlawfully discriminate in employment decisions against workers because of their affiliation with worker groups. The applicable legal requirements and company policies regarding freedom of association must be communicated to all workers.

A7.2 Are there procedures and opportunities for workers to communicate openly with management regarding working conditions without fear of reprisal or intimidation?

The supplier has enacted, within the scope of national law and practice, a mutually agreed upon process between the company management and workers to facilitate regular discussion on matters of mutual concern. Supplier management conducts regular sessions with workers to discuss their issues or concerns.

A7.3 Does the facility respect the legal rights of workers for free association?

The supplier should have written policies and procedures addressing freedom of association. Most countries recognize the legal right of workers for free association.

A7.4 There is no evidence of unequal treatment between employee representative(s) and other workers

The supplier cannot unlawfully discriminate in employment decisions against workers because of their affiliation with worker groups. As with Humane Treatment, periodic worker surveys, random worker interviews and processes to anonymously report violations can provide valuable information on how well company policies are being followed.

A7.5 Does the facility refrain from interference with or finance of labor organizations with the objective to place such organization under the control of the facility?

The supplier should have written policies and procedures addressing freedom of association. These policies state that the supplier will not interfere and will not finance directly, indirectly or through benefit in kind any employee organization or trade union.

A7.6 When the workers automatically enroll in union or other forms of worker representation when being employed, are they been informed regarding to this enrollment?

If a worker automatically becomes a union member upon being hired, this should be communicated to the worker before he/she signs their contract. The details of union membership should also be described in the worker handbook and on notice board postings throughout the facility.

The questions from the guidance manual are not exhaustive. For example, there is no guidance for the auditor to ask the management what their attitude to trade unions is; nor is there guidance to ask the workers what would happen if they tried to form a union, even though these questions could bring to light an anti-union atmosphere in the workplace.

Several of the interviewed companies mentioned that they had trained their suppliers on the audit, or had organised supplier forums. This would give brand companies the opportunity to discuss freedom of association and collective bargaining and what would be expected. As freedom of association and collective bargaining are certainly not priorities at the moment, and many companies do not like to see it in their factories and suppliers, this will not be the focal point of the training and it is unlikely that the training will lead to a change in attitude.

Non-compliances reported

SOMO looked at the reporting of companies on supply chain responsibilities and the reporting of non-compliances, specifically on freedom of association and collective bargaining (see Figure 2).

Looking at Figure 2, it is clear that a substantial amount of companies do not report on non-compliances at all. Companies that do report on the audit results generally report a small percentage on freedom of association. This certainly stands out when compared to reporting on other non-compliance issues, such as wages and overtime. For example, Philips reported 58% zero tolerance and 47% limited tolerance for working hours in 2010, and 12% zero tolerance and 48% limited tolerance on wages. For freedom of association, Philips reported 1% zero tolerance and 0% limited tolerance. The shift between the 2011 and the 2012 report for Asia without China from 3% to 10-25% non-compliances looks large. However, this is not that remarkable seeing that in Asia without China not that many suppliers are audited by Philips (24 suppliers in 2011).

In comparison, the Fair Labour Association (FLA), a multi-stakeholder initiative that mostly audits garment producing companies (but recently also added Apple to its clientele), reported 72% non-compliance on freedom of association in 2010.¹⁷ They reported 95% non-compliance on health and safety, 73% on wages, and 74% on hours of work. This is a huge difference compared to the audits performed by electronics companies. One of the differences is that the FLA will report non-compliances on freedom of association for all factories in China and Vietnam.

Figure 2: Non-compliance with labour rights, freedom of association and collective bargaining¹⁸

The table should be read as follows:

Overall Overall non-Compliance (in most cases not including health and safety)

FoA Freedom of Association

CB Right to Collective Bargaining (CB is hardly ever separately reported, and is mostly shared under FoA). Rates are given in percentages or absolute figures, depending on company reporting.

– means that a company did not specifically report compliance overall, or on FoA

+ means that no figure is reported for overall non-compliance with labour rights, but figures for other violations (non-FoA, non-CB) are reported

• means a violation or an issue is reported but no specific figure or information is given

| Year Report | 2007 | 2008 | 2009 | 2010 | 2011 |
|--------------|---|---|--|---|---------------------------------------|
| Acer | | | | | |
| Overall | – | 78% (only based on SAQ and including safety, health and environment) | + | +(Wages & Benefits: 7%, Working Hours: 38%, Child Labour: 16%) | Not available |
| FoA | – | – | – | 3% | Not available |
| CB | – | – | – | – | Not available |
| Apple | | | | | |
| Overall | + | + | 72% | 72% | 74% |
| FoA | 0 | Practice: 2% Management System: 5% | Practice: 4% Management System: 20% | Practice: 1% Management System: 21% | Practice: 5% Management System: 9% |
| CB | – | – | – | – | – |
| ASUS | | | | | |
| Overall | – | – | – | – | 77.2% |
| FoA | – | – | – | – | – |
| CB | – | – | – | – | – |
| DELL | | | | | |
| Overall | – | – | – | – | – |
| FoA | – | – | – | – | – |
| CB | – | – | – | – | – |
| HP | | | | | |
| Overall | + | + | + | +(for example major non-compliance working hours >51%, wages and benefits 11 - 25%) | Not available |
| FoA | 10% minor and 11 - 25% major non-compliance | 1 - 10% | 1 - 10% | (for major and minor non-compliance each) 1 - 10% | Not available |
| CB | – | – | – | – | Not available |
| IBM | | | | | |
| Overall | + | + | +(for example wages and benefits 45%, working hours 54%) | + | Not available |
| FoA | 1% (2004-07) | 1% (2004-08) | 2% (2004-09) | 3% (2004-10) | Not available |
| CB | – | – | – | – | Not available |

| Year Report | 2007 | 2008 | 2009 | 2010 | 2011 |
|-----------------|---|-------------------------|---|---|--|
| LG | | | | | |
| Overall | - | - | - | • | Not available |
| FoA | - | - | - | • ¹⁹ | Not available |
| CB | - | - | - | - | Not available |
| Lenovo | | | | | |
| Overall | - | - | • (working hours) | • (working hours) | - |
| FoA | - | - | - | - | - |
| CB | - | - | - | - | - |
| Nintendo | | | | | |
| Overall | - | - | • (working hours) | - | - |
| FoA | - | - | - | - | - |
| CB | - | - | - | - | - |
| Motorola | | | | | |
| Overall | • for example working hours 171 non-compliances, wages and benefits 151 non-compliances) | • (underage workers) | - | • | Not available |
| FoA | 1 non-compliance | - | - | 3 non-compliances ²⁰ | Not available |
| CB | - | - | - | - | Not available |
| Nokia | | | | | |
| Overall | - | - | - | - | Not available |
| FoA | - | - | - | - (Nokia does not report on its supply chain but on its own factories: 0%) | Not available |
| CB | - | - | - | - | Not available |
| Philips | | | | | |
| Overall | + | + | + | 0% zero tolerance, 18% limited tolerance (for example 58% zero tolerance, 47% limited tolerance for working hours and 12% and 48% on wages) | 20 - 25% (for example working hours 50 - 75%, wages and benefits 25 - 50%) |
| FoA | 0% | 0% | 1% zero tolerance 1% limited tolerance | 1% zero tolerance 0% limited tolerance (Asia, excl. China: 3% zero tolerance, 0% limited tolerance) | <10%; Asia, excl. China: 10 - 25% |
| CB | 0% | 0% | 0% | 0% | 0% |
| RIM | | | | | |
| Overall | - | - | - | - | - |
| FoA | - | - | - | - | - |
| CB | - | - | - | - | - |
| Samsung | | | | | |
| Overall | - | - | - | - | - |
| FoA | - | - | - | - | - |
| CB | - | - | - | - | - |

| Year Report | 2007 | 2008 | 2009 | 2010 | 2011 |
|----------------------|------|------|------|------|----------------------------|
| Sony | | | | | |
| Overall | - | - | - | - | - |
| FoA | - | - | - | - | - |
| CB | - | - | - | - | - |
| Sony Ericsson | | | | | |
| Overall | - | - | - | - | Sony Mobile Communications |
| FoA | - | - | - | - | - |
| CB | - | - | - | - | - |
| TomTom | | | | | |
| Overall | - | - | - | - | - |
| FoA | - | - | - | - | - |
| CB | - | - | - | - | - |
| Toshiba | | | | | |
| Overall | - | - | - | - | - |
| FoA | - | - | - | - | - |
| CB | - | - | - | - | - |

But they will also report non-compliances for freedom of association in Europe, the Middle East and Africa, South Asia and South East Asia over 70% and the Americas about 25%.

Differences between reporting and practice

Some of the companies that were interviewed by SOMO acknowledged that the non-compliance rates did not reveal that there are in fact quite a lot of freedom of association problems in their supply chain. Companies have no clear cut answer to the reasons behind this discrepancy, although several companies did give some ideas during the interviews, outlined in the following paragraphs.

What stands out, and is communicated by several companies in different ways, is freedom of association is not one of the focus areas for companies in practice. It is one of the less developed areas for auditing. This could easily lead to auditing not picking up on freedom of association issues.

Freedom of association is generally not seen as one of the core violations: a violation that would require immediate action. Core violations that are commonly mentioned are child labour, forced labour, health and safety issues that would pose immediate danger to life or risk serious injury,

and environmental issues with a significant or immediate impact on the environment or local community.

One of the companies mentioned that it is certainly not reported accurately, but that getting this issue clear through auditing is challenging; also, in terms of workers' interviews: *'this doesn't come out strongly, most of the workers complain about canteen food'*.

As most of the production for electronics goods takes place in China, the majority of the audits will be done in China as well. One of the companies mentions that non-compliance for China is difficult to issue, as it is very tricky to assess in China; you cannot judge why a firm does not have a trade union. Then again, in practice, a lot of suppliers in China have a trade union in place. It is questionable how representative the trade union is. But if a checkbox is ticked that there is a union, it will not be noted that there is a non-compliance: that workers have not elected the union representatives and are not aware of the existence of the union, or even that there is a management-led union. The box on China clearly shows the problem with representation.

Companies and auditors will have certain interpretations of what constitutes a non-compliance. For example, companies were asked how they audited in the Philippines, where suppliers do not allow freedom of association and collective bargaining in the Special Economic Zones. In practice,

there is a no union, no strike policy. One of the companies commented that, even though unions are allowed by law, this denial of the right to organise is still considered as the governmental point of view and this will thus not be questioned or reported as a non-compliance. And no action will follow, although there is a clear freedom of association problem.

One company mentioned that they will not monitor or audit freedom of association at all, and only engage with the supplier when there is a problem reported on freedom of association, which has not happened so far. They also mentioned that they prefer workers' councils instead of unions, as they are more constructive in their communication. This gives some idea about how the company will deal with non-compliances that might be reported. Although not always communicated in such a straightforward way, more companies are terrified of having a unionised workforce, as one other company reported. These companies will not push it on their first tier suppliers, as they are afraid the costs will go up.

Several companies also commented that, even though some issues might not be reported as non-compliance, issues around freedom of association might still be taken up with management for discussion and improvement.

Clearly there are different interpretations around what a brand company should audit and report, what constitutes a non-compliance, and how important auditing of freedom of association is. Reporting on non-compliances is, however, quite consistently absent or low, with a few exceptions.

Lack of remediation – lack of change

The question is whether electronics brands can prevent abuses and have suppliers provide an open climate for freedom of association and collective bargaining through corrective action plans and/or other actions. As non-compliances on freedom of association and collective bargaining are not picked up, they will also not be remediated. This might come as no surprise to those who have seen their rights violated over the years. Even factories that have faced multiple audits have seen no change; workers are still unaware of the union in their factories in China. And workers wanting to change their conditions through organising in the Philippines are still not able to do so.

The box on China illustrates very clearly the issue of management-led unions in Foxconn. Although it is unclear, due to lack of specific reporting, whether this issue was actually picked up during the numerous audits over the few last years, evidently this did not lead to any change in the situation through a corrective action plan.

It took a very large audit in 2012 to get this issue as a non-compliance reported by the FLA.

How is auditing done in practice?

During the interviews, companies were asked how they were auditing freedom of association. Two issues came out strongly during the interviews. The first is checking for a trade union or otherwise representative system; the second is looking for a complaint mechanism/feedback system.

In the interviews that SOMO conducted with different companies, several mentioned checking whether there is a trade union in the factory, or some kind of parallel process, and whether the representatives are freely elected. Only one company mentioned they were carrying out further checks to see whether trade unions are representative: whether it is mandatory to join the union; whether the union is registered on the local municipal level; and whether there are mandatory wage deductions.

One other company explicitly mentioned that there can be no discrimination because of affiliation with workers' groups. Another company mentioned that, in workers' interviews, they look for threats where workers are members of unions – this would be a major non-compliance with the FOA issue. They make sure that they interview both union and non-union members.

In the absence of a union, freedom of association can only be audited/assessed via suppliers' policy and interviews with workers, according to one company.

Secondly, auditors will look for a well-structured grievance procedure. Two companies mentioned that these should be checked on to see how it works in practice. Or there should be open feedback channels for employees to bring issues to the attention of the management. Apple for example 'views effective communication systems for worker feedback and participation as an important aspect of these rights,' as mentioned in their 2009 supplier responsibility report.²¹ Their code includes an anonymous grievance system. When this is absent, Apple will add this to the corrective action plan after an audit.

When there is weak communication between workers and management, this will be seen as non-compliance, according to one of the companies. They check when there are issues flagged concerning wages or benefits when these are brought up by workers, and look at how this will be addressed by management. Other companies mentioned that they will look for lack of communication, but this will not be reported as a non-compliance issue; it is regarded more as an issue to be discussed with management.

Spotlight on China

In China, the largest manufacturing country of consumer electronics, only one union is allowed, the non-democratic ACFTU. Often the existing workplace unions that are affiliated to the ACFTU are controlled by management.

In the 2011 makeITfair research on game consoles and music players,²² the organisation SACOM interviewed over 100 workers in China. The workers in Celestica, producing for among others Microsoft and IBM, did not know if there was a trade union or not. Even though Flextronics mentions that all of its workers receive a membership application for the trade union, as well as an introduction, more than half of the workers in Flextronics were unaware of its existence. The other half did not know its mandate or how to join. None of the interviewed workers was a member.

Workers from Multek/Flextronics, which works among others for Philips, Sony and Motorola, were also interviewed. Only one out of 20 workers knew about the union, although Flextronics mentioned there were various union-related communication channels that would serve to promote worker awareness and participation. None of the workers trusted that the union would improve their working conditions.

Foxconn, the company that received quite a lot of press attention in 2011, after a series of tragic suicides among workers, has had a trade union since 2007. During the

research in 2010, workers mentioned that they were not aware of the union and did not know about its functions, which was the same outcome as uncovered by earlier research carried out by SACOM in 2008.²³ On different occasions, SACOM has published in statements and letters that workers are not able to elect their own union representatives. There is a collective agreement but workers are not aware of its existence.

Apple mentioned in its social responsibility report of 2011 a thorough investigation into the suicides. This included a July 2010 survey among more than 1,000 workers and interviews with workers and management, which 'evaluated working and living conditions firsthand'.²⁴ The trade union was not mentioned.

Foxconn is a company producing for most of the large brand companies. They have been audited on numerous occasions. However, the issue of freedom of association has not been solved. Neither have numerous other issues, including overtime, wages and abusive management methods.

FLA carried out an audit of Foxconn for Apple in 2012, in which 35,500 workers were interviewed. They concluded that 'a majority of the members of union committees are drawn from the ranks of management'. There are elections but 'the candidates are often supervisors or managers nominated by management'.²⁵

In order for companies to be compliant on freedom of association, the auditor will look for written policies, interviews with management on the law and how the company complies. Workers will be interviewed to find out whether they are receiving training, for example.

Documentation will be checked. The management will be asked to describe the national laws and how they comply with these. For most companies, they will check whether the law is upheld. Not respecting the law is seen as a major non-compliance, while other issues are seen as minor infringements.

Auditing collective bargaining

Although collective bargaining is not part of the EICC code, as mentioned, several companies have upgraded the code, as well as their auditor guidance, so that their auditors actually address the issue. In our interviews with companies, what emerges is that the audit is not very strong on collective bargaining.

Several companies indicated that collective bargaining is included in the auditors' guidance, but only in question 1 of the questions under freedom of association (see the box with the excerpts from the EICC code implementation guidance manual for suppliers).

One of the companies mentioned in an email that collective bargaining should definitely be addressed in the future. Currently, collective bargaining is complicated to audit,

especially in China, since it is dependent on the level of employee initiative and what kind of freedom of association there is; whether there is a workers' council or a trade union, for example, or some other entity. They added that they need to take into account the influence of local culture, the company culture and the existing relations between employer and employees. One of the companies mentioned that, in China, there is simply no knowledge about collective bargaining. The workers interviewed did not understand the questions, and often the management did not understand them either. Another company added that collective bargaining is not really happening in China.²⁶

Audit constraints

Auditing freedom of association is challenging. There are no absolute parameters; there are different interpretations and most companies do not actively encourage freedom of association. They might even oppose it and ultimately it will be a judgement call if auditing identifies a violation. Although risk assessment will usually be carried out by companies to assess where audits should take place, risk

assessments on freedom of association will generally not be carried out. This is because freedom of association is not seen as one of the core issues in audits. Several companies are also sensitive about the subject because they do not like to see unions in their supply chain. In addition, there is a cost consideration to take into account, as well as the quality of the auditors used.

Audits are costly and therefore there is often a time constraint. There is not enough time to interview enough workers, both inside and outside factory (off-site workers' interviews are hardly used and are not a requirement of the EICC audits). There is not enough time to take a thorough look at the records either. Audit teams do not have all the expertise needed, as they are mostly quite small. The auditing company Verité – which usually audits with five or six auditors – is often only hired for complicated audits in high-risk companies.

One of the reasons for freedom of association issues (including collective bargaining) not showing up in audits could be that auditors are not well trained or are not well suited to identifying these issues, which tend not to

Spotlight on Mexico²⁷

The Mexican NGO CEREAL has written several reports about companies in the electronics industry in Mexico. CEREAL found that most electronics companies in Mexico have signed a collective bargaining agreement with the union. However, workers are unaware of the unions in their companies and are unaware that they are represented by these unions.

In Mexico, the protection contracts are generally seen as an obstacle to freedom of association. Protection contracts are negotiated between employers and unions without the knowledge of the workers, and serve to protect the employer from the emergence of representative and democratic unions and from genuine negotiations.²⁸

CEREAL mentions a programme by Sanmina SCI that does not end the contract with the 'ghost' union. Instead it works on developing capacity building efforts and representation mechanisms that might improve representation as a solution, as an innovative way to deal with the specific issues in Mexico and this company.

CEREAL interviewed workers about their knowledge of unions in their company and has compiled

information on three companies. Some of this information can be found in CEREAL's latest report: *The crisis that never went away*.²⁹

In the company Jabil, CEREAL could not find one worker who could give information about the union in the company. However,³⁰ Jabil has a collective contract which Ernesto Sánchez, as General Manager, signed with the Workers and Employees of maquiladoras³¹. This trade union affiliates all the workers of Jabil in the city of Guadalajara.

Although the three Foxconn plants have signed collective agreements with three different unions, CEREAL could not find one employee who could give information about their trade union.

In Flextronics,³² none of the workers interviewed, even those with more than 10 years of seniority, could give any information about the existence of the union; they did not know the name of the leader, nor whether there is a contact point or representative union to turn to in case of problems.

be as straightforward as other labour rights violations. One of the companies interviewed mentioned that the quality of auditors is indeed seen as an issue. As a result, EICC decided to have their auditors trained by Verité. However, not all auditors have followed the training yet.

Beyond auditing: Training of suppliers

Auditing is obviously not a solution. It can improve labour rights like health and safety issues. It can also flag problems such as consistent overtime. In general, when auditing is done in the right way, it can show which issues should be addressed on a factory level, as well as on a more sector-wide level. If companies are serious about supply chain responsibility, they will have to put more effort into training, sector-wide initiatives and working with stakeholders such as civil society organisations, including trade unions.

Several companies are involved in projects that address freedom of association and/or workers' training, including:

- The Dutch Sustainable Institute (IDH) electronics programme: set up by a multi-stakeholder group of Dell, Philips, HP, GoodElectronics, SOMO and the FNV together with the IDH. The main objective is to improve labour conditions in the electronics industry. It is starting with a programme in China, with one other country to follow. The focus of the programme in China is on worker-management communication in suppliers: 'bringing together employers and worker representatives to identify needs, issues and implement solutions.'³³ There is a training programme for both management and workers. The implementation phase of the programme started at the end of 2011 with a steering committee of local representatives from the brands and civil society.
- Nokia is organising a project in Chennai on training about freedom of association. They are working with the International Metalworkers' Federation (IMF). They will start with a pilot in the Nokia factory; after that, they will also add the suppliers to the programme. As many workers in the factory are very young and inexperienced in organising, part of the training will focus on how to organise in trade unions, with specific focus on women. They are considering the same training in other countries such as Vietnam.
- HP piloted worker-management training with two Chinese suppliers, Chicony and Delta in 2009.³⁴ The training was targeted at helping workers improve their understanding about labour rights and provided an independent workers' grievance hotline for

communicating concerns about their working environment. HP also provided training for a workers' representative committee. Their training programme will train 18 more suppliers in 2012.

- Dell mentioned, in their interview, that they intend to focus on training in China, with part of the training directed to support workers representation when workers would want to do that. They organised a pilot in two factories and have implemented this in about ten more factories since then.

Conclusions and recommendations

Conclusions

It seems fair to conclude that most of the companies that participated in the interviews conducted by SOMO are those companies that pay attention to freedom of association and collective bargaining, to some degree. Several of these companies also participate in projects around freedom of association and/or worker-management communication. However, even in these companies, as the information in this briefing paper clearly shows, freedom of association is often not well defined in codes, it is not well audited, and violations are not addressed in most cases.

As mentioned in the introduction, freedom of association and the right to collective bargaining are the most important rights to secure decent working conditions. If those rights are refused to workers, they are also refused the tools to improve their labour conditions.

Companies need to communicate to their supply chain that freedom of association and collective bargaining are important rights. It is important to include these rights in codes, in clear language aligned with the specific ILO conventions. It is disappointing that the EICC, as an important sector initiative, has so far not amended its code on freedom of association and is still not addressing the right to collective bargaining. The fact that amendments to the code addressing these issues, including in the last 2011-2012 round, have time and again been voted down by a majority of the members can be seen as a clear indication of how these issues are perceived by the majority of the EICC members.

In this respect, it is encouraging that several companies have adapted the language of the EICC on freedom of association or have included stronger language in their own code. Also several companies have added collective bargaining to the EICC code or their own code.

It is clear from the auditing practices and the results noted in corporate responsibility reports that companies have failed to adequately assess issues around the implementation

of freedom of association and collective bargaining in their supply chain so far. Overall violations of freedom of association and collective bargaining are not being picked up in most audits and are therefore not being addressed. There are different reasons for this. The most important reason is the lack of attention paid to freedom of association. There is an unwillingness on the part of a large group of companies to take freedom of association seriously, as we have seen from the code review, from audit practices and from the absence of trade unions in the electronics industry.

SOMO did not assess the auditors as such. It is obvious that it is extremely important that auditors should be able to assess freedom of association violations. What was noted from the interviews is that not all auditors are well trained and received specific training for the EICC audits.

As they are being used at the moment, audits do not seem to be the right tool for assessing issues around freedom of association, nor do they seem to be improving the situation. More is needed in order to address the violations that are taking place. It is encouraging, however, that several companies are already involved in training and projects around freedom of association.

To come back to the research question: Are electronics brand companies playing a positive role in ensuring that freedom of association and collective bargaining are respected by their suppliers? Looking at code implementation and auditing, it seems the impact would be quite small. The newly launched efforts beyond auditing such as the IDH initiative and specific training programmes on freedom of association by Nokia could be the start of efforts to address these issues more seriously, however. These could lead to positive changes in factories on freedom of association and, in the case of China, on improving worker-management communication.

Recommendations for companies

It is important for brand companies to broadcast the message that, for them, freedom of association and collective bargaining are among the most important labour rights that need to be upheld. This would include upgrading their code, giving training on the code to suppliers, and reporting on freedom of association in their corporate responsibility reports. It would also mean that freedom of association should be treated as one of the core violations that would require immediate action.

Since most non-compliances relating to freedom of association and collective bargaining are currently not picked up, there is a need for improvement of the audits and the audit guidance. There is a need for country-specific guidance on these issues in order to be able to detect all violations and the specific issues concerning freedom of association in each country. Freedom of association is complicated to audit, therefore country-specific questions and information should guide the auditor. The guidance should come from civil society organisations and trade unions in the specific countries.

Companies should define corrective action plans when non-compliances on freedom of association are found. They should take into account country specific constraints such as the no union, no strike policy in export processing zones in the Philippines or the "ghost" unions in Mexico.

Auditing should be carried out by well-trained auditors, who have a reasonable amount of time for the audit, working with civil society organisations, including trade unions. And the audit should include off-site workers' interviews. Questions should include relationships between management and the trade union.

Companies should publicly report on non-compliances in general, as well as on specific labour rights, including freedom of association and collective bargaining. They should also make their corrective action plans public. It is important that workers in the factories are also aware of the findings and the corrective action plans.

Auditing alone is not the answer to violations of the right to freedom of association and collective bargaining. Companies need to do more to address the issues seriously, including offering specific training by specialised organisations for both management and workers, and being involved in multi-stakeholder initiatives to work towards freedom of association. Working independent complaint mechanisms are important to give workers a possibility to complain in case of violations and to check if indeed improvements are being done.

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Colophon

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MakeItFair is a public awareness campaign run by a coalition of European and Southern NGOs, with the goal of improving labour rights and environmental conditions along their supply chain.

