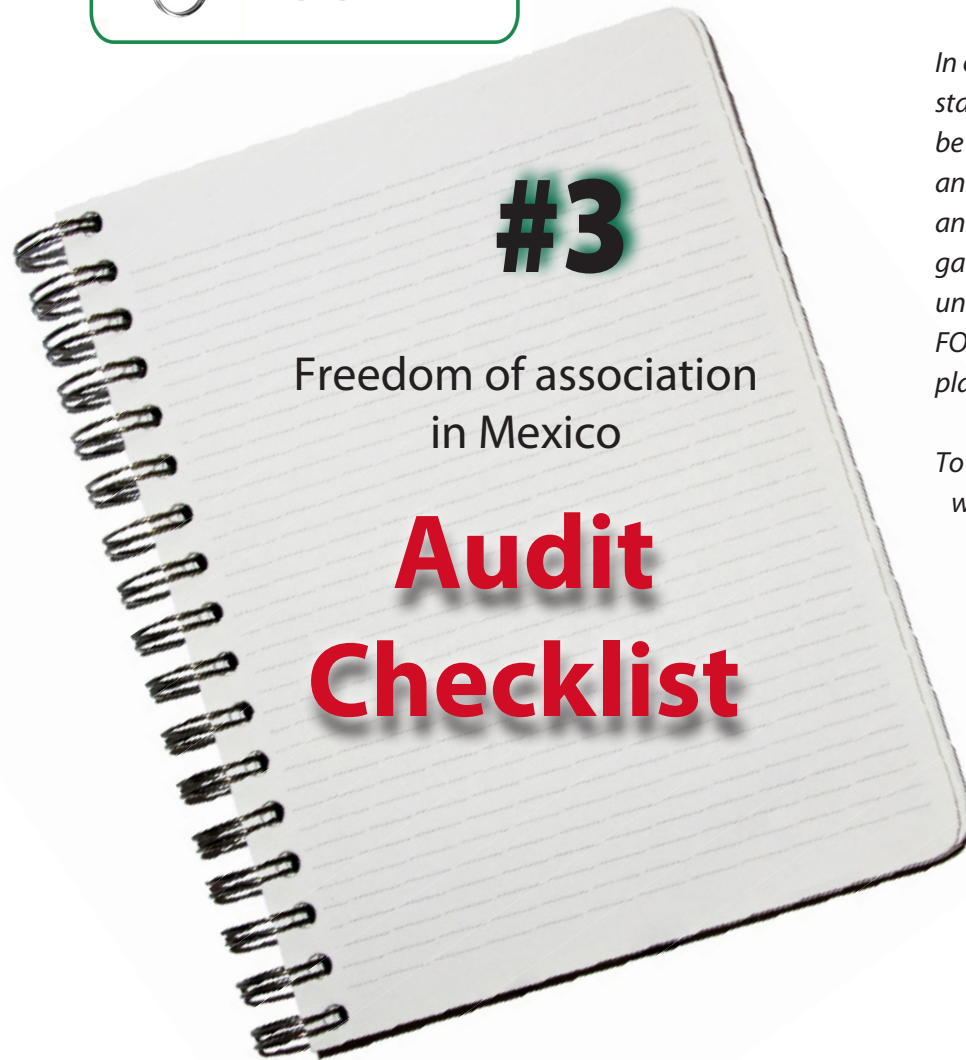




MAQUILA SOLIDARITY NETWORK

DECEMBER 2014



In order to assess compliance with freedom of association (FOA) standards and benchmarks, social compliance auditors must first be thoroughly familiar with the provisions of ILO Conventions 87 and 98¹ and the legally mandated procedures in Mexico for forming and registering a union and for negotiating a valid collective bargaining agreement (CBA), as well as the purposes and functions of unions. Auditors should also be aware of the particular barriers to FOA in Mexico, including the role “employer protection contracts” play in undermining FOA.

To better identify protection contracts and determine whether workers’ associational rights are being respected at supplier factories, the following is a series of specific questions that auditors should ask when carrying out interviews with management, union representatives and workers, as well as indicators to look for when reviewing company records and other documents. This is not an exhaustive list of questions, but it does address most of the key FOA issues particular to the Mexican context. The checklist also includes a flow chart on page 7 describing the audit process when there is or is not a union in the facility.

A. In the initial interview with management:

Is there a union that represents the workers at the factory?

If the answer is “yes”, ask the following questions:

- In what year was the company legally registered and in what year did the factory open? When and how was the union created?²
- When was the first collective bargaining agreement (CBA) signed? How often have there been negotiations for revisions to the CBA?
- Do you have a copy on file of the *Acta constitutiva del sindicato*? (Request to see the document.) [Union Charter proving that the union was formed at a worker assembly and in accordance with the requirements in the Federal Labour Law]
- Is there a collective bargaining agreement currently in effect? Who holds title to the collective bargaining agreement? [Request to see a copy.]
- Have there been any other agreements signed between management and the union concerning the terms and conditions of employment (such as changes in work schedules, reduction of workforce or hours of work, change or elimination of benefits, termination and disciplinary measures, and/or change in other policies that directly affect the workers)? [Request to see copies of all such agreements.] How and with whom were the agreements discussed and agreed upon?
- Who are the union representatives in the factory? How did they become the representatives of the workers? What are their job positions? Are they available to be interviewed?
- The CBA should contain signatures of the company's legal representative and the union members that negotiated it. *If it does not, ask:* What worker representatives signed the current collective bargaining agreement? *If they are not the same people as the union representatives identified above, ask:* Are the signatories also available to be interviewed.
- Are all of the legally mandated joint worker-management commissions operating in the factory, including those regarding health and safety, profit-sharing (*pago de utilidades*), training and productivity (*Comisión de Capacitación, Adiestramiento y Productividad*), and workplace rules?³ Are worker representatives on those commissions available to be interviewed?

If there is no union in the factory, ask the following questions:

- Has there ever been an attempt to form a union at the factory? If so, why did the attempt fail? Are any of the workers who attempted to form the union still working in the factory? If not, what happened to them? If they are still active employees, are they available to be interviewed?
- Are all of the legally mandated joint worker-management commissions operating in the factory, including mixed commissions on health and safety, profit-sharing (*pago de utilidades*), training and productivity (*Comisión de Capacitación, Adiestramiento y Productividad*), and workplace rules? Are worker representatives on those commissions available for interviews?



B. When interviewing union/worker representatives, ask the following questions:

- When and how was the union formed? What were the main issues/concerns of the workers that led to the formation of the union? How did you become the representative of the workers, and how were you chosen? How long have you held this position?
- What are the most serious complaints and/or concerns the union hears from their membership (workers) and how are these handled? Are workers' grievances received in writing and, if so, are copies available?
- If not already obtained from management, ask to see a copy of the *Acta constitutiva del sindicato*. If the union representative doesn't have a copy on file, ask for a list of the workers who originally constituted the union and whether they are still working in the factory.
- How often does the union hold worker assemblies and/or other meetings? What are the purposes of the meetings? Who attends? Where and when are they held?
- How are worker representatives chosen for commissions on health and safety, profit sharing, training and productivity, and workplace rules?
- What benefits are included in the CBA that provide workers with entitlements beyond what is required by law? How are these entitlements communicated to the workers?
- In the most recent negotiations for revisions to the CBA, what were the demands that the union put on the table?

C. When interviewing workers, ask the following questions:

Where there is a union

- Who do you go to if there is a problem in the factory?⁴
- Are you aware that there is a union in the factory? Can you name the union and/or confederation to which the union is affiliated? Do you know where the union office is located and/or where you can contact the union (during work hours and after work hours)?
- Can you name your union representative(s)? Do you know how to contact them? Have there been any changes in the officers of the union since you started working at the factory? Have you ever brought any issues to the attention of the union representative? Do you know of anyone that has brought an issue to the union, and if so, what were the results?
- Are you aware you are covered by a collective bargaining agreement (CBA)? Do you know the contents of that agreement? Do you have secure, reasonable access to copies of your collective bargaining agreement? [For example, is the CBA only displayed in a public area in the factory, or are workers given individual copies that they can review privately?]
- Do you know who your worker representatives are that negotiate revisions to the CBA? Do you know how they are chosen? Do you know whether or how those revisions are ratified by the workers?
- Are you aware of any other signed agreements between union and management concerning the terms and conditions of employment (such as *paro tecnico*, redistribution of work week, or productivity agreements)?
- Do you have reasonable access to any and all such written agreements established between management and the union?
- Are you ever pressured to sign a document or blank sheet of paper without being fully informed of what you are signing?
- Do you know if the union holds worker assemblies or other meetings to discuss problems workers are encountering at the workplace? Are you invited to participate in those meetings or other union activities? If not, do you know anyone from your area or unit (*modulo*) that was invited and attended?
- Are mixed commissions (health and safety, training and productivity, profit-sharing, workplace rules) operating in the factory? If so, how are worker representatives chosen? If you have complaints about any of these issues, who do you go to?

Where there is no union

- Are mixed commissions (health and safety, training and productivity, profit-sharing, workplace rules) operating in the factory? If so, how are worker representatives chosen? If you have complaints about these or other issues in the workplace, who do you go to?
- Have there been any attempts to form a union in the factory? If so, why did the attempt fail? Are the workers who supported those efforts still working at the factory? If not what happened to them?⁵
- If there have been no attempts to form a union, what do they think would happen if workers attempted to join or form a union?
- Is there a workers' committee and, if so, how were the members chosen and what kinds of activities do they carry out?
- Are you ever pressured to sign a document or blank sheet of paper without being fully informed of what you are signing?

D. When examining documents/company records:

- Was a first collective agreement signed prior to any worker being hired?
- If there is an *Acta constitutiva del sindicato* (Union Charter) available, how long after the factory opened was it signed? How many workers signed it?⁶ Is there evidence that the union was formed at a worker assembly?
- Is there any evidence of financial payments made from the company to the union and/or individual holding title to the collective bargaining agreement (CBA) prior to workers being hired or beyond normal union dues?
- Does the collective bargaining agreement reflect only the company's minimum legal obligations to workers or does it provide for terms and conditions of employment, or monetary and non-monetary benefits, beyond what is legally required?⁷
- Are salary scales included in the CBA? Do they reflect at a minimum the current regional, professional minimum wage? Do they reflect a negotiated wage higher than legal minimums?
- Does the CBA include clauses permitting flexible working hours and work shifts, without the need for prior consultation with the union and the affected workers?
- Does the CBA stipulate that decisions concerning productivity and other production practices can be made without the need for prior consultation with the union and the affected workers?
- Have there been changes or improvements to the collective bargaining agreement during negotiations for revisions to the CBA, or does each agreement mirror the original?
- Does the CBA contain an exclusion clause requiring the dismissal of any worker that is expelled from or decided to leave the union? If so, is management aware that, based on Supreme Court rulings and reforms to the Federal Labour Law, such clauses are now illegal?



E. Other factors to monitor for, in both interviews and record reviews, to determine whether your supplier is taking the adequate steps to guarantee FOA:

- Does the supplier have a freedom of association policy and, if so, has it been communicated to workers, and how has it been communicated?
- What training, if any, have workers and/or management personnel received on freedom of association and collective bargaining and by whom?
- Does the supplier have a hiring policy in place that prohibits, among other forms of discrimination, any discrimination in hiring on the basis of a worker's previous union membership or organizing activities? What evidence exists that the hiring policy is being put into practice, such as questions asked of workers during job interviews?
- Is there any evidence that the employer participates in blacklisting concerning the hiring of new employees or sharing names with other employers of workers that have been involved in trade union or other organizing activities?⁸
- Is there any evidence based on interviews and/or company records of discrimination, harassment, coercion, favouritism or punishment based on workers' union or other organizing activities? Has any worker been encouraged or induced to resign as a result of their union or other organizing activities?
- Has the supplier maintained complete and adequate records on hirings, transfers, disciplinary action, dismissals and voluntary resignations, including reasons for such actions, in order to allow the auditor to determine whether there has been any harassment, discrimination, coercion, favouritism or punishment of workers for union or other organizing activities?
- Has any worker been expelled from or chosen to resign from the union and subsequently dismissed or induced to resign by management?
- If there is evidence that the employer entered into a relationship with the union without the knowledge or consent of the workers and/or colluded with the union in the negotiation of a protection contract, what reasons does management give for doing so? What corrective action is the employer prepared to take?

The **Freedom of Association in Mexico Toolkit** sets out how brands can strengthen their FOA policies, auditing procedures and corrective action plans, as well as communication with vendors, suppliers and licensees on those policies and expectations. The Toolkit includes four tools:

1. ***The Mexican Context***
2. ***What Brands Can Do to Ensure Respect for Freedom of Association***
3. ***Auditing Checklist***
4. ***FOA Progress Chart***

The Mexico Toolkit is available at
www.en.maquilasolidarity.org/node/969

ENDNOTES

¹ ILO Convention 87, which Mexico has signed, guarantees the right of employers and workers to freely associate to defend their respective rights and interests. Convention 98, which Mexico has not yet signed, guarantees the right of workers to organize and bargain collectively. The ILO's Fundamental Principles and Rights at Work, which includes the rights defined in both Convention 87 and 98, applies to all ILO-member countries, whether or not they have signed the particular conventions. Convention 87 and 98 can be found at: www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232 and http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312243:NO.

² If the union was formed prior to, at the time of, or shortly after the factory opened, it is likely a protection union, since workers could not have had a role in the formation of the union.

³ See articles 509, 125, 153-E, and 424 in the Federal Labour Law.

⁴ The auditor might want to put forward an example of a serious problem that could occur, in order to generate a focused response. The objective here to see whether and how worker concerns about major changes in work conditions and benefits are channelled through the union.

⁵ Any indication from the worker interview that an attempt to organize took place at some point in the not too distant past (general rule, less than three years) needs to be further investigated, as it may be a case of anti-union discrimination. The auditor in this case should attempt to get the name(s) of affected workers, approximate date(s) they left the factory in order to review their personnel files for evidence of unlawful dismissal and to get personal information so they may be interviewed.

⁶ Under the Federal Labour Law Article 364, a minimum of twenty workers may form a union.

⁷ Even in most cases of protection contracts, the CBA contains some benefits beyond what the law requires, however often these benefits do not amount to any significant expense to the employer, such as paying for funeral expenses, providing marriage leave, etc. Benefits that are typical of an authentic CBA include higher than regular wage rates, additional paid vacation or sick leave time, representation by the union in workers' disciplinary matters, etc. It is therefore important to know what exactly was negotiated when the contract was agreed upon.

⁸ Blacklisting is a widespread practice in maquilas in Latin America. When blacklisting is detected or alleged, a special FOA investigation methodology needs to be used. This requires, among other things, a close look at the factory's hiring procedures and a review of all job applications for a given period of time, including conducting inquiries as to why qualified candidates were not hired and questioning new hires as to what exactly was asked during their job interview.