

The background features a complex, abstract geometric pattern composed of various triangles and quadrilaterals. It uses a color palette of teal, light blue, grey, white, and gold. The shapes overlap and interlock to create a sense of depth and movement.

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Enforcement of Fundamental Labor Rights

The Network Approach:
Closing the Governance
Gaps in Low-Wage
Manufacturing Industries

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Executive Summary

The Bangladeshi ready-made garment sector employs millions of workers and what they produce ends up in Western fashion stores. The conditions under which these products are made, however, are much less visible. For decades, the international community has criticized Bangladesh for failing to guarantee basic labor standards. Trade union rights are restricted, factories are notoriously unsafe and wages are too low to live on. Since the Tazreen factory fire in November 2012 and the collapse of the Rana Plaza building in April 2013, which in total resulted in the deaths of almost 1,300 workers, Bangladesh has become a “policy laboratory” for new ways to enforce fundamental labor rights. These responses, which can be characterized as a network approach, involve many stakeholders cooperating in different coalitions to pursue a variety of goals. The network approach aligns with the idea that improving labor rights in global supply chains is not the sole responsibility of the state in which production takes place. A collaborative effort is required.

This policy brief provides an overview and an analysis of the major initiatives that aim to improve labor conditions in Bangladesh. It assesses the main innovative features and presents policy recommendations that could further strengthen the network approach in low-wage manufacturing sectors. These recommendations are targeted at various stakeholders. The brief argues that businesses with transnational supply chains should cast their labor commitments in a contractual form, following the successful example of the Bangladesh Accord for Fire and Building Safety. For the International Labour Organization (ILO), the challenges are twofold. At the normative level, it needs to evaluate whether there is a need to merge existing standards into one comprehensive instrument covering occupational health and safety. Institutionally, the ILO should engage more directly with businesses and use its authoritative role to strengthen supply-chain bargaining. At the state level, there is a need to explore the possibility of an international factory inspectorate, which could play a more assertive role than current ILO missions. States also need to ensure coherency in their foreign policy, particularly in trade and development cooperation, to support the enforcement of international labor rights.

Introduction

The collapse of the Rana Plaza building in April 2013 near Dhaka, the capital of Bangladesh, was one of the biggest industrial accidents in history. On its one-year anniversary, International Labour Organization (ILO) Deputy Director-General Gilbert Houngbo called it “a catalyst of sustainable change.”¹ Indeed, the policy responses in the aftermath of Rana Plaza have been both innovative and unprecedented. Beyond ensuring that the labor rights situation in Bangladesh is improved, Rana Plaza evokes two more fundamental challenges for global labor governance. First, how do we make sure that innovation does not lead to fragmentation? Although some 180 companies are members of the Bangladesh Accord for Fire and Building Safety (the Accord), which was set up at the initiative of trade unions and nongovernmental organizations (NGOs), twenty-six other companies came together to establish the Alliance for Bangladesh Worker Safety (the Alliance). And while the United States decided to withdraw preferential tariff treatment from Bangladesh, the European Union has opted for a more comprehensive approach concerning trade and development cooperation. More broadly, initiatives such as the Accord and the Alliance have been layered on top of existing enforcement mechanisms introduced by the ILO, the United Nations (UN), regional human rights bodies, social clauses in free-trade agreements and a wide array of corporate social responsibility (CSR) initiatives. Second, how can we apply the lessons learned from unprecedented industrial accidents, such as Rana Plaza, to remedying mainstream labor rights violations? In many countries, labor rights violations are ubiquitous. According to ILO estimates, 2.3 million people die every year from work-related accidents and diseases. Because of dispersion and low visibility, this problem has not always ranked high on the policy agendas of international organizations, governments and businesses. It is to be hoped that Rana Plaza has fundamentally changed this situation.

To evaluate the new landscape of labor enforcement initiatives after Rana Plaza, The Hague Institute for Global Justice (The Hague Institute) convened a roundtable with a select group of academics,

policymakers and practitioners in The Hague on May 19, 2014. The topic closely aligns with The Hague Institute’s focus on global governance. The roundtable also served as the inaugural event of the Social Justice Expertise Center, a collaborative project with Leiden University to conduct policy-relevant research in the field of fundamental labor rights, facilitate dialogue among stakeholders, and develop capacity-building initiatives to promote social justice.

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Overview of Post-Rana Plaza Initiatives

Numerous stakeholders are involved in the Bangladeshi ready-made garment (RMG) sector. From the perspective of this policy brief, the most relevant actors are the Bangladeshi government, employer organizations, trade unions, international union federations, global textile brands and retailers, NGOs, the International Labour Organization, the World Bank, the European Union, the United States and other donor countries. Their stakes vary widely. This is reflected in the level of their involvement and their approach to specific issues that arose in the aftermath of the Rana Plaza building collapse.

ILO / UN human rights system

Stakeholders: ILO, UN, Bangladesh government, Bangladesh trade unions, Bangladesh employers

Bangladesh has ratified thirty-four ILO conventions as well as the International Covenant for Civil and Political Rights, the International Covenant for Economic, Social, and Cultural Rights and the Convention on the Rights of the Child, which all contain a subset of labor norms. This means that the country is subject to the supervisory activities of the ILO, various UN treaty bodies and—as a member of the United Nations—to the Universal Periodic Review of the UN Human Rights Council. Even before the Rana Plaza disaster, these supervisory bodies were involved in monitoring the commitments Bangladesh had made to improve its domestic labor legislation and its enforcement. The ILO bodies in particular continue to push for further improvements, especially with regard to freedom of association, the situation in export processing zones and labor inspections.

National Tripartite Plan of Action on Fire Safety

Stakeholders: ILO, Bangladesh government, Bangladesh trade unions, Bangladesh employers

The national action plan on fire safety was initiated by the ILO after the Tazreen factory fire of November 2012.² After Rana Plaza, the plan was amended to address the structural integrity of work premises and includes commitments related to legislation and policy, administrative issues and practical activities.³ The plan's coverage ranges from reviewing existing laws and regulations to establishing a public disclosure website on fire safety. Completion dates for most of these items were set for 2013. Deadlines for the remainder—a few major challenges such as inspecting all active RMG factories, redeploying displaced Rana Plaza workers and training factory inspectors—are set for 2014.

The Rana Plaza arrangement

Stakeholders: ILO, Bangladesh government, Bangladesh trade unions, Bangladesh employers, global unions, global brands and retailers, NGOs

The goal of what is called the Rana Plaza arrangement—more formally the Understanding for a Practical Arrangement on Payments to the Victims of the Rana Plaza Accident—is to provide financial and medical support and compensation to the victims according to the standards enshrined in the ILO Employment Injury Benefits Convention No. 121. The ILO serves as the Coordination Committee's independent chair. The majority of the current twenty-seven donors are global fashion brands and retailers. The alignment of the Rana Plaza arrangement with Convention No. 121 is notable because Bangladesh has not ratified the convention.

The Bangladesh Sustainability Compact

Stakeholders: ILO, Bangladesh government, European Union, United States

After the Rana Plaza accident, the European Commission discussed whether Bangladesh's preferential trading status under the Generalized Scheme of Preferences (GSP) should be withdrawn. Rather than use this stick, however, the EU decided to offer Bangladesh a carrot: collaboration, together with the ILO and the United States,

in the Bangladesh Sustainability Compact. The commitments Bangladesh has undertaken are threefold: realizing improvements in domestic labor legislation; improving both the structural integrity of buildings and the enforcement of occupational health and safety standards; and conducting responsible business practices. The EU and the ILO provide technical assistance on a range of issues. The EU will also provide assistance to rehabilitate displaced workers, but most efforts will address the structural deficiencies in the Bangladeshi garment sector.

The U.S. Generalized System of Preferences

Stakeholders: *Bangladesh government, United States*

Unlike the EU, the United States decided to suspend Bangladesh's GSP status. Bangladeshi exports to the United States will therefore now only receive normal most favored nation (MFN) treatment. Notably, the garment sector did not enjoy GSP tariffs. The discrepancy between the sector in which the rights violations occurred and the sectors most affected by the GSP withdrawal has evoked some criticism. U.S. legislation, however, does not require labor rights violations to occur within a sector that enjoys GSP status to justify the general withdrawal of preferential tariffs.

Better Work Bangladesh

Stakeholders: *ILO, World Bank, Bangladesh government, Bangladesh trade unions, Bangladesh employers, global unions, global brands and retailers, donor countries*

Financed by donor countries and textile brands and retailers, the Better Work program is the offspring of Better Factories Cambodia, an initiative launched by the ILO and the International Finance Corporation (part of the World Bank Group). The Bangladesh program, which is still in the planning phase, aims to combine the respective strengths of these two organizations in social policy and business development. When in force, the program will conduct compliance assessment activities in factories, facilitate dialogue between managers and workers and engage domestic and international stakeholders.

The Bangladesh Accord on Fire and Building Safety

Stakeholders: *ILO, global brands and retailers, Bangladesh trade unions, global unions, NGOs*

The Bangladesh accord was the first of two major initiatives by the global textile sector to take responsibility for the problems in one of its major sourcing countries. The Accord is a legally binding contract, and has been signed by more than 180 apparel companies from different continents, as well as by Bangladeshi and global unions. Various NGOs are witnesses to the Accord and the ILO serves as the independent chair. The main task of the Accord is to conduct safety inspections at factories from which the brands source. All factory reports are made public.

The Alliance for Bangladesh Worker Safety

Stakeholders: *Global brands and retailers, Bangladesh trade unions, Bangladesh employers, NGOs*

The Alliance was founded by twenty-six North American textile companies reluctant to expose themselves to the contractual accountability provided for in the Accord. The Alliance management structure does not include global or Bangladeshi trade unions. Its directive is similar to that of the Accord, namely, inspecting factories from which the associated brands source their products.

“More recently, the dichotomy between hard law and soft CSR has begun to fade. Under the state duty to protect, governments increasingly demand transparency from their enterprises when operating overseas.”

Assessing Governance Innovations

A number of structural innovations and lessons learned from the post-Rana Plaza initiatives bear scrutiny.⁴

Corporate Social Responsibility: Changing Paradigms

Traditionally, CSR has been conceptualized and defined as a voluntary exercise. The ILO, for example, described it as “a voluntary, enterprise-driven initiative . . . [that] refers to activities that are considered to exceed compliance with the law.”⁵ More recently, the dichotomy between hard law and soft CSR has begun to fade. Under the state duty to protect, governments increasingly demand transparency from their enterprises when operating overseas. States are also beginning to require compliance with certain labor standards in the context of state support. The Netherlands, for example, adopted legislation that requires companies receiving subsidies to perform supply chain due diligence on child and forced labor.

From the business side, this trend has not met much resistance. In fact, voluntarily adopted CSR instruments often appropriate publicly defined norms. As for labor norms, the four standards found in the

ILO’s 1998 Declaration on Fundamental Principles and Rights at Work (1998 Declaration) are to a large extent, but not uniformly, included in most CSR instruments. These are: freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, effective abolition of child labor and elimination of discrimination in respect of employment and occupation. Although methodologically different (for example, in sample size), the studies presented in Table 1 reveal a kind of normative saturation with respect to the core labor rights in CSR codes. Although it has become common practice to cite all four norms and occupational health and safety (OHS) standards, the level of commitment differs. In some ways, the focus in Bangladesh on fire and building safety departs from the predominant OHS paradigms.

The second major development in the field of CSR is the arbitration clause in the Accord. It provides that disputes between the parties—such as a global textile brand and a Bangladeshi union—are first decided by the Steering Committee, but also that these decisions may be appealed in a binding arbitration process. Following unilateral or industry codes of conduct (first generation) and global framework agreements (second generation), it could be argued that contractual CSR commitments are a third generation in the evolution of how companies engage with their stakeholders in expressing social and environmental commitments.

Table 1. Reference to Labor Practices in CSR Codes (percentages)

	Health and Safety	Wages	Child Labor	Forced Labor	Discrimination	Freedom of Association
2006 - Ruggie	95.7	42,6	80,9	80,9	100	87,2
2004 - Schömann	88	34	62	52	90	54
2001 - ILO	72	51	47	42	70	33
1999 - OECD	75,5	45,3	43,2	38,5	60,8	29,7
1998 - ILO	75	40	45	25	25	15

Note: The study by John Ruggie did not distinguish between forced labor and child labor.

Source: Ruben Zandvliet and Paul van der Heijden, “The Rapprochement of ILO Standards and CSR Mechanisms: Towards a Positive Understanding of ‘Privatization’,” in *Global Governance of Labor Rights*, eds. A. Marx, G. Rayp, L. Beke, and J. Wouters (Cheltenham: Edward Elgar, 2014) forthcoming.

Trade Measures and Labor Rights Violations

The Accord-Alliance divide is not the only trans-Atlantic split. At the government level, the EU and the United States have also seemingly embraced opposite strategies—European carrots and American sticks—to pressure for labor reform in Bangladesh. Whereas the United States withdrew Bangladesh's GSP eligibility, the EU did not. In practice, this good cop-bad cop policy has proved effective. The United States aligned itself with the Sustainability Compact, and the EU continues to threaten, though not very vocally, the withdrawal of preferential trade status.

“The myriad of post-Rana Plaza initiatives involving numerous stakeholders applying notably different approaches, reflects a broader trend in global governance referred to variably as *network society, disaggregated sovereignty, global administrative law or creative coalitions.*”

The ILO as Institutional Lynchpin

In addition to its own work in the region (technical assistance) and in Geneva (supervisory bodies), the ILO is the lynchpin of various post-Rana Plaza initiatives. Its tripartite nature and expertise on issues of social justice make the ILO an

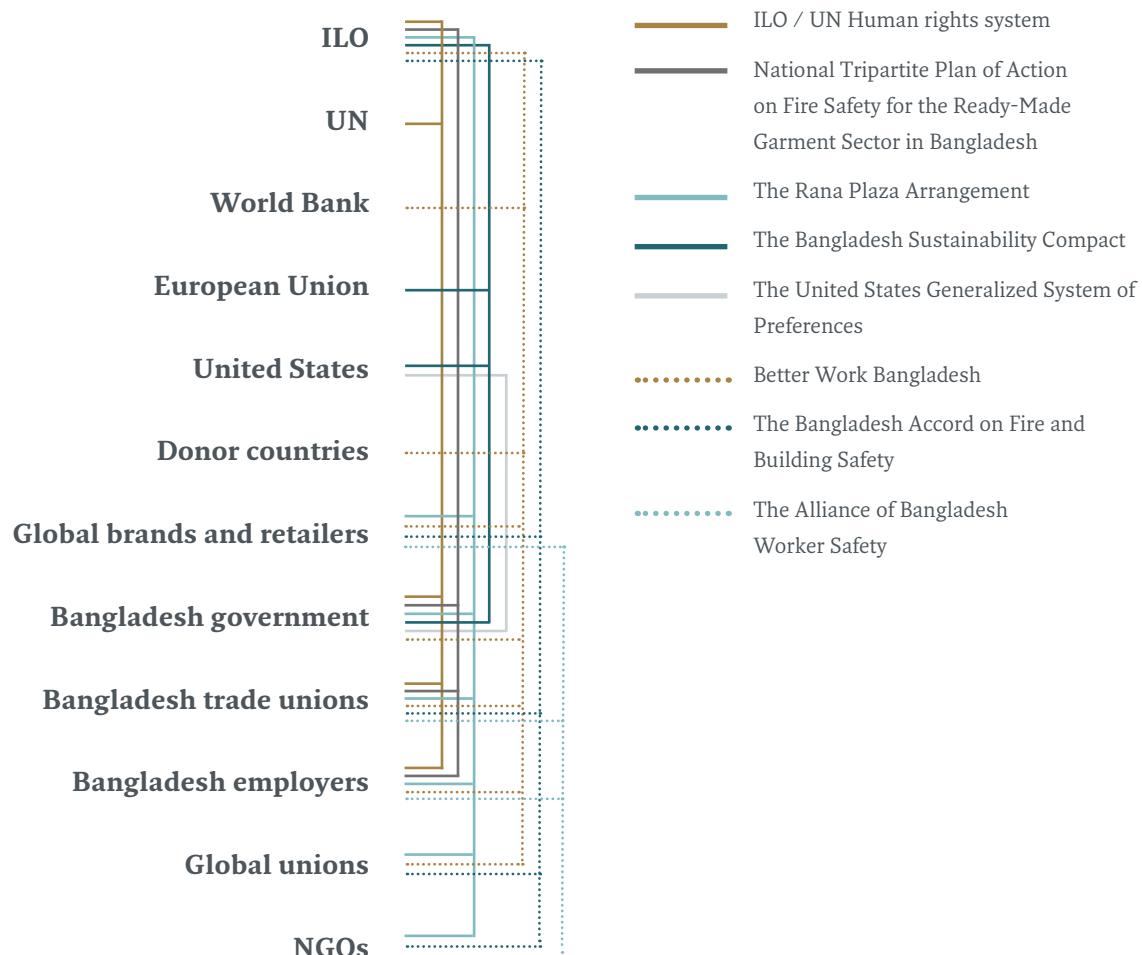
indispensable and credible partner. In addition, the ILO's normative framework has proved an authoritative source of inspiration.

The Employment Injury Benefits Convention, which is used in the Rana Plaza arrangement to allocate financial compensation for Rana Plaza victims, and the Occupational Health and Safety Convention No. 155 have both proved useful, even in the absence of ratification by Bangladesh. For instance, the Alliance's Members Agreement (as amended) includes the principle that a worker may refuse work in the event of a reasonable justification that a safety situation presents an imminent and serious danger to his life or health.

The Network Approach

If the Rana Plaza disaster had happened twenty years earlier than it did, what might have been done differently to prevent it from happening again? The ILO and UN would surely have been involved, albeit mainly in their general supervisory function over ratified conventions. In addition, the ILO may have offered technical assistance. Comprehensive country-specific programs like Better Work did not exist, however. The United States could have withdrawn its GSP preferences, but the European Union only included labor rights conditionality in the 1998 GSP regulation. Although corporate codes of conduct existed at the time, it is unlikely that initiatives like the Accord and the Alliance would have been set up.

The myriad of post-Rana Plaza initiatives involving numerous stakeholders applying notably different approaches, reflects a broader trend in global governance referred to variably as *network society, disaggregated sovereignty, global administrative law or creative coalitions.* These terms are of course not synonymous, but instead describe various aspects of the ways in which transnational actors connect and construct networks and regulatory frameworks to address a common challenge. At the same time, the network approach is highly idiosyncratic. Improving labor conditions in the Asian RMG-sector involves different actors and requires different solutions than combating climate change.

Figure 1. RMG Industry Mechanisms and Stakeholders

Ensuring Decent Work in Global Supply Chains

It is too early to ask whether the post-Rana Plaza experience in Bangladesh can be extrapolated across borders and industries. However, various features of a model that could remedy the mismatch between the economic organization of global supply chains and the attribution of responsibility for violations

of labor rights have been identified. The following section offers several suggestions to strengthen the efficacy of the network approach in global supply chains.

Align the ILO's Governance Structure with the Network Approach

The tripartite nature of the ILO makes it unique among international organizations. Whereas many international organizations grant NGOs observer status, the ILO constitution gives representatives of workers and employers a vote in its governing organs and in adopting international labor standards.

Nonetheless, the ILO remains essentially an interstate organization and the Westphalian idea of sovereign equality remains central to its work. In some respects, however, the state-oriented mindset impairs the effective functioning of the ILO and its supervisory bodies. For example, if public-sector bargaining and general legislative issues are excluded, many of the cases that reach the Committee on Freedom of Association deal with concrete instances at the level of an enterprise or sector in which the government allegedly fell short of its obligation to protect trade union rights. When resolution of the case requires additional information, the International Labour Office requests the state to request information from the enterprise through the national employers' organization. Responses reach the ILO in reverse order. This "supply-chain bureaucracy" limits the effective protection of freedom of association rights. Changing this situation requires mere pragmatism, not the disposal of state sovereignty. In fact, in some instances, such as through the Sectorial Activities Department, the Better Work Program and the Helpdesk for Business, the ILO already works directly with companies,. The ILO's normative function, however, is effectively shielded from direct interaction with business.

"Although inspections are important, meaningful and sustained improvements in labor conditions ultimately depend on the capacity of workers to organize."

A second, related aspect of the ILO's work exhibits a classic agent-principal problem. The tripartite nature of the organization aims to include employers and workers in the decision-making process. They are represented, however, by professional organizations that do business on their behalf. Multinational

enterprises are not officially represented at the ILO, though their scope and impact justify more direct ties with international organizations. The UN Global Compact, for example, expressly invites companies to partner with the United Nations.

It is important that the ILO's norms, knowledge and credibility remain available to business-led initiatives. At the same time, a more proactive engagement with the business community would give the ILO a tool to steer their attention to labor rights violations in countries not receptive to the ILO's supervisory bodies or technical assistance initiatives. Such an approach is less adversarial than consumer campaigns or boycotts, and aims to address problems at an early stage so that the next similar initiative does not respond to the death of thousands of workers, but instead prevents such a tragedy in the first place. Companies can demand compliance with substantive labor standards from their suppliers or affiliates in foreign jurisdictions directly, and conduct private inspections to enforce their specific demands.

Supply-Chain Inspections and Bargaining

Most post-Rana Plaza initiatives focus on inspections, either through public capacity-building or by creating a private safety inspectorate. Accord and Alliance inspections do not necessarily overlap with public labor inspections because they focus solely on fire, electrical and structural issues. Parallelism between public and private inspections is more apparent in established social auditing. The focus of the Accord on building safety and joint management is a paradigmatic departure from previous social audit regimes and represents a new form of CSR commitment. As the inspections near completion, focus will shift toward establishment of OHS committees and joint worker-management ownership of solutions.

At the May roundtable in The Hague, the creation of an international factory inspectorate was raised as an idea. This model is not unknown in international relations: the International Atomic Energy Agency, for example, has a mandate to conduct site visits at nuclear facilities in its member states. The ILO has in the past used both Commissions of Inquiry

and Direct Contact Missions to conduct fact-finding operations. These instruments are only used as a last resort, however, and are much more political than the hands-on approach of labor inspectors. Importantly, this would be an addition to the ILO toolkit rather than an alternative to existing public or private inspections.

Although inspections are important, meaningful and sustained improvements in labor conditions ultimately depend on the capacity of workers to organize. The Bangladesh case shows that the challenges to guaranteeing freedom of association are twofold. On the one hand, it is imperative that the country reform its labor law to incorporate international minimum standards. Monitoring this process and inducing further reform is the ILO's traditional mode of operation. On the other hand, the Bangladesh Accord shows the demand for new types of supply-chain bargaining architectures. At the International Labor Conference in 2016, the ILO will hold a general discussion on decent work in global supply chains. There, the tripartite partners could reflect on the third-generation of CSR and the role the ILO might play.

The Normative Framework

Since 1919, the ILO has adopted 189 conventions and 203 recommendations, thirty-three of which deal with occupational health and safety. Although the adoption of new international norms may not be an urgent necessity, various options could be explored to align the ILO's normative framework with the realities in global supply chains. The first option would be to evaluate whether existing OHS standards adequately cover fire and building safety, and, if not, whether this impairs the efficacy of the Accord and the Alliance. Second, it is worth exploring a merger of the thirty-three existing OHS instruments into one new convention, along the lines of the much-lauded Maritime Labour Convention. It would also be interesting to revisit the idea of a social label. This has been the subject of a rather old discussion within the ILO, but a recent book by former legal adviser Francis Maupain offers several related concrete and valuable ideas that merit consideration.⁶ Last, the ILO could identify procedural or governance problems in

global supply chains, such as the resolution of mass claims in the aftermath of industrial accidents.

At the moment, a fierce debate is under way within the UN Human Rights Council on whether a treaty should address binding human rights norms to companies. On June 30, 2014, the council adopted a resolution that, *inter alia*, established an intergovernmental working group to draft "a legally binding instrument to regulate, in international human rights law, the activities of Transnational Corporations and Other Business Enterprises."⁷ The vote was highly divided (twenty in favor, fourteen against, and thirteen abstentions) and has invoked criticism from a range of other stakeholders. A binding treaty, with possibly a new supervisory or enforcement institution, would further add to the range of stakeholders in the Asian RMG industry. It would be interesting were the proponents of a business treaty to use the Rana Plaza case study to substantiate how such an instrument might have contributed to the improvement of labor conditions in Bangladesh.

Final Remarks and Recommen- dations

This paper has focused on global supply chains in low-wage manufacturing industries, and specifically on the steps taken after the Rana Plaza disaster in Bangladesh. Many other sectors in which labor rights violations are endemic are thus excluded. Ensuring decent work in the informal economy, agriculture and domestic labor sector remain monumental challenges. Enforcing labor rights in the ready-made garment sector, however, is anything but a low-hanging fruit. Despite the sector's export-oriented nature, the international community responded only after major accidents drew attention to the dangers inherent in working at the other end of the supply chain.

The actions taken by the various stakeholders after the Rana Plaza tragedy show clearly that we are living in a global multistakeholder network society. States, companies, trade unions, NGOs and global and regional international organizations are both interconnected and interdependent. The ILO has served as convener and coordinator, chairing many committees with different actors and stakeholders. Through this work, the ILO became the central node in this particular network. That in itself is an innovation and holds promise for global governance in the coming years.

The Hague roundtable informed the following policy recommendations:

- Businesses should follow the example of the Bangladesh Accord for Fire and Building Safety and cast their **CSR commitments regarding labor in a contractual form** (third generation), including referral to binding arbitration processes. The role of business in actively promoting labor rights is particularly important when governments have limited ability to protect and enforce labor standards. Avoiding the risk of being complicit in labor violations requires businesses to identify vulnerable workers and address the underlying conditions that place these workers at risk. **CSR commitments should therefore address the underlying conditions of poverty and the lack of decent work opportunities** that leave workers with few options but to work in unhealthy or dangerous work environments.
- The main challenge for the ILO is to **find pragmatic solutions to resolve “supply-chain bureaucracy”** and keep direct contact at the enterprise and sectoral levels. In line with this challenge, the ILO should seriously consider **merging the numerous health and safety conventions into one**, following the model of the Maritime Labour Convention. Furthermore, it should continue to explore how the global multiactor network approach relates to its work, in both technical assistance and standard-setting, as well as its institutional design. This includes

using its convener role to broker Accord-like deals to tackle specific labor rights issues in supply chains.

- States, as well as the European Union, should consider setting up **an international factory inspectorate**, preferably via a cooperative arrangement with the ILO. This inspectorate would be more proactive than current ILO missions, and more focused on “invisible” sectors that are not on the CSR radar.
- In other multilateral institutions, cooperation mechanisms and negotiations, states should pursue **policies that are compatible with and support—rather than undermine—enforcement of ratified human rights conventions and international labor norms**.
- All relevant actors and networks should **highlight the value of trade union representation** for garment workers, and weave into their policy responses initiatives to promote and sustain collective bargaining in the sector.

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Endnotes

1 | See <http://english.peopledaily.com.cn/90783/8585823.html>.

1 | “ILO: Rana Plaza is an opportunity to change how global supply chains operate,” April 24, 2014, http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_241607/lang--en/index.htm.

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7 | United Nations General Assembly, Human Rights Council, UN Doc. A/HRC/26/L.22/Rev.1, June 25, 2014.



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