



**WIETA**

**INCIDENTS REPORTING**

**&**

**CODE VIOLATIONS INVESTIGATIONS**

**PROTOCOL**

**&**

**PROCESS**

V3 – May 2017

## Preamble

The UN Guiding Principles on Business and Human rights clearly sets out guidelines for business regardless of sector, type, size, ownership structure or where located to respect the rights of its workers and ensure that human rights are promoted and where violations occur, these are immediately remedied.

WIETA embraces these principles and therefore believes that all businesses in the wine supply chain undertake due diligence in support of the promotion, protection and enforcement of human and labour rights of agricultural workers employed in cellars, bottling facilities and on farms.

WIETA also supports the international approach taken on human rights due diligence. An approach which holds that business need to take responsibility for ensuring that people's rights are protected, both in the workplace and on their business premises and property and that businesses be held accountable for any negative impact on human and labour rights, taking the responsibility to ensure that appropriate remedies are put in place to restore the rights of their employees and general citizens impacted by rights infringements within the business.

The guiding principles can therefore be summarised in three words

### ***PROTECT – RESPECT – REMEDY***

Where worker rights violations are reported, WIETA would have a commitment to evoke the WIETA Incidents & Violations Protocol & Process to investigate, access against the WIETA Code, and identify restorative solutions. These solutions would require that the necessary remedial actions are followed and a more responsible ethical business practice is adopted.

Effective communication, a co-operative and collaborative approach is critical to building good working relationships and restoring trust.

To assist such a co-operative approach, WIETA has prepared a set of guidelines to follow when human and labour rights infringement and/or Code violations are reported either via the media or through a complaint from within or outside of WIETA membership.

The guidelines are intended to maintain common understanding and cooperation throughout the investigation and resolution of the alleged human and labour right infringement and/or Code violation. The aim is to reach a conclusion that all parties accept as final, i.e. a position where the parties agree that as much as can be done has been done, bearing in mind the limitations inherent in any particular situation.

When the WIETA Board deems it appropriate these guidelines can be reviewed, to enable modification and improvement.

## The Guidelines

### 1. Definition

- 1.1 The alleged human or labour rights infringement and/or code violation Incidents protocol contain guidelines agreed by WIETA for the investigation of alleged violations occurring on members' sites and for remediation where it is established that a code violation has occurred.

### 2. Purpose

- 2.1 The purpose of the guidelines is to
- (a) ensure that alleged code & human or labour rights violations are brought to WIETA in a way that facilitates the investigation of the allegation;
  - (b) ensure that the investigation of the allegation, and any remediation found to be necessary, occurs expeditiously and transparently;
  - (c) encourage the sharing and transparency of information amongst WIETA members about supply chain labour and ethical practices;
  - (d) build positive working relationships and the confidence of stakeholder groups in each other and
  - e) Promote the use of non-statutory alternative dispute resolution mechanisms to reach a consensual outcome where disputes arise.
  - f) ensure that remedial action is taken where violations occur and that in the event that an investigation is refused by the alleged perpetrator or where remedial action is declined or no commitment is given towards any actions within a given period, said alleged perpetrator will face suspension of the site's certification. Refer to Annexure 1 hereto attached.

### 3. Parties to the Guidelines

- 3.1 The mutual obligations set out in these guidelines apply to members of the WIETA (wine industry producers and growers, trade unions and NGO's).
- 3.2 It is understood that allegations of human and labour rights infringements and/or WIETA Code violation arise, they usually originate from the partners or affiliates of the trade union and NGO members, farm workers or through media reports.

- 3.3 WIETA will establish a list of preferred independent investigators to undertake the preliminary assessment following any complaints of alleged violations received by WIETA and constitute an incidents investigation panel who will have the responsibility to review all reports and make recommendations on referrals to other agencies for further action following the preliminary assessment.
- 3.4 WIETA will establish a list of preferred mediators who are able to perform independent mediation services.

## 4. Principles

- 4.1 The principles underlying these guidelines are the following:

**Transparency** – the parties involved are open with each other about all aspects of the allegation and its investigation and remediation i.e. source and nature of the allegation, specific details and time of occurrence, method of investigation, timetable for investigation, results, remediation plan, timetable and verification.

**Co-operative approach** – the parties adopt a co-operative approach to working with each other, during investigations of allegations and achieving WIETA Code compliance where breaches have occurred.

**Respect for the facts** – an emphasis at all stages (allegation, investigation, and remediation) on establishing the facts as reliably as possible.

**Direct communication** – facilitating direct communication amongst those affected by the alleged code violation so that the issues can be resolved as close as possible to their point of origin, involving the WIETA Office and the WIETA Board only as a last resort.

**Promptness** – investigation and remediation to occur within the shortest period of time appropriate to the nature of the allegation or code breach.

**Finality** – to produce a definite result, i.e. a position where all the parties agree that as much as can be done has been done.

- 4.2. Use of the WIETA Incidents and Violations Protocol & Process cannot bar employees from using other means of redress (e.g. collective bargaining agreements, grievance procedures, CCMA processes, mediation and arbitration simultaneously, alternative dispute resolution mechanisms, as the legal framework and parties to these other means of redress are different from those of the WIETA.
- 4.3 Where a labour practice is the subject of a complaint via another channel of redress, this should be made known to WIETA.

## 5. Scope of the Guidelines

- 5.1 These guidelines cover allegations of human and labour rights infringements and/or of WIETA Code violations that are either
- (a) specific and very serious, requiring an instant response, or
  - (b) specific and on-going, requiring prompt investigation in line with these guidelines.
- 5.2 In instances where the information about an alleged code violation is not specific enough (e.g. to a particular member site) or not definite enough (e.g. hearsay not supported by reliable testimony) to trigger these guidelines, such information should still be passed on to the relevant wine brand, cellar and applicable worker representative structure for them to use in planning their supply chain monitoring activity.
- 5.3 The parties should discuss in each case whether the information constitutes general background information, or information that is intended to trigger these guidelines. A specific set of questions has been developed to determine whether the protocol is to be followed.

## 6. Definition of “member sites” for the Purposes of these Guidelines

- 6.1 These guidelines apply to alleged human and labour rights infringements and/or WIETA Code violations occurring on member sites that
- (a) are within the scope of application of the WIETA code and
  - (b) have a direct and identifiable relationship with a WIETA member site.
- 6.2 Where incidents occur on sites that are not member sites, the complaint will be directed to the necessary authorities such as the Department of Labour and Department of Agriculture or any other applicable department or designated body to investigate further.
- 6.2 These guidelines do not apply to alleged violations outside the scope of the WIETA Code.

## 7. Process for Invoking the Incidents Protocol

- 7.1 Complaints concerning labour, interest or rights based disputes in contravention of the WIETA Code can be referred in writing to the Standards and Certification section within WIETA.
- 7.2 Complaints received telephonically from workers need to be lodged by the WIETA office in a prescribed format and record kept.
- 7.3 Complaints can also be lodged in terms of any possible code violation from social, print or broadcast media reports, for further investigation.
- 7.4 As much information as it is reasonably possible about the transgression needs to be gathered to evoke the Incidents Protocol. In this regard an Incidents Investigation Questionnaire would need to be completed. Attached as Annexure A.
- 7.5 The general principle is that as much detail as possible about the allegation should be supplied. However, in some circumstances there may be a risk of victimisation of the employees concerned. If so, this should be stated by the Complainant communicating the allegation and the names of the individuals concerned may be withheld.
- 7.6 Where the allegation concerns alleged code breaches affecting large numbers of employees (e.g. to do with pay rates, overtime, health and safety) there is no requirement to divulge the names of individual workers. However, the supporting information supplied should still be sufficient to identify the time, place and circumstances of the alleged violation(s).
- 7.7 If the allegation relates to employees being wrongfully dismissed, the names of the employees should be supplied, and relevant documentation supplied.
- 7.8 Within ten (10) working days of the complaint received, WIETA will assign an investigator from the *Approved Investigator List* to conduct a preliminary assessment of the nature of the alleged transgression / dispute. The purpose of the preliminary assessment is to find the facts and record these as reliably as possible. The investigator may also be required to conduct off-site interviews with employees of the alleged violator where this is necessary for the employees to freely express themselves.
- 7.9 If the allegation relates to behaviour that has already been the subject of other investigations or is *sub-judice*, the results of these investigations should be taken into account by the investigation carried out under these guidelines.
- 7.10 Should the alleged transgressing site refuse access to allow the assessment to take place, the Certification and Risk Matrix Policy provisions will come into effect.
- 7.11 When informing the site that an allegation has been made, WIETA should make it clear to the supplier that there is a “no victimisation” policy in relation to employees who may have made allegations of code violation and that any victimisation will be regarded as a serious breach of the Code.

## **8. Investigation Report**

- 8.1 When the preliminary assessment has been completed the investigator should make a written report, which will be shared with the Multi-stakeholder Incidents Investigation Panel for review.
- 8.2 The investigation report should state:
- Who carried out the investigation.
  - When it was done.
  - What methods were used (in sufficient detail to give the reader an understanding of the investigation process).
  - What the coverage of the investigation was (i.e. what proportion of the employees and the work site was covered).
  - Whether off-site worker interviews were conducted.
  - The results of the consultation with the persons or organisation originating the allegation.
  - What the findings of the investigation were, specific to each allegation.
  - Recommendations to be made
  - Recommendations on any referrals to external agencies
- 8.3 In order to support the “no victimisation” policy, the names of individual non-managerial employees should not be disclosed in the investigation report.

## **9. Remediation**

### **9.1 Remediating Labour Based Non Compliances**

- 9.1.1 Where the investigator’s report confirms any or all of the alleged code breaches, WIETA will negotiate a remediation plan with the member company. This plan should provide for prompt remediation of the violations, taking into account the nature of the violation and the type of remediation required.
- 9.1.2 The remediation plan must be shared with the relevant employees, the person or organisation originating the allegation and WIETA.
- 9.1.3 The remediation plan should contain:
- A description of each infringement and/or WIETA Code breach being addressed.
  - The nature of the remediation action.
  - The timescale for the remediation action.

### **9.2 Meeting to Consider the Investigation Report and Remediation Plan**

- 9.2.1 Within two weeks after the circulation of the investigation report, the parties concerned must meet to discuss the report and decide on the next steps.
- 9.2.2 If the parties concerned agree with the findings of the investigation report, and the report discloses Code breaches, the next step is to reach agreement on the remediation plan.
- 9.2.3 The views of the company workforce and the organisation originating the allegation should be taken into account in assessing the accuracy of the investigation and the contents of the remediation plan.
- 9.2.4 If the person or organisation originating the allegation disagrees with the findings of the investigator's report, this disagreement should be communicated to WIETA who will refer the matter back to the Multi-stakeholder Incidents Investigation Panel, along with any additional information necessary to explain the disagreement.
- 9.2.5 The panel should examine this information seriously and take the appropriate steps, which may include a further enquiry into the member company's operations, if necessary to establish the facts. The parties should agree who undertakes this investigation, the terms of reference and the status of the report. The results of this further enquiry should also be reported back to all parties and reasons given for the findings.

### **9.3. Unresolved Disputes**

- 9.3.1 Where the allegation cannot be resolved through by a remedial plan of action in joint agreement by the aggrieved and transgressing parties, the nature of the dispute will be referred to the Incidents Investigation Panel for review.
- 9.3.2 The following will be taken into account:
- The nature of the dispute will be reviewed i.e. evictions, harassment, abuse cases, rights based violations
  - the degree of leverage WIETA has to resolve the dispute.
  - Possible referral mechanisms/agencies to be identified where the rights violations go beyond the scope of the WIETA Code or where WIETA deems there to be a conflict of interest or where the transgressor refuses to take any responsibility for remedies and refuses intervention.
  - Or whether to seek joint action with wine industry members.

### **9.4 Mediation as a Workplace Dispute Resolution and Remedial Tool**

- 9.4.1 In the case where the dispute is of such a nature that mediation is deemed an appropriate remedial tool and appropriate and agreed mechanism for seeking to

resolve both workplace or interest based disputes, a mediator will be appointed by WIETA from an *approved mediator list after consultation and agreement with the parties concerned.*

- 9.4.2 Any documentation relevant to the dispute should be handed to the mediator as part of the investigation. Where the mediator is able to resolve the dispute during a fact-finding exercise this should be encouraged.
- 9.4.3 On a date mutually agreeable to all parties, the mediator will mediate the dispute in line with agreed to mediation protocol guidelines. The proceedings shall be “without prejudice” and shall not be referred to in any other proceedings for any purpose whatsoever.
- 9.4.4 The mediation process should be concluded as speedily as possible and at the most be completed within three months of the referral following the circulation of the preliminary assessment report to parties.
- 9.4.5 The procedure will be that of mediation, not arbitration or conciliation. No finding will be made against any party. The role of the mediator will be, with his/her knowledge of the wine industry and agricultural sector, to assist the parties in reaching an amicable resolution.
- 9.4.6 In the event of a resolution being reached, the outcome shall be put in writing and signed by both parties. The decision shall constitute a full and final settlement of the dispute. All parties to that mediation shall then withdraw any legal proceedings that may have been instituted as a result of the dispute. There will be no further recourse to any legal action by either party.
- 9.4.7 The proceedings and the outcome of the mediation shall, at all times, remain confidential.
- 9.4.8 Both parties to the dispute should receive a copy of the signed agreement and a further copy should be submitted to WIETA.
- 9.4.9 The mediator shall, after the completion of the mediation, whether it has been resolved or not, hand back all documentation collected from the respective parties and destroy all notes taken during the mediation process.
- 9.4.10 In the event of a matter not being resolved, the matter will proceed as if there had been no mediation. This outcome shall also be communicated to WIETA who will then refer the unresolved matter to the Accreditation Committee for review in terms of the Incidents Reporting : Certification and Risk Matrix Policy, hereto attached as Annexure 1.
- 9.4.11 The outcome of any mediation process shall be regarded as private and confidential save where the parties agree to a public statement. Joint statements may be released by WIETA should that be the wish of the parties to the mediation. However no

individual person or company involved in the mediation may be identifiable in any such press release - unless they have given their express permission in writing thereto.

- 9.4.12 If, at any stage, both parties agree that the mediator should recommend the matter be taken to arbitration, then he/she may do so and such arbitration shall be conducted in terms of the Arbitration Act. In such a case, the parties are bound to the arbitrator's decision, and the arbitration will be concluded in writing for the signature of both parties. Where the matter has been arbitrated, both parties reserve their rights in terms of section 145 of the Labour Relations Act.

## **10. Failure to Remedy**

- 10.1 Where remedial action and /or dispute resolution is deemed appropriate by WIETA but where transgressing parties refuse to commit to remedy or refuse mediation and such a dispute and Code violation remains un-remedied, WIETA retains the right to undertake the following action:

- Refer the dispute / violation to an appropriate agency i.e. Department of Labour or Department of Agriculture; Human Rights Commission, CCMA Workplace Dispute Resolution Mechanism Unit etc.
- Refer the matter to the Wine industry Bodies and
- Refer the transgressing member internally for review in terms of the Certification and Risk Matrix Policy, hereto attached as Annexure 1, for Certification and / or membership suspension.

## **11. Monitoring of remedies**

- 11.1 WIETA will monitor the member company's compliance with the remediation plan and / or mediation outcome. When remediation is complete, the company will be requested to write to the Incidents Investigation Panel, via the WIETA CEO, describing the remediation actions that have been undertaken and stating that remediation is complete.
- 11.2 If the person or organisation originating the allegation disagrees with the statement that remediation is complete, this opinion should be communicated to the WIETA CEO, along with any additional information necessary to explain the disagreement. The Panel should discuss the differences between the two positions and try to reach an agreement on what course of action should be followed.
- 11.3 If the process takes longer than six months from the date the allegation was made, the WIETA office should provide an interim report at the six month point stating what has been completed, what remains to be done and the timetable for completion. A copy of this report should go to the WIETA Board who will determine a course of action appropriate to the circumstances and aligned to the WIETA Certification and Risk Matrix Policies.

- 11.4 If remediation is still not complete after a further six months, the WIETA member company should provide a further interim report stating what has been completed, what remains to be done and the timetable for completion. This report should be referred to the WIETA Board, which should determine a course of action appropriate to the circumstances.
- 11.5 Where a code breach is remedied, the issue should be kept under review by the company in its audit process.

## **12. Time frames for Incidents Reporting, Investigation and Remediation**

- 12.1 The following timeframes are recommended:
- Preliminary assessment undertaken within 10 days of complaint received
  - Preliminary Assessment Report circulated to aggrieved and transgressing parties within one week of completion of preliminary assessment
  - Remediation plan agreed to within one month of receiving report
  - Remedies put in place required within 3 months of receiving report
  - Report to WIETA on impact of remedies within 3 months of report
  - Where recommended, referral to mediation within two weeks of Preliminary Assessment Report
  - Mediation completed within 3 months of referral
- 12.2 If agreement cannot be reached, the issue may be referred to the WIETA Board for an opinion.
- 12.3 The decision of the Board will be final and binding on the parties.

## **13. Disagreements over the Interpretation or Implementation of these Guidelines**

- 13.1 In the event of a disagreement over the interpretation of these guidelines or the appropriate response to an alleged code violation, the parties should first try to resolve the disagreement in direct discussion with each other, in the spirit of mutual trust and co-operation described in the preamble.

## **14. Costs of Investigation and Remediation**

- 14.1 The costs of the investigation, where there is a violation at the member site and any necessary remediation is undertaken, should be met by the WIETA member company.
- 14.2 Where mediation is recommended as a tool for remedy. WIETA will endeavour to seek to cover part costs for this mechanism through fundraising initiatives in association with local and international partners.

14.3 Where there is no violation, WIETA will absorb the costs.

## Annexure 1 – Incidents Reporting : Certification &amp; Risk Matrix

Incidents Reports Post Audit : Risk Matrix				
Any Human rights transgressions, Labour or Ethical Code Violations Reported to WIETA OR negative media exposure/publicity that impacts the WIETA brand and / or reputation	High	Refusal or unwillingness on the part of the site implicated, to allow WIETA access to investigate the incident/s  OR  Where access is allowed to investigate and the site is found to have violated the Code, but fails to undertake any remedial action recommended	Certificate suspended	Failure to comply with request to investigate incident  OR  Failure to comply with recommendation for remedial action within required timeframes  Results in immediate suspension of certificate with requirements for re-audit focusing on alleged violations areas and the implementation of ongoing quarterly Worker Mobile Monitoring Mechanism.
	Medium	WIETA has access to site/s to investigate incident allowed.  Remedial action suggested, is undertaken <b>only after 6 months</b> of incident report and approved	If violation has occurred, certificate withheld until remedial action is received and approved. Ongoing quarterly Worker Mobile Monitoring Programme to be implemented	Announcement of re-audit after lapse of annual certification
	Low	WIETA has access to site/s to investigate incident allowed  Remedial action <b>undertaken within 3 months</b> of incident report and approved	If incident is proven – re-audit within normal audit cycle with implementation of ongoing quarterly Worker Mobile Monitoring Mechanism  No impact on certificate	Re-audit follows usual cycle