The Ethical Trading Initiative

Negotiated solutions to human rights violations in global supply chains?
About this report series

This report is part of a series produced by the Non-Judicial Human Rights Redress Mechanisms Project, which draws on the findings of five years of research. The findings are based on over 587 interviews, with 1,100 individuals, across the countries and case studies covered by the research. Non-judicial redress mechanisms are mandated to receive complaints and mediate grievances, but are not empowered to produce legally binding adjudications. The focus of the project is on analysing the effectiveness of these mechanisms in responding to alleged human rights violations associated with transnational business activity. The series presents lessons and recommendations regarding ways that:

- non-judicial mechanisms can provide redress and justice to vulnerable communities and workers
- non-government organisations and worker representatives can more effectively utilise the mechanisms to provide support for and represent vulnerable communities and workers
- redress mechanisms can contribute to long-term and sustainable respect and remedy of human rights by businesses throughout their operations, supply chains and other business relationships.

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## Acronyms

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Executive Summary

The United Nations Guiding Principles on Business and Human Rights (UNGPs) propose that 'non-state-based non-judicial grievance mechanisms' have an important role to play in remedying human rights violations linked to transnational business, in addition to state-based judicial and non-judicial mechanisms. This report is one of the case studies of an Australian Research Council-funded project investigating the efficacy and potential of these kinds of grievance mechanisms.

The report focuses on the Ethical Trading Initiative ('ETI'), a UK-based multi-stakeholder initiative that promotes respect for the human rights listed in the ETI’s code of conduct (which is known as the ‘ETI Base Code’) within the supply chains of ETI-member companies. The report is primarily based on extensive field research conducted in India and the UK between late 2011 and late 2015, supplemented by more recent information provided by research participants and available in public reports.

In so far as non-state-based non-judicial grievance mechanisms are concerned, the ETI is an important case-study. Unlike many such initiatives, the ETI is not administered or controlled by industry. Instead it has a tripartite structure involving collaboration between companies; international and UK trade unions; and non-government organisations (‘NGOs’) with a strong reputation for human rights advocacy. Given this membership, ETI might therefore be expected to be a leading example of what a non-State-based grievance mechanism can contribute to the resolution of business related human rights grievances.

Most research participants did confirm the ETI is doing more to address allegations of rights violations than competing industry-controlled initiatives. However, if the ETI is an example of leading practice in the development of non-state-based human rights grievance mechanisms, our research suggests national governments and the international human rights community should have modest expectations of such mechanisms.

Our research indicates there is currently a significant accountability gap. When global companies, including ETI member companies, make purchasing decisions that increase the likelihood that workers in their supply chains will suffer human rights violations, there is rarely an effective remedy available to those workers. The ETI is not currently filling that gap.

Three aspects of the ETI’s activities can be broadly categorised as grievance processes:

- Its process for designing and implementing programmes to address alleged breaches of the ETI base code in particular industries in particular geographical areas;
- Its processes (both formal and informal) for responding to member-initiated complaints regarding alleged code violations; and
- Its oversight of grievance mechanisms administered by member companies or their suppliers.

The ETI programme we investigated in greatest depth was its Garments and Textiles from Southern India programme, established to address ongoing allegations of forced labour and
other human rights violations in the southern Indian state of Tamil Nadu. Our research in India and the UK found that the process of designing this programme was slow, London-centric and marked by significant internal conflict between ETI companies and ETI civil society organisations as to the programme’s scope and goals. The programme itself has been a significant disappointment to many civil society representatives in India and Europe. These groups believe that the programme—and in particular the focus on providing workers with training and information in their rights—will be of limited benefit because young Indian women employed in forced labour situations are not in a position to assert those rights. These groups believe the ETI should instead focus on persuading mill and factory owners to allow workers to make contact with local trade unions and other advocacy organisations, so that these organisations can investigate alleged rights violations, advocate on the workers’ behalf, and support the workers to organise and claim their rights. ETI staff argued ETI companies do not have sufficient leverage in relation to the textile mills to persuade mill owners to allow advocacy organisations to visit workers in the mills. However ETI companies have refused to share detailed supply chain information with ETI civil society groups, making the exact extent of their leverage in relation to the textile mills opaque.

While it is unclear how typical the Tamil Nadu programme is of ETI’s programmes as a whole, it shares important characteristics with another ETI project we considered, the homeworker project in north India. Like the Tamil Nadu programme, the homeworker project avoided addressing key rights in the ETI Base Code, such as the requirement that workers be paid a living wage. Like the Tamil Nadu programme, the rights-based component of the ETI homeworker project also focused primarily on providing workers with information and training about their rights, rather than on requiring ETI companies to provide suppliers with incentives to respect those rights. As with the Tamil Nadu programme, the benefits to workers have fallen well short of full respect for the human rights listed in the ETI Base Code.

In so far as the ETI’s processes for responding to member-initiated complaints are concerned, most ETI civil society members reported that pursuing human rights grievances within the ETI was time consuming and, although it sometimes resulted in positive outcomes, it commonly resulted in ‘agreement to disagree’. However, when ETI companies face significant threats to their reputations the ETI can play a valuable role in facilitating important initiatives to address rights violations. The ETI’s involvement in the establishment of the Accord on Fire and Building Safety in Bangladesh (the “Bangladesh Accord”) following the Rana Plaza tragedy in 2013 is a good example of such a case. However the extensive media coverage of human rights issues generated by the Rana Plaza tragedy is highly unusual and therefore it cannot be regarded as a typical indication of the effectiveness of the ETI’s grievance processes.

Civil society groups also reported that on several occasions the ETI had responded to evidence of rights violations by helping to coordinate successful advocacy for legislative reform in the UK. Two examples are the ETI’s role in persuading the UK parliament to pass the Gangmasters (Licensing) Act 2004 (UK) and the ETI’s involvement in the successful push to include a ‘transparency in supply chains’ component in the Modern Slavery Act 2015 (UK). Many civil society representatives (and some corporate representatives) argued the ETI should make advocacy for legislative and policy reform in producer countries a much higher priority since, as a representative of many major global buyers, the ETI has the potential to play an influential role in that space.
As for the ETI’s role in overseeing grievance mechanisms administered by member companies or their suppliers, our research interviews indicated that this has not been an organisational priority. The ETI’s public reporting on this issue is not detailed and it is not clear from the ETI’s public reports how many of those workplace-level mechanisms that are in place are working effectively.

So, with some notable exceptions, our research indicated that the ETI’s overall contribution to providing effective redress in cases of human rights grievance has been very limited. Why is this the case? It is important to note that there are complicated and highly unbalanced power relationships in each of the various spheres that the ETI must influence in order to facilitate effective redress. These spheres include the power differentials between workers and employers in low-skilled industries; the power relationships between ETI member companies and their first tier suppliers (and other suppliers further down the supply chain); and the power relationships between corporations (including ETI member companies and their suppliers) and state institutions in various countries. The vulnerable position of many workers means that it is far from easy to establish a grievance mechanism that they would have confidence to access, even if that mechanism did have the potential to resolve their grievances. The continual push by global retailers in many industries to minimise the amount they pay for their goods also severely limits their suppliers’ willingness to cooperate in any human rights initiative that might increase production costs. Suppliers also commonly have multiple customers, and if only a minority of their customers demand effective human rights compliance they may prefer to let those con-
tracts go (or conceal the rights violations from social auditors) rather than spend money on human rights initiatives. Further, in many producer countries close relationships between industry and government result in half-hearted attempts by state institutions to protect workers’ rights. This also contributes to creating an atmosphere in which it is very difficult for workers to assert and claim their rights.

There are also complex and unbalanced power relationships within the ETI itself. The ETI’s public communications occasionally imply that its member companies and member civil society groups work together harmoniously to achieve common goals. This is not the case. While there is considerable variation in the extent to which ETI member companies are actively pursuing compliance with the Base Code, our research interviews indicated that even in the more progressive member companies the primary motivation for participating in the ETI is to protect and enhance their reputations with consumers and investors. That is, they want to avoid or minimise any negative publicity associated with exploitative conditions in their supply chains. And most, if not all, ETI companies are only motivated to bring these exploitative conditions to an end if they can do so without reducing profit margins. While there is potential for overlap between this corporate agenda and ETI civil society groups’ goal of human rights redress, that overlap is not automatic. In the absence of a significant reputational threat (or of evidence that a human rights initiative would be either cost-neutral or profit-enhancing) it can be in the best interests of ETI companies to continually delay any agreement on how to respond to a human rights grievance and to water down the final agreement so it falls well short of the full respect for the ETI Base Code. Further, arguably just by joining the ETI a company acquires a valuable shield against public criticism of its labour practices, since it can claim that it is working with well-respected civil society organisations to address human rights issues. This creates the risk that the ETI could undermine, rather than increase, pressure on companies to cooperate in ensuring that human rights grievances are properly addressed.

To some extent these various power imbalances could be mitigated by reforms to the ETI’s processes and activities. This report recommends a number of reforms designed to achieve this goal. These proposed reforms include that the ETI should:

- prioritise addressing violations of rights in the Base Code that give workers more power in their workplaces (such as freedom of association and living wages);
- require ETI member companies to demonstrate how their purchasing practices reward suppliers that genuinely address grievances;
- reform the ETI’s procedures and the role of ETI staff to enhance civil society members’ capacity to influence decision-making within ETI;
- improve the credibility and transparency of the ETI’s reporting processes;
- work towards legally-binding agreements that hold ETI companies to account on specific commitments; and
- support the establishment of local tripartite multi-stakeholder grievance mechanisms in producer countries, and work closely with those mechanisms.

In our analysis these proposed reforms would enhance the ETI’s capacity to contribute to effective human rights redress. It is therefore noteworthy that the ETI’s current five year plan in-
cludes commitments that are similar to many of our proposed reforms. However there is currently limited information available on how these commitments will be implemented and it remains to be seen to what extent the practice will match the goals.

What are the implications of these findings for UK government policy in relation to the UNGPs? While it is possible that planned organizational reforms may improve the ETI’s effectiveness in future, the ETI’s performance to date certainly cannot justify a refusal to pursue other initiatives, including more resources for state-based non-judicial mechanisms and greater international efforts to encourage governments to properly resource state-based judicial mechanisms to uphold and protect labour rights.

Further, government agencies and other organisations that fund non-state non-judicial mechanisms such as the ETI should be aware that the effectiveness of these mechanisms substantially depends on the extent to which companies believe it is in their financial interest to address human rights grievances. In order to maximise the value of funding non-state non-judicial mechanisms it is therefore necessary to ensure that such funding is complemented by significant funding support for research that investigates, and draws public attention to, whether or not well-known companies’ business practices are contributing to human rights violations. Other initiatives, such as government procurement policies, can also provide companies with important incentives to genuinely address human rights violations in their supply chains. In the absence of such incentives and threats, negotiations between civil society organisations and corporate representatives within the ETI can absorb a great deal of time but only produce very limited improvements in respect for human rights.
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## References
**Introduction**

The introduction and initial implementation of the United Nation’s *Guiding Principles on Business and Human Rights* (‘UNGPs’) has generated considerable interest in the role and effectiveness of what the Principles refer to as ‘non-state non-judicial grievance mechanisms’—voluntary non-state mechanisms that seek to provide redress when the human rights of individuals or communities are adversely impacted by business. The UNGPs suggest the benefits of non-state mechanisms can include speed of access and remediation, reduced costs and transnational reach. One such mechanism is the Ethical Trading Initiative (‘ETI’), a UK-based multi-stakeholder labour rights initiative whose membership is made up of trade unions, non-government organisations (‘NGOs’) and companies. This report considers the effectiveness of the ETI as a mechanism for human rights redress.

Companies that become members of the ETI are expected to ensure their suppliers continually improve compliance with local labour laws and with the ETI’s Base Code, which includes key international labour standards. The ETI also has three processes that we would characterise as grievance processes: its programme approach; its processes for responding to member-initiated allegations of code violations; and its oversight of grievance mechanisms administered by member companies or their suppliers. This report considers the effectiveness of these grievance processes, makes recommendations to enhance their effectiveness and reflects on the capacity of initiatives like the ETI to provide redress when transnational business is associated with human rights violations.

**Methodology**

This report is part of a series based on the findings of a three-year Australian Research Council Linkage Project analysing the effectiveness of non-judicial redress mechanisms in responding to human rights concerns in which transnational business activity is involved. We adopt a broad definition of non-judicial redress mechanisms, namely those that are mandated to receive complaints and help resolve disputes but which are not empowered to produce legally binding adjudications.

The research has sought to shed light on the range of factors that contribute to greater or lesser effectiveness and legitimacy in the functioning of transnational grievance-handling systems. A key objective of the project is to develop recommendations regarding how non-judicial forms of redress can better support communities who are adversely impacted by business operations to access justice and have their human rights respected. These recommendations are primarily aimed at those who participate in these mechanisms, including businesses, affected communities and civil society organisations, as well as staff and other members or stakeholders of grievance-handling mechanisms themselves.

Field research for the project as a whole has focused on human rights grievances in the garment and footwear, agribusiness and extractives sectors, with case studies for each sector drawn from two jurisdictions: India and Indonesia. 10 case study reports examine specific human rights grievances experienced by communities and workers and the strategies employed in their at-
tempts to gain redress in the context of these specific sectors and regulatory environments. Five mechanism reports in this series have been developed to provide a better understanding of the effectiveness of individual non-judicial human rights mechanisms governing transnational business. In addition to these individual case-study and mechanism reports, the project’s overall findings are presented in four cross-cutting reports which provide broader comparative analyses across the various case studies we examined.

This mechanism report focuses on the Ethical Trading Initiative (ETI). It is the companion to another report in this series, Forced labour in the textile and garment sector in Tamil Nadu, South India: Strategies for redress, which documents various efforts to seek redress for human rights violations in textile and garment production in South India, and comments particularly on the ETI’s engagement with this issue. Two other reports in this series, Rajasthan stone quarries: Promoting human rights due diligence and access to redress in a complex supply chain and Barriers to grievance: Leather footwear homeworkers in Tamil Nadu, South India, will also be relevant companion reading, as they report on human rights violations in production locations from which ETI member companies source product. These reports are all available at: www.corporateaccountabilityresearch.net.

This report’s findings are based on extensive primary and secondary source research gathered through in-country research in Tamil Nadu and elsewhere in India and the UK. The report is informed by 119 semi-structured interviews and 30 focus group discussions involving a total of 228 research participants. Of those research participants, 36 were representatives of companies or industry associations, 66 were representatives of trade unions or non-government organisations (NGOs) and 126 were workers or former workers in the garment, footwear, textile or stone industries in India. Of the company participants, five represented companies that are currently ETI members and the rest were representatives of supplier companies in India. Of the trade union and NGO participants, ten represented ETI member organisations. Interviews were also conducted with seven ETI staff and one ETI consultant. Some interviews were conducted via Skype or telephone but most were conducted during research trips to India and the UK between December 2011 and July 2015. The report therefore primarily focuses on this period, although some aspects of the analysis have been updated with more recent information. The research also drew from various ETI publications and programme reports, third-party evaluations of ETI programmes and studies that document working conditions in relevant supply chains.

The scope of our research in relation to the ETI’s operations is limited in several ways. Although we interviewed research participants about (and consulted secondary sources of data regarding) the overall operations of the ETI, our research focus was on the ETI’s human rights grievance processes. In conducting this research we focused particularly on the ETI’s response to forced labour issues in Tamil Nadu, and to a lesser extent on the ETI’s response to several other human rights grievances in India. We did not conduct field research in relation to the operation of the ETI’s grievance processes in other countries. The team of researchers who conducted the research for this mechanism report and the clothing and footwear case-studies also focused particular research attention on the extent to which the ETI and other non-judicial grievance processes are addressing violations of the following three human rights issues:
These three human rights issues were prioritised for the garment and footwear case studies and this ETI mechanism report because they were frequently identified by interviewees as being particularly important rights in the labour context, since each of these rights is fundamental to increasing workers’ capacity to achieve more systematic and sustained improvements in working conditions throughout manufacturing supply chains. For example, if there is no freedom to organise and negotiate collectively then vulnerable workers with few other employment options will rarely, if ever, raise grievances for fear of being dismissed. The right to secure forms of employment is also important because, in many of the supply chains of ETI member companies, precarious work arrangements are directly undermining workers’ freedom to organise.

Adequate remuneration is also critical to the empowerment of workers because poorly paid workers live in a highly precarious economic state that makes it difficult for them to engage in advocacy efforts to improve their lives. It is important to note that in most countries that produce goods for ETI member companies, legal minimum wages are often well below what is needed for workers and their families to meet their basic needs.

What is the ETI?

The ETI was founded in 1998. As noted on the ETI web site, its goal is to promote "respect for workers' rights around the globe". The ETI has a Base Code that reflects the core labour standards in international human rights instruments and all ETI companies are expected to ensure progress is made toward respect for those standards within their own and their supplier’s operations. ETI companies usually contract out the production process to other companies (first tier suppliers) and those first tier suppliers in turn have contracts with other suppliers and so on. Hence many of the relevant production processes take place in factories, mills, quarries, farms, small-holdings or homes that are beyond the first tier of the supply chain. The ETI expects ETI companies to ensure that their first tier suppliers “engage with their own suppliers to comply with the Base Code throughout the supply chain” (ETI, 2009: 1).

The ETI Base Code includes reference to the three human rights issues we have focused on in this research. The rights to freedom of association and collective bargaining are covered in Article 2 of the Base Code; the right to secure forms of employment is covered in Article 8; and the right to adequate compensation is covered in Article 5. Within the ETI, companies’ efforts to ensure compliance with the Base Code are described as their “ethical trade” programmes.

The ETI’s governance structure is tripartite. Its board is made up of four elected corporate representatives; four elected NGO representatives; four elected trade union representatives; and an
independent chair and vice-chair. The ETI has a secretariat, with twenty three staff positions plus a coordinator of the ETI member NGOs and a coordinator of ETI member trade unions.

As at July 2016, the ETI has 66 full company members (hereafter “ETI companies”) and 22 ‘Foundation Stage’ company members. ETI’s membership includes well-known companies such as Asda, Burberry, C&A, Gap, Inditex, Marks & Spencer, Mothercare, Sainsbury’s and Tesco. Most of the ETI’s funds come from corporate membership fees but the UK government also contributes to the ETI as part of its overseas aid funding programme, administered by the Department for International Development (DFID). Between 2011 and 2014 DFID contributed more than £1.2 million of the ETI’s core funding. The ETI also seeks project funding from the UK government and other funding organisations. For the fiscal year ending 31 March 2015, the ETI’s total income was £1,836,123 of which £657,775 was from grants (including from DFID).

Unlike other similar initiatives, such as the Fair Labor Association in the USA, the ETI does not formally endorse or certify ETI companies’ efforts to promote respect for labour rights in their supply chains. Instead the ETI describes itself as a learning organisation, and uses its programmes to develop “lessons that can be applied more broadly, for the benefit of workers in other sectors and countries” (ETI, 2012b: 4). The ETI expects member companies and civil society organisations to work together to determine what steps companies need to take to ensure compliance with the Base Code in their supply chains. Taken at face value, describing the ETI as a learning organisation implies that it is based solely on a service model (providing advice to member companies) rather than an accountability model, which would involve holding member companies to account for their implementation of the Base Code. However, most ETI staff and corporate and civil society members we interviewed believed that holding member companies to account for their implementation of the ETI Base Code was an important part of ETI’s role.

In research interviews several civil society members suggested there was internal tension within the ETI between those who were comfortable with a service model and those who believed the ETI should be doing more to hold member companies to account.

The ETI’s grievance mechanisms

In research interviews a number of representatives of ETI member organisations made the point that ETI does not primarily see itself as a grievance mechanism and that responding to grievances has not been a central part of the ETI’s work. However, the UNGPs take a broad approach to “access to remedy”, referring to the need to “investigate, punish and redress business-related human rights abuses when they do occur” and “redress” or “remedy” is envisaged as including efforts to prevent further harm. Accordingly in this report we use the term “grievance process” broadly, to include all of the ETI’s processes for responding to allegations of non-compliance with the ETI Base Code. Thus we consider ETI’s informal grievance processes as well as its formal grievance procedures and we consider ETI’s processes for responding to allegations of systemic non-compliance in particular geographic regions as well as its processes for responding to allegations of non-compliance in particular workplaces. Defined in this way, there are at least three aspects of ETI’s operations that can be regarded as grievance processes:
1. the ETI’s process for selecting, designing and implementing programmes to address systemic violations of the ETI Base Code in particular supply chains in particular regions (at least in relation to those programmes that have been initiated in response to complaints about breaches of the Base Code);
2. the ETI’s process for investigating alleged code violations; and
3. the ETI’s oversight of grievance mechanisms administered by member companies or their suppliers.

These three processes are described below. Their effectiveness is considered in the subsequent section.

Grievance process 1: Selecting, designing and implementing supply chain programmes in specific country locations

Many in the ETI itself would not regard ETI’s programmes as grievance processes. However, at least some of those programmes—those developed in response to allegations of systemic rights violations in particular supply chains and particular geographic regions—fit within a broad definition of grievance handling and redress. In fact, given that since 2011 the ETI’s programmes have been a central part of the organisation’s strategic plan and that the programmes consume a significant proportion of the organisation’s resources and staff time, these programmes are arguably one of the most important ways that the ETI is responding to human rights grievances in the supply chains of member companies.

Up until 2011, ETI members formed working groups that developed strategies to advance particular human rights issues right across the supply chains of member companies. Since 2011 the ETI has stopped those working groups and has instead adopted its programme approach, which aims to “drive sustained change for workers within a limited number of strategic supply chains” (ETI, 2012a: 3). The ETI has so far selected and begun to implement nine programmes, including *Garments and Textiles from Southern India* and *Sandstone from Rajasthan*. The latter two programmes are highly relevant to the field research we conducted in India for this research project and each of these programmes are considered in separate reports in this series. In the broad sense that we are using the term, these two programmes can be regarded as grievance processes since the former followed an internal ETI complaint (and public report) by ETI member Anti-Slavery International (ASI) and the latter represents a response to years of public campaigning by labour rights groups in Rajasthan.

Grievance process 2: Responding to member-initiated complaints regarding alleged code violations

The ETI does not have a process that allows external organisations or individuals to directly lodge a complaint with the ETI. However, internally, ETI civil society members (that is, ETI member trade unions and NGOs) can raise concerns regarding alleged violations of the ETI Base Code. Such allegations can relate to any part of the supply chain(s) of one or more ETI member companies. If workers or communities affected by the activities of businesses in an ETI company supply chain believe their human rights are being breached and want to complain to the ETI they must therefore first secure the support of an ETI member organisation before the ETI will address their complaint.
Although grievances raised by ETI civil society members are usually addressed informally through negotiation with the ETI members companies concerned, the ETI does have an *Alleged Code Violation Procedure* (the *Procedure*) that members may choose to activate if informal approaches are not “appropriate in the circumstances, or have failed to satisfactorily address the issue” (ETI, 2014b).

Although the *Procedure* does not explicitly require an ETI NGO or trade union to have a mandate from affected individuals or groups in the supplier country to raise the grievance, the form that ETI members must fill out in order to invoke the *Procedure* requires the ETI member to clarify whether or not it has a mandate from the workers involved and asks whether the workers concerned have expressed their own preference for a particular solution (ETI, 2014b: 7). If there is a danger that the victims may experience victimisation due to their involvement in the complaint then their identity may be withheld, provided that naming the workers is not essential to addressing the alleged violation (ETI, 2014b: 3).

The *Procedure* outlines four distinct stages for the complaint process. In Stage 1, the complaint is filed and the company responds. Where the parties agree, or substantially agree, on the facts, then they can move to Stage 2, in which a joint remediation plan is negotiated between the ETI member complainant and the respondent ETI company. Both stages are expected to progress as promptly as can reasonably be expected in the circumstances. The remediation plan is expected to include a clear time-frame for implementation and its implementation is expected to be monitored, with the company providing regular reports (ETI, 2014b: 3-5).

The ETI’s Base Code establishes a remedy for any child labourer found working within a member companies’ supply chain (ETI, 2014a: 2). For other grievances there are no specific remedies set out in the ETI’s rules, an ETI company is simply required to ‘work with its suppliers to rectify any problems identified’ (ETI, 2009: 3). For those alleged code breaches that are resolved in discussions between ETI companies and ETI NGOs or trade unions, the remedy depends on the result of those negotiations. If a code breach is acknowledged by all parties, then the procedure is concluded once that code breach is remedied (ETI, 2014b: 4-5).

While the *Procedure* expects the complainant and the ETI company to seek to resolve the complaint through negotiation, the *Procedure* envisages the possibility of various forms of intervention by the ETI if those negotiations do not result in a mutually acceptable resolution of the complaint. If negotiations break down at Stage 1 or 2, either party can elect to go to Stage 3, where either the ETI or a mutually agreed mediator seeks to assist the parties to reach agreement on the subject of the complaint and how it should be remedied. As a means of resolving disagreement regarding the veracity of the alleged breach, if parties agree then an independent investigation can take place, with the investigator selected by ETI and paid for by the ETI company. Where mediation is failing to resolve disagreement among the parties, either the mediator or the ETI is also able to commission an investigation (ETI, 2014b: 3-5).

If agreement continues to prove elusive, in Stage 4 the ETI Director can issue a recommendation, either that the complaint should be dropped or that the members should commit to a recommendation plan. It is up to the ETI Director to decide whether or not it is appropriate to issue such a recommendation and, if so, at what stage in the process. If the ETI Director does issue
such a recommendation then if either party is dissatisfied with that recommendation they may request that it be reviewed by a 3 member tripartite review committee of the Board. The review committee cannot replace the ETI Director’s recommendation with its own, but if it determines that there has been an error or some procedural unfairness it can remit the decision back to the director with instructions as to how to address that shortcoming. The review committee can only make such a decision by consensus. Any decision made by the review committee will stand unless the ETI Board itself decides to consider the matter (ETI, 2014b: 3-5).

The Procedure does not stipulate any direct consequence for a company if it fails to comply with a recommendation made by the ETI Director. It does, however, note that ETI has “an established and separate procedure for enforcing membership obligations” and that “failure to adhere to this code violations procedure will be grounds to invoke the membership obligations procedure” (ETI, 2014b: 6). The latter procedure can potentially result in a company being expelled from the ETI. An ETI company’s refusal to comply with a recommendation from the ETI Director would likely constitute a failure to adhere to the Procedure, provided that recommendation had not been overturned by the review committee.

The Procedure was adopted by the ETI in 2014, and replaced ETI’s Alleged Code Violation Investigation Guidelines (‘the Guidelines’), which had been in place in 2001. From early in 2012, in research interviews ETI civil society members and ETI staff regularly told us that the Procedure was being negotiated, and that when it was introduced, the Procedure would represent an improvement on the Guidelines. Although there is a significant degree of commonality between the Guidelines and the Procedure, several differences are worthy of note. The most obvious difference is suggested by the name change. Whereas for the Guidelines, “The extent to which members utilise these guidelines is for them to determine” (ETI 2001: 1), for the Procedure it is much clearer that there are certain steps that ETI companies and ETI member NGOs will be expected to take if the Procedure is invoked. The Guidelines were also narrower in application, whereas the Procedure “applies to all supply chains of ETI member companies” (ETI, 2014b: 2), the Guidelines only applied to “alleged code violations occurring on supplier sites … within the scope of application of the ETI member company’s code of practice” (ETI, 2014b: 4). Unlike its predecessor, the Procedure also includes a significant commitment to public transparency, stipulating that ETI will “publish a statement agreed by the parties or a short summary of the complaint and the outcome” and that “ETI will communicate, via its website, how many complaints it has received, the parties involved, and the outcomes of complaints” (ETI, 2014b: 6). The Procedure also makes a clearer link between a company’s failure to cooperate in investigating and remediating a grievance and the possibility of a company being expelled from the ETI. These changes would all appear to increase the pressure on an ETI company that is the target of a complaint to cooperate in its investigation and remediation.

On the other hand, the Procedure places a great deal of discretion in the hands of the ETI Director. Under the Procedure it is only if the Director decides to make a recommendation that a party can request a review by the tripartite committee, and even then the tripartite committee can only determine that the Director’s decision is inadequate and require that the Director make a new decision, it cannot replace the Director’s decision with its own. The Procedure also stipulates that the tripartite committee’s conclusion regarding the adequacy of the Director’s deci-
sion must be made by consensus, raising the possibility that the corporate member of the committee could block the NGO and trade union representatives from overruling a recommendation by the Director. In contrast, the Guidelines did not explicitly require that the Director make a recommendation before the issue could be referred to the tripartite committee and the tripartite committee was empowered to directly replace the Director’s decision with its own binding determination, with no requirement that that tripartite committee’s decisions be reached by consensus. Whether or not these particular changes restrict the effectiveness of the Procedure will depend on how ETI Directors exercise this discretion.

Grievance process 3: Grievance mechanisms administered by ETI companies and by suppliers in ETI company supply chains

The ETI’s Principles of Implementation requires ETI companies to ensure that workers in their supply chains have access to grievance mechanisms that they can use “confidentially and without detriment” to report violations of the standards set out in the ETI Base Code and have that grievance addressed. This can include grievance mechanisms established by the ETI member company itself and/or grievance mechanisms established by the ETI member company’s suppliers. The ETI does not have a clear guidance document setting out exactly what is expected of companies and their suppliers in this regard, although the ETI NGO Caucus has prepared a discussion paper that aims to identify necessary elements of an effective complaints mechanism and ETI staff reported in our research interviews that they share examples of good practice among corporate ETI members.

How effective are the ETI’s grievance mechanisms?

The context: the ETI’s overall effectiveness in enhancing respect for workers’ rights

Evidence from interviews with ETI member organisations

During interviews conducted in 2013 and 2014, ETI civil society members reported that most ETI member companies are making some progress in persuading their first tier suppliers to improve respect for some of the rights in the ETI base code. But they noted that these improvements are primarily confined to first tier suppliers—there is little evidence of progress further down the supply chain. And even among first tier suppliers there are key rights in the base Code that are still routinely breached. The following statement is typical of comments on this issue by ETI civil society members. After noting that no other multi-stakeholder initiative was doing a better job than the ETI, a representative of an ETI-member NGO went on to say:

Our analysis would be that actually things are not alright and on the ground there are endemic issues that are deep-rooted and not changing over time, for all the efforts of these companies…Ok, some areas, health and safety has improved, and we’ve got more compliance to the minimum wage, but actually the rights-based issues are probably not much better than they were. You don’t have worker representation through unions, wages are not much closer to a living wage and women suffer harassment and abuse, and discrimination (Interview with a representative of an ETI member NGO, 2013).
The representatives of ETI member companies and ETI Secretariat staff that we interviewed tended to be moderately more positive than ETI civil society members about the ETI’s achievements, but they also acknowledged that the ETI faced considerable challenges in its efforts to facilitate progress toward full compliance with the Base Code. Interestingly, some of the representatives of ETI member companies reported that many of their more effective labour rights initiatives were separate from their participation in ETI. They expressed some disappointment at the inability of ETI to persuade less engaged company members to commit to more progressive initiatives.

**Evidence from India**

The field research we conducted in India between 2011 and 2015 indicated significant limits on the extent to which participation in the ETI is resulting in compliance with the Base Code. Three of the Indian case-studies described in other reports in this series were based on interviews with workers, some of whom were employed in ETI company supply chains: the report on textile and garment production in Tamil Nadu; the report on homeworkers in leather footwear supply chains, also in Tamil Nadu; and the report on stone quarrying in Rajasthan. ETI companies had been sourcing from these areas for a number of years before we conducted our research, so we were able to get a sense of the impact of ETI companies’ previous efforts to promote ethical trade in these regions. For all three case-studies the main focus of our research was on workers employed by producers below the first tier of the supply chain. At these lower tiers we were unable to find any evidence of ETI member companies’ ethical trade efforts resulting in improvements for workers. Two of our case-studies—labour issues in textile and footwear production in Tamil Nadu.
Nadu and in stone quarrying in Rajasthan—related to ETI programmes that had been under development since August 2011. However both programmes were slow to get started and so we were unable to directly assess their impact during our research period.

For the case-study examining issues of bonded and forced labour and other alleged rights violations in Tamil Nadu textile mills and garment factories, we also conducted research in relation to first-tier suppliers in Coimbatore and Tirupur, namely garment factories and integrated facilities that produced both garments and textiles. Here there was some evidence that the ethical trade efforts of ETI companies were leading to limited improvements for workers, particularly in a small number of production sites where ETI companies were cooperating with local NGOs to monitor working conditions and to provide workers with training in their rights. However, even in those production sites workers were still not being paid living wages and their rights to join trade unions were not being respected.

Other assessments of the ETI’s overall effectiveness

The above findings are consistent with the most comprehensive assessment of ETI’s impact thus far attempted, which was conducted at ETI’s request by researchers from the Institute of Development Studies (IDS) at the University of Sussex. Between 2003 and 2006 IDS undertook extensive field-work to assess the ‘positive and negative impacts of implementation of the ETI Base Code on the working conditions and lives of workers within the supply chains of ETI member companies’ (Barrientos and Smith, 2006a: 8). The IDS researchers also found that ETI’s work had only resulted in limited improvements in compliance with the ETI Base Code, noting that ETI’s impact was ‘mainly limited to more visible issues, such as health and safety, with minimal impact on less visible issues such as freedom of association and discrimination where significant issues remain’ (Barrientos and Smith, 2007: 59). For those standards in the ETI Base Code that we have prioritised in this research, namely freedom of association, living wages and regular employment, IDS found either no progress at all or only minor progress (Barrientos and Smith, 2007). IDS only investigated suppliers in the first two tiers (and primarily in the first tier) of ETI company supply chains, on the grounds that the ETI companies’ ethical trade programmes had primarily focused on the first tier.

Although this impact assessment was completed ten years ago, more recent ETI documents suggest that those limitations on the ETI’s effectiveness identified in the IDS research have continued. An external evaluation of the ETI’s work was commissioned in 2014 and completed in 2015. This was a much lighter exercise than the IDS study (it primarily relied on the ETI’s internal data based on companies’ own reports, rather than on direct interviews with workers) but that evaluation also concluded that “results directly affecting the lives of workers are to date largely limited to the more ‘visible’ (and readily accessible) aspects of the Base Code such as child labour and health/safety” (ETI 2015a: 15). An annex to the ETI’s current five-year strategy, released in December 2015, describes the first 15 years of implementation of the ETI’s Base Code, and particularly the focus on confidential audit visits to production facilities to monitor compliance, in the following terms:

*ETI’s experience is that while this [social audit] approach has provided companies with certain information on standards, some progress in their supply chains and some reputational benefit, it*
has not delivered the expected credible assurance of standards that they and their customers seek. Oft cited progress on health and safety standards has not been sufficient to prevent catastrophically unsafe conditions such as those in Tazreen and Rana Plaza factories in Bangladesh. At the same time, more challenging areas have not seen meaningful progress. Areas such as wages have seen a focus on documentation on minimum wages, not progress on the living wage element of the Base Code, and fundamental aspects of freedom of association have not been tackled effectively. The perceived need for workplaces to ‘pass an audit’ can lead to real working hours and wage underpayment being hidden … (ETI 2015b: 9).

While these comments are focused specifically on ETI companies’ social audit programmes, our research found similar limitations in relation to the operation of the ETI’s grievance processes.

The effectiveness of Grievance Process 1: the ETI’s targeted supply chain programmes

The programme approach has become a major focus of the ETI’s work and consumes a significant proportion of its resources. Despite this, progress has been slow. As noted above, the Garments and Textiles from Southern India and Sandstone from Rajasthan programmes are relevant to two of the case study reports in this series and we recommend reading the relevant sections of those reports in concert with this report. By late 2011, when we started conducting our field research for those reports, ETI staff and/or consultants working on the two programmes had already begun conducting research and consulting with local stakeholders as part of the preparation for designing the programmes. By early 2014, both programs were only just starting to be implemented.

Garments and Textiles from Southern India – the process of designing an ETI programme

In both cases the supply chains involved are complex, as is the political and cultural context, and it is understandable that it could require considerable time to research, consult about and design programmes to effectively address the labour rights issues involved. However, at least in so far as the ETI programme on garment and textile production in Tamil Nadu is concerned, negotiations as to the programme’s design during 2012 and 2013 took place primarily between ETI members in the UK, with only occasional consultation with local stakeholders in India. Our research interviews suggest that the primary cause of the length of these internal negotiations was not the complexity of the challenges associated with improving labour rights in the relevant supply chains. Instead it was primarily differences of opinion between ETI members in the UK regarding the scope and nature of the proposed intervention (and the fact that these differences were debated during regularly scheduled meetings in London that took place many weeks apart) that made the process so time-consuming.

The issue of forced labour in garment and textile production in Tamil Nadu had been raised within the ETI in November 2010 by an ETI NGO member, Anti-Slavery International (ASI). The ETI responded by facilitating the establishment of a working group, the Sumangali Bonded Labour Group (SBL), and over the ensuing six months the companies and civil society groups in the UK who agreed to be part of the SBL negotiated a Joint Statement of Intent. In 2011, just
before this statement was due to be published, most of the companies who had been involved
in negotiating this statement indicated that they were no longer willing to sign. These companies
instead signed a document they had drafted among themselves (ASI 2012: 29).

The differences between these two documents are informative. Both documents recognised that
forced labour, child labour and exploitative apprenticeship schemes are unacceptable and that
workers should have access to appropriate means of raising grievances and having them ad-
dressed. However the Joint Statement went further, emphasizing the importance of workers being
paid a living wage and of trade unions being able to talk to workers about their rights. Unlike
the document prepared by the companies, the Joint Statement also required its signatories to
commit to developing a transparent collective action plan with clear goals and milestones.

Many of the ETI companies and ETI civil society groups that had been part of the SBL subse-
sequently became part of the ETI working group that designed the ETI’s Garments and Textiles
from Southern India programme, with the negotiations over that design taking place over the
course of 2012 and 2013. This working group involved similar tensions to the SBL, with our re-
search interviews with ETI civil society members indicating that they pushed for—but, at least
during this period, did not achieve—agreement with ETI companies and ETI staff on a broad
focus on many of the key labour rights in the ETI Base Code, including trade union rights, and
a clear timeline with specific goals and time-bound milestones.

The ETI programme plan that was finalised in 2013, and shared with civil society groups in
Tamil Nadu in early 2014, involved three categories of actions: actions focused on textile mills
and integrated (garment and textile) facilities in ETI member supply chains; actions focused
on workers’ communities; and actions focused on advocacy for policy change by state author-
ities in India. These various activities are analysed in further detail in the companion report in
this series regarding forced labour in textile and garment production in Tamil Nadu. While
limited public information is available regarding ETI’s ongoing advocacy for policy change by
state authorities in Tamil Nadu, most civil society stakeholders we interviewed agreed that this
was an important role that ETI could play. They noted that being a representative of global com-
panies sourcing their products in Tamil Nadu would likely give the ETI some leverage in relation
to the Tamil Nadu state government. During the design phase of the ETI programme in Tamil
Nadu, ETI staff and consultants did meet with local state authorities to discuss the forced labour
issue. And in research interviews conducted for this report in 2013, several ETI staff reported
that the Tamil Nadu programme would involve public policy work, citing particularly the goal
of persuading the state to reduce the textile mills’ apprenticeship scheme from three years to
six months (e.g. Interview with Debbie Coulter, ETI’s Head of Programmes, October 2013).
However, in interviews and subsequent correspondence, representatives of labour rights groups
in Tamil Nadu expressed disappointed that the ETI had not coordinated with local advocacy
campaigns and reported that to the best of their knowledge the ETI seemed to have put little
effort into its own advocacy toward the Tamil Nadu government.

The actions focused on workers’ communities involve educating potential and former workers
in their home villages about their legal rights and how to access legal redress through the courts,
as well as seeking to persuade recruitment agents to be honest with workers about the wages
and conditions they will face if they obtain work in the mills. While these community-based activities may bring some benefit, there are so many poor communities in India where mill owners could source workers that this does not appear to represent a long term solution; if workers from particular communities become more outspoken in demanding their legal rights then mill owners could simply recruit from other communities. It also arguably represents an odd strategy for ETI to employ, since any donor organisation could fund such activities, it does not take advantage of the supply chain leverage of ETI’s member companies.

The most controversial aspect of the ETI’s Tamil Nadu programme has been the work focused inside the textile mills and integrated facilities. Rather than a comprehensive effort to address allegations of breaches of the Base Code in these facilities, the ETI initially opted for a ‘worker peer group programme’ that was very similar to the HER (Health Ensures Returns) Project, a health and hygiene education programme for women workers that had been designed by another organisation, Business for Social Responsibility. Rather than arranging for local trade unions and civil society groups who have been campaigning against forced labour in Tamil Nadu to get access the textile mills to monitor working conditions and meet with workers, the project was initially implemented for the ETI by the PSG Institute of Medical Sciences and Research, an NGO with close links to the Tamil Nadu textile industry.

The Indian civil society groups we interviewed between 2012 and 2015 complained that they were only consulted sporadically during this long, largely London-based, negotiation process and that they had little power to influence the outcome of the negotiations. In research interviews and meetings with ETI staff toward the end of our period of focused research, the ETI staff argued that the design of the Tamil Nadu programme developed in London was still only a broad framework rather than a detailed plan and that the ETI was strongly committed to working with local stakeholders to fill out the details as the programmes were implemented. However in interviews conducted over the same period, representatives of local labour rights NGOs in Tamil Nadu expressed high levels of frustration with the ETI’s approach to consultation and considerable disappointment with the ETI’s decision to make the HER project the primary initial focus of the programme, at least in so far as work inside textile mills was concerned. Local Tamil Nadu NGOs involved in the Tirupur People’s Forum had proposed that the ETI use its supply chain leverage to persuade local industry representatives to work with Indian trade unions, NGOs and state authorities in the establishment of a local grievance process to investigate and address any allegations of forced labour in particular mills. Local NGOs involved in the Tirupur People’s Forum had also repeatedly told ETI civil society members that the ETI should seek to persuade the mill owners to allow local labour rights groups to get access to the mills to monitor labour conditions and provide workers with training in their rights. These groups were very disappointed that ETI had instead opted for a training programme that narrowly focused on providing women workers with information about how to stay healthy, with that training provided by an organisation that is closely connected with the textile industry.

Members of the ETI staff team that we interviewed defended the initial focus on health and hygiene training on the basis that ETI member companies have such an indirect buying relationship with the textile mills in Tamil Nadu that ETI companies do not have sufficient leverage to persuade the mill owners to allow trade unions to access the mills. They also argued that ETI
companies were in any case the ultimate buyers of only a small proportion of the mills’ production, since much of the cotton produced in the Tamil Nadu mills is exported to other countries (including Bangladesh, China and Turkey) rather than sold to Tamil Nadu garment factories supplying ETI companies. They argued it was therefore necessary to use the HER project as a platform for building relationships with mill owners, to pave the way for later negotiations about how to address other labour rights issues in the mills.

However the ETI opted against requiring ETI member companies to trace their supply chains back to the mills, on the grounds that there would be a very large amount of administrative work involved, since many of the relevant supply chains are complex and continually shifting. If such supply chain tracing had been undertaken it could have included tracing connections via ETI company garment suppliers in China, Bangladesh and Turkey that purchase cotton from Tamil Nadu mills. Tracing ETI supply chains in this way would at least have allowed an assessment of the extent of the leverage that ETI companies possess in relation to particular mills. That is, it would have revealed the extent to which it could impact on a particular mill if all ETI companies threatened that all of their first tier suppliers (not only those in Tamil Nadu) would refuse to order from the mill if it failed to cooperate in a more comprehensive labour rights programme, or alternatively, if the ETI companies promised that their first tier suppliers would favour Tamil Nadu mills that did participate in such a programme.

Our period of focused field research came to an end in the latter half of 2015. In mid-2016 we contacted many of the research participants in order to seek their permission to quote or reference their interviews in this report. Some research participants from ETI member organisations noted that there had been recent improvements in the ETI’s Tamil Nadu programme, and that they would be somewhat less critical of it if they were interviewed again. These research participants noted for example that the next phase of the work inside textile mills, to be implemented in 2016 and 2017, involves more comprehensive training for workers in their rights, rather the previous narrow focus on health and personal hygiene (see ETI 2016). Other research participants, from both within and outside the ETI, were less persuaded of the significance of these improvements. For example, a representative of an Indian NGO who attended an ETI consultation meeting in Tamil Nadu in March 2016 described the ETI’s Tamil Nadu programme as “muddled”. This observer expressed disappointment at the previous focus on training workers in personal hygiene and health since it “seems to put the onus on workers who are so young and vulnerable”. This observer argued that, on its own, providing women workers with training in their labour rights would not result in any change, since it would not address the “big power difference between the management and the young workers” (Email from Indian NGO representative, March 2016). Our research interviews and focus groups with young Indian women predominantly from rural Dalit communities who had worked under forced labour conditions in Tamil Nadu mills leads us to share this view: the young women working in the mills are in such a vulnerable position that, on its own, acquiring information about their rights is unlikely to give them much power to change their situation, arguably they need ongoing contact with organisations that can both advocate on their behalf and support them as they organise to advocate for themselves. And they need that contact while they are working in the mills and factories, rather than after they return to their villages.
Our research into the ETI’s Tamil Nadu programme therefore indicates that it is a programme whose design process was slow, London-centric and marked by significant internal conflict between ETI companies and ETI civil society organisations as to the programme’s scope and goals. The programme itself has not attempted to use ETI companies’ supply chain leverage to persuade mill owners to allow local trade unions and labour rights groups to access the mills to investigate alleged rights violations, advocate on workers’ behalf, and support them to organise to claim their rights. Instead its work inside production facilities has focused on providing workers themselves with training and information, initially in relation to health and hygiene issues and more recently in relation to employment rights. At least initially, this training was provided by an organisation that has close ties to textile industry employers. While this training may be of some benefit, it is hard to see how it and the other aspects of the ETI’s Tamil Nadu programme will make it possible for the young, mostly Dalit, women employed in forced labour situations in the mills to overcome the power differential between themselves and management in order to claim the rights set out in the ETI Base Code, including the rights to freedom of movement, freedom of association and living wages.

Further, as discussed in the relevant companion report in this series, some civil society groups in Europe and India fear that ETI’s Tamil Nadu programme may actually undermine attempts to achieve more far-reaching solutions. These groups have been working for many years to document and publicise forced labour and other human rights issues in mills and garment factories in Tamil Nadu, in an effort to pressure international retailers and the Tamil Nadu government to take steps to ensure workers’ rights are properly respected. These groups are concerned that
the ETI’s programme will dissipate rather than increase pressure on ETI companies and mill owners to cooperate in allowing local trade unions and labour rights organisations to get access to the mills, since ETI companies are able to mitigate any negative publicity associated with the forced labour issue by pointing to their participation in the ETI programme as evidence that they are taking the issue seriously and seeking to address it.

Of course, this is not to suggest that it would be easy for the ETI or any organisation to persuade textile mill owners and factory owners in Tamil Nadu to allow local trade unions or labour rights organisations to have regular contact with their employees. The textile industry in that state is very powerful, has a close relationship with the state government and is strongly opposed to allowing such access. However, at least one ETI member company has persuaded one of its direct suppliers in Tamil Nadu (an integrated textile mill and garment production facility) to allow local labour rights organisations to monitor conditions and have regular contact with workers. This is obviously easier to achieve with a first tier supplier than with mills further down the supply chain. But most of the ETI companies that source from Tamil Nadu have so far refused to share detailed supply chain information with ETI NGOs and trade unions or to use the associated leverage to try and persuade suppliers to cooperate in more extensive labour rights programmes (either by rewarding compliant suppliers or punishing those that refuse to comply). Unless and until ETI companies are willing to cooperate in such an exercise, the exact extent of their potential leverage in relation to the textile mills in Tamil Nadu will remain opaque.

To what extent is Garments and Textiles from Southern India typical of ETI programmes?

We researched the ETI’s Tamil Nadu programme in greater depth than any of the ETI’s other programmes, so it is difficult to determine with certainty to what extent these characteristics are typical of the ETI’s other programmes, or whether these characteristics will continue into the future. The decision not to map ETI company supply chains in Tamil Nadu down to the mills as part of the programme may be atypical, as by contrast the ETI its programme in Rajasthan has involved mapping of supply chains in the Rajasthan stone sector to identify where the ETI has leverage to bring about change (ETI 2011). Further, the focus on conducting negotiations regarding ETI’s programmes among stakeholders in London rather than in the countries in which the programmes will be conducted may well change in future. Our research interviews suggested there was recognition among key decision-makers within ETI that it needs to move to a position where ETI’s programmes (whether or not they are established in response to a grievance process) are negotiated and planned in the country where they will be implemented, with local stake-holders playing a direct role in that negotiation. For example, ETI Director Peter McAllister noted in an interview:

… Even I would be the first to admit that we have a woefully inadequate board in terms of genuine supplier or Southern global perspectives, so there are lots of issues around governance I would like to explore … while I am happy to have conversations in London, many of these conversations need to happen in Beijing, in Johannesburg, wherever, and if you like [we need] satellite-type ETIs, rather than us having these meetings [in London] (Interview with Peter McAllister, January 2014).

On the other hand, the considerable length of time it has taken to design and implement the Tamil Nadu programme certainly appears to be standard across ETI’s programmes so far. The programme in Rajasthan also progressed too slowly for us to assess its impact during our field
research visits to that state in 2012 and 2013. The ETI’s 2015 *External Evaluation Report* noted that ETI’s programmes have taken so long to develop that there is a danger of the ETI being perceived as “being in the ‘slow lane’ of achieving change in workers’ conditions” (ETI 2015a: 20). Specifically in relation to the ETI’s programmes the evaluators attributed the slow pace to the complexity of the tasks rather than internal tensions between ETI members, although more generally the evaluation report recognised that the ETI’s “tripartite structure necessarily implies conflicting objectives and incentives, which if not reconciled could threaten to forestall meaningful action” (ETI 2015a: 19).

The ETI’s *External Evaluation Report* also highlighted the difficulties in accessing reliable data in order to assess the effectiveness of ETI’s programmes. The report was positive about the “new set of relationships” emerging from ETI’s Tamil Nadu programme but said the question of whether these relationships would result in systemic change within mill operations “remains untested” (ETI 2015a: 15). The report was also positive about the Rajasthan programme, commenting that the relevant ETI working group had been “successful” in developing collaborative programmes, but it is not clear from the report what had been achieved or what data the evaluators were relying upon to determine that it had occurred. The *External Evaluation Report* also refers to some data regarding several other ETI programmes (data that is held internally within the ETI as part of its reporting system for a DFID grant), but notes that this data illustrates “some of the inherent problems and continuing challenge of capturing, interpreting and communicating the results of ETI’s work” (ETI 2015a: 17).

In the context of limited reliable public data, it is therefore difficult to be sure of the extent to which our findings in relation to the Tamil Nadu programme are generalizable across the ETI’s other current programmes. It is however worth briefly comparing it to a now completed ETI project that was discussed in detail by research participants in a number of our research interviews. Although it pre-dates ETI’s new programme approach, the ETI’s Homeworker Project in North India also involved seeking to implement ETI’s Base Code in a particular supply chain (garments) in a particular geographical area (North India). In particular that project has similarities with the Rajasthan Stone and Tamil Nadu garments programmes, which also seek to implement the ETI Base Code beyond the first tier of ETI company supply chains. As such the Homeworker Project can provide useful insights into both the potential benefits and potential limitations of ETI’s programme approach. As the following analysis indicates, there are a number of similarities between this project and the ETI’s Tamil Nadu programme, particularly in the way the project avoided addressing key rights in the Base Code, such as the requirement that workers be paid a living wage. Like the ETI’s Tamil Nadu programme, the ETI homeworker project also focused on providing workers with information and training about their rights, rather than on requiring ETI companies to provide suppliers with incentives to respect those rights. **Lessons from a prior ETI project – the Homeworker Project in North India**

The ETI’s Homeworker project ran from 2002 until 2013. The period 2002-2006 involved brand, NGO and trade union stakeholders preparing guidelines for member companies on how to support the rights of homeworkers. Between 2006 and 2013 the ETI implemented a project supporting the rights of homeworkers in some member company supply chains in North India. The ETI’s willingness to attempt to address the rights of homeworkers was itself an important
step forward, since many international companies refuse to acknowledge that homeworkers play a role in producing their goods. Alok Singh (2011), who coordinated the homeworker project and is now coordinating the Rajasthan Stone programme, described the project activities in Bareilly in Uttar Pradesh in a blog entry on the ETI site:

*Initially our activities focused very much on training homeworkers in health and safety, basic record-keeping, quality control and so on. Then we started to link them up to government-funded credit and insurance schemes...they have set up their own 'self help' groups, where they get together to work out solutions to common issues, as well as raising problems with contractors—the 'middle men' who give them work... Training homeworkers to keep records of their transactions with contractors has also made a difference to increasing incomes, as it means they are better able to keep track of what they are owed, and the transactions become visible to everyone in the supply chain.*

In our research interviews, several ETI civil society members provided a more sober assessment of the Homeworker Project’s achievements. They confirmed that some suppliers were willing to provide information about which homeworkers they worked with and to allow ETI’s local partner to provide support and training to those workers, of the kind described in the above quotation from the ETI web site. However they also indicated that:

- only one of the ETI companies involved in the project was willing to commit to ensuring homeworkers received piece-rates that were the equivalent to the local legal minimum wage, a wage level that was itself well below a living wage;
- most of the ETI companies involved in the project were not willing to pay their suppliers higher prices or guarantee long term orders in exchange for their cooperation in the project
- in the absence of higher prices or the promise of more stable orders, the suppliers were not willing to pay higher piece rates to the homeworkers.

ETI civil society members also strongly criticised most of the ETI companies involved in the project because—despite the fact that the project was successfully improving some conditions for workers—over the course of the project all but one of the ETI companies decided to cease ordering from Bareilly, thus significantly undermining the project’s effectiveness. One ETI NGO representative noted that for some of the ETI companies the decision to cease ordering from Bareilly was actually made by ethical compliance staff within the ETI companies:

*The particularly galling change was that the ethical trade divisions of retailers and brands, which were the divisions that initiated the Homeworkers project, started to specify that production should only happen within a radius of Delhi that enabled an audit to be conducted within one day. This resulted in work being taken away from Bareilly, where women embroidered. The men and boys with the embroidery skills of their communities moved to Delhi slums and were employed to work, eat and sleep all in the same workshop space. The conditions experienced by some were appalling, and included being always made to work, rarely going outside (Email from ETI NGO representative, July 2016).*
In another research interview, an ETI company representative who had been involved in the project spoke positively about the benefits for homeworkers of being part of schemes that helped ensure they were paid whatever piece rates they had been promised; of being provided with a community crèche where their children can be cared for while they work; and of being supported to form self-help groups where homeworkers discussed what piece-rates they should be willing to accept. However the company representative freely admitted that his own company was not willing to pay more to suppliers to ensure that homeworkers were paid higher wages and argued that the complexity of the supply chains at Bareilly made it impossible to significantly raise homeworkers’ piece rates. The company representative also reported that many of the other companies involved in the project had not been as committed to practically implementing the ETI’s Homeworker Guidelines as his own company:

*Once we tried those guidelines as a part of the pilot project; then with that came out a lot of challenges... And there were a lot of [ETI Company] members in the group who were not willing to take those challenges head-on.*

Other research also indicates that the achievements of the Homeworker Project were relatively limited. Mezzadri (2014) conducted extensive interviews with homeworkers and other stakeholders in Bareilly as part of an academic study of the impact of ETI’s Homeworker Project. Her report bears out the criticisms of the project made by ETI civil society groups in our research interviews. Mezzadri is very critical of the project, describing it as “fully embedded within labour social relations of domination” because ETI essentially provided support services to homeworkers without challenging the deeply unbalanced power relationship between the homeworkers and those who provided them with work. Mezzadri found that those homeworkers employed by contractors participating in the ETI project were receiving the same very low piece rates as other homeworkers in the area (Mezzadri, 2014: 29-30). She acknowledged that providing homeworkers with training and assisting them to access government benefits was a positive development. However she argued that ETI’s decision to conceptualise ethical expectations in terms of training provision and awareness-raising resulted in very little improvement in respect for their labour rights. She suggested much more would have been achieved if the ethical expectations on companies had also included improving wages and ensuring more stable contractual relations.

**The effectiveness of Grievance Process 2: The ETI’s Procedure for responding to member-initiated complaints**

In our earlier discussion of the differences between the ETI’s new Procedure and the previous Guidelines, we argued that although in a number of respects the Procedure represents an improvement on the Guidelines, the Procedure gives considerable discretion to the ETI Director and its effectiveness will therefore rely to a significant extent on how that discretion is exercised.

Unlike the Fair Labor Association in the US, as of July 2016 the ETI is not maintaining historical data on its website as to how many allegations of non-compliance with the ETI base code have been initiated or how they have been resolved. As noted earlier, the Procedure includes a commitment to publish such information on the ETI site. The Procedure was not introduced until 2014 and its transparency requirement may not have been intended to operate retrospectively.
In any case, the current lack of detailed public data makes it difficult to systematically consider the effectiveness of either the Guidelines or the Procedure.

Anecdotally, in research interviews we conducted in 2013 and 2014, most ETI civil society members reported that pursuing human rights grievances within ETI was time consuming and that although it sometimes resulted in positive outcomes, it commonly resulted in disappointment, whether or not the Guidelines were used. For example, one representative of an ETI NGO reported that, while some grievances had been resolved through negotiation, many cases ended in agreement to disagree, either in relation to the alleged facts or in relation to the extent of ETI member company responsibility for acts committed by (often by now former) suppliers (Interview with participant from an ETI member NGO, 2013).

Although the Guidelines were not formally invoked, the way the ETI initially responded to Anti-Slavery International’s complaint about forced labour in garment and textile production in Tamil Nadu (in 2010 and 2011, before that response became one of the ETI’s programmes) is a good example of the difficulties ETI civil society groups face in trying to use the ETI as a mechanism to have human rights violations addressed. Negotiations between human rights complainants and companies implicated in alleged violations can be productive if the companies are either intrinsically motivated to ensure the rights violations are brought to an end, or else there is some external threat or reward that is sufficient to persuade the companies to cooperate. In this case both were clearly lacking and almost all of the companies withdrew from the Joint Statement of Intent that they had spent six months negotiating with the civil society groups.

However three successfully resolved grievances were repeatedly cited in our 2013 and 2014 interviews with ETI staff and ETI civil society members. The first was ETI’s involvement in persuading the UK parliament to pass the Gangmasters (Licensing) Act 2004. The second was ETI’s 2011 involvement in persuading ANZCO, a New Zealand supplier of lamb to ETI member Waitrose, to stop locking out employees involved in an industrial dispute and resume negotiations with those workers. The third was ETI’s involvement in persuading companies to sign up to the Accord on Fire and Building Safety in Bangladesh (the “Bangladesh Accord”) following the Rana Plaza tragedy in Bangladesh in 2013. While the factors contributing to these success stories will be considered later in this report, the overall picture that emerged from our interviews with ETI civil society members was that, at least in the period before the Procedure was introduced, these positive stories of grievance resolution appear to have been the exception rather than the rule. It remains to be seen whether the new Procedure will improve the ETI’s success in facilitating effective remediation of alleged rights violations.

The effectiveness of Grievance Process 3: grievance mechanisms established by ETI companies and their suppliers

Although all ETI companies are formally required by the ETI’s rules to ensure that workers in their supply chains have access to grievance mechanisms, a number of ETI civil society members noted in research interviews that company and supplier grievance mechanisms have not been a major focus of the ETI’s work. Several also questioned whether the staff of the ETI Secretariat had the necessary expertise to advise companies and suppliers on how to establish effective grievance mechanisms.
The ETI’s public reporting on this issue is not very detailed. The 2015 ETI External Evaluation Report indicated that, based on ETI company reports, as of 2011 there were 161 workplaces in ETI company supply chains with “mechanisms in place through which workers can voice their workplace concerns” (ETI 2015a: 16). A document on the ETI website dated July 2016 reports the total number of such workplaces as 411. It is not clear what proportion of the total number of workplaces in ETI supply chains that this represents, but given that the ETI estimates there are 10 million workers in ETI company supply chains, there are likely to be a significant number of workplaces in those supply chains that do not yet have such mechanisms in place.

It is also not clear from the ETI’s public reports how many of those workplace-level mechanisms that are in place are working effectively. Given that in most of the industries in which ETI companies operate there are very significant power imbalances between workers and their managers, it certainly cannot be assumed that, just because a grievance mechanism is in place in a workplace, workers will therefore be confident to use it, or that those who do use it will have their complaint handled in a fair and appropriate manner. It was clear from our research interviews in India and Indonesia that in the absence of respect for freedom of association it is very difficult to establish effective workplace-level grievance mechanisms. This point is considered in greater detail below in the section titled ‘Power dynamics between workers and their employers’.

Factors determining effectiveness

While the amount of public information on ETI’s performance is limited, both the data we gathered through our interview research and the two external evaluations commissioned by the ETI itself indicate significant limits on the extent to which the ETI’s grievance procedures (and the ETI’s operations more generally) are enhancing compliance with the ETI Base Code. Why is that the case? And what reforms, including reforms to ETI’s grievance processes, might improve that performance? This section of the report addresses these questions by considering the key power relationships at the various different scales at which ETI operates.

Power dynamics between workers and their employers

If ETI’s various grievance procedures are to provide redress when the human rights in ETI’s Base Code are breached, then they will have to address the significant power imbalances between workers in ETI company supply chains and those who provide them with work. Numerous academic and NGO studies have reported that in global supply chains in most labour-intensive industries there is a significant power imbalance between workers and those who provide them with work. Most manual workers in these supply chains have limited alternative job opportunities and little or no job security. They rarely have any savings and commonly are significantly indebted. They are frequently ignorant of their legal rights and in any case have good reason to doubt whether government officials would actually enforce those rights if a complaint was made. In many of these industries the great majority of these workers are women. Many of these women live under patriarchal societies where they are discouraged from being
assertive. Many encounter sexual harassment or other forms of violence from (usually male) managers, supervisors and others who hold positions that give them power over them. As should be clear from the ‘case-study’ reports in this series, these power imbalances were very obvious in the field research we conducted in India and Indonesia, including in supply chains producing for ETI companies in Rajasthan and Tamil Nadu.

Even if it is assumed that ETI member companies are genuinely motivated to ensure respect for workers’ rights in their supply chains, whatever monitoring systems or grievance processes they put in place must deal with the reality of this power imbalance. Many of the garment and textile workers we interviewed told us they were trained to lie to labour auditors and to answer labour audit questions as if there were no labour rights issues in their factory or mill. The workers also said they were warned by factory owners that any negative reports to social auditors could lead to lost orders and lost jobs. This phenomenon of workers in global supply chains being trained to lie to social auditors has also been regularly reported by other researchers (Adam et al, 2005: 9; AFL-CIO, 2013: 26; Clean Clothes Campaign, 2005: 15; ETI, 2006a: 8; Financial Times, 2005; Harney, 2005; Roberts and Engardio, 2006). Even if an auditor conducts surprise visits and interviews workers confidentially (which rarely happens) workers commonly keep silent about labour violations for fear that negative reports may endanger their jobs. This helps explain why labour auditing has been largely unsuccessful in addressing labour violations that cannot be directly observed by the auditor.

Any grievance mechanism made available to workers also operates in the context of this power imbalance. If an ETI company requires its suppliers to establish their own complaint mechanisms in particular workplaces then this may have some value in addressing individual misbehaviour by particular supervisors. It will be useless in addressing labour rights violations, such as illegally low wages or suppression of trade unions, when those violations form part of a deliberate strategy by senior management, since those managers can hardly be expected to objectively investigate and address a complaint against themselves.

Further, if an ETI company establishes its own grievance mechanism, such as a telephone hotline, it will not be used unless workers believe they can complain confidentially and have their complaint addressed without being victimised. As an ETI NGO representative told us in a research interview:

*I think the main barrier is that workers would tend not to trust these mechanisms, if they are [run] by the factory. They wouldn’t trust them because they are management mechanisms and so they don't necessarily feel that they are their mechanisms. If they are run by the brands, they would feel like it is not for them because, who are the brands? They are miles away* (Interview with a representative of an ETI member NGO, 2013).

The amount of work involved in establishing mechanisms that workers believe they can trust is demonstrated by a pilot project addressing sexual harassment that is currently being undertaken in six supplier factories in southern India by the Fair Wear Foundation (FWF), a Dutch multi-stakeholder initiative. In the course of our research we interviewed Suhasini Singh who is the country representative of FWF and Viyakula Mary of the labour rights NGO SAVE, both of whom have been involved in implementing the programme. A telephone hotline was estab-
lished but in the first two years of its operation barely any workers used it, even though staff from the labour rights NGOs had provided the workers with training about the hotline, and the same staff were the ones who would answer any calls. The NGO staff also trained workers to form their own sexual harassment committees and provided ongoing support and training to those committees. It was only after two years of regular training visits that workers started to trust the process enough to use both the workplace committees and the telephone hotline to make complaints. While both Singh and Mary were positive about the pilot programme, they both had concerns about whether any positive changes resulting from the pilot would be sustained after the project came to an end. Mary was seeking to facilitate contact between workers involved in the pilot programme and local trade unions, in the hope that trade union branches might develop in the factories, since she believed that would result in more sustainable change.

This begs a question: if trade unions provide a more sustainable model for facilitating grievance redress, why aren’t MSIs like ETI and the FWF establishing grievance mechanisms and other processes that focus more directly on ensuring respect for trade union rights? In a 2013 research interview, Dwight Justice of the International Trade Union Confederation (ITUC) pointed out that collective bargaining is in essence a dispute resolution mechanism. He developed the point in subsequent correspondence:

Moreover, because trade unions directly address the power imbalance between workers and management, grievance mechanisms established in collective agreements and involving trade union representation are much more credible than those established by management alone. The involvement of trade unions is the best way to address the problem of fear for workers who want to complain (Email from Dwight Justice, 2016).

Ben Moxham (at that time a long-time member of the ETI Board, representing the UK Trades Union Congress) made a similar point about workplace-level complaints mechanisms:

If you have a garment worker who has not been paid a living wage, would you say to her “well why don’t you file a complaint with your employer and see what happens?” If they are lucky they get ignored, if they are unlucky they get sacked … it is very unlikely that you’ll get success out of it. So you need to, historically, have a complaints mechanism within the collective bargaining structure, so if the collective agreement is not being respected you go through the disciplinary or grievance process and that will throw up a whole lot of issues that can be dealt with in the next round of collective bargaining. So they have always been complementary, one without the other doesn’t work very well (Interview with Ben Moxham, October 2013).

Justice, Moxham and several other representatives of trade unions and NGOs involved in ETI expressed disappointment that ETI had not made the right to freedom of association a more central priority in its programmes and activities (Interview with Dwight Justice, October 2013; interview with Ben Moxham, October 2013). One research participant from an ETI company suggested that ETI had avoided focusing on freedom of association because it is one of the most challenging rights to deal with:

If you look at really what is going to make a difference, it has got to be freedom of association. Why in the last ten years have we [i.e. ETI] not done anything on freedom of association? Because we
know it is the hardest thing to tackle. But it would have the biggest impact. Because if you look at all the code issues if you’ve got freedom of association you would be able to deal with all the code issues at once, particularly wages … (Interview with a participant from an ETI company, 2013).

In 2013 ETI produced a ‘practical guide’ on freedom of association in company supply chains (ETI, 2013). While this document contains much useful information and advice, it contains only two examples of initiatives that are seeking to promote this right. The first example is Inditex’s cooperation with Industriall to provide training in worker representation in six supplier factories in Turkey. While Inditex’s relationship with Industriall does appear to be resulting in positive initiatives to promote trade union rights, this relationship pre-dates Inditex’s decision to join ETI and no other ETI companies have followed Inditex’s lead by signing a framework agreement with a global union federation. The second example is the Freedom of Association Protocol (‘FOA Protocol’) in Indonesia, which is considered in a separate report in this series. While the Protocol is certainly leading to some improvements in respect for freedom of association in some garment and footwear factories in Indonesia, only one ETI company has actually joined the FOA Protocol and our research interviews in Indonesia indicated that the ETI member company was putting less effort into implementing the Protocol than other participating companies. At least five other ETI companies have been invited to join the initiative but have declined to do so. It is noteworthy that ETI was not able to point to more evidence of its own work resulting in enhanced respect for freedom of association, despite internal pressure from civil society members that this right be prioritised.

**Power dynamics between ETI companies and their suppliers**

If ETI’s grievance mechanisms are to result in greater respect for workers’ human rights, then suppliers in ETI company supply chains have to be persuaded to cooperate in resolving those grievances. At present the main means by which most ETI companies seek to persuade first-tier suppliers to stop labour rights violations is by implicitly or explicitly threatening to limit or cut orders to a supplier that refuses to comply. In theory, these kinds of threats could also be made to suppliers beneath the first tier, although it would require careful supply-chain mapping and the ability to persuade suppliers below the first tier to make and carry out such threats.

While such threats are sometimes effective in persuading first tier suppliers to address labour violations, the impact of such threats is limited by the context in which they are made. ETI companies rarely offer a long-term commitment to suppliers and their suppliers are under significant pressure to keep costs low in order to avoid losing orders. In research interviews, representatives of garment and textile suppliers in Tamil Nadu described how they were forced to accept low prices for their goods for fear of losing orders to countries like Bangladesh, which they believed had far worse labour conditions. Further, the suppliers of ETI companies frequently also supply companies outside ETI and can potentially change customers if ETI companies put pressure on them to improve labour conditions without offering to share the costs. In a research interview, ETI’s Head of Programmes, Debbie Coulter, said:

> Sometimes you look at some of these issues and find it very frustrating that we can’t use our collective strength to have any influence. I think partly it is recognition that our influence is really minimal. So both in Tamil Nadu in the mill industry and Rajasthan sandstone is a classic example that if
ETI members called off tomorrow and stopped sourcing there wouldn’t be a dent. People really wouldn’t notice our absence and would attend to the domestic market ... We just had the same response from, we are doing a project in Vietnam with wooden furniture and you will get suppliers when they are pressed too quickly, too fast, too hard, they will say: “Do you know what, it is not worth the hassle. We can supply to the domestic market or the American market or any market where we don’t get this intense pressure about how ethically we are trading” (Interview with Debbie Coulter, October 2013).

Other evidence also suggests that threats by ETI companies to cut orders if suppliers do not make costly improvements in labour conditions may be as likely to make those suppliers look for other customers—or to conceal their non-compliance from the ETI companies—as persuade them to comply. An ETI NGO representative argued that by paying such low prices, ETI companies were creating a situation in which their suppliers had little choice but to conceal labour abuses from auditors, since actually improving workers’ wages and conditions would increase their costs and result in lost orders:

Because at the moment what we are doing, we as in the UK PLC [publicly listed companies], we are placing orders with suppliers in a manner that effectively forces them to lie about the working conditions. Because in practice suppliers need to supply at a low cost & flexibly. Theoretically the suppliers have to meet the minimum [ETI] Base Code, which they are not. But for the purposes of generating a paper fig leaf that you then wave to a journalist, to say that you have done something, we are actually undermining the ability to improve working conditions because we are putting suppliers in a position where they need to lie if they are to maintain their business relationships. So instead of ETI promoting a process where you open up a discussion between a supplier and a decision maker in a retailer/brand company about how to do good working conditions, unfortunately the combination of labour audits of dubious quality and the demand for low-cost, flexible production has undermined that dialogue in some places (Interview with a representative from an ETI member NGO, 2013).

An ETI NGO representative argued that a much better approach would be for ETI companies to increase the prices they pay in order to cover the costs associated with labour rights compliance that meets the ETI Base Code and, where it provides workers with additional protection, national law:

The only way you are going to get sustained improvement on some of these issues is if the purchaser, who has the dominant voice in the buying company, makes the request and integrates whatever the improvement is into the conversation with the suppliers (Interview with a representative from an ETI member NGO, 2013).

These concerns are not new. One of the central findings of IDS’ major 2006 evaluation of the ETI was that the purchasing practices of ETI member companies—low prices; insecure orders; stringent quality demands; short lead times—were undermining attempts to improve respect for rights in those companies’ supply chains. IDS researchers reported that suppliers of ETI companies ‘criticised the “double standards” of corporates whose buyers’ demands directly undermined compliance with their own code of labour practice’ (Barrientos and Smith, 2007: 725). In the years since the IDS report was released the corporate membership of the ETI has grown significantly and the ETI has put more of a focus on reforming purchasing practices, but the ETI civil society representatives that we interviewed were not convinced that much had re-
ally changed. One representative of a trade union involved in the ETI described company purchasing practices as ‘the elephant in the room’ in all negotiations between ETI-member companies and ETI-member civil society organisations (Interview with a representative from an ETI member trade union, 2013). An ETI NGO member made a similar point, noting that it is the companies’ buying staff, not their ethical trade staff, who determine the economic demands that ETI companies make of their suppliers and ‘the [ethical trade] staff that the companies send to ETI are rarely influential or effective at changing their own colleagues’ behaviour’ (Interview with a representative from an ETI member NGO, 2013).

The ETI’s website does indicate that when they are ‘scoring’ supplier performance, some ETI companies add labour rights compliance scores to the scores for factors like price, quality and speed of delivery, and the final score helps determine which suppliers get more orders and which get less (see for example ETI, 2008). While in theory this approach could provide suppliers with an incentive to improve labour rights compliance, its effectiveness depends on how compliance is measured. If the labour rights scores are based on audit reports then the danger is that suppliers might be rewarded for concealing labour violations rather than improving labour rights performance. As discussed earlier, if a supplier allows workers to form a trade union then those workers will likely feel more confident to express complaints, which would result in the supplier getting higher numbers of complaints and worse scores on general labour audits. Hence these schemes are only likely to be effective if they are heavily weighted towards rewarding suppliers for respecting rights like freedom of association, job security and living wages, rights which increase workers’ power in the workplace and hence their confidence to speak openly about rights violations. As noted earlier, there are few examples of ETI companies making progress in addressing these rights.
The other means by which the ETI seeks to encourage suppliers to implement the ETI Base Code and to respond positively to grievances is by arguing that labour rights compliance makes individual enterprises more productive and hence more profitable. An ETI civil society member noted that this was a major concern of companies within the ETI:

But the challenge to unions and to the NGOs [inside the ETI] as well is all the time to keep the focus on workers. Because people get side tracked about the business benefits of ethical trade. And you have to persuade people in businesses that there is a commercial case for having better conditions in the factory rather than doing it because it is the right thing to do. So it seems that the CSR people [within ETI companies] are under pressure to demonstrate that there is a business case for Ethical Trade (Interview with ETI civil society member, October 2013).

An example of this kind of ‘business case’ argument for ethical trade can be found in ETI’s (2013: 5) guide to freedom of association, which cites research evidence that collective bargaining agreements can contribute to productivity and competitiveness. The danger in this approach is that respect for human rights becomes conditional on the ‘business case’ for respecting each human in each workplace. While it is no doubt true that in many cases collective bargaining will facilitate productivity gains, this will not always be true. If workers are allowed to form trade unions they may well demand living wages and they may refuse to accept the higher work intensity that can be associated with higher productivity. Freedom of association is just as much a human right for such workers as it is for workers who are more willing to make compromises. If freedom of association is to be treated as a fundamental right, then respect for it cannot be conditional on whether or not it enhances productivity and profitability.

If neither threats to cut orders nor promises of the ‘business case’ for human rights are adequate to persuade suppliers to fully respect human rights—and the evidence discussed above suggests they are not—then arguably buying staff in ETI companies should seek to offer suppliers economic incentives to cooperate in respecting rights, for example by offering to pay higher prices or offering longer term ordering relationships. Evidence from ETI civil society members indicates they have not been able to persuade member companies to take this step. As another of the ETI NGO representatives put it:

They [the labour rights compliance staff within ETI member companies] may try to be aligned with the buyer side of things but that doesn’t go as far as actually changing anything in the way the value chain is managed. It goes as far as awareness raising, training of buyers on the impact of their decisions, looking at recommending incentives and having a balance of all kinds of approaches … but does it mean that somebody would pay a higher price? No they won’t. So that just means that there is a flaw at the heart of this whole thing, which is, who can change business practices? Because I am not sure these companies can (Interview with a representative of an ETI member NGO, 2013).

The fact that the ETI civil society members have not been able to persuade member companies to offer suppliers more attractive purchasing arrangements in exchange for better labour rights compliance raises important questions about internal power relationships within the ETI.
Power dynamics between the ETI’s company and civil society members

As a non-judicial mechanism, the ETI cannot rely on the power of the state to compel ETI companies to provide redress when the ETI Base Code is breached. Unless those companies are intrinsically motivated to correct identified breaches, if the ETI is to operate as an effective grievance mechanism then ETI civil society organisations and the ETI Secretariat have to find ways to persuade ETI companies to cooperate in efforts to provide redress. Our interviews with ETI civil society members (and in some cases with representatives of ETI companies themselves) made it clear that for many grievance cases it has not been possible to rely on ETI companies’ intrinsic motivation. As the ETI’s 2015 External Evaluation Report noted, the ETI’s “tripartite structure necessarily implies conflicting objectives and incentives” (ETI 2015a: 19). While nominally all ETI members are committed to enhancing compliance with the ETI Base Code, our interviews indicated that this goal is a much lower priority for the ETI companies than the ETI civil society groups. Most interviewees reported that, as a rule, ETI companies are not willing to take steps that would enhance respect for the Base Code if those steps might reduce the companies’ profits. This begs a question: to what extent is the ETI’s structure and processes increasing ETI civil society groups’ power to persuade ETI companies to cooperate in addressing grievances?

At least one of the ETI company representatives we interviewed in 2013 argued that the ETI civil society organisations should be being more assertive in their efforts to reform the ETI and increase their ability to influence the practices of ETI companies:

Strategically, they [NGOs within ETI] need to use ETI much better … because what you have done is, you have given up campaigning to be part of that group, really… If you are not going to go to the media, if you are not going to put that kind of pressure, then what you’ve got to do is, you’ve got to be quite demanding … draw a red line, and once you have drawn that red line don’t look back at it (interview with a participant from an ETI member company, 2013).

As noted earlier, ETI plays at least two distinct roles in relation to member companies. First, it has a ‘learning’ or ‘service’ role: it develops and tests strategies for improving compliance with the Base Code and shares evidence of good practice among company members. Second, ETI also plays an ‘accountability’ role: it expects member companies to regularly explain what steps they are taking to improve compliance with the Base Code and it has a process for expelling members who are not taking this membership responsibility seriously. It is this accountability role that is most relevant to the power relationship between ETI companies and ETI civil society groups.

In a research interview in 2014, ETI Director Peter McAllister noted that both roles are important. He also acknowledged that ETI’s accountability role required further development and described the tensions associated with trying to hold companies to account in the context of a voluntary initiative:

There is no doubt that unless we want to be at the lowest common denominator there also have to be accountability mechanisms. Companies need to know that we take these things seriously. So for example we ejected a company at the last board meeting last December after a long process and after various conversations but we just did not feel that they were delivering what was expected of
an ETI member … There needs to be an accountability mechanism, it is almost like the big stick you leave in the corner. If all we ever do is bully companies and tell them that they are doing something wrong, then they are not going to stay, in the day and age that we’re in, they can go somewhere else … For want of a better word, we are an alliance that you join if you share [ETI’s] sense of purpose, and if you bring things to achieve that sense of purpose. Now if you don’t that is fine but then don’t join the club. We don’t give out free badges. We are not here as an umbrella for a rainy day and we do expect you to make an effort. Now I don’t think we have always been as rigorous on that as we could have been and we are learning to be sharper and smarter and more demanding (Interview with Peter McAllister, January 2014).

McAllister’s reference to the possibility of ETI member companies going “somewhere else” is important. Like all voluntary corporate initiatives, the ETI does not only need to persuade member companies to actively pursue the organisation’s goals, they also need to persuade those companies to stay involved in the ETI. According to company representatives and ETI secretariat staff interviewed for this study, several factors motivate companies to initiate and maintain membership of ETI. For example, ETI membership lends greater credibility to companies’ efforts to respect workers’ rights and can mitigate reputational damage stemming from various public campaigns on poor working conditions that have emerged since the 1990s. The ETI also facilitates direct dialogue between companies and civil society organisations for joint problem solving in a closed-door setting, potentially limiting the need for public campaigning and media. Further, ETI gives companies the opportunity to collaborate with industry peers and to combine their global purchasing power to exert greater influence over suppliers in tackling systematic human rights abuses.

However, there are a number of other initiatives that also claim to be able to assist companies to improve respect for labour rights in their supply chains. While many of these competing initiatives lack significant participation by trade unions or well-known NGOs and hence may be less credible than ETI in the eyes of well-informed consumers and investors, it is unclear what proportion of consumers and investors would make this distinction. Despite McAllister’s reference to ETI becoming ‘sharper and smarter and more demanding’ the overall picture that emerged from our research interviews was of an organisation that is wary of putting too much pressure on its corporate members for fear of driving the companies away. For example this is from an interview with a representative of an ETI NGO, during a discussion about ETI companies’ purchasing practices:

**Interviewer:** How does, at the moment, the ETI respond when a company might be at the table, nodding, but in practice it just hasn’t really made any effort to have any difficult conversations with its suppliers or to push its suppliers. What does the ETI do in that context?

**Respondent:** Well it probably doesn’t do all that much. It just leaves it, because this is basically a voluntary based approach (Interview with a representative of an ETI member NGO, 2013).

A representative of another ETI NGO put it this way:

*And so ETI has provided us with really useful learning and understanding of how the sector works and it provides us with contacts [with companies]. But it doesn’t necessarily provide us with the tools to actually bring about sustained change* (Interview with a representative from an ETI member NGO, 2013).
Brand-risk and external campaign pressure

The same ETI company participant argued that the key driver of corporate action to address labour rights issues in supply chains is perceived brand risk. That is, companies join ETI in order to learn how to develop programmes that reduce the likelihood that their brand will be named in media reports about labour abuses, since such media reports can damage the value of their brands. He noted that, for a variety of reasons, over the last ten years UK NGOs and trade unions have put significantly less energy and resources into public campaigning on labour rights in global supply chains than had been the case during the early years of the ETI. Reduced investment by NGOs in research and campaigning regarding labour rights abuses in supply chains has in turn resulted in less media coverage of the issue. This has reduced the brand risk associated with labour abuses in supply chains, making it more difficult for the civil society groups in ETI to push ETI companies to comply with the Base Code.

The same point came up frequently in interviews with ETI civil society members. These research participants acknowledged that ETI facilitates a network of relationships between companies and civil society organisations and provides an important mechanism for dialogue. They reported that in circumstances where there is strong external pressure on companies to address particular rights violations, the relationships created through ETI can play a valuable role in facilitating positive change. Where strong external pressure on companies is lacking, the collaboration that results is generally quite limited in scope and its achievements fall well short of compliance with the Base Code.

As one representative of an ETI civil society organisation put it:

> The challenge for ETI is, does it need always a campaign or factory disaster to push companies? At the moment I am afraid to say, it does, and ETI has yet to find a mechanism that would push sufficient commitment without campaigning. That may just be the reality of the situation, because we are talking about enormously powerful economic forces, and trying to move gargantuan commercial actors and vested interests, both in the North and in the South. Creating the force for change of this magnitude is going to require a lot of pressure (Interview with participant from an ETI member NGO, 2013).

The Bangladesh Accord provides an example of how ETI can help translate strong external pressure into positive action. While a detailed assessment is beyond the scope of this report, the Accord is clearly an important initiative with the potential to bring significant safety improvements for garment workers in Bangladesh. Importantly, Bangladeshi trade unions are allowed access to worksites to provide safety training to workers, which may also assist their organising efforts. Unlike almost all other multi-stakeholder initiatives, the Accord constitutes a legally binding agreement and signatory companies who fail to honour their commitments under the Accord can face financial penalties. The Accord also requires signatory companies to make a substantial contribution to funding its compliance mechanism. As Moxham noted:

> The Bangladesh Accord commits companies to paying up to, it is a quarter of a million pounds a year for five years. And we’ve now got more than 100 companies on board so that would be 50 or 100 times more than the ETI budget. And it is effectively running a private union-run inspection system across a third of Bangladesh (Interview with Ben Moxham, ETI Board Member and trade union representative, 2013).
The primary reason civil society organisations that negotiated the Accord were able to persuade the signatory companies to agree to such a significant commitment was because of the extensive global media coverage of the Rana Plaza tragedy. In April 2013 an eight story building in Dhaka collapsed, resulting in the death of 1,138 men and women while 2,500 were left seriously injured. The building, Rana Plaza, had housed factories producing clothing for many global brands including Benetton, Monsoon, Mango, Primark and Walmart. The factory owners had ordered the workers to continue working even after cracks appeared in the building. The tragedy generated a tremendous amount of global media coverage—including shocking footage of the removal of bodies from the collapsed building site—and sustained and targeted campaign pressure and public outrage kept the tragedy in the news. While the content of the Accord was not negotiated within the ETI framework, ETI civil society members used the ETI as a forum to put pressure on ETI member companies to sign the Accord, and the ETI director publicly encouraged ETI members to do so. As a result, ETI companies made up a significant proportion of the companies that signed up to the Accord before the civil society groups’ first deadline, helping to give the process significant impetus. Moxham described the role that ETI played:

ETI’s role was very good in organising companies, distilling what their outstanding concerns were. And it gave us direct contact to the key people in all the companies to put lot of pressure on them. So when the Accord deadline passed, I think there were 30 signatories and I think a 3rd of them were ETI members … The evidence is pretty clear that a couple of [ETI member] companies were always going to sign the Accord once the big players moved. But there were a whole lot of them where heads of CSR departments were saying, ‘I can’t get the board of directors to sign up to it’ … And we said ‘would it help you if you were about to get 50,000 email protests on your face book page’ and she said ‘Yeah, yeah that will do it’…ETI has helped us build up relationships with the staff in the organizations to be able to do that (Interview with Ben Moxham, ETI Board Member and trade union representative, 2013)

Moxham also noted that, at a minimum, ETI plays an important role in ‘getting the right players round the table’ while at its best it can push reluctant companies ‘across the line’ on key accountability initiatives.

However, in another part of the same interview Moxham mentioned that the ETI Secretariat had been ‘annoyed’ with the unions in ETI for putting public campaign pressure on ETI companies to sign the Accord. Further, according to a representative of a UK labour rights group, in the period before it became clear that some very large companies would sign on to the Accord, the ETI Secretariat played a less proactive role:

Interviewee: After Rana Plaza … we were … on to a very active campaign against particular companies to join the Accord, and we were in touch with someone at ETI who was basically telling us that the Accord wasn’t going to happen, that companies were going to go for a voluntary mechanism instead, and that we should stop pushing for companies to join the Accord because it wasn’t what was going to happen.

Interviewer: They [the ETI] must have changed their minds?

Interviewee: Yes, it was actually at that point we started seeing [ETI] companies starting to go over ETI’s position and go straight for joining a common mechanism. But there it appeared that they
[ETI] were taking a more aggressive position than the companies. Rather than taking a progressive position and trying to push the companies to go further, their position was actually one of trying to maintain the status quo (Interview with a representative of a UK NGO, 2013).

According to this research participant, not all ETI Secretariat staff were pushing ETI companies to join the Accord, or at least they did not start to do so until it became clear that there was enough external campaign pressure to persuade companies to sign a binding agreement. This again suggests that the ETI needs such pressure in order to push companies to make significant and costly commitments to address grievances.

Earlier in the report we mentioned two other cases in which the ETI’s response to labour rights grievances also helped contribute to improved outcomes for the workers: first, the ETI’s role in persuading the UK Labour Government to adopt the Gangmasters (Licensing) Act 2004 and second, ETI’s role in persuading New Zealand lamb supplier ANZCO to resume negotiations with its workers. Both these cases were also associated with significant external campaign pressure and brand risk. Like the Bangladesh Accord, ETI’s role in persuading the UK Labour Government to adopt the Gangmasters (Licensing) Act 2004 was facilitated by a tragedy that generated considerable media coverage. In that case it was the death of 23 cockle pickers in the 2004 Morecambe Bay cockling disaster. As for the Waitrose case, while this was not associated with a tragedy, there was significant campaign pressure on Waitrose, since the UK Trades Union Congress was threatening to picket Waitrose retail outlets. Each of these success stories was associated with a degree of external brand risk that is not present in relation to most of the ETI’s work. While the Rana Plaza tragedy focused the world’s attention on the plight of workers employed in particular supply chains in a particular geographical area, it is rare for labour abuses in particular supply chains to generate that level of media interest. Most of the ETI’s activities, including its grievance processes, take place in the context of more limited risks to the reputations of the companies involved. For ETI activities where the brand-risk is not as great, the unions and NGOs in ETI have not been able to persuade ETI companies to take the kind of steps that they believe are needed to bring about more significant progress toward compliance with the Base Code.

**Is there a risk of the ETI mitigating external campaign pressure rather than capitalising on it?**

Given the importance of media coverage of labour rights abuses and campaign pressure as a driver of change, it is also appropriate to consider the impact that ETI membership has on the effectiveness of labour rights campaigns targeting ETI member companies. Arguably ETI membership offers companies a useful public relations tool for countering media-driven campaigning, since companies can use their ETI membership to reassure their customers that they are working to improve labour conditions with some of the most trusted civil society organisations in the UK. There is therefore a danger that the ETI’s current structure could be facilitating a “free rider” problem, where companies do “just enough” to stay a member and get the public relations kudos associated with being a member, with no real incentive for making significant progress in terms of labour rights initiatives.

More generally, there is concern among a number of labour rights NGOs outside of the ETI that initiatives like the ETI not only can undermine attempts to persuade individual companies
to improve their labour rights performance, they can also undermine attempts to persuade states to take a greater role in regulating the transnational operations of business. For example, Murray Worthy of the UK NGO War on Want said in an interview:

“There’s no redress, no sanctions. The worst sanction you can have within ETI is leaving. So there’s a real sense that it’s engaging with companies on their own terms and that there’s no force behind that whatsoever … linked to that is the role that multi-stakeholder initiatives and voluntary principals have played in blocking routes for greater regulation. So for example, when CORE [the corporate responsibility coalition] has been pushing for a Commission on Business and Human Rights, the solution, the response they got back is, “No, no, they’ve got ETI, they’ve got a range of multi stakeholder initiatives, and therefore this isn’t needed.” So in a sense, those play a role in the political strategy to enable business to continue, business as usual, but with these mechanisms around them to provide a slight degree of accountability in engagement with stakeholders (Interview with Murray Worthy, October 2013).

In a number of research interviews representatives of ETI member organisations downplayed the extent to which ETI membership can be used by companies as a public relations tool to counteract public criticism of their labour practices. They noted that ETI member NGOs and unions are wary of being named on company web-sites in a manner that might imply some kind of endorsement, and that the ETI Secretariat is also careful to ensure that member companies do not claim that ETI membership demonstrates that a company has good labour practices. While these steps no doubt limit the kudos companies can gain from being ETI members, occasionally public communications by ETI companies appear to go beyond these guidelines. For example on 16 December 2013 the Australian company Pacific Brands put out a media release that claimed that:

As the founding and only Australian member of the Ethical Trading Initiative (ETI), Pacific Brands’ social compliance standards are the highest in the Australian marketplace and indeed in all markets in which we operate.

It is also clearly of public relations benefit for companies to be able to claim, as M&S does on its website:

As our relationship with a supplier develops, we expect them to improve working conditions in line with the more demanding standards promoted by the Ethical Trading Initiative (ETI), a collaborative group of companies, trade unions and human rights groups set up by the Government in 1998 (M&S, n.d.).

We also heard during research interviews that ETI member companies have lobbied internally for stricter controls on when ETI NGOs and Unions are allowed to publicly criticise the labour practices of ETI companies. Before taking any labour rights concerns to the media, ETI’s civil society members are currently expected to attempt to address those concerns through negotiation with ETI companies. However ETI’s rules are not clear as to how much time NGOs or Unions are expected to spend trying to address such grievances privately before sharing their concerns with the public. If the ETI was to adopt stricter controls on when ETI civil society members can criticise ETI corporate members, this would also increase the public relations benefit of ETI membership, with the associated danger of the ETI operating more as a shield from public criticism than a driver of positive change.
On the other hand, in a 2013 research interview, a representative of an ETI trade union noted that there was very little campaign pressure being put on UK companies outside the ETI to improve labour conditions. This lack of pressure on non-member companies could also be making it difficult to motivate ETI-member companies to more actively pursue the ETI’s ethical trade goals, since ETI-member companies have little reason to be afraid that it would increase their vulnerability to ‘name and shame’ campaigns if they were to be forced out of the ETI, or to leave it voluntarily.

Arguably, if the ETI had a credible and transparent reporting system that regularly indicated how much progress each member company was making in addressing grievances and improving compliance, then it would help address both of these concerns. That is, it would help avoid the ‘free rider’ problem, since ETI’s own reporting system would publicly reveal the extent of the effort each ETI member company was putting into addressing grievances and improving its labour rights performance. At the same time, if labour rights organisations had confidence in such a reporting system, then it would give them an incentive to prioritise non-ETI companies in their campaigning, since they could have confidence that ETI member companies were already being subjected to public pressure to improve. Unfortunately ETI’s current reporting system is not transparent and is unlikely to be credible.

**The ETI’s processes for monitoring ETI companies’ compliance with the base code**

The public relations benefit that ETI companies are gaining from participating in ETI would be justified if there was good evidence that member companies are making continual progress toward ensuring compliance with the Base Code, including by providing appropriate redress in grievance cases.

**Self-reporting**

Currently the ETI’s monitoring processes primarily rely on confidential self-reporting by ETI companies themselves. These self-reports are reviewed by ETI Secretariat staff and ETI civil society members, who then rate companies as ‘Improvers’ (the lowest ranking), ‘Achievers’ (the middle ranking) or ‘Leaders’ (the highest ranking). Neither the companies’ self-reports, nor the ratings, are made public and in any case their reliability is uncertain because the accuracy of the internal rating system depends on the companies’ reporting honestly. There is no systematic process of independently verifying company reporting by interviewing workers themselves. On those rare occasions when the ETI does commission research that involves interviews with workers, that research also tends to be kept from the public. One ETI NGO representative noted:

*The first thing that the (ETI’s) small holder working group did was commission research in Kenya. That research in Kenya identified very clearly that decisions that were made by UK supermarkets that were ETI members directly had an impact on the income and the levels of risks that the small holders farmers in Kenya were bearing. And it was just disproportionately unacceptable levels of risk that the small holder farmers were having. And it was a real struggle to get that report public. Despite an ETI board meeting agreeing that that report would be public, that report is still not publicly available on the ETI website* (Interview with a representative from an ETI member NGO, 2013).

The names and addresses of ETI’s suppliers are also regarded as confidential information. Some international companies outside ETI, including Nike, Adidas and Levi Strauss, and at least one
ETI company (M&S), regularly release at least their first tier supplier lists, but ETI companies as a whole are not currently required to do so. If ETI companies were required to regularly publicly release lists of their suppliers, including suppliers below the first tier, it would increase the potential for ETI’s grievance processes to result in positive change. This is because it would make it easier for ETI civil society groups to initiate grievances, since they could let their local contacts in producer countries know which suppliers produce for ETI companies.

A number of ETI members that we interviewed recognised that relying on corporate self-reporting was unlikely to be reliable. In a research interview one ETI NGO representative described ETI’s annual self-reporting mechanism as one that had ‘allowed people basically to achieve a status by just knowing how to fill in the form’. An interviewee from an ETI company also questioned the validity of relying on companies’ self-reports, arguing that companies’ own reports tend to highlight factors that reflect positively on the company and minimise factors that could be perceived negatively:

... [I]n our annual reports or in any business annual reports, whether it be, not just garment, but any single business, in your annual report you would say “This is the good we are doing”, not “This is the good we are doing but we know also there is bad happening”… ETI needs to be at the forefront of ensuring transparency — they are not … ETI itself should be doing this, the Secretariat has failed. But the NGOs and trade unions have also failed in pushing ETI to say “Companies that are members of yours should be more transparent” (Interview with a participant from an ETI member company, 2013).

The ETI Director, Peter McAllister, also described ETI’s approach to public reporting as one that required further development:

At the moment this is I think a weakness of ETI, we don’t publish any of those individual results … what we would like to do is encourage more sharing and that not just of the good experiences but also of the lessons learnt where things did not work out so well. However, we are a step away from that and again I would say that is something ETI is probably not at the head of the pack on, so that is one area where we are sharpening up the accountability and sharpening up our own tools (Interview with Peter McAllister, January 2014).

A new, improved reporting system?
Some of the larger ETI Companies are now part of a new reporting approach under which they are expected to submit three-year plans that explain what steps they plan to take to improve compliance with the ETI Base Code. These plans are then evaluated by ETI staff and civil society members. This new process was only just beginning at the time that the interview research for this report was conducted. In an October 2013 interview Ben Moxham (at that time the longest serving member of the ETI’s Board, representing the UK Trades Union Congress) outlined his vision for how a new monitoring and reporting process could work:

Moxham: We have been working to do a much stronger monitoring and evaluation framework on the programmes. Simply, I put a challenge to them: ‘How many workers get a living wage at the moment? … And how many more can get it in five years’ time or three years’ time?’ … And the knowledge and learning team within ETI have been working on that, so I am not quite sure where they are at. The other thing we are doing is to say to the top twenty companies … ‘Give us a strategic
plan where you are meeting or exceeding the elements of the framework but putting it in your own words’ … and we get to comment on all the drafts. It gives us a chance to say: ‘Well in Romania you have got 16,000 workers in the supply chain, only 2,000 of them have a permanent contract on your own data, can you at least triple that number in four years time? And we know the union in Bucharest who are interested in this so you can get in touch with them.’ … So we are going to grade them on two things, one is how challenging is the plan? If they are not talking about outcomes that are related to Base Code then we will give them three out of ten, and how much of it have you actually achieved? So if you are ambitious and you achieve half of it, you would have the same scores if you were un-ambitious and achieved all of it.

Interviewer: But that is all still internal right?

Moxham: Yeah what the debate is… is to make public your objectives, and your strategic plan, and the outcomes, and the outcomes need to be related to the base line. So: we will give x number of workers Y in A, B, C years. So we want that bit of transparency, the challenge is that ETI currently has 80 companies reporting, so…

Interviewer: It comes back to the resources?

Moxham: There is a huge resource problem. We’ve only got about a half dozen union people actively involved, reading the reports.

If Moxham’s vision could be realised (including by being properly resourced) it could help minimise the ‘free rider’ problem. Moxham argues ETI member companies should be required to publicly commit to measurable improvements in compliance with the Base Code within specified time periods; that ETI companies should be required to publicly report on the extent to which those goals are realised; and that the focus should be on regions in which ETI civil society members have contacts with local organisations who can verify the company’s reporting (such as, in Moxham’s example, the union in Bucharest). If all these elements were in place, and if the focus was on those elements of the Base Code that give workers more power (such as, in Moxham’s examples, living wages and permanent contracts) then the ETI’s reporting systems would help concerned consumers and investors make decisions that would reward labour rights progress. While individual investors and consumers probably would not read every report, organisations that rate companies’ labour rights performance—such as the UK NGO Labour Behind the Label—could factor the information into their ratings, which translate complex information about companies’ labour rights performance into simple metrics that ethically-minded consumers and investors can use to guide their choices.

This kind of goal-oriented, focused, time-bound, verifiable and public reporting would be as useful for ETI’s grievance procedures as it would for other aspects of ETI’s work. In our research interviews, a number of representatives of civil society organisations in India, the UK and Europe heavily criticised the ETI’s Garments and Textiles from Southern India programme for not having measurable, time-bound, goals linked to the standards in the ETI’s Base Code. They argued that this vagueness about the programme’s goals allows ETI member companies to use the ETI programme for public relations purposes without having to demonstrate genuine impact in addressing the labour rights violations that were the subject of the original grievance. For example, the websites of several ETI company members specifically mention their engagement in ETI’s
Sumangali programme as demonstrating corporate social responsibility and commitment to eradicating forced labour practices (see for example Arcadia 2013, Gap 2012, Primark 2012).

As of mid-2016, Moxham’s vision for a new reporting system for the ETI has not been realised or at least, if there have been improvements in the ETI’s internal reporting, the relevant reports have not been made public. However the ETI’s current five year plan includes a commitment that ETI “will work to ensure that company reports are supported by evidence of the impact on workers’ rights” and that:

*Drawing from company member reports, whether made public or not, ETI will be a reliable source of public, credible, balanced and authoritative statements on member company progress (ETI 2015b: 4).*

At this stage it is unclear whether this evidence of the impact on workers’ rights will be drawn from independent organisations who are in contact with workers’ themselves. This will be crucial in determining how credible the ETI’s new public reporting scheme will be, and hence how useful it will be in motivating member companies to properly address grievances and take other steps to enhance compliance with the Base Code.

**The ETI’s process for sanctioning poor performance by corporate members**

In addition to its reporting processes, the other means by which ETI can hold member companies to account is its disciplinary procedure, which can result in a company being expelled from the organisation. Although a company was expelled in December 2013, this disciplinary procedure is rarely activated. Given that many of the ETI civil society members we interviewed expressed disappointment with the way most corporate members respond to grievances, it is interesting that this sanction has not been utilised more often. This is particularly so since many of the same research participants also believe ETI currently has too many corporate members and too few resources to effectively hold them all to account.

There appear to be several reasons why the disciplinary procedure is not used more often. One is ETI’s current reliance on companies’ self-assessment reports. Companies that want to stay members of ETI are unlikely to self-report in a manner that highlights the extent to which they are failing to implement the Base Code, so it would be difficult for ETI civil society members to use those reports to argue that those companies should be expelled. However the disciplinary procedure is also rarely used in grievance processes, where the ETI NGO or union is bringing the complaint on behalf of an NGO or trade union in the producer country and hence has access to independent sources of information.

Arguably a more significant reason for the minimal use of the disciplinary procedure can be found in the relevant procedural rules. Although the trade union and NGO representatives together control a majority of votes on the ETI board, they are not given the opportunity to vote on a company’s expulsion unless the ETI Director and the chair of the board together recommend to the board that the company be expelled. Although the ETI Director is appointed by the board, he or she also is responsible for overall management of the organization, including ensuring that it is adequately funded. Give that company’s membership fees make up a significant part of ETI’s income, a director would be unlikely to initiate this process lightly, since dis-
missing company members will reduce ETI’s income and hence reduce the director’s ability to carry out ETI’s programmes. Given that the size of a company’s membership fee increases with the company’s annual turnover, this is particularly true for the larger ETI companies. If ETI member NGOs and trade unions were themselves able to ask the ETI board to consider whether an ETI member company should be suspended or dismissed from ETI then it would increase their negotiating power in relation to particular grievances.

The ETI’s meeting processes, tripartism, and the role of ETI staff

Corporate membership of ETI has grown disproportionately to NGO and trade union membership. There are 88 corporate members, compared to 3 trade union organisations and 17 NGOs. There is also considerable variation in the extent to which ETI’s civil society members are engaging with ETI processes, with only a handful being very actively involved. The current political and economic environment in the UK is such that a number of the trade union and NGO members of ETI are finding it difficult to commit the time and resources to ETI that they have in the past. In one of our interviews with Moxham he put it this way:

*Ethical trade and the work of ETI is very much sort of externally focused, it is outside of the UK. When unions are dealing with widespread budget cuts and austerity and redundancy, they are far more internally focused. So the day to day engagement of trade unions in ETI is a bit limited* (Interview with Ben Moxham, then ETI Board Member and trade union representative, 2013)

The ongoing recession in the UK has also reduced general donations to the human rights and development NGOs in ETI and many have had significant staff cuts. In research interviews conducted in 2013 a number of ETI NGO members also commented that work on labour rights in global supply chains is not currently a priority of grant-making bodies so it is much more difficult to get grant-funding for those aspects of their work that are linked to their membership of ETI. Several of the ETI NGOs are in any case very small organisations, with only one or two staff. In this context of constrained resources a number of member NGOs have reduced the staff-time they allocate to ETI processes. In some cases this decision to deprioritise the ETI had not only been a reflection of resource constraints but also a strategic decision. Several representatives of ETI NGOs, including some who had been involved in the ETI for many years, reported in 2013 that they and their organisations were feeling less confidence in the ETI as a means of bringing about change and hence were devoting less staff-time to it. Participating NGOs’ perception of the ETI’s value is not static, however, and by 2016 some of the same NGOs reported that ETI’s involvement in the successful push to include a ‘transparency in supply chains’ component in the Modern Slavery Act 2015 had improved the NGOs’ perception of what ETI can deliver.

Nonetheless there continues to be a significant imbalance between the number of ETI company representatives and the number of ETI civil society representatives who can potentially attend ETI meetings. In research interviews, several ETI civil society members noted that ETI had not taken account of this imbalance when determining how to manage decision-making in meetings on particular issues, such as meetings regarding the design of ETI programmes. As one ETI NGO representative put it, when there are only two or three civil society representatives at a meeting and a much larger number of corporate representatives, it is very difficult to create a ‘feeling in the room’ that the civil society group’s proposals need to be adopted (Interview with
participant from an ETI member NGO, 2013). Given that the ETI recognises that its tripartite nature is key to its effectiveness, several representatives of ETI civil society organisations argued ETI should insist on genuinely tripartite ways of working and decision-making within working groups, with equal weight given to the voice of NGOs, trade unions and companies. One ETI civil society representative put it this way: ‘However many people are in the room, there should only be three votes – one apiece for companies, unions and NGOs – so you cannot agree things by a show of hands’ (Email from a representative of an ETI member NGO, July 2016).

In 2013 a number of ETI civil society representatives also expressed the view that the majority of ETI staff at that time were less effective in facilitating effective outcomes through ETI meetings and programme implementation than previous staff had been. They reported that in the past ETI staff had clearly seen it as their role to do all they could to persuade member companies to agree to a strategy that would result in greater compliance with the ETI Base Code. This often included strategically lobbying particular companies before a meeting to support particular proposals during the meeting. A number of ETI civil society members reported that in the past this active involvement of ETI staff in pushing companies to accept proposals to promote compliance had helped address the power imbalance between ETI companies and ETI civil society groups, as well as making meetings more productive. They reported that ETI staff now take a more facilitative role aiming to build consensus between member companies and civil society groups, which has allowed the companies to dominate decision-making. According to these ETI civil society members, this has resulted in ineffective and inefficient meetings. Some of the NGO representatives who made this point believed this change in the role of ETI staff had resulted from the change of senior managers, others noted there had been significant staff turnover and wondered whether the new ETI staff had yet established the requisite skills and experience. They all recognised that ETI staff have complex roles and that it is very challenging for ETI to attract, train and retain staff with the necessary skills, knowledge and confidence to play these roles effectively. Whatever the cause, they were concerned that this change in the way ETI staff were approaching negotiations between ETI companies and ETI civil society groups was changing the power relationship in favour of the companies.

During a 2013 interview, one ETI NGO representative gave a recent example:

What we have had more recently is meetings where insufficient preparation by ETI staff had taken place … In one situation where there was a need for urgent action, two proposals were presented, one clearly having strong involvement of civil society organisations in the supplier country, the other an initiative by a western European Donor … ETI initially played a neutral role. A whole meeting was pretty much wasted with discussion of which proposal to back – which led to neither being backed initially—rather than the urgent activity of making tweaks to improve the proposal that had strong civil society involvement and getting retailers/brands to sign up.

Fortunately one retailer indicated they were going to back the better proposal, and its competitors swiftly followed. Previous ETI staff would have known that you have to get at least one company on board before the meeting and then in the meeting the other companies are more likely to follow. Previous ETI staff did this preparatory phoning. There was much better quality of analysis on how to get stuff agreed and it is less there now … Genuinely they [current ETI staff] seem to be trying to work in a really open and consensual way but that basically means that the people who have got
the most power get their way, and not enough progress is made. Since most of the people in a meeting are from the companies, the airtime is usually dominated by their perspective and so what you need is ETI staff members who are actually pretty determined to get something done (Interview with a representative from an ETI member NGO, 2013).

Power dynamics between ETI companies and state institutions

In our research interviews, some supplier company and industry-level representatives in India expressed the view that state and national governments in India were vigorously enforcing local labour laws and hence that interventions from organisations like ETI were unnecessary. However local NGO and trade union representatives in India—and both company and civil society members of ETI—reported the opposite: that local state authorities in India were putting very little energy into enforcing labour laws and that there were significant problems with corruption among labour inspectors. Civil society organisations that we interviewed in Indonesia made similar criticisms of state enforcement of labour laws in their country.

A number of research participants argued that one of the most useful roles ETI can play is to support campaigns for more effective state regulation. One ETI NGO representative compared what could be achieved through public policy with what had been achieved through voluntary labour rights improvements by ETI companies:

We have had experience of companies not being able to consistently improve labour rights in their supply chains. The prioritisation of better working conditions is essentially down to the whims of company priorities. A leading ETI company ceased their ethical trade activities when the company decided not to list on the FTSE. Another ETI company, which is struggling financially, under-resources their efforts to improve working conditions but overstates those efforts when briefing their shop-floor staff. Other ETI companies claim they are unable to improve because they compete with laggard, sometimes non-ETI member companies, in the same market. So engaging with companies can lead to quick wins if the company is interested, but our experience is that these may not be sustained. Changes in public policy are the only way to send a clear signal that minimum labour rights are not optional, and are the only way to sustain improvements (Email from representative of ETI member NGO, July 2016).

Another ETI NGO representative said:

ETI as an organization must be open to working on and must be committed to working on public policy change. And if ETI wants to do it, it would be fantastically successful because you would have companies, NGOs and trade unions backing the change. So the government really listens (Interview with a representative from an ETI member NGO, 2013).

Within the UK, ETI has been involved in advocacy that has resulted in several important policy reforms. For example ETI has lobbied UK government bodies to implement more ethical sourcing practices and in at least one public sector, health services, ethical procurement guidelines have been introduced. Between 2002 and 2004 ETI’s UK Homeworker Group called on the then UK Department of Trade and Industry for statutory reform with respect to homeworkers’ employment rights and a fairer system for piece rate workers. In 2004 the Department agreed to introduce an accredited work measurement system to prevent pay rates falling below the mini-
minimum wage. More recently ETI played an important role in ensuring that the UK *Modern Slavery Act 2015* included a requirement that commercial organisations report on what steps they are taking to ensure slavery and human trafficking is not taking place within their supply chains.

In our research interviews, several ETI NGO members pointed to ETI’s role in persuading the UK Labour Government to adopt the *Gangmasters (Licensing) Act 2004* as a good example of what advocacy by ETI can achieve in public policy terms:

> There were really bad practices by these gang masters, as you get with any contractor, wherever you go, all over the world. But out of all of that, ETI worked very closely, the Labour Party were in government at that time, with the Labour Party, with the Parliament and actually got through this piece of legislation, and the setting up of the gang master’s licensing authority. So all these gang masters’ contractors had to be licensed, and there were regular audits and you know all the regular kind of stuff that goes with that. And I would say that that was a real feather in ETI’s cap, getting that done. It came from a lot of work that was done by the unions bringing issues to the press, so it was out there ... And because it was something that was local to us, we knew how to kind of play the political game and to bring it in, and to make sure that the legislation was more effective than it would be when you get a lot of civil servants, parliamentarians putting legislation together. It is that kind of stuff you want happening at local level in Tamil Nadu or wherever (Interview with a representative from an ETI member NGO, 2013).

An ETI company representative, based in India, argued that the ETI had considerable potential to also influence policy making in producer countries:

> ETI have the membership of almost all the high-street retailers, or all the retailers of the UK and Europe as well; and there’s GAP also, which is US. So, if they go out and speak to the local administration, it’s going to have a huge impact (Interview with representative of an ETI member company, 2014).

The ETI does at times get involved in lobbying governments in producer countries. For example, ETI retailer members have in the past supported calls on the government of Bangladesh to increase the local minimum wage. The ETI has also written to the Uzbek High Commission on behalf of its members to call on Uzbekistan to ban the use of forced and child labour in cotton harvesting. However to date advocating for public policy reform in producer countries has not been a central focus of ETI’s programmes. One ETI NGO representative went so far as to say that their NGO had placed a lower priority on becoming involved in ETI programmes because of the lack of a clear statement from ETI that work on public policy was going to be a priority in any of these programmes. In their view, this meant that participating extensively in the ETI programmes was not the most strategic nor effective use of NGO staff time (Interview with a representative from an ETI member NGO, 2013).

Given the limited reach of ETI’s programmes, if the ETI’s programmes can contribute to efforts to improve labour regulation in source countries then it would significantly enhance the organisation’s impact. However, it is unlikely that local governments in the Global South will respond positively to lobbying pressure from ETI unless it is clear that ETI companies are committed to continue sourcing from countries that raise minimum wages and improve protection of labour rights, even if that results in an increase in their costs. As noted earlier, ETI civil society members continue to be frustrated by ETI companies’ unwillingness to make such a commitment.
Recommendations

The above analysis is primarily based on interview research we conducted between late 2011 and late 2015, including extensive interviews with representatives of ETI member organisations and with staff of the ETI Secretariat. That analysis leads us to believe that a number of reforms to ETI’s rules and processes would increase the effectiveness of the organisation’s grievance processes. Our reform recommendations are set out below.

Before listing these recommendations, it is important to note that in May and June 2016 – when we sought permission from research participants to quote their interviews – some (but not all) of the more critical ETI member representatives reported that they would be somewhat less critical of the ETI if they were interviewed today. While they still were happy to be quoted in this report, these ETI members particularly identified the ETI’s work in successfully lobbying for the reporting requirements that were included in the Modern Slavery Act 2015 (UK) as a positive sign. Several also pointed to the commitments in the ETI’s current five year plan (2015-2020) as a step forward. Therefore, after presenting our recommendations, among other things the final concluding section of the report will compare our recommendations with the commitments in that plan.

General recommendations for all ETI grievance processes (including ETI programmes)

Based on our interview research and analysis, we believe that if the ETI were to adopt the following recommendations it would increase the effectiveness of its grievance processes.

1. **Prioritise those standards in the ETI Base Code that empower workers**
   Given the very significant power imbalance between most workers in ETI company supply chains and those who provide them work, in its efforts to address grievances the ETI should prioritise those standards in the Base Code that will increase workers’ power to assert their rights. Such standards include secure forms of employment; living wages and freedom of association (understood broadly to include all democratic, worker-controlled organisations not only workplace-based unions).

2. **Require ETI member companies to demonstrate how their purchasing practices reward suppliers that genuinely address grievances**
   Given the power relationship between ETI member companies and their suppliers, the ETI should require all member companies to demonstrate how their purchasing practices provide incentives for suppliers to correct breaches of the Base Code when they are identified. To demonstrate this, ETI companies would need to be willing to absorb any additional costs associated with paying living wages, reducing work-stress to reasonable levels and allowing workers to form trade unions. They would also need to demonstrate long-term commitment to ordering from suppliers that cooperate in addressing grievances.
3 Reform ETI meeting procedures and the role of ETI staff to enhance civil society members’ capacity to influence decision-making within ETI

Given the current power relationship between ETI member companies and ETI civil society organisations, any ETI working groups established to address alleged violations of the Base Code—including those established to design ETI programmes—should be structured in a genuinely tripartite manner. That is, companies, trade unions and NGOs should have an equal say in decision-making. This could be achieved by requiring that any decisions be put to a vote, with the group of union representatives, the group of NGO representatives and the group of company representatives each having one vote (three votes in all). Rather than operating as mediators or facilitators, ETI Secretariat staff should actively seek to persuade ETI company members to agree to steps that would advance compliance with the Base Code.

4 Release supplier lists

The ETI should require ETI member companies to publish their supplier lists. This would make it easier for civil society organisations to identify whether or not a particular supplier has a relationship with an ETI company (and hence whether it is possible to pursue a grievance with the ETI).

5 Improve credibility and transparency of reporting

Where violations of the Base Code have been identified, the response by ETI member companies should be developed in cooperation with civil society organisations (both inside and outside of the ETI). That response should have measurable outcomes, clear time-frames, monitoring by credible, impartial organisations and independent verification by local civil society groups in producer countries. At an appropriate time, credible reports on the progress of these activities should be made public, and should contribute to regular public reporting on ETI member company progress. The public reporting should highlight which individual member companies are falling short of expectations, as well as which member companies are performing well.

6 Make it possible for ETI civil society members to initiate disciplinary proceedings

Where an ETI member company is not cooperating in addressing a grievance (or is failing to meet ETI requirements in other ways) NGO and Trade Union ETI members should be able to propose that the ETI board consider disciplinary action against that company. That is, it should not be the exclusive prerogative of the ETI Director and Chair to determine whether or not the ETI board considers such action. Board decisions regarding all aspects of the disciplinary procedure for ETI companies should be by simple majority vote rather than requiring consensus or super-majority votes.

7 Consider adopting legally-binding agreements that hold ETI members to account on specific commitments

The ETI played a valuable role in persuading companies to sign up to the Bangladesh Accord, which requires signatory companies to make legally enforceable commitments to cooperate in addressing allegations of occupational health and safety violations. Reliance on voluntary cooperation by ETI companies in addressing breaches of the ETI Base Code
has clear limitations. The ETI should explore the possibility of adopting contractual mechanisms that bind companies to take specific steps to address identified breaches of the Base Code within a defined time frame. Following the example of the Bangladesh Accord, contractual agreements could nominate an arbitration body for alleged breaches and specify appropriate remedies for breaches, including financial penalties.

Specific recommendations regarding ETI supply chain programmes in specific locations

1. Identify and treat the programme approach as a grievance process for systemic issues
   The process for selecting future supply chain programmes should be changed so that only ETI civil society organisations are able to propose possible programmes, thus making this process one that is more explicitly tied to civil society concerns about Base Code violations in particular industries and regions.

2. Adopt a more collaborative approach with civil society organisations in producer countries
   Civil society organisations in the producer country with a history of advocacy work and engagement in support of labour rights should be invited to participate in programme design, negotiation and implementation from the beginning, rather than only being consulted about and then informed of the result of programme design negotiations in the UK.

3. Prioritise support for local campaigns to influence government policy and practice
   It should be a key priority of all ETI programmes to work closely with local civil society organisations to support local campaigns for more effective government regulation of labour rights in the targeted supply chains.

4. Plan around longer time-frames and require longer term commitment by ETI companies
   Programmes should have a much longer time-frame than three years, since this is too short a period to effect significant and lasting change. ETI member companies who participate in ETI programmes should be required to make a clear long-term commitment to continue ordering from suppliers that actively participate in programmes, even if somewhat cheaper sources of supply emerge in other countries or in other parts of the same country.

5. Establish local multi-stakeholder grievance mechanisms
   Where appropriate, local multi-stakeholder grievance mechanisms should be established in areas in which the ETI plans to have ongoing programmes. Participation by ETI companies in the FOA Protocol in Indonesia (considered in a separate report in this series) would likely provide useful learning in this regard, as would the Fair Wear
Foundation’s pilot programme in South India (considered earlier in this report).

Recommendations regarding the ETI’s Procedure for responding to member-initiated complaints

6 Increase the ability of civil society organisations to influence the final stages of the grievance procedure
The final stage of the ETI’s Alleged Code Violation Procedure currently concentrates significant power to influence the process in the office of the ETI Director. The rules should be changed so that where negotiation between the parties to the complaint (the ETI civil society organisation and the ETI company) have failed to resolve the issue, either party should be able to require the ETI Director to make a recommendation. If that recommendation is appealed, then a three member tripartite review committee of the ETI Board should be able to replace the ETI Director’s recommendation with its own recommendation, and the review committee should be able to make its recommendation by majority vote, rather than by consensus.

7 Linking the grievance procedure to the disciplinary procedure
The procedure for investigating alleged code violations should be more directly tied to ETI’s disciplinary procedures; so that it is clear to companies that failure to properly address a grievance could potentially lead to their suspension or dismissal from ETI.

8 Greater transparency
There should be regular public reporting by ETI of what grievances are raised, what procedure is followed for addressing each grievance and how each grievance is resolved. Such reports should remain on the ETI website.

Recommendations regarding grievance mechanisms administered by ETI member companies and by suppliers in member company supply chains

Local Grievance Mechanisms
If the ETI is able to successfully facilitate the establishment of local grievance mechanisms as part of its programmes, this could become a model for production locations that are not being targeted in a specific programme. Where a number of ETI member companies source in the same geographic area, rather than each developing individual grievance mechanisms, member companies could be encouraged to work together with each other and with local civil society organisations to establish and jointly administer grievance mechanisms that focus on those standards in the Base Code that increase workers’ power. ETI member NGOs and Unions could work with local civil society organisations to monitor and report on the effectiveness of these mechanisms. As a first step, ETI member companies that source from Indonesia could sign on to the FOA Protocol in that country and participate in that locally-negotiated grievance mechanism and in negotiations with Indonesian trade unions regarding corresponding protocols on job security and wages.
Conclusion – the politics of non-state non-judicial mechanism reform

I am thinking ‘non-judicial’ is always problematic because you are always relying on our goodwill, and we are business entities (Interview with a participant from an ETI member company, 2013).

The adoption of the UNGPs has raised the profile of non-state non-judicial mechanisms, generating considerable interest in how such mechanisms are currently contributing to human rights redress and what more might reasonably be expected of them. The ETI is one of the most prominent of such mechanisms. This report has identified significant limitations with the current operation of the ETI’s grievance procedures, analysed the reasons for these limitations and made recommendations for reform. Our recommendations aim to change the power dynamics within ETI, to give ETI civil society organisations more power to influence company practices and ultimately to give workers in ETI company supply chains more power to claim their human rights. If implemented, these recommendations would likely require member companies to accept some increases in costs and some reduction in sourcing flexibility. While some individuals within particular ETI companies would support such reforms, our interview research suggests that most ETI companies would likely resist them. If so, the only real chance of these recommendations being adopted would be if the union and NGO representatives on the ETI board decided to support them and strongly agitate for them to be adopted, and even then their ability to get the reforms adopted is uncertain.

The ETI’s current five year plan, released in December 2015, suggests that ETI civil society groups have had some success in getting some of the issues highlighted in our recommendations onto the ETI’s agenda. The plan specifically references the UNGPs and promises that ETI member companies will be “encouraged and supported” to identify how their business activities are impacting workers and communities and will be “supported to act to mitigate these risks and ensure effective remediation where there is adverse impact” (ETI 2015b: 2). The plan also speaks of placing a greater emphasis on promoting freedom of association; supporting member companies to integrate the promotion of the UNGPs into their sourcing and purchasing practices; and supporting the “emergence and development of at least three local ethical trade platforms in key sourcing countries” (ETI 2015b: 2-5). The plan also acknowledges the limits of voluntary initiatives and commits the ETI to working with ETI members to lobby national and international policy makers for more effective monitoring and enforcement of labour standards by national and state governments. As noted above, the plan also promises that the ETI will become “a reliable source of public, credible, balanced and authoritative statements on member company progress”, although it is unclear at this stage how the relevant evidence will be gathered or disseminated (ETI 2015b: 4).

These goals are very much in line with many of our recommendations and, if comprehensively implemented, they would make the ETI a much stronger contributor in the human rights space and would avoid the danger of the ETI providing public relations cover for poorly performing companies. However, the extent to which these goals are implemented will depend on ongoing negotiations between ETI civil society organisations and ETI companies. A key lesson emerging from our research is that the bargaining power of ETI civil society groups in those negotiations
is hampered by factors external to the ETI, particularly by the extent to which ETI companies’ reputations are threatened by media coverage of labour rights violations in their supply chains. As discussed above, for a variety of reasons the amount of money and energy being put into research and advocacy identifying and drawing public attentions to such rights violations is much less now than it was in the 1990s, when the ETI was formed. Hence while the priorities set out in the ETI’s current five year plan represent a positive direction for the organisation, unless there is a significant increase in ETI companies’ perceived brand-risk it is appropriate to have modest expectations for their implementation.

In addition to making recommendations for the reform of non-judicial mechanisms, one of our research goals is to provide research insights of value to governments as they consider how to implement the UNGPs. The Department for International Development (DFID) in the UK has been an important funding source for the ETI. Given the importance of perceived brand risk for the ETI’s effectiveness, arguably DFID’s support for the ETI would more usefully contribute to human rights redress if DFID matched it with funding for labour rights research projects targeting the supply chains of UK companies both within and outside the ETI. Other government initiatives, such as government procurement policies, can also provide companies with important incentives to genuinely address human rights violations in their supply chains. In the absence of such incentives and threats for UK companies, the risk is that negotiations between civil society organisations and corporate representatives within the ETI can absorb a great deal of time but only produce very limited outcomes.

A number of UK civil society organisations have called on the UK Government to establish a new Commission on Business and Human Rights to coordinate government initiatives to implement the UN principles. Several research participants noted that UK Government representatives have cited the existence of the ETI as part of its justification for rejecting the proposed Commission. While is beyond the scope of this report to specifically consider the merits of the Commission proposal, if the UK government is using the ETI to justify rejecting alternative strategies then that is of significant concern. Our research indicates that even where the ETI has concentrated its energies on particular supply chains in particular regions (such as on the rights of garment home workers in northern India or on the rights of textile mill workers in the south of that country) the ETI’s achievements in providing human rights redress have been very limited.

In short, there is currently a significant accountability gap. When global companies, including ETI member companies, make purchasing decisions that increase the likelihood that workers in their supply chains will suffer human rights violations, there is currently no effective remedy available to those workers. The ETI is not currently filling that gap. While the recommendations in this report and those contained in the ETI’s current five year plan would likely enhance the organisation’s effectiveness, it remains unclear to what extent those recommendations will be implemented. The ETI’s performance to date certainly does not justify a refusal to consider the Commission proposal or explore other possibilities, including greater international efforts to encourage governments to uphold and protect labour rights.

As highlighted throughout this report, improving respect for workers’ human rights ultimately involves global companies investing more money in the local manufacturing process to ensure suppliers provide employees with decent wages and working conditions. In the absence of net
financial incentives or legal compulsion, it is important to be realistic about the extent to which ETI member companies will be willing to take steps that will increase their costs of doing business. Consumer demand for more ethically produced goods and investor interest in ethical investment can have an important influence on company behaviour and it is important that any reform to ETI helps facilitate these influences. However, it is unlikely that, on their own, ethically minded consumers and investors will radically transform the terms of global trade.

While voluntary initiatives can promote some improvements in human rights compliance, they are not a sustainable alternative to legally-binding mechanisms. Enhancing local human rights protection and enforcement remains an urgent priority, as is developing transnational legal frameworks that can hold businesses to account for their off-shore human rights impact. Voluntary initiatives like ETI are important if they can promote or complement such developments, but less so if they are used to delay or displace firmer political interventions. Developing binding solutions will be a complex challenge, however the emergence of cross-jurisdictional laws in other areas such as corruption regulation and money laundering suggest that with sufficient multi-lateral commitment it is possible to find legal solutions to systemic global challenges.
Endnotes

1. This is not the only time an ETI process has been undermined by the mobility of production within ETI company supply chains. In 2002, for example, a complaint was raised within the ETI regarding the very low piece rates being paid to homeworkers producing Christmas crackers in South Wales. A working group was established within the ETI and spent many months discussing a possible solution. Meanwhile the suppliers of the ETI companies involved shifted the work to China (Interview with a representative from an ETI member NGO, 2013).

References


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