

MODEL BRAND-UNION AGREEMENT

**FOR FREEDOM OF ASSOCIATION
AND COLLECTIVE BARGAINING
PROTECTION AND GRIEVANCES**

January 2025

**Clean
Clothes
Campaign**



INTRODUCTION

The UN Guiding Principles on Business and Human Rights (UNGPs) are the global standard for preventing and addressing human rights harms connected to business activity. The UNGPs are divided into three chapters (“pillars”), the third of which is devoted to access to remedy and details the complementary roles of judicial and non-judicial mechanisms.

Against the backdrop of increasing legislation on human rights due diligence, more and more companies, industry-, and multi-stakeholder initiatives are setting up operational-level non-judicial grievance mechanisms, in order to achieve compliance. It is unfortunately increasingly common to equate setting up a channel for workers through which they can report grievances with workers being able to actually access remedy.

The UNGP effectiveness criteria, outlined under UNGP 31, and the associated guidance of the Accountability and Remedy Project of the UN OHCHR are very helpful in this regard, but they still leave a lot of room for interpretation.

This provides a challenge and an opportunity for trade unions and labor rights organizations active in the garment and textile industry. Our challenge is to make sure that new grievance mechanisms developed as part of the mandatory framework that is now coming into force, are not modeled after the same faulty voluntary mechanisms that failed to protect garment and textile workers for decades.

A much more effective mechanism to achieve basic rights for garment workers has come through the grievance (or complaints) mechanisms that were developed in the context of Enforceable Brand Agreements (EBA’s) or Worker-driven Social Responsibility (WSR) agreements such as the Bangladesh (now International) Accord and the Anti-GBVH agreement between Lesotho unions and women's rights organisations and Nien Hsing Textile. Trade unions and worker rights advocates were directly involved in developing the grievance mechanisms that were established under these agreements and could improve their design and implementation mechanisms, as well as enforce their implementation in a court of law in the brand’s headquarter country. By design, the grievance mechanisms in these EBA’s are result-specific and time-bound. They include business consequences that brands are obligated to apply to suppliers that do not implement the necessary remedies (such as the Accord escalation protocol). The mechanisms typically also include independent investigation and determination of remedy, and public reporting of the outcomes.

The model agreement outlined below is intended to give a blueprint for a non-judicial grievance mechanism covering the core labor and human rights of freedom of association and the right to collective bargaining, not because other labor and human rights should not also be covered (they should), but because these are enabling rights that empower workers to secure those other rights.

The provisions in the model agreement below cover the entire process required under the UN framework and the UNGPs when it comes to grievance mechanisms: from investigation to remedy to prevention and mitigation of risks. As such, the agreement will not just resolve grievances, but also protect workers against future or ongoing violations of trade union rights.

This model agreement is premised on the notion that such grievance mechanisms need to be set up as part of a negotiated and enforceable agreement (EBA), a legally binding contract between the signatory parties.

In jurisdictions where mandatory human rights due diligence (mHRDD) legislation is (or will be) in place, this is particularly relevant. Even though in such jurisdictions, the enforcement of the mHRDD laws will be done through administrative and judicial means, companies will often be required to also provide access to non-judicial complaint mechanisms, as part of their due diligence obligation (the “remediation step”). In this context, we believe that compliance with due diligence processes and with the requirements to establish a grievance mechanism (see UNGP 31 a.b and in particular) will only be strengthened if businesses and workers directly negotiate the grievance mechanism and it includes binding elements.

This is particularly true in the case of grievance mechanisms for addressing violations of freedom of association and collective bargaining in supply chains where the nature of the rights at stake - the rights to join and form unions and bargain with employers without retaliation - inherently concern interrelationships among workers, employers and brands. Achieving such rights requires access to remedy that is more locally-based, much quicker, and more procedurally efficient than that which is offered through litigation or regulation in another country.

This model agreement is meant to support efforts from unions to develop EBAs and/or strengthen existing EBAs with language on trade union rights, and importantly to counter weaker efforts from brands and business-led initiatives by providing a yardstick to measure them against.

It was developed by the PYW union committee members and borrows heavily from the [Pay Your Workers - Respect Labor Rights \(PYW-RLR\) proposed agreement](#), the [Anti-GBVH agreement between Lesotho unions and women's rights organisations and Nien Hsing Textile](#), and the [International Accord on Health and Safety](#).

For more information please contact the PYW union committee via crpc@cleanclothes.org.

1. SUPPLIER FREEDOM OF ASSOCIATION REQUIREMENTS

BRAND will require all Suppliers to comply with the following with respect to the workers covered by this agreement (“workers”):

1.1 Maintain, implement, and enforce a policy of neutrality, noninterference, nondiscrimination and nonretaliation as to workers’ and unions’ exercise of freedom of association and collective bargaining as protected under local law and/or ILO conventions 87 and 98, to the fullest extent permissible for the employer under applicable laws and regulations, (“FOA Policy”). This includes, but is not limited to, ensuring that members or agents of Suppliers’ management do not serve in any capacity on any union body and that the Supplier does not provide sponsorship, favoritism or funding, apart from transmittal of workers’ union dues and/or use of on-premises meeting and office space, to any union, its officers, or representatives. The preceding shall not restrict the ability of any union that is independent of the Supplier to represent and/or bargain collectively on behalf of the Supplier’s workers with the Supplier.

Impose prompt, meaningful and proportional discipline, up to and including termination, on any manager or supervisor who violates or causes an employee or other person to violate the FOA policy stated in:

1.1 This includes, but is not limited to, terminating any manager, supervisor or employee who commits, threatens or causes an employee or other person to threaten or cause physical violence or wrongful prosecution against a worker in retaliation for the protected exercise of associational rights under national law and/or ILO Conventions 87 or 98.

1.2 Issue, annually, and within 30 days of whenever a violation of the FOA Policy has been found by Independent Complaint Assessors to have occurred, via a verbal announcement to all employees, and, permanently via a prominent written posting in all their factories, meaningful and understandable notice of:

- The FOA Policy established under 1.1;
- The penalties for violation of the FOA Policy required under 1.2; and
- The availability and means to access the FOA Complaint Resolution Mechanism established under point 2, including the name and contact information of the Parties’ designated Independent Complaint Assessors in that country. (“FOA Notice”).

SIGNATORY BRAND(S) and SIGNATORY UNION (S) shall jointly approve, in advance of its issuance to workers, the text of the FOA Notice to be posted in each country where a Supplier operates a factory that employs covered workers, and the SIGNATORY BRAND (S) shall provide the text of the respective notice to its Suppliers in that country translated into the primary language(s) of their respective workers.

1.3 in all factories operated by Suppliers where workers have established one or more trade unions in a manner consistent with ILO conventions 87 and 98, the Supplier shall:

- Recognize the union(s) as representative of the workers employed in that factory and, upon request of the union(s), bargain in good faith with the union(s) over the workers’ working conditions and terms of employment, including negotiation and signing of a collective agreement, to the fullest extent permissible under local laws and regulations, and consistent with ILO conventions 87 and 98.

1. SUPPLIER FREEDOM OF ASSOCIATION REQUIREMENTS

- Cooperate with those unions with members among the workers at the factory on onsite training of workers, and, separately, managers and supervisors on noninterference with, nonretaliation for and lawful exercise of freedom of association, to be delivered jointly by the unions (including with the participation of any labor federations or confederations with which the unions are affiliated), the Supplier, and an external trainer, agreed upon by the Supplier and the union, which is to be repeated no less than once every three years, or within 60 days of whenever a violation of the FOA Policy has been found by Independent Complaint Assessors to have occurred.
- Permit the union(s) to hold voluntary meetings with workers on non-work time and in non-work areas of the Factory and provide access to a reasonable number of representatives of any labor federations or confederations with which the union(s) is affiliated to attend such meetings with reasonable notice to the Supplier.
- Permit workers, upon their request, to be assisted by another worker of their choice, who has been designated by a union as one of its representatives, in any meetings with supervisors or management concerning potential discipline or other workplace issues of concern to the requesting worker.

2. FREEDOM OF ASSOCIATION COMPLAINT RESOLUTION MECHANISM

2.1 For each country where a Supplier operates a factory covered by this Agreement, SIGNATORY BRAND(S) and SIGNATORY UNION(S) shall, within [XX] days of the effective date of this Agreement and, as needed to fill vacancies and/or maintain function, thereafter, establish or designate one or more persons or entities as a Secretariat as outlined under Section 7, of this Agreement, for that country, that retains one or more "Independent Complaints Assessor(s)" who are independent of both Parties and Suppliers, to receive, assess the validity of, and, where valid, determine appropriate remedies for, complaints of noncompliance by a Supplier with the Supplier FOA Requirements of 1.3, or with local laws pertaining to freedom of association and collective bargaining. Such complaints may be submitted by workers, unions, or other persons or entities.

2.2 SIGNATORY BRAND(S) shall require Suppliers to cooperate with, the Independent Complaint Assessors' investigations of complaints and issuance of findings of, as well as to implement the the Independent Complaint Assessors' remedies for, noncompliance with the requirements of the Supplier FOA Requirements of 1.1-3 and/or with local laws pertaining to freedom of association and collective bargaining, including, but limited to, by:

- Making available workers, supervisors, and managers for interview by the Independent Complaint Assessor(s);
- Providing the Independent Complaint Assessor with access to all records, documents and physical premises relevant to the subject matter of the complaint(s); and
- Complying with the Independent Complaint Assessor's findings of and determinations of remedies regarding complaints of, including implementing and complying with all resulting corrective action plans and other remedies issued by the Independent Complaint Assessor for, noncompliance by a Supplier with the requirements of the Supplier FOA Requirements of 1.3, ILO convention 87 and/or 98, and/or with local laws pertaining to freedom of association and collective bargaining.

2. FREEDOM OF ASSOCIATION COMPLAINT RESOLUTION MECHANISM (CONT.)

SIGNATORY UNIONS shall encourage unions and workers to cooperate with the Independent Complaint Assessors' investigations of complaints.

2.3 The Parties shall direct and require that corrective action plans and other remedies issued by the Independent Complaint Assessor for, noncompliance by a Supplier with the requirements of the Supplier FOA Requirements of 1.3, shall include, at minimum:

- In case of discriminatory or retaliatory adverse treatment of a Worker or a Worker's union, the requirement to reverse such treatment and making the Worker and/or Union whole for any adverse impact thereof; and
- In case of failure to respect the representational and/or collective bargaining rights of a Worker and/or Worker's union, the requirement to recognize and respect such representational rights and/or bargain in good faith.

2.4. Parties shall refrain from and use reasonable efforts to ensure that others refrain from interference with the work of the Independent Complaint Assessors, unless there is clear evidence of corruption, incompetence or lack of objectivity or independence by an Independent Complaint Assessor. The preceding shall include requiring Suppliers, unions or other parties to refrain from any discrimination, retaliation or threat thereof against any worker, for lodging a complaint with, or against any person, for cooperating with an investigation conducted by, the Independent Complaint Assessor(s),

2.5. SIGNATORY BRAND(S) shall provide sufficient funds to support the work of the Independent Complaints Assessors, including reasonable compensation and expenses, up to a maximum determined by both parties.

3. SANCTIONS FOR SUPPLIER FACTORY VIOLATIONS OF FOA

3.1 Should a Supplier be found by the Independent Complaint Assessor established under 2, or be determined jointly by SIGNATORY BRAND(S) AND SIGNATORY UNION(S), to have violated the Supplier FOA Requirements of 1.1, 1.2 or 1.3, and/or to have violated local laws pertaining to freedom of association and collective bargaining, and:

- Fail, given reasonable notice and opportunity, to substantially remedy this violation, including, but not limited to making any affected workers fully whole, and/or
- Willfully commit repeated violations of these requirements, given reasonable opportunity to cease

SIGNATORY BRAND(S) shall impose sufficient sanctions, in the form of meaningful reductions of order volumes, in a reasonable time period, so as to compel the Supplier's timely compliance and remediation of violations ("Sanctions"), culminating in ending the Signatory Brand's business with the supplier if the Supplier has been given reasonable notice and opportunity to cease and remedy the violations giving rise to the Sanctions, and has failed to do so, despite being explicitly warned of such consequences.

3.2 SIGNATORY BRAND(S) shall end its business relationship with a Supplier that has been subjected to Sanctions under 4.11.1 only after the Supplier has been given reasonable notice and opportunity to cease and remedy the violations giving rise to the Sanctions, and has failed to do so, despite being explicitly warned of such consequences. The Signatory brand will remain responsible even if inactive to mitigate and remedy the adverse impact. A Signatory Brand that ends its business relationship with a Supplier pursuant to 3.1 shall ensure, in the case that the Supplier terminates the employment of workers as a direct or indirect result of the Sanctions, that all of the workers who are terminated thereby receive their full terminal compensation.

3.3 SIGNATORY BRAND(S) shall not enter into any new business relationship with any Supplier, or any company related to that Supplier, with which a SIGNATORY BRAND with existing business is or would be required to end such business relationship under 3.2.

4. INCENTIVES FOR SUPPLIERS TO RESPECT FREEDOM OF ASSOCIATION

4.1 SIGNATORY BRAND(S) shall give substantial positive consideration, when determining terms and volume of business with its respective Suppliers, to the extent to which a given Supplier has taken affirmative and meaningful actions to comply with and implement of the Supplier FOA Requirements of 1.1-3, and/or with local laws pertaining to freedom of association and collective bargaining. Such consideration shall be sufficient as to provide meaningful positive incentives to the Supplier to maintain and further improve compliance with and implementation of these Supplier FOA Requirements and local laws. Signatory Brand shall furnish to the Governing Board, upon request, evidence of such incentives being provided to any given Supplier, on a confidential basis.

5. MOST PROTECTIVE STANDARD

5.1 In any case where local laws pertaining to freedom of association and collective bargaining may conflict with or differ from the Supplier FOA Requirements of 1.3, Suppliers shall be required to comply with the standard that is most protective of and consistent with enabling the exercise of workers' freedom of association and right to collective bargaining as established under ILO conventions 87 and 98.

6. GOVERNANCE STRUCTURE

Signatories agree to establish a "Governing Board" whose members shall be appointed, within [XX] days of the effective date of this Agreement and, as needed to fill vacancies, thereafter, as follows:

- i. The Signatory Unions shall collectively appoint no fewer than [X] voting members to the Governing Board;
- ii. The Signatory Brands shall collectively appoint to the Governing Board a number of voting members equaling, in total, the number of voting members appointed by the Signatory Unions,
- iii. In case of Signatory Employers as well as Signatory Brands, among the voting members appointed by the Signatory Brands under Section 7.a.ii. there shall be at least one voting member representing the Signatory Employers and one voting member representing the Signatory Brands;

6. GOVERNANCE STRUCTURE (CONT.)

- iv. One additional person, who shall serve as the Governing Board's neutral Chairperson, shall be selected and appointed to the Governing Board, as a voting member, by at least a two-thirds vote of the other voting members of the Governing Board. Should the Governing Board be unable to appoint a Chairperson by such a two-thirds vote, a qualified person shall be appointed to serve as the Governing Board's neutral Chairperson and additional voting member, by an arbitrator selected through the Dispute Resolution process of Section 10 of this Agreement;
- vi. [X] non-voting members appointed by the Signatory NGOs; and

The Signatory Brand and Signatory Unions will cooperate with other Signatory Brands and Signatory Unions, respectively, in selecting the Signatory Brands' and Signatory Unions' appointees to serve as voting members of the Governing Board.

7. SECRETARIAT

The Governing Board will establish, determine policies for and provide sufficient funding from its General Fund to maintain and operate a Secretariat that will:

- i. Collect Signatory Brand and Signatory Employer Contributions and solicit and receive Other Contributions and manage, administer, develop a budget (subject to the approval of the Governing Board) and provide accounting for the Fund and the Global Claims Account, National Account, and General Accounts;
- ii. Retain Chief Complaint Assessor appointed by the Governing Board, and one or more Complaint Assessors, comprised of at least one Inspector per each xxxxx covered workers [or per each xxx factories] in each country covered by this Agreement, whose duties shall include monitoring and reporting to the Chief Complaint Assessor and through the Chief Complaint Assessor to the Governing Board concerning Signatory Brands, Signatory Employers, Signatory Unions and Signatory NGOs' compliance with their obligations under Brand Agreements and Employer Agreements, and who shall have access to all manufacturing facilities covered by this Agreement and to the relevant financial, payment and other records needed for determining compliance;
- iii. The Chief Complaint Assessor shall be permitted by the Parties to carry out the Chief Complaint Assessor's duties independent of the Governing Board and the Parties, and shall only be removable by the Governing Board for good cause. The Complaint Assessors shall be nominated or approved by the Signatory Unions in each country; and, upon acceptance at the discretion of the Chief Complaint Assessor, trained by the Chief Complaint Assessor or the Chief Complaint Assessor's designees in monitoring and assessment techniques, national labor law and international conventions and other relevant instruments, and paid by the Secretariat at a rate to be determined by the Chief Complaint Assessor in consideration of prevailing wages in the national industry under their jurisdiction, The Complaint Assessors shall be supervised in their work by, report to, and may be removed for good cause by the Chief Complaint Assessor.
- iv. Monitor and enforce compliance with all terms of the Agreement including but not limited to: Collecting funds from Signatory Brands for local complaint investigators; Publish reports on investigations and lists of non-compliant suppliers; Assessing and reporting to the Governing Board whether Signatory Brands and Unions are carrying out responsibilities under and complying with the terms of this Agreement.

8. REPORTING AND TRANSPARENCY

Signatory Brands shall list all their suppliers in Open Supply Hub, and require all their suppliers to upload the relevant data themselves.

Reporting should be updated annually, and should include per complaint:

- Facility ID (OSID)
- Date received (yyyy-mm-dd)
- Date resolved (yyyy-mm-dd)
- Outcomes insofar as can be responsibly disclosed

This list should be provided in XSLX or CSV format.

Reports of Findings should be posted publicly and made available to workers in the local language.

Minutes of the meetings of the Governing board will be made publicly available.

9. DISPUTE SETTLEMENT/ARBITRATION

Any dispute between the parties to, and arising under, the terms of this Agreement shall be presented to and decided by the Governing Board, under a Dispute Resolution Process (DRP) that: Specifies timelines and procedures involved when disputes arise, with the aim to establish a fair and efficient process. The DRP shall be supported by a member of the Secretariat who will perform an initial investigation for the parties with the aim of seeking resolution of the matter among the disputing parties. Failing resolution, the dispute and initial investigation shall be presented to the Governing Board with the goal of finding a mutually agreeable solution. If a solution cannot be reached, the Governing Board shall issue a decision on the merits and determine adequate remediation measures.

Upon request of either party, the decision of the Governing Board may be appealed to a final and binding arbitration process. Any arbitration award shall be enforceable in a court of law of the domicile of the signatory against whom enforcement is sought and shall be subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), where applicable. The process for binding arbitration, including, but not limited to, the allocation of costs relating to any arbitration shall be governed by the International Labor Arbitration and Conciliation (ILAC) Rules. The arbitration shall be conducted by a single arbitrator jointly selected by the parties in accordance with the DRP.

The arbitration shall be seated in The Hague and administered by the Permanent Court of Arbitration.

10. CHOICE OF LAW

This agreement shall be governed by the laws of the [X Country].

11. SEVERABILITY

If any provision of this Agreement as applied to any Party or to any circumstance will be judged by a court or arbitrator to be void and/or unenforceable, the same will in no way affect any other provision of this Agreement, the application of such provision in any other circumstance, or the validity or enforceability of this Agreement as a whole.

12. WAIVER

No waiver of any of the provisions of this Agreement will be deemed or constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

13. SUCCESSORSHIP

This Agreement will be binding upon the successors, officers, directors, shareholders, members, managers, employees, agents, parent corporations, subsidiary corporations, personal representatives, administrators, and partners of the Parties.