



Food and Agriculture Organization
of the United Nations

WORLD BANANA FORUM—WBF WORKING GROUP 03 LABOUR RIGHTS

Diagnosis on the labour rights situation in the global banana industry: PAPER ON FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Presentation to the 2nd World Banana Forum—February 2012. Ecuador

1. Introduction

The World Banana Forum's Working Group 03 on Labour Rights (WG03) considers that the right to Freedom of Association and Collective Bargaining are fundamental for opening the spaces for social dialogue in the banana production sector. Without a representative body, workers find it difficult to develop means of dialogue with their employers, to solve the problems of implementing core labour rights in production. Collective bargaining in turn is recognized as the key instrument to regulate the labour development of the banana industry, and is as beneficial to workers as it is convenient for the employers.

However, freedom of association and collective bargaining in the banana industry is still the subject of controversy among the different actors in the banana sector, because it is a debate that is not confined only to workers and employers, but has increasingly involved suppliers, supermarkets, certifiers, consumers etc.

For that reason one of the first tasks of the WG03, is to create a diagnosis or global overview of the subject, to clarify not only the problems but also the possible spaces for dialogue. It was a challenging inquiry and data collection process for the WG03 coordinators who carried out and managed the documents, interviews, visits to websites and research, all which are summarized in this document.

We acknowledge the contribution of the department on Freedom of Association of the International Labour Organisation - ILO in Geneva, Switzerland, who helped in the synthesis of information which has been used to develop a proposal for the Second World Banana Forum, as a series of guidelines for the future work on the freedom of association and collective bargaining.

2. Report on the right to freedom of association and collective bargaining

Freedom of association and collective bargaining rights apply to all workers and employers in the banana sector, including permanent and temporary workers, migrant workers, seasonal workers and workers without formal contracts of employment.

That means that all workers and employers in the banana sector around the world have the right to create and join organizations of their choice without fear that they will be prejudiced or discriminated against because of it. No one should interfere in workers' and employers' organizations. These should be free to carry out their activities to protect and promote the interests of their members. The right to collective bargaining means that the authorities must

make sure that the right conditions are in place to enable workers' organizations and employers to negotiate collectively for better working conditions. All parties should act voluntarily and in good faith.

These rights are guaranteed under the Conventions on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Convention on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Convention on the Law of Association (Agriculture), 1921 (No. 11) and the Convention on Rural Workers' Organizations, 1975 (No. 141). Other international instruments also recognise freedom of association and collective bargaining rights as fundamental, most notably the Universal Declaration of Human Rights. Governments of banana producing countries have a duty to ensure that their workers and employers are able to exercise fully these rights.

Freedom of association and collective bargaining rights are necessary to achieve the goal of decent work in any context. The rights have obvious direct benefits for workers and employers in their workplaces. Additionally, freedom of association and collective bargaining are essential to ensure effective rule of law and democracy in the wider society. These rights are an important part of sustainable economic and social development in all countries. Their promotion and protection, therefore, are a matter for the sector as a whole, and not just for the workers and employers most directly affected.

3. Challenges to full freedom of association and collective bargaining in the global banana sector

The documentation collected by the Coordinating Committee of Working Group 03 in the producing countries of Latin America and the Caribbean, Ghana and Cameroon in Africa and the Philippines in the Asian continent on the major challenges in protecting and promoting freedom of association and collective bargaining in the banana sector is abundant. In several countries, union leaders indicated that there are serious concerns relating to law and practice in terms of freedom of association and collective bargaining, particularly in relation to the right of workers to establish organizations of their own choosing, as well as to join organizations. Although nearly all stakeholders in the banana sector especially the large trading companies and the bodies of the domestic producer organizations, confirmed their support and respect for the defence of the rights of freedom of association and collective

The ILO and Social Dialogue Useful Initiatives for the Banana Sector

Labour law, industrial relations and social dialogue are at the core of ILO member States' economic and social organization. Sound industrial relations and effective social dialogue are a means to promote better wages and working conditions as well as peace and social justice. As instruments of good governance they foster cooperation and economic performance, helping to create an enabling environment for the realization of the objective of Decent Work at the national level.

Changes in the world of work pose numerous challenges to industrial relations institutions and actors, labour legislation and collective bargaining processes. They also create new impetus for innovative practices. Moreover, labour law needs to reflect the evolving labour market situation and address current needs and challenges.

Taken from: <http://www.ilo.org/ifpdial/lang--en/index.htm>

bargaining, the total conformity of the law and the practice of these rights is not guaranteed. These difficulties are further aggravated by the pace of globalization, poverty among workers, violence, discrimination based on gender, ethnicity or origin - migrants, and even the presence of child labour in some countries.

Globally, the challenges are found in the following areas:

3.1 Due process of law and enforcement of the law

Often, freedom of association and collective bargaining are not applied by the authorities and where it is applied there is very little support from governments. In the banana producing countries, many union leaders believe that governments do not support the creation of unions and that employers, in turn, can break the law with impunity.

It is believed that there is an absence of rule of law and that due process is not always guaranteed for trade unionists. Therefore, the unions feel the impact of what they believe is a non-democratic, in which banana workers exercise their rights.

Some trade union leaders speak of a “loss of confidence in the law – not in regards to the right to assemble but in terms of the corrupt authorities who are supposed to protect these rights”. In other countries, trade union leaders believe that employers and government collude to ensure that workers cannot form and join trade unions. There is the belief that labour authorities show partial support to the employers.

There is also reference to the union's exposure to violence, armed conflict in the banana regions - Philippines - as well as intimidation and assassination of leaders by private security groups and crime, especially in Guatemala, Honduras, Colombia, Cameroon.

The increase in the so-called outsourcing and sub-contracting and hiring practices undermine trade union development in Guatemala, Costa Rica and Peru.

3.2 Difficulties in forming and joining organizations

Allegations of serious anti-union discrimination are made in many banana-producing countries. The commonly reported forms of discrimination include dismissals and other discriminatory measures against leaders and members of unions and the blacklisting of union leaders and members. A number of trade unionists around the world believe that trade union leaders and members are persecuted and victimized, due to which “workers fear becoming members”. Fundamental concerns exist in relation to the legislative context, most notably the absence of resources and sufficiently dissuasive sanctions against anti-union discrimination. Problems with registration of union organizations are also noted.

Trade union leaders in banana-producing countries in Latin America perceive employers to be “intolerant” of trade unions and explain that elected representatives are often intimidated, despite the legal provisions that exist for their protection. Trade unionists in Costa Rica perceive an anti-union attitude as it obstructs the right to assemble and due to the promotion and imposition of alternatives forms of association by the companies (solidarity associations and standing committees of workers). In Ghana, in comparison, there is a suggestion that the situation in the country is improving, with “most employers” now allowing workers to join trade unions. Moreover, the main banana companies that have dominated the world banana

market manifest a respect for the rights to freedom of association and collective bargaining in the global supply chain and in some ways requiring their suppliers comply with the relevant codes of conduct. Certain parameters indicate that there has been significant progress in the recent years and that initiatives of social and labour certification, ethical trade and fair trade, have begun to include in its rules the respect of freedom of association and collective bargaining.

Nevertheless, practical challenges exist in relation to the freedom of association and collective bargaining rights of temporary and undocumented workers. In some countries, trade union leaders report that companies hire workers on short-term contracts or out-source jobs, so that workers are unable to join trade unions. In other countries, representatives state that sometimes workers do not want to organize because of a lack of awareness about their rights and poor confidence in the authorities.

3.3 Rights of organizations to freely organize their activities

The alleged anti-union discrimination extends beyond workers' rights to form and join trade unions, to allegations of extreme violence, harassment and dismissals of banana workers, often in the case of and labour disputes and labour strikes or protests. In some countries, trade union leaders are arrested or subject to repression by the police and the army following demonstrations. In other cases, the banana sector is considered as part of an essential service, making it possible to stop a strike in the sector by compulsory arbitration.

3.4 Collective bargaining

There are many allegations made as to the failure of collective bargaining in the banana sector. In some cases, employers allegedly refuse to negotiate with trade unions; delay negotiations to an extent that, in the opinion of trade unionists, workers are disadvantaged; or dismiss workers after a draft collective agreement has been submitted. Legislation in some countries may limit the subject matter of collective agreements and short-term contracts mean that workers are unable to organize themselves to collectively bargain.

Nevertheless, trade unionists consider collective bargaining to be the best tool available to them to improve workers' living conditions and to develop good labour relationships: "collective bargaining is the only tool to improve living conditions of all workers".

4. Conclusions

There are, obviously, serious problems in the way in which freedom of association and collective bargaining are implemented in the banana sector. Many common themes are evident across the many and varied countries. Overall, there is the feeling that, while national law upholds the right to organize and trade unions fight for this right to be protected, the authorities and employers do not enforce the law in the banana sector. Consequently, workers fear joining trade unions. There is the belief that employers do not want trade unions in their enterprises – and trade unionists in some countries believe that it is not "profitable" for employers to have trade unions.

There are great concerns with the right of workers to establish organizations of their own choosing. This includes a feeling among trade unionists that they are not protected and are at continual risk of losing their jobs. There are practical difficulties for workers who are not permanent employees.

Unionists regard collective bargaining as a very positive way to improve the situation of workers and to improve their relationship with their employers. However, several difficulties exist in practice. These major challenges create a situation where both workers and employers

Global framework agreement: good practices in freedom of association in the banana sector

In June 2001, the first international framework agreement in agriculture was signed between COLSIBA, the IUF and Chiquita. This followed an international campaign concerning Chiquita's record on workers' rights in Latin America led by COLSIBA and targeting supermarkets and consumers in the US and EU.

In Costa Rica the Standard Fruit Company and COSIBACR DOLE signed in 2007 an Agreement Framework to establish conditions for the opening of trade union organizations in the country's banana farms belonging to companies as well as their suppliers. This agreement was brokered by the Norwegian retailer Bama Gruppen and has the support of the Government and trade unions in that country. Since 2010 a Social Dialogue process has been developed, which is assisted by the ILO.

Also in Costa Rica, the British retailer Tesco and NGO Banana Link have promoted dialogue through their meetings with COSIBA-CR trade unions and COSIBACR organizations of producers (CORBANA National Corporation and National Producers Associations)

These actions are considered an example to follow: The on-going dialogue established in Colombia between the union SINTRAINAGRO and the Association of producers AUGURA. In this country there is a collective labour agreement for the entire banana production sector.

The international advocacy from civil groups in consumer countries has been vital to establish the appropriate respect of labour rights in the producing countries, examples of these groups include the EUROBAN network in Europe and North America as well as USLEAP, ILRF and AFL-CIO.

are not aware of the advantages of a totally free trade union in the sector. Fully functioning Freedom of association and collective bargaining are an essential element of a sustainable, fair and productive banana industry.

The way forward

The World Banana Forum's working group on labour and social issues has conducted wideranging research into the situation on the ground in relation to freedom of association and collective bargaining. In summarising the problems that exist around the world, as well as the many similarities in experience, this position paper illustrates the seriousness of the situation. Freedom of association and collective bargaining are an opportunity for the banana sector to move towards more stable, productive and just labour relations. For this reason, the work of the working group will, from this point on, focus on identifying the way forward.

The proposed steps below build on the World Banana Forum's strengths as a multistakeholder forum, within which representatives of companies, farm-workers, farmers, supermarkets and governments, from many countries, are involved.

5. Proposals from the WG03 on Labour Rights to the World Banana Forum in the area of freedom of association and collective bargaining rights:

- 5.1 Create a space for banana sector companies and suppliers to come together to discuss freedom of association and collective bargaining.*
- 5.2 Call upon the employers including transnational traders, producers' associations in the producing countries, as well as retailers and certification initiatives, ethical trade and fair trade, to participate and join in this effort within the Working Group 03 on Labour Rights to the WBF.*
- 5.3 Create a space to allow banana companies - employers – to engage in a dialogue and to share experiences on freedom of association and collective bargaining. Additionally offering a space to voice concerns and suggest best practices.*
- 5.4 Develop a good project or experience of practice on freedom of association and collective bargaining, for companies in the banana sector.*
- 5.5 Develop an information campaign for workers on freedom of association and collective bargaining rights, and disseminate this to workers at plantation level. This will include, within an overall campaign strategy, developing printed materials, training and awareness-raising programmes, and other aspects aimed at the wider community.*