

Social auditing, freedom of association and the right to collective bargaining

Many of the emerging methods of assessing companies' compliance with basic labour rights have their limitations. Ironically, the group that is best capable of monitoring practices at the workplace is the one that these standards seek to protect: workers and their trade unions.

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Over the past decade, social auditing has taken on an important new role in the monitoring of labour and environmental standards. It has grown rapidly in recent years, involving various companies, consulting firms, labour unions and non-governmental organizations (NGOs) in industries such as forestry, agriculture, clothing and footwear, and textiles. The combined pressure of campaigns by trade unions and NGOs, negative media attention and an increasingly vocal public concern about working conditions have prompted some companies to have their factories audited. Concern about the credibility of such audits has been a major issue in the public debate about corporate social responsibility.

Recent research has begun to consider the methodologies and effectiveness of social auditing initiatives.¹

This article offers an analysis of audit methodologies and their coverage of freedom of association and the right to collective bargaining. It will examine six initiatives: Fair Labour Association (FLA), Social Accountability International (SAI), Social Accountability in Sustainable Agriculture (SASA), Insan Hitawastana Sejahtera's (IHS) 1999 Reebok audit, the auditing activities of the Trade Union Congress of the Philippines (TUCP), and the ILO's Cambodia Project.

It will concentrate on their efforts to audit freedom of association and the right

to collective bargaining. The article will answer the following question: is it possible, given current auditing methods, to audit successfully a production facility's compliance with freedom of association? It will be shown that auditing methods are underdeveloped with respect to these rights and freedoms, and need significant improvement and reconceptualization before offering a sufficient level of assurance.

Three notes of caution should be sounded. First, the field of social auditing is very dynamic and fast-paced. Even as they were writing this article, the authors were constantly trying to keep up to date with new and diverse activities of the different organizations described. Second, many organizations keep their methodologies confidential, and although the authors had access to some of these documents, they have specifically avoided using them. It can be argued that this results in unfair treatment of some of the initiatives. However, the initiatives under review all make public statements about the company's compliance with freedom of association and collective bargaining. Thus, it is not inappropriate to evaluate only the methods they have made public, as these are what they ask the public to place their faith in. Third, freedom of association and the right to collective bargaining are vast subjects and treatment of the entirety of the standards in a short text

would be impossible. Instead, the present article draws out elements of the different initiatives' methodologies on the subject and points to specific problems and areas that need further attention.

Auditing, inspection and monitoring

Auditing, inspection and monitoring are three terms used interchangeably to refer to the practice of evaluating a company's compliance with a set of standards. However, they represent distinct elements of this evaluation and thus provide a useful framework for the analysis of auditing a standard.

A social audit is undertaken by a company to evaluate the working conditions existing in a facility or supply chain. Unlike monitoring, it lasts anywhere from a few hours to a few days, and involves a number of steps, each one theoretically used in combination with the others. The performance of a social audit tends to involve three related processes: the document review, the site inspection and interviews with workers, management and third-party stakeholders. Although there is a great deal of diversity amongst the initiatives, they all usually follow this format – with the exception of the ILO's Cambodia project and the TUCP Sweatshops Verification Checklist, which provide no methodological advice but just a list of questions to be answered.

An auditor or team of auditors generally conducts the document review, site inspection and interviews. Social auditing does not involve continuous monitoring, although follow-up procedures are not uncommon.

The site inspection entails the direct inspection of production facilities, and sometimes includes informal discussions with workers and management. It tends to last between a few hours and one or two days. There are announced and unannounced inspections. The ability of the inspector to make skilled observations and judgements concerning a facility's condition is the key issue of the site inspection.

Monitoring is the ongoing and regular surveillance of a facility by one or more people. The most important characteristic of monitoring is the requirement of continuous engagement and presence at the facility. Unlike auditing, it is more capable of offering an in-depth and long-term view of a workplace.² Monitoring requires the continuous presence and engagement of monitors.

While all these areas are discussed throughout this article, it is primarily concerned with auditing practices.

Document review

The document review is an important part of the social audit. It can be used to monitor elements of all labour standards, but it is mostly used in the auditing of wages and working hours. With regard to freedom of association, the document review is not particularly effective. As envisioned by several of the initiatives, including the FLA, SAI, IHS and the SASA Pilot Audit Template, this review cannot provide the information necessary to confirm freedom of association, not least because it is rarely supported by the necessary methodological guidance. The ILO Cambodia Project and TUCP Sweatshops Verification Checklist, on the other hand, do not explicitly indicate the use of a document review. Only the FLA provides guidance on this element of social auditing for freedom of association and the right to collective bargaining.

Among the documents examined by auditors, company policies and collective bargaining agreements are mentioned by all of the initiatives, while the FLA includes personnel files and employment records. SASA emphasizes union membership lists and the minutes of recent union meetings, and also mentions the records of training and capacity-building sessions. It does not, however, include direction on what to look for in these documents, and neglects to tell us what auditors do to determine how many of these documents are examined. Moreover, there is no indication of what is

being audited in terms of freedom of association, and auditors are not given a clear definition of the standard. Although SASA provides the longest list of documents to be looked at, it does not provide support for this list, either in the form of methodological guidance or in that of methods of analysis. In this respect, the FLA is somewhat better, while SAI and the IHS Report also neglect to offer guidance. The latter, for example, states only that its Project Methodology included the “independent review of written documentation from factories including contracts and payment schedules, personnel rules, and safety procedures”.³ No indication is given about how these documents were actually used.

In contrast to this, the FLA does discuss some of the methodological issues of auditing for freedom of association during the document review. It requires its auditors to look for indications of anti-union discrimination in employment records and personnel files, and asks them to compare such documents in order to see if employees have been treated in the same way for “similar workplace infractions”. In cases where discrimination is considered possible, a record showing that certain workers “were treated differently than other workers for similar infractions” provides “an indication that the workers may have been fired for reasons of anti-union bias”. If this is the case, auditors are expected to “establish a clear record of the employer’s actual steps in disciplining the workers, in order to balance the written record against the oral record”.⁴

The FLA is the only initiative reviewed that specifically deals with anti-union discrimination, but even its coverage is insufficient. It focuses on anti-union discrimination as it relates to termination of employment and disciplinary action.⁵ However, ILO principles on freedom of association specifically prohibit “acts of anti-union discrimination” in all aspects of the employment relationship, including training opportunities, promotion, transfer, hiring and conditions of work. Anti-union discrimination is a difficult aspect of freedom of association to audit. Initiatives that try

to do so should be given credit. It would, however, probably be more realistic for an auditor to obtain indications that this may be happening – through interviews with workers or stakeholders – and then to place upon the employer the burden of proving that this is not the case.

Site inspection

The site inspection is also a valuable part of the social audit. It offers auditors an opportunity to view the production facility and gives them a chance to observe its conditions and environment, something particularly worthwhile in the auditing of health and safety standards. Unlike the document review, site inspections are rarely used for the verification of freedom of association. The main aspects of association covered by site inspections are the existence of facilities for union-management meetings and the posting of union announcements and material. Only the FLA provides direction on these issues, and this information is not completely reflective of the principle of freedom of association.

There are a number of issues that auditors need to deal with vis-à-vis site inspections. Their duration is of great significance, while the question of whether or not auditors have complete and free access to a facility is also important. With regard to freedom of association, the presence of union materials is noteworthy, for example the posting of notices advertising union meetings, and the availability of meeting rooms is also significant. These entitlements are issues dealt with by ILO principles concerning freedom of association and collective bargaining. The ILO Cambodia Project even asks if employers have “provided the shop steward with an office, meeting room, working materials and poster-displaying site”.⁶ These requirements could be considered to go beyond the principles of freedom of association and the right to collective bargaining, as the standards call for a certain amount of flexibility regarding the precise nature of the facilities to be provided to

workers' representatives. It would, however, be worth examining whether these are conducive to representatives conducting their work promptly and efficiently.

There are various other conceptual problems with the guidance and recommendations laid down by several initiatives on the site inspection process. The IHS, for example, reports the use of "labour relations experts" during the site inspection in its audit report, but does not provide any further information about this, neglecting to tell us what these "experts" did or what constitutes an expert. The FLA requires its auditors to "observe any posted rules unreasonably restricting workers' ability to communicate freely with each other".⁷ However, auditors are not told to observe the actual patterns of employee communication, nor are they given any guidance on what to look for as possible indicators of restrictions on employee communication. The term "unreasonably restricting" is also not defined, leaving the auditor to decide what counts as unreasonable. The use of terms such as this poses particular difficulties, because it is open to considerable interpretation by auditors. While standardizing these sorts of subjective judgements is difficult, if not impossible, mechanisms to ensure consistency are necessary. Mechanisms could be set up in the initiatives at least to move in this direction. SAI's auditor calibration meetings could be one example of such an activity. Finally, in some programmes, auditors are asked to observe spaces made available for worker-management meetings, "if workers meet with management and/or supervisors to discuss complaints".⁸ Two points should be noted here: discussions with workers' representatives are not mentioned; and the existence of a meeting room tells us nothing about whether meetings take place, how often they occur or how they are conducted.

The use of the site inspection as a method to audit freedom of association and the right to collective bargaining is clearly limited. It only offers the auditor a chance to verify whether two specific elements of the standard are respected,

namely the provision of facilities to workers' representatives and the posting of trade union notices.

Interviews

The interview process is perhaps the most valuable aspect of the social audit. It consists of discussions with various parties and offers the auditor a unique opportunity to speak with workers. Interviews provide the most direct source of information and, when used correctly, can offer detailed and reliable insight into a production facility's working conditions. It is not surprising that they are often a more developed part of the audit process. With regard to freedom of association, interviews tend to target workers and their representatives. The FLA, however, also includes a component on management interviews, and provides guidance on how to conduct them. It also covers interviews with local community groups and NGOs.

Local community groups and NGOs

Representatives from local community groups are interviewed primarily in order to gather external information. The FLA believes they are able to provide auditors with "helpful information" regarding union positions and inform them about the "approach" of the local government to trade union activity. They can also identify factories with registered unions and collective agreements, and provide detail on the character and outcome of recent labour disputes. In SAI's system, it is suggested that auditors consult NGOs on collective bargaining and the harassment of trade unionists. No indication is given by SAI about the purpose of these interviews, and no details are provided concerning the way they are conducted or how certain answers are to be treated. Whether or not the information provided by NGOs is accurate is also not discussed, and neither the FLA nor SAI inquires about the character of these organizations. Are they knowledge-

able about labour standards and freedom of association? What positions do they take vis-à-vis local trade unions? These are important questions that have significance for the rest of the audit. Cross-referencing this information with interviews with unionists would be useful, but puts the auditor in the unusual situation of becoming a moderator between parties, rather than a verifier of facts.

Management interviews

Management interviews can give an auditor considerable opportunity to explore the issues of freedom of association and collective bargaining with managers. However, only the FLA deals with manager interviews.

One aspect of bargaining that is emphasized in the FLA's management interviews is the nature of collective agreements. The auditor is encouraged to review the provisions of the collective agreement with managers. However, the guidance provided for this review refers only to provisions on grievance procedures and how workers' representatives raise concerns with management – nothing else. The FLA also inquires about training requirements for managers on freedom of association and management interference in union activities. These questions, while limited in scope and depth, are an extremely significant development, as other initiatives have not yet grasped the need to include them. Both the ILO Cambodia Project and the TUCP are instructive on these issues, although neither mentions them with specific reference to management interviews.

Worker interviews

The content of worker interviews tends to be quite consistent. The main issues discussed cover various aspects of freedom of association and include anti-union discrimination, disciplinary action and management interference in organizing efforts. The FLA also includes an emphasis on

grievance procedures, while SAI includes a concern about meeting rooms. The latter, moreover, asks its auditors to inquire about worker committee meetings and recent committee elections, in cases where the law restricts freedom of association; this is also a concern shared by SASA, which in this case seems to adopt all of SAI's recommendations.⁹ IHS, on the other hand, is a bit of an anomaly and perhaps even a concern from a trade union point of view. It confirms that "structured" interviews were conducted, and says that these interviews used a "formal worker survey". The content of this survey, however, covers little with regard to freedom of association, and seems more concerned with gathering information about union activities. It asks about membership dues and the benefits of union membership, and inquires about how frequent union meetings are and when they take place. The survey does address the issue of discrimination, asking if the company must first permit workers to join a union and whether such membership affects promotion.

With regard to the methodological questions about worker interviews, the FLA is the only initiative to provide guidance specific to freedom of association.¹⁰ It comments on the way interviews should be conducted, suggesting that auditors ask open-ended questions, and identifies the people with whom the auditor should speak. Auditors are encouraged to interview "officials of the most representative union" and "representatives of all other workers' organizations that have members at the facility".¹¹ They are also told to conduct interviews "off-site" and "informally" in cases where a union is not recognized or there is no collective bargaining agreement.

The interview process is beset with methodological problems, many of which are rarely discussed by auditing initiatives. Without a clarification of these issues, the evidence gathered from interviews remains unreliable and cannot provide meaningful insight into workplace conditions. How, for example, do auditors gain the trust of workers during an interview?

This is an important question, and one that goes to the very heart of social auditing. An interview between strangers, one that lasts only a short time and is conducted by someone often hired by factory management, is not likely to inspire confidence in the worker; the information he or she gives is unreliable from the outset.

Auditing freedom of association in difficult situations

Thus far, we have considered in a relatively detailed way the methods auditors are using to go about collecting information on freedom of association. However, one notable area has been left out, because it does not fall neatly into the conceptual framework of an audit – how auditors do their job in countries where freedom of association and collective bargaining are not allowed from the start, for example in China.

In countries where freedom of association is not respected at all and it is impossible for workers to organize freely, several organizations recommend that companies facilitate parallel means of freedom of association and collective bargaining. Auditors would generally be asked to look for ways that this is facilitated within the company. SAI, for example, suggests that the selection of a workers' "Social Accountability Representative could be a means for management to facilitate the independent association of workers".¹² However, this requirement is a departure from international labour standards, in that these instruments make no such provision, as a result of the fact that they are directed at governments.

However, this does not imply that there may not be ways to audit a company's respect for freedom of association and the right to collective bargaining in these situations. One school of thought suggests that auditors examine communication channels between management and workers, such as management-worker committees on health and safety or other subjects within a company. However, as manage-

ment is the group that would be organizing these meetings and dialogue, it is unlikely to meet the requirements of genuine voluntary dialogue. Another approach to considering company actions would be to examine how they approach freedom of association in the country. For example, are they active in lobbying for legal changes, forming coalitions of companies to advocate for such change and making public statements with respect to the subject? These may in fact be better indications of respect for freedom of association than management-organized dialogues or committees.

Conclusion

Freedom of association and the right to collective bargaining could be considered the Holy Grail of social auditing. This article has sought to analyse the coverage by various initiatives of these rights. However, in doing so, it must acknowledge the vastness and complexity of ILO standards on freedom of association and collective bargaining. While the initiatives have made some progress in developing methodologies to audit these rights, methods are inconsistent and do not cover the full range of issues dealt with by the standards. To their credit, many of the initiatives reviewed in this article acknowledge this and continue to develop their methodologies.

This article was designed not to be critical or comprehensive but to provide for discussion. It aims to help inform trade unions about developments in social audits, while at the same time demonstrating to auditors the value of fully understanding the rights that they are auditing for. Many proposals could be made in this respect, including mechanisms to monitor the monitors (perhaps placed within the ILO); clear requirements concerning social auditors' knowledge of labour standards, particularly international labour standards; and greater trade union involvement and consultation in auditing practices.

However, a broader and more fundamental issue remains to be discussed. Earlier in this article, three terms were noted – auditing, inspection and monitoring – and it was argued that these are at times used interchangeably by commentators and critics of the social auditing movement. This article has dealt with auditing practices, whether or not the initiatives themselves describe them as such. However, due to the complexity of freedom of association and the right to collective bargaining, it might be asked if one of the other methods is not better designed to address a company's respect for and observance of freedom of association and the right to collective bargaining.

Inspection was considered in this article and was found to be of quite limited effectiveness with respect to the rights under discussion. However, monitoring has not been considered here. It was described as “ongoing and regular surveillance of a facility by one or more people”. The interesting and somewhat ironic point is that the very organization and group of people capable of doing this – a trade union and the workers themselves – are the very group that we are interested in protecting through the development of these social auditing activities!

Notes

¹ See: Jem Bendell: *Towards Participatory Workplace Appraisal: Report from a Focus Group of Women Banana Workers*, New Academy of Business, 2001; Marina Prieto and Jem Bendell: *If You Want to Help Us Then Start Listening to Us! From Factories and Plantations in Central America, Women Speak out about Corporate Responsibility*, New Academy of Business, 2002; Melanie Beth Oliviero and Adele Simmons: “Who’s Minding the Store? Global Civil Society and Corporate Responsibility”, in *Global Civil Society 2002*, The Centre for the Study of Global Governance, October 2002; Centro Internacional de Política Económica: *Report: Social Audits and the Banana Industry in Costa Rica*, 1999.

² Social auditing and accreditation and certification systems sometimes involve follow-up inspections and, in the case of SAI, “surveillance visits”. Although these are meant to monitor whether corrective action has, in fact, been implemented, this activity should not be confused with monitoring as it is referred to in this article.

³ Insan Hitawasana Sejahtera: *Peduli Hak: Caring for Rights*, 1999.

⁴ Fair Labour Association, “Monitoring Guidance,” p. 30.

⁵ In the “Compliance Benchmarks” section of the *Monitoring Guidance* document, the FLA mentions other forms of anti-union discrimination without providing methodological guidance. Fair Labour Association, “Monitoring Guidance,” p. 39-41.

⁶ ILO: *Final Checklist*.

⁷ FLA: op. cit., p. 33.

⁸ FLA: op. cit., p. 33.

⁹ SASA: *Joint Pilot Audit Template*, p. 19.

¹⁰ SAI also provides guidance for its auditors on how to interview workers. This guidance, however, is not specific to auditing for freedom of association.

¹¹ FLA: op. cit., p. 15. SAI also suggests speaking with union representatives and leaders, but tends to emphasize the testimony of workers. It also suggests interviewing former workers.

¹² SAI: *Guidance 1999*, p. 24.