



International
Labour
Organization



► Guidelines for stakeholders
on the right to freedom of
association in agriculture

► What is freedom of association?

Freedom of association is the right of employers and workers to unite and create organizations to help them defend their interests. Freedom of association is a human right closely linked with freedom of expression, assembly and universal suffrage. These rights support democratic representation and governance in the world of work.

When workers unite to form organizations, these are most commonly called trade unions. National legislations in some countries might call them by other names, such as labour associations, syndicates, labour organizations or labour unions.

By forming organizations, employers and workers can unite and voice their demands. They can also engage in bargaining over working and employment conditions. This process is called collective bargaining and might result in a collective agreement.

Both freedom of association and the right to collective bargaining are considered fundamental principles and rights at work by the International Labour Organization (ILO).

What are the ILO fundamental principles and rights at work?

In 1998 the International Labour Organization adopted the ILO Declaration on Fundamental Principles and Right at Work. The Declaration makes clear that there are rights that are universal and should apply to all people in all States, regardless of their level of economic development. These rights are called fundamental rights, and are the following:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of forced or compulsory labour;
- the abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation.

The ILO Declaration of Principles and Rights at Work is a recognition that economic growth alone is not enough to ensure equity, social progress and to eradicate poverty.

► Why is freedom of association important in agriculture?¹

Workers and employers face a number of challenges in agriculture in many parts of the world, which include the following:

- ◆ **High incidence of informal employment:** Most agricultural workers are not in formal wage employment but in self-employment or unpaid family work, especially subsistence farming. Informal employment constitutes 98.6 per cent of agricultural employment.
- ◆ **Vulnerable workers:** Some of the most vulnerable categories of workers, such as migrant workers or indigenous peoples, form the largest share of the workforce in agriculture. Women make up over half of the rural workers around the world. Rural work is also characterized by large numbers of casual, seasonal or temporary workers, often in particularly vulnerable situations.
- ◆ **Poverty and poor working conditions:** Agricultural workers are often excluded from the coverage or implementation of national labour laws. Poverty levels are typically higher in rural than in urban areas, and incomes and other working conditions are often poor. Very often agricultural workers are obliged to work beyond normal working hours under the threat of penalties, dismissals or payment of wages below the minimum level. Fewer than 20 per cent of agricultural workers have access to basic social protection.
- ◆ **Child labour is mainly a rural issue:** The agricultural sector accounts for by far the largest share of child labour: out of the 152 million children found in child labour, 71 per cent work in agriculture alone. In absolute terms, this represents 108 million children.²
- ◆ **High workplace accidents:** Approximately half of the yearly fatal workplace accidents worldwide occur in agriculture. Exposure to occupational hazards continues to prevail in many rural areas. Agriculture is among the three most dangerous sectors to work in at any age, and even more dangerous for children: around 60 per cent of hazardous child labour is to be found in agriculture.

¹ ILO: Giving a voice to Rural Workers, General Survey concerning the right of association and rural workers' organizations instruments, Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution), Report III (Part 1B), (Geneva, 2015). Available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_343023.pdf.

² ILO: Global estimates of child labour: Results and trends, 2012-2016 (Geneva, 2017). Available at: www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575499.pdf.

Freedom of association and the right to collective bargaining are enshrined in the ILO's Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No. 87) and Convention on the Right to Organise and Collective Bargaining, 1949 (No. 98). These rights are recognized as fundamental rights by the ILO. The right to freedom of association is also recognized as a basic human right in the Universal Declaration of Human Rights.

The fundamental right of both employers and workers in agriculture to establish and join organizations of their own choosing as a means of defending their interests and improving their conditions is also enshrined in the ILO Convention on the Right of Association (Agriculture), 1921 (No.11). The ILO Convention on Rural Workers' Organizations, 1975 (No.141) also seeks to extend the principle of freedom of association to those working in rural areas.

- ◆ **Forced labour in agriculture:** The ILO estimates that 20.9 million people are victims of forced labour³ at any point in time and agriculture is one of the sectors most frequently cited. Many victims of forced labour are migrant workers or poor seasonal workers, who move from rural to urban areas, or to other rural areas, in search of work.
- ◆ **Lack of collective voice:** Agricultural workers face notable challenges in the exercise of their basic right to organize, and their capacity to use their collective voice. Unionization in rural areas is usually very low, and rural workers' organizations are often weak and fragmented. The same applies for smallholders, who also face challenges to organize and influence the terms and conditions of their contracts with buyers and to intervene in policy initiatives that directly affect their living conditions.

It is important to note that in this context, rural workers' organizations are key players in highlighting the specific needs of rural workers, who are often dependent on their work relationship for housing, education for their children, transport and a variety of services related to their daily life.

Through organizing and engaging in negotiations, workers can promote implementation of other rights, such as standards related to conditions of work, working time, occupational safety and health, employment promotion and social protection.

Through negotiations, smallholders can also influence economic conditions and related benefits when selling their crops, and improve living conditions for their families and their employees.

► What does freedom of association mean in practice?

Freedom of association includes:

- ◆ the right of all employers and workers to form and join the organizations they wish, without prior authorization from any third party, neither the administration nor an employer;
- ◆ the right of employers' and workers' organizations to freely express their opinion;
- ◆ the right of employers' and workers' organizations to establish their constitution and rules, and decide how they want to operate internally, often subject to the establishment of an internal democracy system set by national laws;
- ◆ the right of organizations to freely elect their representatives, to organize their administration and activities, and to formulate their programmes;
- ◆ the right of employers' and workers' organizations to establish and join federations and confederations and to affiliate with international organizations;
- ◆ the right to strike; and
- ◆ the right to meet and demonstrate.

³ ILO: ILO global estimate of forced labour: Results and methodology (Geneva, 2012). Available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf.

► Who is covered by the right to freedom of association?

Freedom of association applies to all employers and workers, regardless of the type of contract and the economic sector. These include migrant workers, short-term workers, small holders, self-employed workers, and covers, naturally, both men and women.

Some categories of more vulnerable workers face specific challenges to unionize. This is the case of rural employers and workers, particularly smallholders, who often live in isolation, have precarious employment conditions and are not aware of their rights and the benefits that unionization can bring. Migrant workers and workers in small economic units are also less likely to unionize.

National legislations often establish minimum membership requirements or percentage of the workforce to form a trade union. Legislation also sets the procedures that need to be followed to register the union with the labour authorities.

In agriculture, actors that should be granted the right to freedom of association include:

- ◆ Employees working in small farms or big plantations, regardless of their status and nature
- ◆ Self-employed workers
- ◆ Small and medium-scale growers and processors
- ◆ Big producers employing waged workers
- ◆ Buyers of crops
- ◆ Smallholders employing just a few or no workers and acting individually or in small groups, such as clubs
- ◆ Buyers and traders
- ◆ Rural workers



The term rural workers means any person engaged in agriculture, handicrafts or a related occupation in a rural area, whether as a wage earner or (...) a self-employed person such as a tenant, sharecropper or small owner-occupier.

Rural Workers' Organisations Convention, 1975 (No. 141), Art. 2.



Each of these actors has its own role to play, and its own economic and social interests and position in the agricultural sector. It is only through unionization and association, dialogue and negotiation that the right balance between the interests of all parties is to be found.

► What type of organizations are found in agriculture?

Organizations to be found in agriculture include:



Trade unions: Formed by workers to defend their work-related interests. They can be formed in a workplace, enterprise, sector, region, or at other levels.

National legal frameworks generally allow individual workers in farms or plantation to join trade unions established at the community or sectoral levels. This is a way of granting the right to organise of workers who, due to their low numbers, might be legally unable to establish a trade union at their workplace.

Trade unions can be specific for agricultural workers, or might represent workers of different sectors. They can be formed at the workplace, at the community level or represent an entire sector. They can be specific for wage earners or include self-employed workers or other categories.

Labour organization for both self-employed smallholder farmers and for waged workers tends to be weak in rural areas, where traditional labour relations persist, and where rural workers often enjoy weaker legal rights than other workers. The lack of an employer-employee relationship also explains that agricultural workers are poorly organised. Labour organization tends to be much stronger when farms are large, employment is stable and labour relations more formalized, as in plantations.



Cooperatives: A cooperative is an association of persons who join together to achieve a common objective and make equitable contributions to the capital required. The profits earned are equitably distributed among the members. These organizations constitute one of the most effective means not only of increasing farmers' income, but also of improving rural communities, both economically and socially.

In agriculture, cooperatives might gather small producers or self-employed workers. Women-only cooperatives are also common in a number of regions.



Producers' associations: They assume important functions on behalf of their members, such as concentrating supply, improving the marketing of products, optimising production costs, carrying out research, as well as a wide array of other activities.



Employers' organizations: These organizations represent the collective interests of enterprises in agriculture, generally employing workers benefiting from an employment relationship. These organizations defend their economic interests and often have a labour-related agenda. They can include the buyers, who might be grouped in buyers' associations.



Self-Help Groups: A self-help group is formed when a group of persons from a common socio-economic background voluntarily come together to serve the different needs of their members. They may be savings and credit groups, or how-to-start-a-business groups. Self-help groups may help to economically empower poor women workers.



Credit Unions: A credit union is a cooperative microfinance organization usually formed by people living in the same village or neighbourhood to promote savings and provide credit at reasonable rates to its members.

► What benefits can freedom of association bring to workers in agriculture?

- ◆ It channels the needs and concerns of agricultural workers
- ◆ It balances power between the employer and the workers
- ◆ It allows the creation of trade unions, with greater accountability than other forms of association; national legislations usually include provisions to ensure democratic elections within the organizations and to protect the independence of unions
- ◆ It allows workers, through their organizations, to engage in negotiations with the employer and jointly achieve beneficial and productive solutions on a wide range of work-related issues
- ◆ By engaging in collective bargaining, trade unions can:
 - ◆ Improve working conditions
 - ◆ Improve occupational safety and health
 - ◆ Contribute to achieve higher productivity

- ◆ Achieve higher wages, greater wage equality and a more equitable distribution of wealth
- ◆ Make business more predictable, accountable and transparent
- ◆ Contribute to security and stability in the workplace
- ◆ Contribute to the availability of employment opportunities
- ◆ It allows workers to be more motivated at work
- ◆ It helps improving trust between employers and workers
- ◆ It increases compliance with other rights and facilitates changes and improvements
- ◆ It facilitates access to financial services, education and vocational opportunities, contributing to rural development
- ◆ It supports competitiveness, associated with higher exports of labour-intensive goods, productivity growth and innovation
- ◆ It improves the quality of management decision-making

Freedom of association and collective bargaining are not only fundamental rights, but also enabling rights, as they are the gateway to achieve the exercise of a range of other rights at work. These include other fundamental principles and rights at work, occupational safety and health or access to social protection.

► Growers and the right to organize

All employers and workers, regardless of their status, should be granted the right to freedom of association. This includes growers, no matter the size of the plot and the number of workers employed. Smallholders with no employees should also be able to form organizations.

Growers' associations are not trade unions, but most often there is still an obligation to register with the public administration.

By uniting, growers can:

- ◆ Channel their needs and concerns
- ◆ Balance power in their relationships with the government and, in the case of smallholders, with the buyers
- ◆ Engage, through their organizations, in dialogue and negotiations with the government over a variety of issues, including the design of public policies

Each Member of the International Labour Organisation which ratifies this Convention undertakes to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture.

Right of Association (Agriculture)
Convention, 1921 (No. 11)

- ◆ Engage in dialogue and negotiations with the buyers to improve the conditions of economic transactions to ensure basic conditions of life for the growers, their families and their workers.
- ◆ Achieve higher productivity through exchange of experiences with other growers and the buyers
- ◆ Improve trust between growers and other stakeholders
- ◆ Improve compliance with other rights at work and facilitate changes and improvements
- ◆ Facilitate access to financial services, education and vocational opportunities, contributing to rural development
- ◆ Support competitiveness, associated with higher exports of labour-intensive goods, productivity growth and innovation



Employers often deny union organizers' access onto farms and plantations making it difficult for trade union representatives to establish initial contact with workers, inform them about their rights, and recruit them as members of trade unions.

Plantations and other agricultural undertakings are private property on which the workers often not only work but also live and it is only by having access to these undertakings that trade union officials can carry out normal trade union activities. Access by trade union officials for the purpose of carrying out lawful trade union activities is therefore of special importance, provided that there is no interference with work being performed during working hours and subject to any appropriate precautions being taken for the protection of the property.

Source: ILO: *Giving a voice to rural workers: General Survey concerning the right of association and rural workers' organizations instruments*, Report III (Part 1B), ILC, 104th Session, Geneva, 2015. Available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_343023.pdf

► What challenges do agricultural workers face to unionize?

There are a number of impediments for agricultural workers to organize and form trade unions. These include:

- ◆ National laws might exclude agricultural workers, or some categories of agricultural workers, to form and join trade unions
- ◆ The law might impose excessive requirements to form trade unions or federations, such as a high minimum membership
- ◆ Inadequate protection against anti-union discrimination and interference
- ◆ Restrictions on access for trade union representatives to meet with workers on farms or plantations
- ◆ Vulnerable employment and working conditions of agricultural workers
- ◆ Physical isolation and geographical dispersion of agricultural workers, who often live in a property owned by the employer far away from community centres
- ◆ Seasonal activity with discontinuous community engagement
- ◆ Low levels of empowerment and fear of retaliation
- ◆ Legal restrictions specific to women, such as non-access to ownership and control of land
- ◆ Internal by-laws that restrict women's participation in groups such as agricultural cooperatives and farm associations
- ◆ Weak state machinery to ensure implementation
- ◆ Difficult access of union organizers to access the premises of privately-owned farms
- ◆ Interference from the part of the employer on the internal functioning of trade unions
- ◆ Lack of awareness of the right to freedom of association and the benefits it could bring to workers
- ◆ Poverty
- ◆ Lack of awareness of existing rights and low levels of literacy
- ◆ Additional constraints for women workers to unionize, such as the multiplicity of roles for rural women workers in the household, allowing them little time and energy for union activities or difficulties in accessing leadership positions on account of stereotyped notions

What factors are conducive to unionization in agriculture?

- Stability in employment
- Knowledge of statutory workers' rights
- Awareness of the benefits of organising
- Existence of trade unions in the community/district
- Free access of trade union representatives to the premises of the farm or plantation
- Facilities for socialising and networking

► What is trade union discrimination?

Trade union discrimination implies treating unionized workers less favourably than other workers only because of their trade union membership, activities or sympathies.

Some examples of work-based discrimination can include:

- ◆ Discrimination in relation to hiring; for instance, when a worker is blacklisted because he or she is known to be a trade union sympathiser
- ◆ When an employer grants benefits only to non-unionized workers
- ◆ When a worker is laid off or suspended because of his or her union membership, activities or sympathies
- ◆ Harassment or intimidation against a worker for trade union membership or activities
- ◆ When a worker is not promoted in employment because of his or her union sympathies
- ◆ Taking disciplinary action against a worker on the sole grounds of his or her trade union membership, activities, or sympathies
- ◆ Dismissing a worker for participating in a legal strike
- ◆ Subcontracting non-unionized workers as a means of evading in practice freedom of association and the right to collective bargaining

In order to enjoy the right to freedom of association, international standards provide that workers' organizations are provided **adequate protection against anti-union discrimination**.

► What is interference in trade union matters?

Workers should have the right to join organizations of their own choosing in full freedom, without any interference by the employer or the public authorities in trade union activities.

What could be considered acts of interference?

- ◆ When the workers are required to get the approval of the employer or the public administration to be able to register
- ◆ When the employer promotes a specific candidate
- ◆ When the employer imposes procedures for trade union internal elections
- ◆ When the public authorities or the employer promote the establishment of a parallel trade union
- ◆ When the employer appoints a worker to be part of an executive committee of a trade union
- ◆ Offering bribes to union members to encourage their withdrawal from the union
- ◆ Closing down trade union offices as a result of a legitimate strike
- ◆ Preventing trade union officers from entering the premises of the farm/plantation to undertake trade union activities

Producers' associations, cooperatives or other employers' associations can also suffer acts of interference. For instance, when a buyer refuses to enter in a contract with growers who are members of an organization.

International labour standards also provide that employers' and workers' organizations shall enjoy **adequate protection against acts of interference** in their establishment, functioning or administration, neither from the employer nor from the public authorities.

► How can employers and workers be protected against anti-union discrimination and acts of interference?

Protection against acts of anti-union discrimination should cover hiring, dismissal and any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker.

Protection against acts of anti-union discrimination is particularly important in the case of trade union officials, as they should perform their duties in full independence, without fear of suffering retaliation.

One way of ensuring the protection of trade union officials is that these officials may not be dismissed, either during their period of office or for a certain time thereafter, except for serious misconduct. This protection might be included in the law or in a collective agreement.

Protection is generally provided by national laws. Legislation most often forbids and penalizes acts of anti-union discrimination and interference in trade union activities and sets administrative and judicial procedures to be followed when grievances are filed.

The law also lays down explicitly remedies and penalties against acts of anti-union discrimination and acts of interference.

For the law to be effective it has to be supported by effective implementation, this is, by strong administrative and judicial bodies that:

- ◆ Perform a rapid examination of cases
- ◆ Provide for expeditious, inexpensive and impartial means of redressing grievances
- ◆ Provide for sufficiently dissuasive sanctions and prompt means of redress, including reinstatement if the worker has been dismissed

What are the main mechanisms that workers could use to seek redress in a case of trade union discrimination?

The first entry point for grievances on discrimination or interference in trade union affairs is the **labour inspection** or the labour office of a specific locality. According to international labour standards established by the ILO, labour inspectors should be able to enter any workplace liable to inspection freely and without previous notice, and carry out any examination, test or inquiry which they may consider necessary in order to verify that all legal provisions – including those relating to anti-union discrimination – are strictly respected.

If labour inspectors or the labour office are unable to solve the grievance, the workers should have the right to bring their case to **the judiciary** to demand redress.

In practice, agricultural workers often face severe challenges to ensure protection against anti-union discrimination and interference. These include:

- ◆ Lack of capacity of labour inspectors to reach out to agricultural areas, often in isolated locations in a context of under-funded labour administration services
- ◆ Lack of empowerment of the labour inspectors, who are often unable to enter workplaces
- ◆ Long delays in the resolution of cases in under-resourced courts

This implies that redress may often come too late, as agricultural work is often seasonal and the employment relationship may have already been terminated.

This is why, beyond the essential administrative and judicial procedures that are needed in every region or district, other stakeholders could play an instrumental role in identifying and redress situations of trade union discrimination and interference.

These stakeholders include:

- ◆ Trade unions established in the locality – general workers' union or agricultural workers' union
- ◆ NGOs active in the locality
- ◆ Technicians or supervisors working on the premises
- ◆ Elected representatives from local governments
- ◆ Individuals with a good reputation in the locality

These actors could intervene in different ways: from raising awareness on the right to unionize and collective bargaining to exposing specific cases of discrimination; from mediating in cases where one or a group of workers are discriminated to facilitating access of trade unions in workplaces. The ways in which the different actors can intervene depend on the effectiveness of the existing administrative and judicial mechanisms, the challenges faced by the different actors to unionize and engage in collective bargaining and the roles and capacities of those that could intervene in solving the conflict.

Project “Addressing Decent Work Deficits in the Tobacco Sector of Tanzania and Zambia”

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