

Comment and Controversy

**EMERGING FROM THE TRAGEDIES IN
BANGLADESH: A CHALLENGE TO VOLUNTARISM
IN THE GLOBAL ECONOMY**

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ABSTRACT

Under the regime of private company or multi-stakeholder voluntary codes of conduct and industry social auditing, workers have absorbed low wages and unsafe and abusive conditions; labor leaders and union members have become the targets of both government and factory harassment and violence; and trade union power has waned. Nowhere have these private systems of codes and audits so clearly failed to protect workers as in Bangladesh's apparel industry. However, international labor groups and Bangladeshi unions have succeeded in mounting a challenge to voluntarism in the global economy, persuading more than 180 companies to make a binding and enforceable commitment to workers' safety in an agreement with 12 unions. The extent to which this Bangladesh Accord will be able to influence the entrenched global regime of voluntary codes and weak trade unions remains an open question. But if the Accord can make progress in Bangladesh, it can help to inspire similar efforts in other countries and in other industries.

Keywords: corporate social responsibility, labor rights, Bangladesh, apparel

During the last two decades, enforceable international agreements have removed both tariffs and non-tariff barriers to trade, while in many places laws that protect workers' rights, safety, and welfare have been inadequately enforced. In their

place, a parallel regime of private company or multi-stakeholder voluntary codes of conduct has burgeoned, and corporate-controlled social auditing has become a multi-billion dollar industry. Under this regime of voluntary rules, workers have absorbed low wages and unsafe and abusive conditions; labor leaders and union members have become the targets of both government and factory harassment and violence; and trade union power has waned.

Nowhere has the failure of voluntarism to protect workers been more harsh and better publicized than in the apparel industry of Bangladesh. A series of catastrophic fires and building collapses in factories that had been audited and certified compliant by large apparel brands and retailers have claimed the lives of more than 1,800 workers and injured thousands more since 2005. Following the most dramatic of those tragedies—the Rana Plaza building collapse that killed 1,138 workers and injured more than 2,500 others on April 23, 2013—the international labor movement has succeeded in mounting a challenge to voluntarism by persuading more than 180 apparel brands to sign a binding and enforceable agreement for garment workers’ safety in Bangladesh with both international and Bangladeshi unions. This initiative faces formidable challenges, breaking patterns of relations and thought cemented in the corporate social responsibility (CSR) industry over the last two decades. However, it can also serve as the foundation for a renewed regime of rules that protect workers globally in apparel and other industries.

THE GROWTH OF VOLUNTARY CODES

Private monitoring of labor standards in the apparel industry dates to the 1990s Los Angeles garment industry, when the U.S. Department of Labor (DOL) threatened to invoke the “hot goods” provision of the Fair Labor Standards Act (FLSA)¹ unless companies remedied violations and committed to a contractor monitoring program. The Augmented Compliance Program Agreements that the DOL signed with apparel companies were ambitious efforts to crack down on rampant sweatshop violations in the Los Angeles garment industry, but the program was only partially successful. While compliance rates improved somewhat thanks to DOL’s threat to enforce the hot goods provision of the FLSA, monitoring in and of itself had little effect, and a majority of the factories continued to be out of compliance [1]. Nor did the program have a lasting positive effect. More than a decade after the DOL program ended, FLSA noncompliance in the Los Angeles garment industry had increased to 93 percent.

¹ The “hot goods” provision of the FLSA (29 U.S.C. § 215(a)(1)) makes it illegal for any person to “transport, offer for transportation, ship, deliver, or sell in commerce, or . . . ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of [the FLSA minimum wage provisions].”

Around the same time that DOL introduced private sector monitoring in the Los Angeles garment industry, anti-sweatshop advocates promoted private codes of conduct as a strategy for bridging “the governance gap”—to ensure workers’ rights despite weak labor law enforcement in the countries from which global brands were sourcing. In 1991, Levi Strauss was the first global apparel company to adopt a workplace code of conduct for its manufacturing suppliers around the world. Today, private codes of conduct and proprietary social auditing have become the core of a growing, multi-billion-dollar corporate social responsibility industry that has expanded from apparel to a variety of industries, including electronics and agriculture. While CSR encompasses a wide range of practices, social auditing itself has been estimated to be an \$80 billion industry [2].

Multiple reports show that these voluntary corporate monitoring programs have not been more successful in protecting workers from labor violations than those adopted under the threat of the “hot goods” provision in the FLSA in the early years of the Los Angeles garment industry. A recent review of “private regulation” in the apparel industry notes “breathtaking levels of exploitation” in the global apparel industry despite the fact that codes and monitoring have become an accepted way of doing business [3]. Academic studies have again concluded that monitoring has limited effect on compliance. For example, economist Richard Locke analyzed 800 Nike audits from 51 countries and found that monitoring alone had little effect on labor compliance [4]. A large body of literature has analyzed and exposed the weaknesses of corporate-controlled monitoring, where auditors, compromised by conflict of interest, detect and report only the violations corporate clients expect or want to address [5-7]. Factory auditors themselves have acknowledged how easy it is for them to miss blatant violations during an audit for a corporate client, and described the ingenious ways in which factories mislead auditors [8]. Critiques, including some by this author, have documented case after case of global supplier factories, audited and certified for western retailers and brands, with the most heinous labor rights violations [9-11].

Governments have used private codes and auditing systems to replace, rather than improve compliance with, labor law around the world. In Pakistan, for example, the Ministry of Labor used industry workplace certifications as a means to reduce its inspection burden. A rush to certifications resulted in the Ali Enterprises factory being certified just prior to the fire that killed 259 garment workers [12, 13].

According to one analysis, corporate-controlled social auditing programs are only effective to the extent that addressing labor standards violations—such as violations of wage, hour, and health and safety standards—helps companies protect themselves against risks of reputational damage caused by activist campaigns and media exposés. Corporations also have a strong interest in maintaining control over the cost structure and operations in their supply chain and are considerably less likely to effectively monitor and remedy violations of workers’

rights to organize and bargain collectively because effective implementation of those rights lessens corporate control [14].

THE FAILURE OF VOLUNTARY CODES IN BANGLADESH

Nowhere have these private systems of codes and audits so clearly failed to protect workers as in the apparel industry. In the wake of a series of catastrophic workplace disasters these failures have become legendary in Bangladesh.

For example, in February 2010 the Garib & Garib Sweater Factory burned, killing 21 workers. The Swedish retailer H&M had inspected Garib & Garib four months prior to the fire. Worldwide Responsible Accredited Production (WRAP), an industry monitoring organization, had also certified Garib & Garib as compliant with the WRAP 12 Principles, including the requirement to provide a safe and healthy work environment. Gap had inspected the That's It Sportswear factory shortly before the December 2010 fire, which killed 29 workers. The factories involved in all three of the most recent apparel catastrophes—the Ali Enterprises fire in Pakistan killing 259, the Tazreen Fashions fire in Bangladesh killing 113, and the Rana Plaza factory collapse in Bangladesh killing 1,138—had been audited multiple times or certified as safe and decent workplaces. Business Social Compliance Initiative (BSCI) had audited two factories in Rana Plaza, New Wave Style and Phantom Apparel [15]. According to Ether Tex's website, it too had passed inspection by BSCI and also by the Service Organization for Compliance Audit Management (SOCAM) [16]. None of these audits were sufficient to save workers' lives.

AN ACCORD WITH RULES THAT WORKERS CAN ENFORCE

On March 21, 2012, ABC News reported on a breakthrough in fire safety in Bangladesh [17]. For the first time ever a major buyer in Bangladesh and one of the world's largest apparel companies, PVH Corp., reached an agreement with trade unions on a legally enforceable factory safety program. According to the agreement, factory audits, investigations, and remediation plans would be public and not proprietary to companies, and workers would have a meaningful voice and influence through trade union participation in implementation and overall governance of the program. These terms would be enforceable through binding arbitration by an adjudicator empowered to issue the remedies necessary to repair a breach of contract.

For over a year only one company in addition to PVH Corp. signed this agreement: the German retailer Tchibo. Most companies preferred their own voluntary—rather than legally binding—programs, orchestrated from the top rather than organized with the workers and the unions that represent them.

However, within weeks of the Rana Plaza tragedy of April 24, 2013, dozens of companies signed the agreement, now called the Accord on Fire and Building Safety in Bangladesh. At the time of writing, more than 180 global brands and retailers have joined the Accord [18].

The Accord represents a fundamental challenge to the dichotomy of rules in the global economy, where rules that help to expand global investments and the movement of capital are binding and enforceable through trade sanctions imposed by trade tribunals, but rules intended to protect the rights, safety, and welfare of the workers who make the goods are voluntary private codes or unenforceable international guidelines or principles. For the first time the apparel companies that had invested in Bangladesh because of its low prices would be responsible for the human costs of its apparel. Companies' stated commitments to workers' health and safety would, if necessary, be enforceable in a court of law.

These are the enforceable commitments the companies made:

- to disclose supplier factories to an independent inspector;
- to require factories to remedy safety violations, as determined by the independent inspector;
- to cease doing business with factories if they fail to address high-risk safety violations in a timely fashion, and, if this occurs, to shift orders from those factories to qualified and safe factories while making every effort to ensure that workers who lose their jobs in the unsafe factories are offered employment in the safe factories;
- to ensure that workers will be fully paid when a factory temporarily closes in order to make the necessary renovations to become a safe place of work, and that they are guaranteed continued employment when it reopens;
- to maintain orders to tier one and tier two factories (that make up 65% of companies' total production in Bangladesh) that maintain compliance with safety requirements, provided such business remains commercially viable for the buyers; and
- to provide financial assistance to factories for the cost of the repairs (signatory companies must "negotiate commercial terms with their suppliers which ensure that it is financially feasible for the factories to maintain safe workplaces and comply with upgrade and remediation requirements" [19]).

Workers can enforce these commitments through their representative trade unions. As Accord signatories, trade unions can initiate binding arbitration against another signatory to compel it to comply with the terms of the agreement. Moreover, because the Accord involves unions both in the governance and implementation of the program, it helps to strengthen the industrial relations that form the backbone of labor law. The Accord's executive committee includes an equal number of representatives of trade unions and companies. The Accord's training teams also include trade union representatives to educate workers about their rights, including the right to refuse dangerous work, and the right to

proactively protect their safety by organizing, forming legally recognized unions, and bargaining collectively with their employers.

AN ALLIANCE FOR VOLUNTARY STANDARDS

Walmart, Gap, and many other North American companies have thus far refused to join the Accord. In March 2012, ABC News reported that Gap too was negotiating a fire safety agreement with the unions and labor rights groups [17]. However, the negotiations floundered over the issue of binding versus voluntary standards. Gap negotiators stated: “Taking on a legally binding document in which we create legally binding commitments that don’t exist right now is not possible.” Hoping to move the labor groups, company representatives asked: “Can there be a different creative approach that can achieve the objectives the coalition is looking for [20]?”

However, Gap’s refusal to make the program enforceable rather than voluntary was an insurmountable obstacle. As one of the labor-side negotiators stated at the time: “Nothing in Gap’s response addresses the fact that implementation of this program is solely at the whim of Gap executives rather than a legally-binding responsibility, and that workers and their unions—who are essential for day-to-day monitoring and remediation of hazards—are treated as bystanders rather than collaborators. This is why we see Gap’s program as merely a continuation of the kind of failed company auditing program that allows serious safety hazards to continue unchecked with tragic results for workers and their families [21].”

On October 2, 2012, Gap announced its own “Comprehensive Building and Fire Safety Action Plan for Bangladesh Apparel Facilities [22].” The company expressed regret at not being able to complete negotiations with the unions and labor rights groups, but claimed its program was nevertheless “a critical step forward to address fire and building safety issues in Bangladesh’s apparel industry [22].”

However, the Gap program was another top-down approach that jettisoned the most critical components of a successful worker safety program: independence, transparency, a binding contractual commitment, and involvement of and accountability to workers and their organizations. The Chief Inspector was not to be independent, but hired by and accountable to Gap. The company was silent on the role of workers and their unions, who otherwise could be the best day-to-day monitors of workplace hazards. Based on its announced program, Gap had no plan to share factory inspection reports with workers, unions, government agencies, or other stakeholders. The company did not even state that it planned to tell workers about factories that fail to remedy serious safety problems. Without such a provision, it remained possible for Gap to drop a factory that failed to comply without telling workers about workplace hazards that threaten their lives [23, 24].

“WORKER EMPOWERMENT” WITHOUT UNIONS

While Gap’s Comprehensive Building and Fire Safety Action Plan for Bangladesh Apparel Facilities was never to be fully implemented, it became a model [25] for the 26-member Alliance for Bangladesh Worker Safety [26], which labor groups criticized as a non-enforceable retailer-led worker safety program with no trade union involvement [27].

Alliance members, however, embraced “worker empowerment” as a central principle of worker safety. Article Three of the Agreement is titled “Empower Workers” and explains that the members are “keenly aware that effective worker empowerment is a critical element in achieving meaningful fire and building safety in Bangladesh.” The members will work to ensure “true worker empowerment,” the Agreement states [28].

Worker empowerment means two things to Alliance members. First is the development of mobile technology to allow workers to report problems through a hotline [29]. In itself this hotline is merely a technologically sophisticated complaint box. It supplies information to Alliance companies, and the companies, rather than the workers or representative trade unions, retain the power to decide whether or not to investigate the complaints. The Agreement does not ensure that worker representatives receive the information submitted via the hotline and does not allow them to hold companies accountable for addressing the problems they report.

Alliance members also require the establishment of Worker Participation Committees (WPCs) as a means of “worker empowerment.” Bangladeshi law already requires WPCs in factories with 50 or more workers [30]. When functioning as intended, the WPCs give workers some voice, but not power backed up by law, in dealing with management. By law, the purpose of WPCs is simply to “inculcate and develop a sense of belonging and worker commitment [31].” By contrast, Chapters 13 and 14 of the Bangladesh Labour Act of 2006 give unions the right to negotiate legally enforceable agreements on wages, benefits, and workplace conditions with management, and the authority to file grievances to protect workers from safety hazards and other legal infractions.

Notably, the word “union” only appears parenthetically in one section of the 18-page Alliance Member Agreement [30]. In the 11-page Action Plan, “union” only appears once. In both documents, the role of unions is incidental. In case a union is present in a factory, an Alliance inspector is authorized to notify the worker representatives of an “immediate danger” to worker safety [31]. For Walmart, Gap, and other Alliance companies, “empowerment” is something that happens without unions and without granting workers official authority or power based in the law. But without the protection of unions with legally sanctioned powers, workers are likely to remain fearful of voicing their concerns about safety hazards.

The Alliance itself describes itself as a “legally binding” initiative [32]. This claim is curious as Gap and other founding members repeatedly and publicly stated that they could not join the Accord because it would impose unacceptable legal liability. A legal advisor to the National Retail Federation explained: “For U.S. corporations, there is a fear that someone will try to impose liability and responsibility if something goes awry in the global supply chain [33].”

Indeed, the Alliance is effectively voluntary. While the Board of Directors can “seek binding arbitration against any Member who does not satisfy its obligations under the agreement [34],” the Board includes Walmart, Gap, VF, Target, and the Bangladesh Garment Manufacturers and Exporters Association, but no union or workers’ organization [35]. While some trade union leaders serve as advisors to the Alliance, they cannot hold companies accountable for violating the terms of the Agreement. That means enforcement depends on unlikely scenarios such as Gap and Walmart holding each other or other signatory companies accountable for infractions of the Member Agreement. Even if this were to happen, the maximum penalty is public expulsion from the program, amounting to a brief period of public relations challenges, but not a ruling that would compel the company to fulfill its obligations under the Alliance and ensure remedies for the workers.

COMPENSATION OR CHARITY

Brands that reject legal liability for garment factory fires and building collapses also do not believe it is their responsibility to pay reparation to injured workers or to the families of workers killed on the job. These companies prefer to contribute to workers’ welfare under the framework of “humanitarian relief,” similar to the aid provided by aid organizations to meet human need in the case of unavoidable natural catastrophes, such as cyclones and floods—events beyond human control where nobody is at fault and nobody is responsible. Rather than working with trade unions to negotiate compensation within a framework of rights and remedies for wrongs, companies often work with relief organizations to help victims of a “no-fault” tragedy.

For example, following the fire at That’s It Sportswear, Gap, JC Penney [36], and Kohls [17] led the development of a humanitarian fund to “to address the medical and financial needs of those affected by the fire.” Rather than working with the Bangladeshi trade unions and labor rights groups after the Garib & Garib fire, H&M commissioned Save the Children to assess the needs of the nearest family members of the deceased workers and the injured workers. The company decided to focus its contribution on the needs of the children and elderly parents, but not to provide general compensation based on the loss of income.

Voluntary relief only goes so far. After the three recent tragedies at Ali Enterprises in Pakistan and Tazreen Fashions and Rana Plaza in Bangladesh, no company volunteered information that they had used those factories and

would compensate workers and their families for loss of income, medical bills, or pain and suffering. Only after union organizers and worker supporters entered the shells of the former factories, dug through the ashes and the rubble, photographed labels they found there, and after international media displayed them for a rapt global audience, did companies volunteer compensation. And even then some companies refused, claiming they were not responsible because their suppliers had shifted production to those factories without their knowledge and without authority to do so.

After the Rana Plaza tragedy, labor organizers successfully developed a framework for compensating the victims based on responsibility rather than voluntary charity. The Rana Plaza Arrangement established a multi-stakeholder committee to set compensation levels for the 3,600 victims of Rana Plaza or their families based on International Labour Organization (ILO) Convention 121 on Employment Injury Benefits. The Arrangement gives anybody who has suffered injury as a result of the Rana Plaza disaster or any family member who was dependent on the income of a worker who was killed the right to make a compensation claim. The committee adopted procedures for review and decisions on claims, based on an assessment of losses incurred by each family and the medical needs of injured workers, and established mechanisms for payments to the victims [37].

Yet, one year after the Rana Plaza building collapse only four brands—Bonmarché, El Corte Inglés, Loblaw, and Primark—had signed the agreement and only half of the companies that were connected to factories in the building had made contributions to the Rana Plaza Donors Trust Fund, which had received just one-third of the funds necessary to ensure all the families of victims and the survivors receive the compensation they require. Victims of this tragedy continued to suffer, struggling to cope with the trauma of the disaster and tremendous financial burdens. Some families had to pull their young children out of school and send them to work to keep from starving, while many of the injured workers accumulated massive debts just to pay their hospital bills.

CONCLUSION

The Bangladesh Safety Accord and the Rana Plaza Arrangement challenge the dominant voluntarism in the global economy, in which global companies choose to abide by private codes and provide humanitarian relief in case something goes wrong. This flexible arrangement has been vital to the production of cheap consumer apparel over the last two decades, but has failed to protect workers from workplace abuses and safety hazards, has undercut industrial relations, and has exposed union members and labor leaders to threats and violence from employers and government.

Despite voluntarism's failure to protect workers, the experiment currently underway in Bangladesh—to establish binding rules to protect workers and

strengthen unions' capacity to enforce the rules—faces formidable challenges. After nearly one year of the implementation of the Accord, the complex and sometimes conflicted relations—between the Accord, its signatory companies, the unions, the factories, and the Bangladeshi government, as well as outside commentators—had produced the following questions:

- Will factories suspend production where workers are facing imminent dangers? Accord signatory unions and media reported that several Accord factories had already been evacuated, protecting thousands of workers from deadly hazards, but in some cases the factories simply suspended production for Accord companies, continuing production for other companies [38].
- Will Accord brands remedy unsafe workplaces rather than terminate risky factories? Union signatories reported that despite their commitment under the Accord to remedy unsafe workplaces some Accord companies had begun to pull out of risky factories, leaving workers no safer than before.
- Will companies finance repairs and ensure that workers are paid during closure? Though the Accord companies have made unprecedented financial obligations to repair dangerous factories and remedy safety violations, one widely circulated report claimed that the question of who will actually finance repairs—the companies or the factories—was not resolved [39]. Critiques of the report argued that the report itself contributed to a climate of uncertainty that could encourage brands to renege on their financial obligations [40, 41].

The central question was, however, how the under-resourced Bangladeshi unions would fare under the Accord. The best remedy for unsafe workplaces is after all workers who speak out, organize, and make effective demands for health and safety measures in their own workplaces. Will the Bangladeshi unions be able to take advantage of certain provisions in the Accord—which give them a voice in the governance and a role in training and education activities—to organize more workers and make progress on a range of issues that concern workers, including health and safety, wages, working-hours and leaves? Will the unions have the capacity to monitor company behavior and hold them accountable to the terms of the Accord?

Trade union registrations in garment factories increased dramatically in 2013 and 2014, following the Rana Plaza tragedy and the suspension of U.S. trade benefits for Bangladesh under the Generalized System of Preferences (GSP). Between 2010 and 2012, 19 garment worker unions applied for registration and only two were approved. From 2013 through May 2014, 240 unions had applied and 162 had been approved. Even though five of these unions were management-sponsored, these figures reflect a vast increase in union activity [42].

Yet there were also troubling signs that these unions would not be able to operate freely and that anti-union violence was, again, escalating. In May 2014, one Bangladeshi union that was a signatory to the Accord reported that more than

a dozen factory-level union leaders of a large factory group that produces for several Accord brands had been assaulted or threatened by lower-level supervisors and local thugs because of their union activity. The union had earlier presented a charter of demands to the factory group—the demands included engaging in discussions with management to ensure fire safety and to form safety committees—following the procedures for dispute resolution established in the Bangladesh Labor Act (2006). The situation became so grave that these factory leaders were forced to seek refuge outside of their homes and could not return to work in the factories [43].

Another Bangladeshi union that was a signatory to the Accord reported in May 2014 that one of its organizers had been kidnapped, brutally beaten, and robbed in apparent retaliation for his role in organizing workers at a factory, which also supplies Accord brands. At the same time there was a break-in at the union office, in which records relating to organizing efforts at the factory were stolen. According to reports from the AFL-CIO Solidarity Center in Bangladesh, increasing violence against union members and organizers appeared to coincide with growing numbers of union registrations being rejected for dubious reasons. In this context it will be important for the Accord brands to respond swiftly and decisively to acts of violence and repression against union members and union organizers, lest a climate of impunity jeopardize the development of industrial relations that must undergird safe factories.

To what extent the Accord will be able to influence the entrenched global regime of voluntary codes, proprietary social audits, and weak trade unions, and help to build a framework of binding rules and strong trade unions, remains an open question. But if the Accord can make progress in Bangladesh, where decades of harassment of worker leaders and trade union organizers have created a climate of fear among workers, and where the line between factory owners and government may appear blurry at times, it will help to inspire similar efforts in other countries and in other industries. International solidarity campaigns that help Bangladeshi workers and their unions hold companies accountable to their promises of worker safety and well-being can be vital to the success of this brave undertaking.

AUTHOR'S BIOGRAPHY

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