

BRIEFING

**Business & Freedom
of Association**

July 2013

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1. Introduction

This briefing provides an overview of companies' impacts on freedom of association, summarising trends and developments in this field, particularly over the past three years.

The right to freedom of association is the right of workers to *"join organisations of their own choosing without previous authorisation"* ([ILO Convention 87](#)). The right to form a trade union is important not just in and of itself, but as an enabling right, because the ability of workers to organise allows them to use their collective power to achieve improved labour rights across the board. Linked to it very closely is the right to collective bargaining ([ILO Convention 98](#)), which allows workers to collectively negotiate their working conditions with their employers, and the right to strike. Respect for freedom of association is a prerequisite for many other basic labour rights, including health & safety, the right not to be discriminated against in the workplace, etc.

Freedom of association is a right guaranteed under many international human rights instruments, including the [Universal Declaration of Human Rights](#) (articles 20, 23), the [International Covenant on Civil and Political Rights](#) (article 22) and the [International Covenant on Economic Social and Cultural Rights](#) (article 8). It is also protected in regional instruments including the [European Convention on Human Rights](#) (article 11), the [European Social Charter](#) (article 5), the [American Convention on Human Rights](#) (article 16), and the [African Charter on Human and Peoples' Rights](#) (article 10). What the right to freedom of association means in practice is set out by the International Labour Organization (ILO) in many of its principal instruments including the [ILO Declaration on Fundamental Principles and Rights at Work](#), and ILO Conventions [87](#) (Freedom of Association and Protection of the Right to Organise) and [98](#) (Right to Organise and Collective Bargaining). The [United Nations Guiding Principles on Business & Human Rights](#), endorsed by consensus by the UN Human Rights Council in 2011, underline the importance of freedom of association by specifically providing that the minimum rights businesses are expected to respect include *"the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work"* ([Guiding Principle 12](#)).

This briefing flags some major developments, issues and cases, but is not intended to provide a comprehensive overview. Further information is available on Business & Human Rights Resource Centre's [Business & Freedom of Association Portal](#) – an online hub that provides up-to-date information on issues ranging from companies preventing workers from organising, to dismissal of workers because of their union membership, to killings of trade unionists, to positive initiatives by companies. We chose to create this portal to give a special focus on our website to freedom of association because of its fundamental importance as an enabling right for other labour and human rights. Furthermore, historically there has been some distance between the labour and human rights movements; through our portal and this briefing we want to help put the fundamental right to freedom of association front and centre in the business & human rights debate.

1.1. About the Resource Centre

Business & Human Rights Resource Centre, an independent non-profit organization, provides the leading information hub on business & human rights. [The website](#) tracks reports about the human rights impacts (positive & negative) of 5100 companies in over 190 countries, and provides guidance tools and resources for all those working in this field. Our researchers are based in Brazil, Colombia, Hong Kong, India, Jordan, Kenya, Lebanon, Senegal, South Africa, Thailand, UK, Ukraine and USA. Mary Robinson, former UN High Commissioner for Human Rights and President of Ireland, is Chair of the Centre's International Advisory Network. Our Academic Partners comprise 23 leading academic institutions. The Centre does not accept funding from companies or company foundations, in order to maintain its independence and to prevent any possible perception of a conflict of interest.

Our mission: To encourage companies to respect and promote human rights, and avoid harm to people. We do this by advancing transparency, public accountability, and informed decision-making.

For further details, see the ["About us"](#) section of our website. [Sign up for free Weekly Updates on business & human rights here.](#)

1.2. Company responses on freedom of association

We seek responses from companies when concerns are raised by civil society, including trade unions, and when we find no evidence that the company has otherwise responded to concerns publicly. Many of the responses we have received relating to freedom of association are included in this briefing. This response process encourages companies to publicly address human rights concerns, and provides the public with both the allegations and the company's comments in full. If a company issues a response that others consider inadequate, they can issue a rejoinder, in which case we go back to the company inviting a response to the rejoinder. In some cases this company response process helps to bring about resolution of the issues. In other cases it has led to dialogue between the company and those raising concerns. In all cases it has increased transparency and public accountability. The worldwide company response rate to us has been just over 70% since 2005; the response rate on issues relating to freedom of association has been 75%.

It should be noted that while a company's response rate is not a reflection of a company's actual conduct, and while the quality of responses varies, it can be an important indicator of a firm's openness to engaging with human rights concerns being raised by civil society.

We have calculated the response rates on freedom of association issues from 2005 for companies by where they are headquartered. Below we indicate the country where the companies are headquartered, and the number of responses obtained out of the total number requested:

- Australia: 100% (3 out of 3)
- Bangladesh: 0% (0 out of 2)
- Belgium: 100% (1 out of 1)
- Brazil: 100% (2 out of 2)
- Canada: 20% (1 out of 5)
- Chile: 100% (1 out of 1)
- China: 75% (9 out of 12)
- Colombia: 63% (5 out of 8)
- Denmark: 67% (2 out of 3)
- Ecuador: 100% (1 out of 1)
- El Salvador: 100% (1 out of 1)
- Fiji: 100% (1 out of 1)
- Finland: 100% (5 out of 5)
- France: 67% (6 out of 9)
- Germany: 90% (19 out of 21)
- Greece: 100% (1 out of 1)
- Guatemala: 67% (2 out of 3)
- Hong Kong: 100% (2 out of 2)
- India: 100% (2 out of 2)
- Israel: 0% (0 out of 1)
- Italy 25% (1 out of 4)
- Japan: 100% (3 out of 3)
- Jordan: 100% (1 out of 1)
- Kazakhstan: 0% (0 out of 3)
- Lebanon: 100% (1 out of 1)
- Mexico: 75% (3 out of 4)
- Netherlands: 100% (7 out of 7)
- Nigeria: 100% (2 out of 2)
- Philippines: 100% (1 out of 1)
- Russia: 50% (1 out of 2)
- Sierra Leone: 100% (1 out of 1)
- Singapore: 100% (2 out of 2)
- So. Africa: 100% (3 out of 3)
- So. Korea: 0% (0 out of 1)
- Spain: 100% (2 out of 2)
- Sri Lanka: 100% (1 out of 1)
- Sweden: 75% (6 out of 8)
- Switzerland: 71% (5 out of 7)
- Taiwan: 62% (8 out of 13)
- UK: 74% (17 out of 23)
- Ukraine: 100% (1 out of 1)
- USA: 76% (64 out of 84)

Details about all of the company responses that we have sought worldwide since February 2005 can be found [here](#). We indicate at the top of the [individual company sections](#) of our website the response rate for each company that we have invited to respond to concerns from civil society.

Here are all response rates by individual companies that we have invited to respond at least three times on freedom of association issues:

- adidas: 100% (4 responses, 4 invitations)
- Apple: 0% (0 out of 3)
- Carrefour: 67% (2 out of 3)
- Cerrejón: 100% (3 out of 3)
- Coca-Cola: 100% (3 out of 3)
- Foxconn: 75% (6 out of 8)
- Glencore: 67% (2 out of 3)
- Deutsche Post DHL: 100% (5 out of 5)
- Dole Foods: 75% (3 out of 4)
- Excellon Resources: 33% (1 out of 3)
- McDonald's: 100% (3 out of 3)
- Mondelēz/Kraft: 100% (4 out of 4)
- National Express: 67% (2 out of 3)
- Nestlé: 100% (3 out of 3)
- Nike: 67% (2 out of 3)
- Nokia: 100% (3 out of 3)
- Unilever: 100% (3 out of 3)
- Walmart: 88% (7 out of 8)

Below is a list of all companies with a **0% response rate** where freedom of association issues made up at least part of the issues they were invited to respond to:

- These companies responded to **0 out of 1 invitations**: ABB, Almedahls, American Eagle, Aramark, ArgymakTransService, Asda (part of Walmart), AT&T, Bon-Ton Stores, BYD, Catcher, Colsubsidio, Costain, Diesel, DuPont, Envoy Group, Exportadora de Pantalones, Fechheimer Brothers, Fresh Del Monte Produce, GeoProMining, Giorgio Armani, Gran Colombia, Grupo Tomza, Horizonte, ID Group/Okaidi, Jackson Lewis, KarazhanbasMunai, Kohler, Kohl's, Laird, Maersk, Nassa Global, Pegatron, Prodeco (part of Glencore), Proper Intl., Reitmans, RI&CA, RoadLink, Sir Robert McAlpine, SJM, Smart Set (part of Reitmans), Surpassing Shoe Co., Total, TulparMunaiService, UPS, Winson Sturdy Factory, Xstrata, Yad Lechayey Adam Carpenters.
- Apple also has a **0% response rate** on freedom of association, having responded to **0 out of 3 invitations**.

Below is a list of all companies with a **100% rate response rate** where freedom of association issues made up at least part of the issues they were invited to respond to:

- The following companies responded to **1 out of 1 invitations**: Aguas Claras, Air Pacific, Aldi, Ali Baba Foods, Alianza Fashion, AngloGold Ashanti, Balfour Beatty, Bavaria, BHP Billiton, Brio, C&A, Carlsberg, Celio, Chi Fung, China Road & Bridge, Chiquita, Cintas, Coca-Cola FEMSA, Coles/Wesfarmers, Coop, Cummins, Del Monte Produce, Dell, Dolefil, Dongguan Heng Li Tian Tou Chuang Ying Toys, Dress Barn, Eagle Industries, Electricaribe/Gas Natural Fenosa, Ericsson, Esprit, Fibras & Fabrics, Ford, Fynch-Hatton, G4S, GAP, Gateway Terminals India, General Electric, Google, GP Garments, Grupo Flores de la Montaña, Grupo México/ Industrial Minera México, G-Star, Hanesbrands, Hoya Corporation, HP (Hewlett-Packard), Hui Zhou Win Merchant Tour Product, Hyatt, Ikena, IBM, Ikea, Intel, Jabil, Jones Group, Koidu Holdings, Lajat (Grupo Lajat), Lee Group, Lenovo, Lidl, Lion Apparel, Macy's, Mae Tay, Marks & Spencer, Martinson Konfektion, Matalan, Mattel, Mediterranean Resources, Mothercare, Nicotex, Ole Wolff Electronics, Otto, Peek & Cloppenburg/Van Graaf, PepsiCo, Perlos, Philips, Pierre Cardin, Piraeus Container Terminal (part of COSCO), Procter & Gamble, PSA Peugeot Citroën, Puma, Quanta Computer, Qantas, R. J. Reynolds, RINA, Rubie's Costume, Rusal, Sainsbury's, Salcomp, Shell, Somdiaa/Sosucam, South Ocean, Spinney's, Standard Flour Mills, Starbucks, Tang Xia Yat Hing Plastic and Metal Manufactory, Target, Theo Chocolate, Timberland, TNT, Tommy Hilfiger (part of PVH), Tongaat Hulett, TOP-TOY, Toyo Rikagaku Kenkyusho, Toyota, Triumph, Ukraine Danube Shipping Company, VF Corporation, Warner Brothers (part of Time Warner), Yee Tung.

- The following companies responded to **2 out of 2 invitations**: Anglo American, Charming Shoppes, Firestone Natural Rubber, Flextronics, Freeport Indonesia, Kellwood, Swire Beverages, Tesco, Union Fenosa, Vale.
- The following companies responded to **3 out of 3 invitations**: Cerrejón, Coca-Cola, McDonald's, Nestlé, Nokia, Unilever.
- These companies also have a **100% response rate** having responded to our invitations on more than three occasions: adidas (4 out of 4), Deutsche Post DHL (5 out of 5), Mondelez/Kraft (4 out of 4).

2. Abuses against trade unionists

Below are a number of cases highlighted by trade unions, NGOs, journalists and other civil society groups that we have featured on our website and included in our Weekly Update newsletter during the past three years. These cases are illustrative of some of the trends that we have observed; they are not meant to represent a comprehensive account of all abuses against trade unionists and those trying to form unions in this time period. In addition to the abuses referred to below, our portal also includes reports on alleged "disappearances", discrimination, harassment & intimidation, rape & sexual abuse, and torture & ill-treatment. For a more comprehensive look at abuses against trade unionists globally, please refer to the [ITUC's 2012 Annual Survey \(covering 2011\)](#) and its [Countries at risk: 2013 Report on Violations of Trade Union Rights](#).

2.1. Killings

In their last three Annual Surveys (covering years [2009](#), [2010](#), [2011](#)), the ITUC has recorded a total of 267 killings of trade unionists globally for the three years.

Latin America: One of the most dangerous regions to be a trade unionist remains Latin America. In each of these years, [Colombia](#) was listed as the deadliest country for unionists. During 2011, 29 trade unionists were killed in that country. 10 unionists were killed during that year in [Guatemala](#), meaning that the death toll of these two countries alone accounted for over half of the reported [76 people murdered for their trade union activities](#) worldwide in 2011.

Colombia: One of the notable recent killings was the April 2012 assassination of the [General Secretary of the Colombian Sugar Cane Cutters' Union](#), following large-scale strikes by the cutters. Impunity for abuses against trade unionists in Latin America, and Colombia in particular, remains a major problem. An October 2011 Human Rights Watch [study](#) found "virtually no progress" in obtaining convictions for killings of trade unionists in Colombia. With a further [20 unionists killed in the country in 2012](#), according to the ITUC, it does not appear that the situation for trade unionists in Colombia is seeing any marked improvement.

In May 2013, we sought a response from **Nestlé** to an item by the European Center for Constitutional and Human Rights regarding a lawsuit (dismissed by the Swiss prosecutor, on the grounds that it was filed too late), which alleged the company was complicit in the killing of trade unionist Luciano Romero in 2005. In its response, Nestlé said it "*categorically*" rejected all accusations (see further details and the company's full response [here](#)).

For further details on lawsuits concerning alleged corporate complicity in killings in Colombia see section 7.2 below (includes cases involving **BP, Coca-Cola, Drummond, and Nestlé**).

Guatemala: The 2012 [killing of a SITRABI \(Izabal banana workers' union\) member](#) is an example of the danger of being a trade unionist in Guatemala. It is reported that SITRABI member Miguel Angel González Ramírez was killed in the "*midst of a battle*" over minimum wages between the union and **Bandegua**, a subsidiary of **Del Monte** (there was no allegation that the company was involved in the killing). In January 2013, the [ITUC launched a campaign](#) to highlight the grave abuses of freedom of association in Guatemala. The ITUC noted that over 50 unionists have been

killed in the country since 2007 (see ITUC's "[Countries at risk: 2013 Report on Violations of Trade Union Rights](#)").

Asia Pacific: Although the level of violence against trade unionists has not reached the proportions seen in Latin America, the ITUC still reported [17 deaths in the Asia Pacific region during 2011 in its 2012 Annual Survey](#).

Bangladesh: In April 2012, labour rights activist and organiser Aminul Islam was tortured and killed. At the time of his murder, he had been trying to resolve a worker dispute with factories that supplied global brands such as **Tommy Hilfiger (part of Philips-Van Heusen), American Eagle Outfitters** and **Nike**. We invited these companies to respond to the concerns raised over his death, including the possibility that he was killed for trying to organise workers (see company responses and non-responses [here](#)).

Indonesia: In mid-2011, over 8000 workers at **Freeport-McMoRan's** Indonesian subsidiary **PT Freeport Indonesia** went on strike for better wages. During the strike there were reports of striking workers being shot and killed. In October 2011, we asked the company to respond to allegations that a trade union member had been killed during a union protest. It was also alleged that the company had previously paid "*military and police to run security operations for them*" (more on this case and the company's response [here](#)).

South Africa: In August 2012, 34 workers were killed and 78 injured after police opened fire on striking workers at the **Lonmin**-owned Marikana mine. Another 10 people had already lost their lives since the start of the strike over improved pay and working conditions the week before. This is the single most deadly event related to workers exercising their right to strike, or any other freedom of association related right, that has occurred over the last three years anywhere in the world as far as we know. At the time, Lonmin said that it "*deeply regret[ted] the further loss of life in what is clearly a public order rather than a labour relations associated matter*". (See media coverage of this tragedy, including statements by Lonmin, [here](#)). In May 2013, a commission of inquiry started hearing evidence on the circumstances surrounding the shootings (see [here](#) for further information).

2.2. Death threats

Over the past three years we have posted many reports, by a broad range of journalists, trade unions and NGOs, of trade unionists being threatened with death for carrying out union activities. As with killings, the use of such threats is reported as more prevalent in Latin American countries. Death threats, like killings, can also have a [chilling effect](#) on freedom of association with many people too scared to unionise for fear of the repercussions.

Colombia: In April 2013, the [ITUC reported that more than 280 trade unionists in Colombia received death threats](#) during 2012. In January 2013, there were reports by Amnesty International of [threats against trade unionists negotiating a labour agreement on behalf of SINTRACARBON with Cerrejón Coal](#). It was alleged that the threats were made when the union was deciding whether to strike after the first phase of the negotiation had ended. We invited Cerrejón to respond to the concerns raised (more on this case and the company's response [here](#)).

In April 2013, we sought responses from **Prodeco** and its parent company **Glencore** regarding allegations that death threats were made against the president and treasurer of the La Jagua de Ibérico branch of the Colombian Union of Workers of the Mining, Petrochemical, Agro-Fuels and Energy Industries (SINTRAMIENERGETICA). Amnesty International said that the union leaders were defending their union against lawsuits filed by two subsidiaries of Glencore regarding the legality of strikes previously held by the union. The companies did not respond (more on this case [here](#)).

In February 2012, it was alleged that the leadership of Sintraelecól, an electric power union (ICEM-affiliated), was being systematically threatened. In particular it was alleged that two of

Sintraelecól's leaders who were working at **Electricaribe**, a subsidiary of Spanish company **Gas Natural**, received death threats over their union activities. We invited Gas Natural to respond to these concerns and it responded that it condemned any violence or threats against its employees and that as soon as it became aware of these allegations it referred the matter to the Colombian Ministry of the Interior (see the company's response [here](#) – available only in Spanish).

Indonesia: Following strikes over pay, there were reports of violence at **PT Freeport Indonesia** (a subsidiary of **Freeport-McMoran**). The chief negotiator in the dispute between the striking Grasberg mine workers and PT Freeport Indonesia allegedly narrowly missed a bullet at his home in September 2011. It was reported that the bullet was a “*clear warning shot*” that if he continued fighting for wage parity he would be killed. The allegations regarding harassment of striking workers implicated both PT Freeport Indonesia and its security company, **G4S**. We invited both companies to respond to the concerns raised. G4S said that allegations of intimidation by its personnel were “*baseless and false*”. Freeport-McMoRan said it was working to end the strike which it maintained “*had no legal basis*” (more on this case and responses from both companies [here](#)).

2.3. Beatings & violence

Cambodia: In 2013, NGOs raised concerns about alleged violence and the reported dismissal of members of the independent union Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU) at **E-Garment** factory, which is owned by the Hong Kong company **Yee Tung**. The factory was identified as being a supplier of major international brands including **Bon-Ton, C&A, Diesel, Dress Barn, Gruppo Coin, ID Group/Okaidi, Marks & Spencer, Matalan, VF Corporation**. We invited these international brands as well as Yee Tung to respond to the concerns raised (see the responses/non-responses [here](#)). In March 2013, an agreement was signed between E-Garment and C.CAWDU to end the dispute. E-Garment committed to reinstating the striking workers and the union agreed to end the strike. However, an NGO involved in the case, the Worker Rights Consortium, subsequently raised concerns about the terms of the agreement (see details [here](#) as well as Yee Tung's April & May 2013 updates on progress).

2.4. Dismissals

One of the most common types of abuses reported against unionists and those trying to organise are dismissals of those engaged in trade union activities. While not posing a direct threat to the life of the worker, this can have profound socio-economic effects, particularly on their ability to provide for their family. This is particularly serious in cases where workers are “[blacklisted](#)” by an industry due to their trade union activities. In addition to the effect that this has on the person dismissed, this action by companies also undermines union rights generally as workers become more reluctant to unionise for fear of consequences like losing their jobs.

Turkey: In November 2012, UNI Global Union (UNI) and the International Transport Workers' Federation (ITF) submitted an [OECD Guidelines complaint to the German National Contact Point](#). The complaint alleges various abuses of freedom of association by **Deutsche Post DHL** and in particular that it fired a number of workers in Turkey who were trying to organise. We invited Deutsche Post DHL to respond; it stated that the dismissals were for misconduct or other violations of contractual obligations. In January 2013, we received a rejoinder from UNI and ITF, which said that there had been at least 21 dismissals for union activities and added that the Turkish labour court had orally ruled that two dismissals were because of union activities. In February 2013, we received a further statement from UNI and ITF. We asked Deutsche Post DHL to respond to these further statements; Deutsche Post DHL responded that the company has appealed the court's judgment (see [full details of this case together with Deutsche Post DHL's responses and union rejoinders](#)).

Egypt & Tunisia: In August 2012, we invited **Kraft Foods** and **Société Tunisienne de Biscuits (partly owned by Kraft)** to respond to allegations that **Cadbury (owned by Kraft)** workers in Egypt faced dismissal for inciting a labour strike and that Société Tunisienne de Biscuits sacked a

union representative in Tunisia over union activities. Kraft Foods responded that, in respect of the Egypt allegations, the workers had not complied with Egyptian labour law and that they had contested the actions of the workers in the Labour Tribunal. In respect of Tunisia, Kraft stated that as a minority owner it did not have management control over Société Tunisienne de Biscuits. We then received a rejoinder from the International Union of Food Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF). In its rejoinder, the IUF pointed out that the UN Guiding Principles on Business & Human Rights establish a corporate responsibility to respect workers' rights in joint ventures and other business relationships. We again invited Kraft to respond to the rejoinder and it did (see Kraft's responses and union rejoinder [here](#)).

Azerbaijan: In June 2012, we invited **McDonald's** to respond to a report by ITUC on a lawsuit filed by the Trade Unions of Azerbaijan (AHIK) over allegations it dismissed the chair of Baku McDonald's restaurants' union, and allegations that all union members were forced to sign documents agreeing to leave their union. McDonald's responded that the court found in its favour (more details on this case and the company's full response [here](#)).

Lebanon: In September 2012, it was alleged that supermarket chain **Spinneys** had dismissed two workers for trade union activity. We invited Spinneys to respond to these allegations and it did, saying that the allegations were "*simply not true*" (see more on this case and the company's full response in English and Arabic [here](#)).

UK: In 2009, the construction industry was accused of using an "*extensive intelligence database*" to "blacklist" trade union activists. The Information Commissioner investigating the claims found that the industry had been funding the blacklisting operation for at least 15 years and that many workers had been unfairly denied work as a result. In June 2013, the union Unite said it had evidence that the vetting of individuals was still happening. However, the Information Commissioner's Office said it has "*seen no evidence of a new blacklist*". In 2009, we invited some of the largest companies implicated in the alleged "blacklisting" to respond. **Balfour Beatty** responded, **Costain & Sir Robert McAlpine** did not (more on this including Balfour Beatty's response [here](#)).

Ukraine: In May 2013, we received a communication from the trade union Zakhyst Pratsi, which alleged a number of labour abuses by the **Ukraine Danube Shipping Company**. We invited the company to respond to the allegations, including reports that it was threatening to sack union members and other workers who were taking industrial action to protect their rights (more on this case and the company's response [here](#)).

USA: In February 2013, the Worker Right Consortium released a report alleging "*serious violations of worker rights*" by frozen pizza manufacturer **Palermo's**. The allegations included a claim that, in June 2012, the company used an audit by US Immigration and Customs "*as a pretext to terminate...approximately 75 striking workers*" in an attempt to "*thwart*" unionisation attempts. The company denied the allegations, saying that the US National Labor Relations Board had ruled that the allegations were "*without merit*" (more on this case including the [full report by Worker Rights Consortium & Palermo's statement](#)).

3. Interference with right to form trade unions & union bans

As well as abuses against individual trade unionists, unions and labour activists report that companies use a variety of tactics to undermine attempts by workers to unionise.

3.1. Precarious work

Labour rights activists have identified precarious work as a growing issue and a [major barrier to workers being able to exercise freedom of association](#). According to the ITUC, precarious work is "[work that is not-permanent, indirect, informal and/or otherwise insecure](#)." It is characterised by non-traditional employment relationships like the use of temporary contracts, hiring through employment agencies and outsourcing. The ITUC says that precarious work "[strikes at the core of](#)

[trade union rights, as workers under such employment relationships find it difficult if not impossible to organise with fellow workers to form or join a union at the same enterprise](#). Unions point out that while such employment relationships have always been prevalent in the global South, they are now seeing precarious work [become prevalent in industrialised countries](#). The [ITUC warns](#) that many governments have been convinced to alter their labour legislation in ways that encourage forms of precarious work. This has led to temporary, agency and part-time work expanding rapidly in virtually all countries. Because these workers have a much more unstable employment situation, for example because they can be dismissed much more easily, they are deterred from joining unions. The ITUC points out that this strategically weakens the union movement and its bargaining power (see ITUC's ["Countries at risk: 2013 Report on Violations of Trade Union Rights"](#)).

In a submission to the then UN Special Representative on business & human rights in 2010, the International Metal Workers' Federation (IMF) pointed out that employers are using precarious work ["expressly to prevent workers from joining a trade union and bargaining collectively."](#)

3.2. "Anti-union" consultants & lawyers

Another controversial tactic by some companies is the use of so-called "anti-union consultants" to allegedly block efforts by workers to organise. This is most often reported as occurring in the USA, although there have been [some reports](#) of these consultants being used in the UK. Human Rights Watch referred to their use in its 2010 report: ["A Strange Case: Violations of Workers' Freedom of Association in the United States by European Multinational Corporations"](#). The report explains how workers are made to listen to *"diatribes against unions with scripts written by specialized anti-union consultants..."*, and that although the lawyers and consultants *"have refined such statements to pass muster legally"* they *"still thwart workers' organizing initiatives"*. Employers defend the employment of consultants by saying that it is legitimate for them to explain the reasons why unionisation is unnecessary or disadvantageous in their business.

In February 2013, Worker Rights Consortium released a [report](#) about **Palermo's**, a producer of frozen pizzas in the US. The report makes various allegations of anti-union activity, including that it sacked workers attempting to unionise (see above section on dismissals). The report also alleged that it had employed **Jackson Lewis**, a US law firm with a *"reputation for advising employers in the use of aggressive tactics to defeat workers' unionization drives"*. The report stated that Jackson Lewis had been accused of encouraging some of its clients to engage in unlawful behaviour in order to discourage unionisation. Palermo's released a statement in response to the report, which you can read [here](#). We invited Jackson Lewis to respond to the allegations against it in the report but it declined.

3.3. "Retaliatory Practices"

In November 2012, workers at **Walmart** in the US launched their first ever strike. One of the key demands of the strike was that Walmart end *"retaliatory practices"* against workers who try to organise. In particular, workers alleged that they were ["subjected to harassment, cut hours and other disciplinary actions when Walmart higher-ups learned that they supported OUR Walmart, the United Food and Commercial Workers-backed worker group that organized the recent strikes."](#) We invited Walmart to respond to the concerns raised. In its response, Walmart said it has *"an open door policy and a strict anti-retaliation policy that lets associates speak to members of management without fear"* (see further details on the strike and Walmart's full response [here](#)).

3.4. Policies, union elections & coercion

In February 2012, UK union Unite and US union Teamsters released a report criticising **National Express Group's** human rights policy. The unions alleged that the company's policy *"enables it to continue anti-union behaviour [in the USA] rather than appropriately protecting the rights of its workers"*. The report adds that National Express Group is exploiting the "weak" protection US law provides for workers' freedom of association. In particular, it argues that there are company

dominated union elections and coercion in the form of anti-union campaigns. We invited National Express to respond to the concerns raised (see further details including the full report and company response [here](#)). In May 2013, we again asked National Express to respond to concerns articulated in a letter from union pension funds to other shareholders asking them to vote against the annual report and accounts at the company's Annual General Meeting over concerns about its respect for freedom of association at its US subsidiaries (see the company's response and the letter [here](#)).

3.5. Union bans

In July 2011, it was reported that employees of **Samsung** in South Korea had formed the first pan-Samsung union, allegedly "[challenging the group's policy of not allowing labour unions](#)". Later that month, Samsung said it fired a worker involved in setting up this trade union for wrongful conduct saying he had "*leak[ed] sensitive corporate information*". Unionists remark that this is a case of anti-union discrimination (more on this case, including comments by Samsung, [here](#)).

In June 2011, we invited Chinese shipping company **Cosco** to respond to allegations that it does not allow trade unions in Greece. We received a response from **Piraeus Container Terminal** (part of COSCO) which called the allegations "ungrounded". (See more on this and Piraeus Container Terminal's response [here](#).)

4. Interference with right to strike

The right to strike is the right of workers to withhold their labour during an industrial dispute with their employer without fear that they will be dismissed by their employer. The [ILO says](#) that while the right to strike is not set out explicitly in ILO Conventions and Recommendations, this "*right has been affirmed in the 1957 'Resolution concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organisation' and the 1970 'Resolution concerning Trade Union Rights and Their Relation to Civil Liberties', as well as in numerous resolutions of the ILO's regional conferences and industrial committees, and by other international bodies.*" (see further details on the right to strike from the ILO [here](#)).

However, the International Organisation of Employers (IOE) now argues that there is no right to strike at the international level. The IOE argued in June 2012 that the [Committee of Experts on the Application of Conventions and Recommendations](#) (CEACR) (the ILO body that monitors government reports on ratified conventions) [should not legislate on the right to strike or refer to it in their reports](#) as it is not "expressly provided" for in ILO conventions (such as ILO Convention 87) on Freedom of Association. Essentially the position of the IOE seems to be that, while the right to strike might exist in some countries, there is no basis for it in international law. The ILO has considered the arguments of the workers and employers regarding the right to strike (see from page 46 of [General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008 – International Labour Conference, 101st session, 2012](#))

The ITUC, points to "[decades of jurisprudence of the CEACR and the tripartite Committee on Freedom of Association \(CFA\)](#)" in establishing the right to strike. The trade union movement regards this move by the IOE as an attack on the ILO system and the heart of freedom of association.

5. Corporate lobbying allegedly undermining trade union rights

The IOE is not the only business association that is allegedly lobbying to undermine core trade union rights. Other business groups have also received criticism for the positions they take publicly on freedom of association. We have followed the issue of "lobbying" on our portal (see the [corporate lobbying](#) section). Some recent high profile examples of this are highlighted below.

Qantas, Air Pacific and Fiji’s anti-union laws: In September 2011, it was claimed by the Australian Council of Trade Unions that Air Pacific (partly-owned by Qantas) was involved in drafting the “Essential National Industries (Employment) Decree” in Fiji, which civil society said severely restricted trade union rights (see the section on Fiji under “Legal, policy & regulatory developments” below). It was alleged that Air Pacific hired law firm Milbank, Tweed, Hadley & McCloy LLP to draft the decree. We invited Qantas and Air Pacific to respond to these concerns. Qantas said that, as a minority shareholder, it had no control over the day-to-day operations of Air Pacific. Air Pacific referred us to a press statement on their website (see their full responses [here](#)).

Hyatt in USA: Hyatt was accused by American Rights at Work of opposing a Senate bill that would improve worker health & safety. We invited Hyatt to respond to this criticism (see their response [here](#)).

Industry associations re labour rights in China: In 2007, the Resource Centre invited several US and European companies to respond to concerns raised in a [New York Times article and by Global Labor Strategies](#) about the positions taken by industry associations that they were members of (**European Union Chamber of Commerce in China, American Chamber of Commerce in Shanghai** and the **US-China Business Council**). These industry associations were accused of lobbying against proposed Chinese legislation that would have improved labour laws, including strengthening health & safety, cutting the maximum working week and forcing employers to consult with worker representatives over significant job cuts. We approached 21 companies to respond and 12 did so (see the relevant materials and company responses [here](#)). It should be noted that this 57% response rate is significantly lower than our over 70% global average.

We have also covered some recent examples of companies lobbying against laws that are harmful to workers’ rights (see positive initiatives section below).

6. Positive initiatives by business

Over recent years, companies are increasingly showing a willingness to enter into agreements with unions at a global level to respect freedom of association throughout their entire operations. International Framework Agreements (IFAs), which are also called Global Framework Agreements (GFAs), are agreements between multinational companies and a Global Union Federation (GUF) to establish “*an ongoing relationship between the parties and ensure that the company respects the same standards in all the countries where it operates*” (ILO). Companies that have recently entered into IFAs include [Grameenphone](#) and [Codere](#). See further details about the impacts of these agreements on freedom of association, including details on many of the agreements companies have entered into [here](#).

There have been other specific positive steps regarding freedom of association, such as:

Peru: In March 2013, six US textile & apparel companies (**47 Brand, The Life is Good Company, New Balance, Nike, PVH & VF Corp.**) issued a joint letter urging the Peruvian Government to repeal a law (Decree 22342). They argued that this law, which allowed “non-traditional” exporting companies to employ workers on fixed-term contracts, would act to encourage labour rights violations (see further information on this and other positive examples [here](#)).

Turkey: In May 2013, garment company **Inditex** partnered with IndustriALL under their IFA to develop guidelines on free elections of workers’ representatives (details [here](#)).

China: One recent development that initially looked like a positive move by **Foxconn** in China was a February 2013 *Financial Times* article that reported the tech giant was preparing to hold “[genuinely representative labour union elections](#)” at its plant in China. The report said that the position of chair and 20 members of the Foxconn Federation of Labour Unions Committee would be determined by elections every five years under the plan. It also said Foxconn would begin training staff on how to vote for representatives with the help of the Fair Labor Association.

However, in May 2013, it was [reported](#) that Foxconn had said that union elections were not on their agenda. We invited Foxconn to respond to a call by Students and Scholars Against Corporate Misbehavior (SACOM) urging it to “*keep its promise*” and hold democratic and transparent elections (see more on this and Foxconn’s response [here](#)).

7. Legal, policy & regulatory developments

7.1. Laws & regulatory action

Poland: In June 2012, the [ILO made a recommendation to the Polish Government](#) that their laws concerning employees’ freedom of association should be changed. It requested that the government take necessary measures to ensure that all workers, without any distinction, enjoy the right to establish and join trade unions. The ILO’s recommendations came after it had investigated a complaint submitted by the national commission of Solidarity, the Polish independent self-governing trade union, alleging that Polish legislation restricted the rights of certain categories of workers to establish and join trade unions and did not effectively protect against acts of anti-union discrimination.

Myanmar: As part of on-going reforms in Myanmar in recent years, the government introduced [a new law in March 2012](#) giving workers the right to form unions and hold strikes. The legislation also introduces penalties for employers who sack striking workers. However, the legislation, while an improvement on the past, still contains numerous provisions that are inconsistent with ILO Conventions 87 and 98 according to the ITUC. The ITUC also points out that the application of the law remains wanting, as trade unionists dismissed for union activity are often not reinstated despite an arbitration award in their favour (see ITUC’s “[Countries at risk: 2013 Report on Violations of Trade Union Rights](#)”). After the law was passed, hundreds of [employees from factories in Yangon went on strike](#) demanding improved labour conditions, including 300 wig factory workers who went on strike to demand a raise of their basic salaries; the South Korean employer granted all staff requests. In June 2012, U Soe Thane, then Minister for Industry and Chair of the Myanmar Investment Commission, [called on civil society and political parties](#) to help form trade unions for the protection of workers’ rights.

However, despite these steps, civil society and the trade union movement remain cautious. The ITUC has repeatedly warned that labour rights abuses continue in Myanmar. In particular, ITUC has warned that, in order to avoid being associated with abuses in the country, multinationals should be required to take “*proactive steps to improve the environment for freedom of association, including making commitments...with trade unions to adopt and promote an open attitude towards their activities.*” (See “[Business & Human Rights in Burma: A Trade Union Proposal](#)”, ITUC, 26 Apr 2013). [Civil society observers have stated that even with the legal changes it will take a long time for freedom of association to be accepted as a right](#) in Myanmar. At a forum held in April 2013, [local and international activists claimed](#) that in practice, workers’ rights to form or join unions have not been fully recognised by officials and business people. They called on the government to ensure the laws are working in practice, and to educate mid-level officials and employers about the laws. A Labour Ministry official was reported as saying that several related laws and rules are being drafted or are set to go before Parliament that will further bolster workers’ rights.

However, there have been a few positive developments on the ground: in August 2012, a group of [4000 gold miners formed the first union](#) in Myanmar in 50 years.

Fiji: Following the 2006 military coup d’état in Fiji, civil society has raised serious human rights concerns and since 2011, trade unions have become particularly concerned about restrictions being placed on freedom of association. In September 2011, the Fiji Government enacted the “Essential National Industries (Employment) Decree”. Amnesty International said the decree restricted workers’ rights “*by virtually outlawing trade union activities*”; in particular, the imposition of restrictions on collective bargaining and the right to strike. In April 2013, Fiji Women’s Crisis Centre [raised concerns](#) about the Bill of Rights in the new draft constitution, pointing out that there were “*derogations from freedom of assembly and association for workers and union members*”.

Bangladesh: Following a string of work & safety tragedies, including the Rana Plaza garment factory building collapse in late April 2013 which left over [1120 dead](#), and the [Tazreen factory fire](#) in November 2012 which left over 110 dead, there were widespread calls for changes to Bangladesh's labour laws. According to the ITUC, freedom of association in Bangladesh has been limited. Bangladesh law required unions to represent 30% of the workforce at each company and obtain permission from the government (see further information [here](#)). Freedom of association has been especially limited in the garment industry where [owners of factories "never" allowed unions](#) (even though it was technically possible under the law). Following the Rana Plaza disaster, the [government agreed labour reforms with the ILO](#) that will include improvements to worker safety and the right to unionisation and collective bargaining. These changes will reportedly allow workers to form unions in the garment industry without prior permission from factory owners. However, the ITUC has since raised concerns that the reforms being proposed are "[more cosmetic than real](#)."

7.2. Lawsuits

Nestlé: Acting on behalf of the widow of a trade unionist, the European Center for Constitutional and Human Rights (ECCHR) and Colombian trade union SINALTRAINAL filed charges with the Swiss public prosecutor against Nestlé and members of its senior management in March 2012. The charges allege that Nestlé negligently failed to take precautionary measures against the murder of Luciano Romero, a trade unionist who was assassinated by a paramilitary group in Colombia in 2005. We invited Nestlé to respond to the allegations contained in the lawsuit. Nestlé said it "categorically" rejected the claims (read their full response [here](#)). The ECCHR said at the time of filing that the complaint could set a legal precedent "[as it could mark the first time a Swiss company is held liable in Switzerland for a crime committed abroad](#)." However, the case was dismissed on 1 May 2013 on the grounds that it had been filed out of time (the statute of limitations was 7 years). The plaintiffs are currently deciding whether they will lodge an appeal against this decision.

BP: In February 2012, Colombian union leader Gilberto Edgar Torres Martinez filed a claim against BP in US federal court alleging that he was kidnapped and tortured "*at the behest*" of BP. Specifically, the claim alleges that BP recklessly hired paramilitaries to protect its Colombian pipeline and failed to prevent them from torturing Torres Martinez. This case was brought under the Alien Tort Claims Act. [BP has indicated that it plans to file an order for dismissal of the lawsuit](#) (see details about the case, including the full text of the claim, [here](#)).

Drummond: In February 2013, a Colombian court convicted [Drummond contractor Jaime Blanco of murder](#), and sentenced him to 38 years in prison over the killing of two of the three Drummond trade union leaders that were killed in 2001. The Colombian judge also ordered an investigation into Drummond's top executives.

There have also been two lawsuits brought in the US against Drummond over its alleged role in the deaths of these trade unionists. The lawsuits included claims that Drummond executives hired paramilitaries to kill and torture labour leaders. Drummond denied all the claims. The first case brought by family members of the victims was dismissed in 2007. The second case, brought by the children of the victims, was dismissed in 2012, although the plaintiffs may still appeal. (For further information see our [case profile](#).)

Coca-Cola: The United Steelworkers Union and the International Labor Rights Fund sued Coca-Cola and two of its Latin American bottlers – Bebidas y Alimentos and Panamerican Beverages, Inc. (Panamco) in July 2001 in US federal court. The Colombian trade union SINALTRAINAL and five individuals alleged that the companies hired, contracted with or otherwise directed paramilitary forces that murdered and tortured the leaders of SINALTRAINAL (which represented workers at the bottlers' facilities). The companies argued that the plaintiffs failed to demonstrate complicity between the firms and the paramilitaries. The cases were dismissed in the US in 2006 (for further information, see our [case profile](#)).

Daimler, Ford & Ledesma: There have been a number of efforts to hold corporations accountable for alleged complicity in serious human rights abuses during the military dictatorship in Argentina in the 1970s and 80s. Among others, there is currently a lawsuit in US court against [Daimler](#), and in Argentina against [Ford](#) and [Ledesma](#), for alleged complicity in the torture, murder and “disappearance” of trade union members. All the companies deny liability. A notable recent development is that, in May 2013, three former Ford executives were charged with crimes against humanity for “[allegedly targeting Argentine union workers for kidnapping and torture after the country's 1976 military coup](#)”.

Sinter Metal: In January 2012, Turkey’s Supreme Court handed down its final ruling that Sinter Metal had dismissed workers in 2008 for joining a trade union. This ruling affirmed an earlier 2010 ruling that the workers were not dismissed for economic reasons, as argued by the company, but for their union membership. The ruling ordered the company to reinstate the workers (see more on this case [here](#)).

See the “[Lawsuits](#)” section of the Business & Freedom of Association Portal as well as our [Corporate Legal Accountability Portal](#) for more details on these cases and others.

7.3. OECD Guideline complaints

The [OECD Guidelines for Multinational Enterprises](#) are guidelines for responsible business conduct that adhering governments encourage their corporations to follow wherever they are operating. The OECD Guidelines were last updated in 2011. Chapter IV contains guidelines on human rights conduct; chapter V has guidelines on employment and industrial relations that expressly call on companies to respect the rights of workers to establish or join trade unions. Governments that have signed the guidelines have to set up a National Contact Point (NCP) in their countries to promote and implement the guidelines. The NCP is also supposed to investigate cases concerning alleged breaches of the guidelines. There have been [145 trade union cases brought](#) since 2001 against multinational companies for breaches of the guidelines. Details of these cases (including the 15 that are currently still ongoing) can be found at the excellent website of the [Trade Union Advisory Committee to the OECD](#).

8. The Resource Centre’s plans on business & freedom of association

Business & Human Rights Resource Centre will continue to deepen its coverage of the issues discussed in this briefing. We will continue to bring the concerns of local labour rights advocates and trade unions, as well as concerns by regional and global trade unions, to an international audience, ask companies to respond to allegations raised against them, and provide examples of positive initiatives by companies.

Our [regional researchers](#), currently based in 14 countries around the world, are in regular communication with advocates, unions and companies, and will continue to expand their network of contacts to give this issue greater visibility. Please do not hesitate to get in touch with them with relevant information.

Furthermore, to increase the number of people who can access relevant materials on the subject, the Resource Centre plans to increase its non-English language content on the [Business & Freedom of Association Portal](#). We are also currently in the process of overhauling our website, and plan to gradually introduce full navigation in French, Spanish, Chinese, Arabic, Russian and Portuguese over the coming years. We will also be looking for more interactive ways to engage with our users and will be increasing multimedia content on the portal and the rest of the website.

9. Follow our work on business & freedom of association

You can follow our coverage of this issue on our [Business & Freedom of Association Portal](#).

If you would like to receive our free Weekly Updates, the sign-up form is accessible [here](#).

Please do not hesitate to get in touch with any questions or suggestions of material for our website. Freedom of Association Researchers: Danielle McMullan (mcmullan@business-humanrights.org) and Irene Pietropaoli (pietropaoli@business-humanrights.org).

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Please consider donating to Business & Human Rights Resource Centre, to enable us to continue our work on freedom of association and other business and human rights issues, and to offer our information to a global audience without any charge. As we do not accept donations from companies or company foundations, donations from individuals and foundations are essential for our work to continue.

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