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# THE READY-MADE GARMENT INDUSTRY: AN ANALYSIS OF BANGLADESH'S LABOR LAW PROVISIONS AFTER THE SAVAR TRAGEDY

## INTRODUCTION

On April 24, 2013, a poorly constructed factory building in Savar, Bangladesh collapsed, resulting in the deadliest tragedy in the history of the garments industry.<sup>1</sup> The disaster killed 1127 workers and injured over another 2500.<sup>2</sup> The eight-story building, known as “Rana Plaza” housed several shops, a bank, and five textile factories.<sup>3</sup> The day before the collapse, safety inspectors discovered cracks in the structure of the building.<sup>4</sup> While its shops and bank shut down immediately, the owners of the garments factories on the above floors ignored the hazard warnings and demanded that their employees come in to work.<sup>5</sup> An investigating committee, appointed by Bangladesh’s Interior Ministry, found that Rana Plaza was constructed with extremely substandard iron rods and cement and that the heavy weight and vibrations of the garments manufacturing equipment also contributed to the collapse.<sup>6</sup> Moreover, the owner of

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1. Jim Yardley, *Report on Deadly Factory Collapse in Bangladesh Finds Widespread Blame*, N.Y. TIMES, May 22, 2013, [http://www.ny-times.com/2013/05/23/world/asia/report-on-bangladesh-building-collapse-finds-widespread-blame.html?\\_r=0](http://www.ny-times.com/2013/05/23/world/asia/report-on-bangladesh-building-collapse-finds-widespread-blame.html?_r=0).

2. Mark Lagon & Andrew Reddie, *Bangladesh’s Lessons for Enlightened Corporate Interest*, GEO. J. INT’L AFF, (Aug. 5, 2013), <http://journal.georgetown.edu/2013/08/05/bangladeshs-lessons-for-enlightened-corporate-interest-by-mark-p-lagon-and-andrew-reddie/>.

3. Saeed Ahmed & Leone Lakhani, *Bangladesh Building Collapse: An End to Recovery Efforts, A Promise of A New Start*, CNN (June 14, 2013, 5:17 PM), <http://www.cnn.com/2013/05/14/world/asia/bangladesh-building-collapse-aftermath>.

4. Julfikar Ali Manik & Jim Yardley, *Building Collapse in Bangladesh Leaves Scores Dead*, N.Y. TIMES, Apr. 24, 2013, <http://www.ny-times.com/2013/04/25/world/asia/bangladesh-building-collapse.html?pagewanted=all>.

5. Manik & Yardley, *supra* note 4.

6. *Bangladesh Factory Collapse Blamed on Swampy Ground and Heavy Machinery*, GUARDIAN (May 23, 2013, 1:52 PM), <http://www.theguardian.com/world/2013/may/23/bangladesh-factory-collapse-rana-plaza>.

the building, Sohel Rana, had illegally constructed two additional floors even though he was only authorized to build a six-story structure under the official permit.<sup>7</sup>

While the Savar Tragedy has drawn widespread global attention, it is just one of many instances in recent years that highlight the poorly regulated and unsafe working conditions in Bangladesh's Ready-Made Garments ("RMG") industry.<sup>8</sup> This sector of the nation's economy generates about \$20 billion USD annually and constitutes almost 80 percent of the nation's exports.<sup>9</sup> The RMG industry also employs four million workers in over 5000 factories, most of whom are women.<sup>10</sup> Currently, Bangladesh is the second largest exporter of garments in the world, behind China.<sup>11</sup> In the past decade, the RMG industry in Bangladesh has experienced rapid growth, especially because the country has the lowest labor costs in the entire world.<sup>12</sup> The minimum wage for Bengali garments workers is only about \$37 USD per month.<sup>13</sup>

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7. *Id.*

8. Yardley, *supra* note 1; *See infra* notes 43–48.

9. *Trade Information*, BANGLADESH GARMENT MANUFACTURERS & EXPORTERS ASSOCIATION ("BGMEA"), <http://www.bgmea.com.bd/home/pages/TradeInformation#.UliObBAgeMU> (last visited Jan. 18, 2014).

10. WTO Secretariat, *Bangladesh: Trade Policies by Sector*, WT/TPR/S/270 (Oct. 15, 2012), available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/s270-04\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/s270-04_e.doc); *Trade Information*, *supra* note 9; Ahmed & Lakhani, *supra* note 3.

11. Md. Mazedul Islam, Adnan Maroof Khan & Md. Monirul Islam, *Textile Industries in Bangladesh and Challenges of Growth*, 2 RES. J. ENGINEERING SCI. 31, 31 (2013).

12. Manik & Yardley, *supra* note 4.

13. U.S. DEP'T STATE: BUREAU OF DEMOCRACY, HUM. RTS. & LAB, BANGLADESH 2012 HUMAN RIGHTS REPORT 38 (2012), <http://www.state.gov/documents/organization/204607.pdf>.

Such low costs for labor have attracted major global clothing retailers to outsource their garments production to Bangladesh<sup>14</sup>, including Wal-Mart,<sup>15</sup> the Gap,<sup>16</sup> Sears,<sup>17</sup> Ralph Lauren,<sup>18</sup> H&M,<sup>19</sup> and others.<sup>20</sup> Particularly, corporate labels tied to the factories in the Savar Tragedy include Wal-Mart, Mango, Dutch retailer C & A, Benetton Fashions, Cato Fashions, and the popular British chain Primark.<sup>21</sup> Due to worldwide pressures for more corporate involvement in the protection of workers' rights after the collapse in Savar, international labor organizations, NGOs, and major global retailers have negotiated a legally binding agreement, known as the Accord on Fire and Building Safety in Bangladesh,<sup>22</sup> that obliges its clothing company signatories to help finance safety inspections and building improvements of RMG factories in the country.<sup>23</sup>

Moreover, in response to the disaster in Savar, the Bangladeshi government has also amended the Bangladesh Labour Act

14. Manik & Yardley, *supra* note 4.

15. See *Promoting Responsible Sourcing in Bangladesh*, WALMART, <http://corporate.walmart.com/global-responsibility/ethical-sourcing/promoting-responsible-sourcing-in-bangladesh> (last visited Oct. 12, 2013).

16. See *Bangladesh Update*, GAP, INC., [http://www.gapinc.com/content/gapinc/html/social\\_responsibility/bangladesh.html](http://www.gapinc.com/content/gapinc/html/social_responsibility/bangladesh.html) (last visited Oct. 10, 2013).

17. Scott Nova, *Apparel Industry Outsourcing Costs Garment Workers' Lives in Bangladesh*, GUARDIAN (Dec. 13, 2012, 1:30 PM), <http://www.theguardian.com/commentisfree/2012/dec/13/apparel-industry-outsourcing-garment-workers-bangladesh>.

18. Christina Passariello, Tripti Lahiri & Sean McLain, *What Do Armani, Ralph Lauren and Hugo Boss Have in Common? Bangladesh*, WALL STREET JOURNAL (July 1, 2013, 8:54 AM), <http://online.wsj.com/article/SB10001424127887323998604578567522527553976.html>.

19. See H&M, H&M CONSCIOUS ACTIONS: SUSTAINABILITY REPORT 2013, at 21 (2013), available at [www.hm.com/consciousactions2013](http://www.hm.com/consciousactions2013).

20. Manik & Yardley, *supra* note 4.

21. *Id.*

22. ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH (May 13, 2013) [hereinafter ACCORD], [http://www.laborrights.org/sites/default/files/publications-and-resources/accord\\_on\\_fire\\_and\\_building\\_safety\\_in\\_bangladesh\\_2013-05-13.pdf](http://www.laborrights.org/sites/default/files/publications-and-resources/accord_on_fire_and_building_safety_in_bangladesh_2013-05-13.pdf); Rashmi Venkatesan, *Clothing Garment Workers in Safety: The Case of Bangladesh*, 48 ECON. & POL. WKLY. (July 13, 2013), available at <http://www.epw.in/web-exclusives/clothing-garment-workers-safety-case-bangladesh.html>.

23. Steven Greenhouse, *Major Retailers Join Bangladesh Safety Plan*, N.Y. TIMES, May 13, 2013, [http://www.nytimes.com/2013/05/14/business/global/hm-agrees-to-bangladesh-safety-plan.html?\\_r=1&](http://www.nytimes.com/2013/05/14/business/global/hm-agrees-to-bangladesh-safety-plan.html?_r=1&).

of 2006, in order to improve occupational health and safety in the nation.<sup>24</sup> Under the new legislation, employees will no longer need approval from factory owners to form unions, and factories will be required to set aside 5 percent of their profits for an employee welfare fund.<sup>25</sup> This Note argues that the new provisions of the Bangladesh Labour Act are inadequate to combat the immense violations within the country's RMG industry and that the Bangladeshi government should instead reform its labor legislation by strengthening protections for trade unions, establishing stricter penalties for noncompliance, and mandating the Accord on Fire and Building Safety as a minimum standard for corporate responsibility, in order to effectively improve health and safety conditions for its workers.

Part I of this Note will provide a detailed background of the Savar Tragedy and will describe the current working conditions in Bangladesh's RMG factories. Part II will provide a critical analysis of the amended provisions of Bangladesh's Labour Act. Finally, Part III will propose that, in order to effectively improve the health and safety issues rampant in its RMG industry, Bangladesh must provide more support for the creation of trade unions, increase penalties for its labor law violators, and regulate global retailers in its labor sector via obligatory participation in the Accord on Fire and Building Safety.

## I. THE SAVAR TRAGEDY AND GENERAL CONDITIONS OF THE RMG INDUSTRY

The tremendous loss of life resulting from the catastrophic Savar Tragedy has left the citizens of Bangladesh, as well as the international community, outraged and devastated.<sup>26</sup> While over

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24. See Dui Hajar Tarrow Shonar Tereesh Nongbar Ayn [Bangladesh Labour Act (Act No. 30/2013)] [hereinafter 2013 Labour (Amendment) Act] *translated in* BANGLADESH GAZETTE (Uttam Kumar Das, 2013); *ILO Statement on Reform of Bangladesh Labour Law*, INT'L LABOUR ORG. (July 22, 2013), [http://www.ilo.org/global/about-the-ilo/media-centre/statements-and-speeches/WCMS\\_218067/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/media-centre/statements-and-speeches/WCMS_218067/lang-en/index.htm).

25. Syed Zain Al-Mahmood, *Bangladesh Passes New Labor Law: Workers Granted More Leeway to Form Trade Unions*, WALL STREET JOURNAL (July 15, 2013, 1:54 PM), <http://online.wsj.com/news/articles/SB10001424127887323664204578607814136238372>.

26. *Thoughts On Savar Tragedy*, EMERGING MARKETS ONLINE (May 10, 2013), available at 2013 WLNR 11618182.

1200 people have been confirmed dead, the exact death toll remains unknown, as several hundred bodies were brutally severed by, or buried within, the massive amounts of collapsed steel and concrete.<sup>27</sup> Civic groups buried over 230 unclaimed bodies in a cemetery in the capital city of Dhaka.<sup>28</sup> Rescue efforts spanned twenty days of ceaseless digging through the rubble by soldiers, firefighters, paramilitary police officers, and volunteer citizens in search of survivors.<sup>29</sup> For days, rescuers heard the screams of people scattered within the wreckage, but were simply unable to find many of them.<sup>30</sup>

In light of the disaster, the Bangladesh Garment Manufacturers and Exporters Association (“BGMEA”) formed an eleven member probe committee on April 28, 2013, to investigate the causes of the collapse.<sup>31</sup> The BGMEA, a trade body in Bangladesh, is known for forming taskforces and committees after accidents in the country’s RMG factories.<sup>32</sup> After a two month long investigation, the probe body, led by BGMEA Vice President SA Mannan Kochi,<sup>33</sup> submitted a 400-page report to the Bangladeshi government, disclosing its findings and recommendations.<sup>34</sup> The report identified nine causes for the collapse, the key cause being the illegal transformation of a government approved, six-story design into an industrial and commercial complex that added several additional floors.<sup>35</sup> Other causes identified in the report include the use of substandard quality building

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27. Ahmed & Lakhani, *supra* note 3.

28. *Id.*

29. *Id.*; Manik & Yardley, *supra* note 4.

30. Ahmed & Lakhani, *supra* note 3.

31. *BGMEA Probe Identifies Nine Causes of Savar Tragedy*, NEW NATION INDEP. DAILY (June 27, 2013), available at 2013 WLNR 15721046.

32. Sajjadur Rahman, *Owners Probe Owners’ Fault: BGMEA Investigation Always Comes to a Zero*, DAILY STAR (May 1, 2013), <http://www.thedailystar.net/beta2/news/owners-probe-owners-fault/>.

33. *BGMEA Probe Identifies Nine Causes of Savar Tragedy*, *supra* note 31.

34. *Savar Collapse Probe Uncovers Abuses*, DHAKA POST (May 24, 2013, 10:18 AM), <http://www.thedhakapost.com/2013/05/24/savar-collapse-probe-uncovers-abuses/>; see also Yardley, *supra* note 1.

35. *BGMEA Probe Identifies Nine Causes of Savar Tragedy*, *supra* note 31. The BGMEA investigation report is not available to the public. It was described to journalists, and the main author agreed to an interview, but the actual document has remained private. Email from Jim Yardley, South Asia Bureau Chief of The New York Times, to author (Sept. 22, 2013, 2:00 PM) (on file with author).

materials, the installation of heavy machinery, and the inability of Rana Plaza's pillars to support a high load capacity.<sup>36</sup>

The Bangladesh University of Engineering and Technology ("BUET"), which examined samples from the wreckage collected by the BGMEA probe committee, found that the structure of Rana Plaza had a capacity of 2300 pounds per square inch ("PSI"), which, for a six-story building alone, should have been a minimum of 3500 PSI.<sup>37</sup> Given that Rana Plaza had two additional illegal floors, its capacity should have been even higher.<sup>38</sup> The building was also overloaded with generators, boilers, garment machines, and air conditioning systems.<sup>39</sup> The vibrations of the machinery, as well as a massive stock of ready-made garments, raw materials for five different garment factories, and the large number of workers situated on the factory floors further contributed to the building collapse.<sup>40</sup> Moreover, according to Khandker Mainuddin Ahmed, the BGMEA probe committee head, "a portion of the building was constructed on land which had been a body of water before and was filled with rubbish."<sup>41</sup> The land itself had been "swampy with shallow water."<sup>42</sup>

In its conclusive report, the BGMEA held Bangladeshi factory inspection department officials responsible for issuing permits to owners that enabled them to install heavy machinery and generators on floors that were unauthorized to be built in the first place.<sup>43</sup> Government and Savar municipality officials were also

36. *BGMEA Probe Identifies Nine Causes of Savar Tragedy*, *supra* note 31.

37. *Id.* "Pounds per square inch" is a unit of pressure; it measures one pound of pressure per square inch. 4 HARRY M. PHILO ET AL., *LAWYERS DESK REFERENCE* 9TH § 34:4 (10th ed. 2014).

38. *BGMEA Holds Rana Plaza, 5 RMG Owners Responsible for Disaster, Shirks its Responsibility*, *FIN. EXPRESS TRADE & MARKET* (June 27, 2013), <http://www.thefinancialexpress-bd.com/index.php?ref=MjBfMDZfMjdfMTNfMV85MF8xNzQzNTY>.

39. *BGMEA Probe Accuses Building, Factory Owners*, *DHAKA TRIBUNE* (June 26, 2013, 6:30 PM), <http://www.dhakatribune.com/?q=node/5959>.

40. *BGMEA Probe Identifies Nine Causes of Savar Tragedy*, *supra* note 31; *BGMEA Probe Accuses Building, Factory Owners*, *supra* note 39.

41. *Bangladesh Factory Collapse Blamed on Swampy Ground and Heavy Machinery*, *supra* note 6.

42. *Id.*

43. *BGMEA Probe Identifies Nine Causes of Savar Tragedy*, *supra* note 31.

blamed for failing to oversee building compliance during the construction phase and for approving blueprints.<sup>44</sup> The report suggested that these approvals were granted because Sohel Rana, the building owner, had bribed local officials.<sup>45</sup> The probe committee recommended to the government that Rana and the owners of the five garment factories should be charged with life sentences for culpable homicide.<sup>46</sup> BGMEA President, Atiqul Islam, has denied any liability on the Association's part for the collapse of Rana Plaza, stating that it "warned the factory and building owners to shut it down a day ahead of the disaster."<sup>47</sup>

Unfortunately, the Savar Tragedy is just one of several consequences of a poorly regulated ready-made garments industry in Bangladesh. While the incident in Savar killed 1127 people, the RMG industry in Bangladesh has had at least 1800 deaths as a result of fires and building collapses since 2005.<sup>48</sup> Between 1990 and 2012, there were as many as 275 factory accidents in the country.<sup>49</sup> Just five months before Rana Plaza collapsed, a fire in the Tazreen Fashions Garment Factory burned the building to the ground, killing 112 people.<sup>50</sup> In 2006, fifty-four workers were burned alive in the KTS Garment Factory Fire.<sup>51</sup> Another disaster occurred in the 2005 Spectrum Sweaters Factory Collapse, which killed over sixty people.<sup>52</sup> Other tragedies include

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44. *Id.*

45. Yardley, *supra* note 1.

46. *Id.*

47. *BGMEA Probe Accuses Building, Factory Owners*, *supra* note 39.

48. *Bangladesh Factory Collapse Blamed on Swampy Ground and Heavy Machinery*, *supra* note 6.

49. Venkatesan, *supra* note 22.

50. Steven Greenhouse, *Documents Reveal New Details About Walmart's Connection to Tazreen Factory Fire*, N.Y. TIMES, Dec. 10, 2012, [http://www.nytimes.com/2012/12/11/world/asia/tazreen-factory-used-by-2nd-walmart-supplier-at-time-of-fire.html?\\_r=0](http://www.nytimes.com/2012/12/11/world/asia/tazreen-factory-used-by-2nd-walmart-supplier-at-time-of-fire.html?_r=0).

51. *How Bangladesh Garment Industry Traded Workplace Safety for Jobs*, HUFFINGTON POST (May 23, 2013, 7:04 AM), [http://www.huffingtonpost.com/2013/05/23/bangladesh-garment-industry\\_n\\_3288266.html](http://www.huffingtonpost.com/2013/05/23/bangladesh-garment-industry_n_3288266.html). Even though the KTS's managers admitted at trial that they had locked the gates of the factory after the fire started in order to prevent theft by the employees, they were still acquitted of culpable homicide charges. *Id.*

52. *Id.* No one was held accountable for this incident either, even though the company had violated its building permit. *Id.*



the Shifa Apparels and Omega Sweaters Fire in 2004,<sup>53</sup> the Garib & Garib Sweater Factory Fire in 2010,<sup>54</sup> and the Condense Apparel and Fahmi Factory Fire in 2011, among many others.<sup>55</sup>

Currently, RMG factories throughout Bangladesh are woefully inadequate in terms of health and safety conditions. Factories are created with substandard materials to save on construction costs or are housed in buildings not built for industrial use.<sup>56</sup> It is common for RMG factories to lack sprinklers, fire alarms, adequate emergency exits, nonelectrical emergency lights, and firefighting equipment.<sup>57</sup> Instead, workers are subject to flammable materials in unprotected areas, overloaded electrical circuits, and other hazards.<sup>58</sup> Emergency evacuation plans are hardly implemented or nonexistent, directly contributing to worker deaths or injuries.<sup>59</sup> Almost no training is provided to workers about safety procedures and emergency safety officers are not appointed.<sup>60</sup> Additionally, there are only about twenty occupational health and safety inspectors for 50,000 registered factories in the nation, which amounts to 2500 factories designated to each inspector.<sup>61</sup> The RMG industry in Bangladesh is growing so rapidly that it has outpaced the government's ability to monitor and enforce health and safety standards.<sup>62</sup> But, at the same time, the government has been willing to overlook the rampant violations, which are outweighed by its monetary interest in allowing the factories to continue operating.<sup>63</sup>

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53. Aasha Mehreen Amin & Ahmed Hussain, *Another Garment Factory Tragedy: Could it have been Averted?*, DAILY STAR (May 21, 2004), <http://archive.thedailystar.net/magazine/2004/05/03/coverstory.htm>.

54. *Bangladesh Sweater Factory Fire Kills 21*, CBC NEWS (Feb. 26, 2010, 7:26 AM), <http://www.cbc.ca/news/world/bangladesh-sweater-factory-fire-kills-21-1.868604>.

55. BJÖRN CLAESON, INT'L LABOR RIGHTS FORUM, *DEADLY SECRETS: WHAT COMPANIES KNOW ABOUT DANGEROUS WORKPLACES AND WHY EXPOSING THE TRUTH CAN SAVE WORKERS' LIVES IN BANGLADESH AND BEYOND 21* (Dec. 2012), <http://www.laborrights.org/sites/default/files/publications-and-resources/DeadlySecrets.pdf>.

56. Venkatesan, *supra* note 22.

57. *Id.*; Claeson, *supra* note 55.

58. *Id.*

59. *Id.*

60. Venkatesan, *supra* note 22.

61. Claeson, *supra* note 55.

62. *How Bangladesh Garment Industry Traded Workplace Safety for Jobs*, *supra* note 51.

63. *Id.*

## II. BANGLADESH'S 2013 LABOUR LAW AMENDMENTS

Following much international scrutiny after the Savar calamity,<sup>64</sup> including the suspension of Bangladesh's trade privileges by the United States,<sup>65</sup> the Bangladeshi government officially adopted eighty-seven new amendments to its 2006 Labour Act on July 22, 2013.<sup>66</sup> Noteworthy provisions include amendments directly relating to workplace safety as well as sections concerning trade unions and dispute resolution.<sup>67</sup> Among the amended safety measures are provisions that demand better regulation of gangways and stairs, which are now required to be monitored under closed-circuit cameras and remain open during business hours.<sup>68</sup> A clause has also been added to Section 78 of the 2006 Labour Act to require employers to provide personal safety equipment and offer trainings for the mandatory use of such equipment.<sup>69</sup> Mandatory fire drills are now required every six months in factories with fifty or more employees, rather than just once a year.<sup>70</sup>

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64. See *Conclusions of the ILO's High Level Mission to Bangladesh*, INT'L LABOUR ORG. (May 4, 2013), [http://www.ilo.org/global/about-the-ilo/activities/statements-speeches/WCMS\\_212463/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/activities/statements-speeches/WCMS_212463/lang-en/index.htm); see also Joint Statement by HR/VP Catherine Ashton and EU Trade Commissioner Karel De Gucht Following the Recent Building Collapse in Bangladesh, European Commission (Apr. 30, 2013), available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=894>; see also Press Release, Office of the United States Trade Representative, Statement by the U.S. Government on Labor Rights and Factory Safety in Bangladesh (July 19, 2013), available at <http://www.ustr.gov/about-us/press-office/press-releases/2013/july/usg-statement-labor-rights-factory-safety>.

65. Statement by the U.S. Government on Labor Rights and Factory Safety in Bangladesh, *supra* note 64.

66. See 2013 Labour (Amendment) Act.

67. See *id.* §§ 23–30, 48–52, 55–62. Other key new provisions include a stipulation requiring 5 percent of annual profits to be deposited in a welfare fund for workers, compulsory group insurance in factories employing at least one hundred workers, and compensation for workers who die while in service after continuous employment of at least two years. *Id.* §§ 10, 65, 99.

68. *Id.* § 24.

69. *Id.* § 25; *Revised Bangladesh Labour Law 'Falls Short' of International Standards – UN Agency*, UN NEWS CENTRE (July 22, 2013), <http://www.un.org/apps/news/story.asp?NewsID=45470#.UlpndxCzLi5>.

70. 2013 Labour (Amendment) Act, § 23(d); Bangladesh Labour Act (Act No. 42/2006) [hereinafter 2006 Labour Act], § 62.

In addition, Section 80 now directs factory inspectors to report serious accidents to competent authorities, such as “the Government, Fire Service, Directorate of Factories and Establishments, [and] Police Station[s],”<sup>71</sup> while Section 89 includes new subsections that mandate the establishment of a Health Center in factories of 5000 or more employees.<sup>72</sup> If an employee develops an occupational sickness or injury, employers must finance the cost of treatment until the employee has fully recovered.<sup>73</sup> Importantly, a brand new provision has also been added, requiring the formation of safety committees in factories with fifty or more employees.<sup>74</sup>

Along with updates to safety procedures, the Bangladeshi government has also amended certain trade union regulations of its 2006 Labour Act.<sup>75</sup> For instance, an amendment to Section 178 has eliminated a previous condition requiring the Director of Labor to submit to employers the names of union officers whenever a new trade union is registered.<sup>76</sup> Moreover, in order to form unions, workers no longer need approval from factory owners, who were previously allowed to veto union formations.<sup>77</sup> Under the amended laws, up to five unions can be formed within the same factory, an increase from the previous maximum of two unions.<sup>78</sup> With respect to collective bargaining, a clause has been added to Section 202 of the Labour Act permitting workers to appoint outside experts to assist in their collective bargaining agreements.<sup>79</sup> The right to strike has also been revised by the Bangladeshi government to require a two-thirds vote by a union’s membership,

71. 2013 Labour (Amendment) Act, § 26.

72. *Id.* § 28; *ILO Statement on Reform of Bangladesh Labour Law*, *supra* note 24.

73. 2013 Labour (Amendment) Act, § 28.

74. *Id.* § 30; *ILO Statement on Reform of Bangladesh Labour Law*, *supra* note 24.

75. 2013 Labour (Amendment) Act, §§ 48–52, 55–62.

76. *Id.* § 50; *See* 2006 Labour Act, § 178(3); *Revised Bangladesh Labour Law Falls Short’ of International Standards – UN Agency*, *supra* note 69.

77. N.Y. Times Editorial Bd., *Halfhearted Labor Reform in Bangladesh*, N.Y. TIMES, July 17, 2013, <http://www.nytimes.com/2013/07/18/opinion/halfhearted-labor-reform-in-bangladesh.html>; *New Bangladesh Labor Law Disappoints Rights Groups*, UCA NEWS (July 17, 2013), <http://www.ucanews.com/news/new-bangladesh-labor-law-disappoints-rights-groups/68776>.

78. Al-Mahmood, *supra* note 25.

79. 2013 Labour (Amendment) Act, § 57; *Revised Bangladesh Labour Law Falls Short’ of International Standards – UN Agency*, *supra* note 69.

as opposed to the three-fourths voting prerequisite mandated by the 2006 Act.<sup>80</sup>

The Bangladeshi government's amendments to its 2006 Labour Act have introduced some positive changes to its RMG sector. For instance, the provisions regulating the mandatory use of safety equipment, more frequent fire drills, and the obligation of employees to report accidents to appropriate authorities may ensure better monitoring of industrial mishaps and instill notions of caution within the workplace environment.<sup>81</sup> The provision requiring a Health Center in factories with over 5000 employees<sup>82</sup> can also serve as a potentially useful measure, given that workers in large, demanding establishments will now have a nearby setting to receive medical assistance. However, despite these slight improvements to the 2006 Labour Act, the new 2013 amendments present many weaknesses, especially for the RMG industry. With respect to the new provisions related to safety protocols, the International Labor Organization has expressed concerns that further regulations must be implemented in order to actually bring the 2013 amendments into practical effect.<sup>83</sup> The International Labour Organization ("ILO") recommends that the next step for Bangladesh must be to focus on strengthening the government's labor and safety inspection capacity and developing necessary infrastructure.<sup>84</sup>

Certain amendments to the 2006 Labour Act, however, lack substance entirely. For example, most of the Amendment to Section 62, relating to fire exits, simply breaks down the previous article in the 2006 Act into three shorter clauses, but does not mandate anything that improves the use of these exits.<sup>85</sup> While

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80. 2013 Labour (Amendment) Act, § 59; 2006 Labour Act, § 211; *Bangladesh: Amended Labor Law Falls Short*, HUMAN RIGHTS WATCH (July 15, 2013), <http://www.hrw.org/news/2013/07/15/bangladesh-amended-labor-law-falls-short>.

81. See 2013 Labour (Amendment) Act, §§ 23(d), 25, 26.

82. *Id.* § 28; *ILO Statement on Reform of Bangladesh Labour Law*, *supra* note 24.

83. *ILO Statement on Reform of Bangladesh Labour Law*, *supra* note 24. In addition to the ILO, the United Nations has also noted that "the amendments do not prohibit discrimination in employment or remuneration, nor do they prohibit debt bondage by children or compulsory labour as a form of punishment." *Revised Bangladesh Labour Law 'Falls Short' of International Standards—UN Agency*, *supra* note 69.

84. *ILO Statement on Reform of Bangladesh Labour Law*, *supra* note 24.

85. 2013 Labour (Amendment) Act, § 23; 2006 Labour Act, § 62.

minor grammatical edits are understandable, such revisions found throughout the Labour Act signify that only a portion of the eighty-seven changes are of actual value to the improvement of RMG conditions.<sup>86</sup> While potentially substantive, there are also certain provisions that are ambiguous. Particularly, the insertion of Subsection 90(a), calling for the formation of safety committees in factories with fifty or more employees is quite vague.<sup>87</sup> Human Rights Watch has referred to these committees as “largely powerless bodies made up of management and workers.”<sup>88</sup> The Bangladeshi government has failed to properly define the roles of these committees in the amendment that introduces them.<sup>89</sup>

A number of Bangladesh’s Labour Act revisions relating to trade unions are also problematic. Significantly, the Government has made no changes to the requirement that 30 percent of workers of an entire company must first join a trade union in order for it to be registered.<sup>90</sup> Prior to the adoption of the new amendments, labor leaders urged Bangladeshi legislators to accept a 10 percent threshold for union formation instead.<sup>91</sup> The government’s refusal of these requests does not make unionizing any easier, especially for apparel establishments with thousands of workers, comprising many factories.<sup>92</sup> Theoretically, the elimination of a previous Labour Act stipulation that required the Director of Labor to submit the names of union officers to employers can be considered as a beneficial reform for union members.<sup>93</sup> However, the practical effects of this revision are questionable. According to Babul Akhter, President of the Bangladesh Garment and Industrial Workers Federation, “In a country where corruption is widespread, officials might give the list to owners for bribes and [the union officers] might be fired from the

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86. See 2013 Labour (Amendment) Act.

87. *Id.* § 30.

88. *Bangladesh: Amended Labor Law Falls Short*, *supra* note 80.

89. *Id.*

90. 2006 Labour Act, § 179 (2); *Bangladesh: Amended Labor Law Falls Short*, *supra* note 80.

91. Steven Greenhouse, *Under Pressure*, *Bangladesh Adopts New Labor Law*, N.Y. TIMES, July 16, 2013, <http://www.nytimes.com/2013/07/17/world/asia/under-pressure-bangladesh-adopts-new-labor-law.html>.

92. *Id.*

93. *Id.* § 50; 2006 Labour Act, § 178(3); See also *Revised Bangladesh Labour Law ‘Falls Short’ of International Standards – UN Agency*, *supra* note 69.

factory.”<sup>94</sup> Moreover, even if the new legislation blocks employers from interference with unions, the Director of Labour still maintains wide discretionary powers with regard to the regulation of trade unions.<sup>95</sup>

Another shortcoming of the 2013 Labor Amendments is that it does not change the stipulation that union leaders may only be permitted to select their leaders from their own establishment.<sup>96</sup> This is problematic because employers can fire these leaders if they disapprove of their union involvement—or simply dislike them—without good cause.<sup>97</sup> The only amendment that comes close to modifying this requirement is a provision that enables public industrial sectors to elect 10 percent of union officials from persons who are not employees in the establishment—a provision that is completely irrelevant to private RMG factories.<sup>98</sup> Additionally, a union’s right to strike, a powerful economic weapon for getting owners to meet workers’ demands, also remains limited under the new laws, since a supermajority of the union would still have to vote for the strike.<sup>99</sup> The government is also able to end a strike if it causes “serious hardship to the community” or is “prejudicial to the national interest.”<sup>100</sup>

In addition to these disappointing changes in the 2006 Labour Act, Bangladesh’s new amendments also completely fail to modify the few existing punishments for factory owners and other culpable individuals,<sup>101</sup> despite strong demands after the Savar disaster for harsher punishments for health and safety violations.<sup>102</sup> For example, according to the 2006 Act, the penalty for

94. *New Bangladesh Labor Law Disappoints Rights Groups*, *supra* note 77.

95. Al-Mahmood, *supra* note 25; 2006 Labour Act, § 179.

96. *Id.* § 180(b).

97. N.Y. Times Editorial Bd., *supra* note 77; *Bangladesh: Amended Labor Law Falls Short*, *supra* note 80.

98. 2013 Labour (Amendment) Act, § 52.

99. *Id.* § 59; 2006 Labour Act, § 211. *Bangladesh: Amended Labor Law Falls Short*, *supra* note 80.

100. 2006 Labour Act, § 211; Greenhouse, *Under Pressure, Bangladesh Adopts New Labor Law*, *supra* note 91.

101. Emran Hossain, *Bangladesh’s Labor Reform Puts Profits Before Workers*, HUFFINGTON POST (July 25, 2013, 6:36 PM), [http://www.huffingtonpost.com/2013/07/25/bangladesh-labor-reform\\_n\\_3653850.html](http://www.huffingtonpost.com/2013/07/25/bangladesh-labor-reform_n_3653850.html).

102. Steven Greenhouse, *U.S., Urging Worker Safety, Outlines Steps for Bangladesh to Regain Its Trade Privileges*, N.Y. TIMES, July 19, 2013, [http://www.nytimes.com/2013/07/20/business/global/us-urging-worker-safety-outlines-steps-for-bangladesh-to-regain-its-trade-privileges.html?\\_r=0](http://www.nytimes.com/2013/07/20/business/global/us-urging-worker-safety-outlines-steps-for-bangladesh-to-regain-its-trade-privileges.html?_r=0); *see*

failing to notify authorities of any accident which results in a serious bodily injury is a fine of up to 1000 taka,<sup>103</sup> which is equivalent to about \$12.66 USD.<sup>104</sup> If the accident resulted in the loss of life, the penalty for failing to report it is imprisonment of up to six months, or a fine of up to 3000 taka<sup>105</sup>—approximately \$38.00 USD<sup>106</sup>—or both.<sup>107</sup> Even relative to Bangladesh's current economy, these monetary penalties are quite low.<sup>108</sup> For example, the highest fine an RMG factory owner can receive for an unreported incident, including a deadly one, is about the same as the monthly minimum wage in the nation's RMG sector.<sup>109</sup> The nonmonetary punishments for labor law violations are weak as well. For instance, the maximum sentence for a contravention of the law by an act that results in the death of a worker is imprisonment for up to only four years.<sup>110</sup>

Moreover, the Labour Act and its amendments make no reference to other penal regulations under which RMG factory owners may be held liable.<sup>111</sup> For example, the Bangladesh Building Construction Act, which "provide[s] for the prevention of hazardous construction of buildings,"<sup>112</sup> penalizes anyone who "without the previous sanction of an Authorised Officer, construct[s] or re-construct[s] or [makes an] addition or alteration to any building."<sup>113</sup> While acts committed by RMG employers often coincide with these additional regulations,<sup>114</sup> Bangladesh's

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also Chris Blake & Farid Hossain, *Unidentified Victims of Bangladesh Collapse Buried*, ASSOCIATED PRESS (May 1, 2013, 11:18 PM), <http://big-story.ap.org/article/toll-bangladesh-building-collapse-climbs-290>.

103. 2006 Labour Act, § 290.

104. *Treasury Reporting Rates of Exchange*, BUREAU FISCAL. SERV., US DEP'T OF TREAS. (Sept. 30, 2013), <http://www.fms.treas.gov/intn.html>.

105. 2006 Labour Act, § 290.

106. *Treasury Reporting Rates of Exchange*, *supra* note 104.

107. 2006 Labour Act, § 290.

108. *See generally World Development Indicators: Bangladesh*, WORLD BANK, <http://databank.worldbank.org/data/views/reports/tableview.aspx> (last visited Nov. 8 2013).

109. BUREAU OF DEMOCRACY, *supra* note 13.

110. 2006 Labour Act, § 309.

111. *See id.*; *See also* 2013 Labour (Amendment) Act.

112. Building Construction Act, 1952 (Act. No. E.B. II/1953), *as amended by* (1) E.P. Ord. No. IV of 1960, E.P. Ord. No. XIII of 1966, P.O No. 48 of 1972, Act No. 12 of 1987, Act No. 35 of 1990.

113. *Id.* § 3.

114. *300 Bangladesh Garments Factories May Be Unsafe*, CBS NEWS (June 13, 2013, 8:12 AM), [http://www.cbsnews.com/8301-202\\_162-57589097/](http://www.cbsnews.com/8301-202_162-57589097/).

labor laws do not discuss such alternative grounds for punishment at all.<sup>115</sup> Scattered legislation concerning related or potentially applicable penalties may make employers in the labor industry, as well as the general public, oblivious to other responsibilities the former may have under the law.

### III. IMPROVING HEALTH AND SAFETY CONDITIONS IN BANGLADESH: A THREEFOLD SOLUTION

As a country where government failures and corruption run rampant,<sup>116</sup> Bangladesh must take major strides if it seeks to improve conditions in its rapidly growing Ready-Made Garments sector. Weak to nonexistent government enforcement of labor and safety laws in the nation enables employers to harass and intimidate workers, as well as to ignore safety standards with impunity.<sup>117</sup> Additionally, RMG factory owners often have strong political ties; a number of owners are members of parliament.<sup>118</sup> In a country where government regulators favor those with political clout, factory employers are able to escape legal consequences for their violations.<sup>119</sup> But, as the aforementioned Labour Law and its amendments indicate, the labor sector in

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115. See generally 2006 Labour Act; see generally also 2013 Labour (Amendment) Act.

116. In 2012, Bangladesh ranked 144 out of 176 nations, ascending in order from least to most corrupt, in Transparency International's Corruption Perceptions Index. TRANSPARENCY INT'L, TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX 2012 (2012), [http://www.ey.com/Publication/vwLUAssets/2012\\_TI\\_CPI/\\$FILE/2012%20TI%20CPI.pdf](http://www.ey.com/Publication/vwLUAssets/2012_TI_CPI/$FILE/2012%20TI%20CPI.pdf). Between 2000 and 2005, Bangladesh also topped the Corruption Perception Index for five consecutive years as the most corrupt country in the world. Waliur Rahman, *Bangladesh Tops Most Corrupt List*, BBC NEWS (Oct. 18, 2005, 3:03 PM), [http://news.bbc.co.uk/2/hi/south\\_asia/4353334.stm](http://news.bbc.co.uk/2/hi/south_asia/4353334.stm).

117. *Bangladesh: Tragedy Shows Urgency of Worker Protections*, HUM. RTS. WATCH (Apr. 25, 2013), <http://www.hrw.org/news/2013/04/25/bangladesh-tragedy-shows-urgency-worker-protections>. See *How Bangladesh Garment Industry Traded Workplace Safety for Jobs*, *supra* note 51.

118. John Chalmers, *Special Report: How Textile Kings Weave a Hold on Bangladesh*, REUTERS (May 2, 2013, 7:53 PM), <http://www.reuters.com/article/2013/05/02/us-bangladesh-garments-special-report-idUSBRE9411CX20130502>. Over thirty members of Parliament are employers in the RMG industry, which accounts for about 10 percent of lawmakers in Bangladesh. Additionally, at least half of Bangladesh's parliament has business connections of some sort. *Id.*

119. *Id.*



Bangladesh is flawed at its very core, since basic labor legislation itself is rather weak. In order to begin improving the poor health and safety conditions in its essential RMG industry, the Bangladeshi government must first truly reform the very laws governing its labor sector. This Note will now argue that new legislation must be implemented in Bangladesh; legislation that provides for the following: (1) increased protections for trade unions (2) stronger penalties for labor violations and (3) more responsibility for global corporations through compulsory adoption of the Accord on Fire and Building Safety.

### *A. Improving Trade Union Protections in Bangladesh*

The Savar Tragedy, as well as past labor industry disasters in Bangladesh,<sup>120</sup> helps to vividly illustrate precisely how poor government oversight and law enforcement are within the nation. With only about twenty safety inspectors in total,<sup>121</sup> the government clearly lacks adequate resources to properly regulate the over 5000 factories in its RMG sector.<sup>122</sup> In most developing countries, like Bangladesh, social compliance monitors perform examinations only about once a year, while government inspectors may visit once every ten years.<sup>123</sup> However, where government officials fail, trade unions can help to fill in the gaps for stronger labor safety standards.<sup>124</sup> Unlike government labor departments, trade unions also have better insight as to what specific workplace structure is best for each factory or establishment, since they are formed by the employees themselves.

Unfortunately, in Bangladesh, the government has a notorious reputation for suppressing trade union activity.<sup>125</sup> As a result,

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120. See *supra* notes 48–55.

121. Claeson, *supra* note 55; *Bangladesh: Tragedy Shows Urgency of Worker Protections*, *supra* note 117.

122. WTO Secretariat, *Bangladesh: Trade Policies by Sector*, *supra* note 10; *Trade Information*, *supra* note 9.

123. Lance Compa, *After Bangladesh Labor Unions can Save Lives*, WASH. POST (May 26, 2013), [http://articles.washingtonpost.com/2013-05-26/opinions/39544959\\_1\\_labor-unions-lance-compa-labor-relations](http://articles.washingtonpost.com/2013-05-26/opinions/39544959_1_labor-unions-lance-compa-labor-relations).

124. According to Lance Compa, of the Cornell University School of Industrial and Labor Relations, “a *real* trade union can provide the vigilance and voice that workers need for sustained decency at their place of employment, including a workplace that is not a death trap.” *Id.*

125. See Farid Hossain, *Bangladesh to Allow Unions for Garments Workers*, SAN DIEGO UNION TRIB. (May 13, 2013, 1:24 AM), <http://m.utsandiego.com/news/2013/may/13/bangladesh-to-allow-unions-for-garment-workers/>.

collective bargaining in the country is very weak.<sup>126</sup> According to labor union organizers, Rana Plaza did not contain a single unionized factory.<sup>127</sup> If strong unions were supported by the government, the Savar Tragedy likely could have been prevented, or at least resulted in fewer deaths, since workers would not have felt threatened to come into work in the first place.<sup>128</sup> While the new amendments to the 2006 Labour Act modified some regulations concerning trade unions,<sup>129</sup> much stronger protections are needed to solidify the presence and influence of union activity in Bangladesh.

First, forming a trade union must be made less difficult. The Bangladeshi government's failure to lower the 30 percent employee membership registration requirement continues to be a major obstacle to workers' ability to organize.<sup>130</sup> The government must remedy this by either following the suggestions of union

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For instance, in 2010, Aminul Islam, an outspoken labor union organizer of the Bangladesh Center for Worker Solidarity was arrested after leading protests for a raise in the minimum wage. Later, he was allegedly tortured by police and intelligence services. *Id.* He was again arrested in 2012 for recruiting protesters for an anti-government demonstration. One month later, he was found brutally murdered. Emran Hossain, *Aminul Islam, Murdered Bangladeshi Labor Activist, Still Without Justice 14 Months After Death*, HUFFINGTON POST (June 22, 2013, 12:44 PM), [http://www.huffingtonpost.com/2013/06/22/aminul-islam-bangladesh-activist\\_n\\_3473603.html](http://www.huffingtonpost.com/2013/06/22/aminul-islam-bangladesh-activist_n_3473603.html). Police did not take much action to solve the murder, sparking international pressures for a thorough and independent investigation. Julfikar Ali Manik & Vikas Bajaj, *Killing of Bangladeshi Labor Organizer Signals an Escalation in Violence*, N.Y. TIMES, Apr. 9, 2012, [http://www.nytimes.com/2012/04/10/world/asia/bangladeshi-labor-organizer-is-found-killed.html?\\_r=0](http://www.nytimes.com/2012/04/10/world/asia/bangladeshi-labor-organizer-is-found-killed.html?_r=0). Former U.S. Secretary of State, Hillary Clinton, is one such commentator. See Interview by Mooni Saha and Ejaj Ahmed with Hillary Rodham Clinton, U.S. Secretary of State, in Dhaka, Bangladesh (May 6, 2012), available at <http://london.usembassy.gov/forpol127.html>. Still, today, the government has yet to solve the murder of Islam. See *Bangladesh: Tragedy Shows Urgency of Worker Protections*, *supra* note 117.

126. Hossain, *supra* note 101. According to a 2010 Labour Force Survey by the Bangladesh Bureau of Statistics, only about 3.88 percent of employees out of the total workforce were members of trade unions. Kayes Sohel, *The Right to Form Trade Union? Not in RMG*, DHAKA TRIBUNE (Aug. 28, 2013, 2:53 PM), <http://www.dhakatribune.com/business/2013/aug/28/right-form-trade-union-not-rmg>.

127. *Bangladesh: Tragedy Shows Urgency of Worker Protections*, *supra* note 117.

128. *Id.* See also Sohel, *supra* note 126.

129. 2013 Labour (Amendment) Act, §§ 48–52, 55–62.

130. 2006 Labour Act, § 179 (2); *Bangladesh: Amended Labor Law Falls Short*, *supra* note 80.

leaders and lowering the 30 percent threshold to 10 percent,<sup>131</sup> parallel to the standard in India,<sup>132</sup> or by revising the application of the 30 percent threshold from a single establishment (i.e., an entire garments company) to a single factory, as is the practice in the United States.<sup>133</sup> At the very least, the government should meet union organizers halfway by lowering the minimum registration requirement to 20 percent of workers in an establishment as a transitory start. Regardless, the 30 percent standard must be modified in some way in order for more trade unions to gain momentum in the RMG industry. Importantly, the government should also enable workers in Export Processing Zones (“EPZs”) to join unions as well, as they are barred from doing so under the current law.<sup>134</sup>

However, changes that help to merely increase the number of Bangladesh’s registered trade unions are not sufficient to empower them. The government must also amend the stipulation in its Labour Act that prohibits trade unions from hiring outside

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131. Greenhouse, *Under Pressure, Bangladesh Adopts New Labor Law*, *supra* note 91.

132. India’s 2001 amendments to its Trade Union Act of 1926 modified the minimum requirement for membership in a trade union to 10 percent of employees, or one hundred of them, whichever is less, subject to a minimum of seven members. The Trade Unions (Amendment) Act, 2001, No. 31, Acts of Parliament, 2001 (India), *available at* <http://indiankanoon.org/doc/377818/>. Even though this change actually increased the threshold requirement for forming a trade union, which, before the amendment, required membership of just seven employees, India’s 10 percent minimum requisite or the one hundred member alternative is still much easier to satisfy than Bangladesh’s standard. The Trade Unions Act, No. 16 of 1926, INDIA CODE (1926), [http://pblabour.gov.in/pdf/acts\\_rules/trade\\_unions\\_act\\_1926.pdf](http://pblabour.gov.in/pdf/acts_rules/trade_unions_act_1926.pdf).

133. N.Y. Times Editorial Bd., *supra* note 77. In the United States, the National Labor Relations Board governs the registration of trade unions. *Conduct Elections*, NATIONAL LABOR RELATIONS BOARD, <http://www.nlr.gov/what-we-do/conduct-elections> (last visited Jan. 18, 2014). To form a union, an election petition must be filed with the nearest NLRB office, indicating that at least 30 percent of employees in a workplace are interested in registering. *Id.* If a petition is dismissed, an appeal can be filed within two weeks of the decision for review by an attorney and a supervisor, and later, action by the actual Board. *Id.* The NLRB then investigates to make sure it has jurisdiction, that the union is qualified, and that there are no existing labor contracts that would bar a representation election. *Id.* As an alternative path to registration, not subject to the NLRB process, the NLRB also allows employees to persuade an employer to voluntarily recognize a union after showing majority support. *Id.*

134. *Bangladesh: Amended Labor Law Falls Short*, *supra* note 80.

leaders,<sup>135</sup> so that unions will not have to constantly worry about their leaders being wrongfully fired by vengeful employers.<sup>136</sup> Outside leaders can also be beneficial to unions, especially if they are experts in the field. Since outside leaders are not employed in the affiliated establishment, they may also be able to devote most of their time to union strategy and organization, compared to those who are both full time RMG factory workers as well as union leaders. Ultimately, the decision as to who should lead a union should be left up to the members of that union and not limited by the government.

Additionally, the government must also cease its expansive control over trade unions' access to foreign funding.<sup>137</sup> Currently, the Labour Act requires prior approval from the Labour and Employment Ministry before trade unions can receive "technical, technological, health & safety and financial support' from international sources."<sup>138</sup> Not only does this provision enable the government to maintain a "stranglehold over assistance to unions,"<sup>139</sup> it also violates Article 5 of ILO Convention No. 87, ratified by Bangladesh in 1972,<sup>140</sup> which stipulates that "workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers."<sup>141</sup> As a party to this Convention, Bangladesh thus has the responsibility to ensure that labor unions do not face limitations on their right to freedom of association under international law.<sup>142</sup>

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135. 2006 Labour Act, § 180(b).

136. See *Halfhearted Labor Reform in Bangladesh*, *supra* note 77.

137. N.Y. Times Editorial Bd., *supra* note 80.

138. *Id.*; See 2006 Labour Act, § 178–79.

139. *Bangladesh: Amended Labor Law Falls Short*, *supra* note 80.

140. *Ratifications of C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*, ILO, [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312232](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312232) (last visited Mar. 14, 2015); *Revised Bangladesh Labour Law 'Falls Short' of International Standards – UN Agency*, *supra* note 69.

141. Convention Concerning Freedom of Association and Protection of the Right to Organise art. 5, July 9, 1948, No. 87, available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312232](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232).

142. *ILO Statement on Reform of Bangladesh Labour Law*, *supra* note 24.

Another hindrance for trade unions that Bangladesh must reform is the large amount of discretion given to the Labour Director when registering trade unions.<sup>143</sup> The Labour Act permits Bangladesh's Director of Labour to deny workers authorization to unionize if he is unsatisfied with their application.<sup>144</sup> This authoritarian condition merely reinforces the country's history of corruption.<sup>145</sup> Labor activists worry that this provision will result in the Labour Director catering to powerful businessmen, rather than workers who want to unionize.<sup>146</sup> The problem, though, can potentially be remedied in two ways. First, the government must pass new legislation mandating an independent committee, appointed by the Labour Director, to administer trade union registration. This way, the Director of Labor will still maintain some power by being able to choose the members of the committee—subject to impartiality requirements—but the process of union approvals would be more democratic. Second, Parliament must also pass an amendment, indicating that employees cannot be prevented from unionizing, once certain requirements are met.<sup>147</sup> With such a provision, a union's fate will not be left up to the complete discretion of one particular bureaucrat.

Finally, Bangladesh must also help protect trade unions by adjusting its strict regulation of their right to strike. While the new amendments to the 2006 Labour Act have eliminated the strict three-fourths voting prerequisite necessary for union members to strike, the current two-thirds voting requirement is still too burdensome.<sup>148</sup> Worker strikes, while often criticized as political and disruptive,<sup>149</sup> have been a major avenue for employees in Bangladesh to protest violations by their employers, since they usually have no other means of resolving disputes.<sup>150</sup> A powerful

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143. See *supra* p. 14 and note 95.

144. 2006 Labour Act, § 182(1); Hossain, *supra* note 101.

145. *Id.*

146. *Id.*

147. This suggestion has been proposed by A. K. M. Nasim, senior legal counselor at The Solidarity Center, an international labor rights group. *Id.*

148. See *supra* note 80.

149. Greenhouse, *Under Pressure, Bangladesh Adopts New Labor Law*, *supra* note 91.

150. Celeste Drake, *The AFL-CIO Reacts to Recently Passed Amendments to the Bangladesh Labor Law of 2006*, AFL-CIO (July 23, 2013), <http://www.aflcio.org/Blog/Global-Action/The-AFL-CIO-React-to-Recently-Passed-Amendments-to-the-Bangladesh-Labor-Law-of-2006>.

negotiation and leveraging tool for employers to meet workers' demands,<sup>151</sup> the right to strike should be fostered by requiring a simple majority vote instead of a supermajority, as is the case in the United States.<sup>152</sup>

Additionally, the government of Bangladesh should also modify the language of its labor laws in a manner that supports a *right* to strike as opposed to a mere allowance. Currently, Bangladesh's Labour Act simply introduces the ability to strike by stating that a party involved in a dispute "may" notify the other party of a strike or lockout, provided that specified time conditions are met<sup>153</sup> as well as the aforementioned voting requirement.<sup>154</sup> In contrast, the United States, in Section 13 of the National Labor Relations Act ("NLRA"), stipulates, "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike or to affect the limitations or qualifications on that right."<sup>155</sup> Through the use of strong diction, the right to strike, while subject to limitations, is expressly guaranteed by the NLRA, and an emphasis is placed on its importance.<sup>156</sup> Bangladesh should thus look to the language of the NLRA as a model to establish striking as a critical right of trade unions by first recognizing it in principle.

Furthermore, the legislature must also either remove or clearly define the Labour Act stipulation that allows the government to stop a strike if it would cause a "serious hardship to the community" or is "prejudicial to the national interest."<sup>157</sup> This provision only burdens a trade union's right to strike, and through ambiguous terminology, gives the government too much power in determining whether or not the demonstrations may be permitted.<sup>158</sup> Finally, the Parliament in Bangladesh must amend the 2006 Labour Act's provision prohibiting new, foreign-

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151. In 2006, worker strikes eventually resulted in a new minimum wage for RMG industry workers, as well as other concessions. Nidhi Khosla, *The Ready-Made Garments Industry in Bangladesh: A Means to Reducing Gender-Based Social Exclusion of Women?*, 11 J. INT'L WOMEN'S STUDIES 289, 295 (2009).

152. N.Y. Times Editorial Bd., *supra* note 77.

153. 2006 Labour Act, § 211(1).

154. *See supra* note 80.

155. National Labor Relations Act, 29 U.S.C. § 163 (1935), *available at* <http://www.nlrb.gov/resources/national-labor-relations-act>.

156. *Id.*

157. *See supra* note 100.

158. *Bangladesh: Amended Labor Law Falls Short*, *supra* note 80.

owned, or foreign-invested establishments from striking for a period of three years after beginning production,<sup>159</sup> because a three-year restriction is far too onerous on the workers of the many new establishments developing in Bangladesh's booming RMG sector.<sup>160</sup>

One noteworthy example of the benefits of better protections for trade unions can be taken from the success of the United States-Cambodia Textile Agreement ("UCTA"), which led to improvements in labor rights and standards in Cambodia's RMG industry.<sup>161</sup> In 1999, the United States established a bilateral trade agreement with Cambodia, which gave trade privileges to Cambodia, if it brought its RMG sector into substantial compliance with international labor standards, subject to third-party monitoring by the ILO.<sup>162</sup> One of the most significant improvements in the nation was greater freedom of association and collective bargaining, as well as other protections, for unions.<sup>163</sup> As a result of these regulations, trade unions in Cambodia were able to win more rights for their workers.<sup>164</sup> During the span of the UCTA, Cambodia's garments exports to the United States

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159. 2006 Labour Act, § 211 (8); Drake, *supra* note 150.

160. See Manik & Yardley, *supra* note 4.

161. Don Wells, "Best Practice" in the Regulation of International Labour Standards: Lessons of the U.S.-Cambodia Textile Agreement, 27 COMP. LAB. L. & POL'Y J. 357, 361 (2006). Like Bangladesh, Cambodia is a poverty-stricken, developing Asian country with a major RMG industry that accounts for 85 percent of the nation's exports. *Countries Covered: Cambodia (The Kingdom of)*, ILO, <http://www.ilo.org/asia/countries/cambodia/lang-en/index.htm> (last visited Jan. 18, 2014).

162. John A. Hall, *International Labor Standards: The ILO's Better Factories Cambodia Program: A Viable Blueprint for Promoting International Labor Rights?* 21 STAN. L. & POL'Y REV 427, 429 (2010). Specifically, the Agreement provided for the United States to increase Cambodia's garments export quotas when it made labor improvements. Wells, *supra* note 161, at 363-64.

163. Wells, *supra* note 161, at 369. Some other protections for unions included a ban on firing union leaders without the consent of the Ministry of Labour and mandatory reinstatement for such violations, "simplistic, democratic, and non-confrontational procedures" for recognizing unions, and the creation of labor arbitration council as a method for unions to resolve disputes. Jonathan P. Hiatt & Deborah Greenfield, *The Importance of Core Labor Rights in World Development*, 26 MICH. J. INT'L L. 39, 56 (2004).

164. *Id.* at 57. For instance, in November, 2003, the Solidarity Workers Union signed a collective bargaining agreement that improved safety standards, work regulations, healthcare, and wages for its members at the Four Seasons Garment Factory in Cambodia's capital. *Id.*

also increased fivefold, to a \$1.9 billion USD industry.<sup>165</sup> Although the quota system for garments exports ended in 2005,<sup>166</sup> the case of Cambodia indicates that increased quotas are not the only incentive to strengthen labor standards and employee protections.<sup>167</sup> Even after the UCTA expired, Cambodia was able to maintain wage stability, and even increase employment and textile exports, by continuing to support better labor conditions.<sup>168</sup> Notably, Cambodia's reputation for high labor standards alone has attracted many buyers to its RMG industry.<sup>169</sup> The victories of the Cambodian model, in which government regulations for stronger trade unions played an important role in improving workers' rights,<sup>170</sup> thus serves as an influential example of how Bangladesh, too, could benefit from implementing better protections for unions.

### *B. Stricter Penalties for Noncompliance*

In addition to strengthening protections for trade unions, Bangladesh must also increase its penalties for labor violations, particularly against employers, in order to improve conditions in its RMG sector. In the case of the Savar Tragedy, despite the massive labor law violations committed by building owner Sohel Rana,<sup>171</sup> the maximum penalty he could receive under the current Labour Act is four years imprisonment, due to his contravention of the law resulting in the loss of life.<sup>172</sup> Such lax penalties should not suffice for the individual chiefly responsible for

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165. Wells, *supra* note 161, at 368.

166. Hall, *supra* note 162, at 429.

167. See Wells, *supra* note 161, at 374.

168. *Id.*

169. *Id.* For example, the German ambassador to Cambodia has noted that its labor standards were "of the utmost importance for the image of trading partners in Europe." *Id.* In addition, factories that were deemed more compliant with international standards have been able to use ILO compliance reports to attain contracts. *Id.* The World Bank has also indicated that buyers, in a survey, have reported that labor standards compliance was one of the key factors in their determination to use Cambodian suppliers. See *id.*

170. See *supra* notes 162, 163, 164.

171. See *supra* notes 35, 36, 39, 41, 42, 45.

172. 2006 Labour Act, § 309(1)(a); Hossain, *supra* note 101. Rana may also face culpable homicide charges under section 304 of the Bangladesh penal code, as recommended by a probe committee formed by the Ministry of Home Affairs. Mohosinul Karim, *Rana Plaza Collapse: Probe Body Finds It A 'Culpable Hom-*



one of the worst disasters in the history of the garments industry.<sup>173</sup> Stringent punishments are imperative because they serve as strong deterrents for violators of safety regulations, thus preventing deaths or serious injuries to workers.<sup>174</sup>

Accordingly, the government of Bangladesh must act to reform penalties for labor violations in a number of ways. It must increase penalties for health and safety code violations, which result in the loss of life, from a four year maximum to a ten year minimum at the very least. Moreover, the alternative of a fine, instead of imprisonment, for labor law violations with dangerous results must be eliminated from those provisions under the Labour Act that allow them.<sup>175</sup> The Bangladeshi government can also benefit from adopting the penalty changes recommended by the Obama Administration in its "Bangladesh Action Plan," calling for the nation to "increase fines and other sanctions, including loss of import and export licenses, applied for failure to comply with labor, fire, or building standards to levels sufficient to deter future violations."<sup>176</sup> These alternative types of penalties, such as the loss of import and export licenses, may be more influential in deterring employers from infringing health and

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*icide*,' DHAKA TRIBUNE (May 22, 2013, 5:58 PM), <http://www.dhaka-tribune.com/bangladesh/2013/may/22/committee-submits-report-rana-plaza>.

But, even with a culpable homicide charge, the highest penalty that Rana may receive under the law is ten years imprisonment for acts "done with the knowledge that [they are] likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death." Bangladesh Penal Code (Act. No. 45/1860), § 304.

173. See Hossain, *supra* note 101.

174. This recommendation derives support from the deterrence theory of punishment, which postulates that "perpetrators should suffer punishment in order to—and to the extent needed to—discourage the commission of further criminal harms and thus produce the greatest good for the greatest number." SAMUEL H. PILLSBURY, *HOW CRIMINAL LAW WORKS: A CONCEPTUAL AND PRACTICAL GUIDE* 39 (2009). The theory holds that individuals will refrain from certain activities that may be advantageous or beneficial to them personally "if they know that they will suffer greater pain as a consequence." *Id.* at 40.

175. 2006 Labour Act, § 309(1)(a)-(b).

176. Statement by the U.S. Government on Labor Rights and Factory Safety in Bangladesh, *supra* note 64; see Greenhouse, *U.S., Urging Worker Safety, Outlines Steps for Bangladesh to Regain Its Trade Privileges*, *supra* note 102.

safety codes because they come with long-term consequences, as opposed to minor, one-time fees.<sup>177</sup>

Higher fines for violations that do not result in the loss of life are necessary as well, given that the current maximums are far too low, even relative to Bangladesh's economic standards.<sup>178</sup> The government must amend its current labor laws to increase fines for major health and safety code violations to monetary amounts that are equivalent to the violator's entire annual salary, which is likely to have a more dramatic impact on their willingness to take risks with the laws. In addition, the government should also revise its current Labour Act to explicitly reference other punishments under regulations related to health and safety, such as penalties under the Building and Penal codes, so that labor industry employers as well as the general public are better aware of the different types of penalties that may be applicable to violators.

### *C. Mandating Corporate Adoption of the Accord on Fire and Building Safety*

Lastly, in order for Bangladesh to better reform its current labor regulations, it should mandate all major corporate retailers sign the Accord on Fire and Building Safety via an amendment to its current Labour Act. The Accord, signed on May 13, 2013, is a legally binding contract between international retailers and international and Bangladeshi trade unions that requires the implementation of reasonable health and safety measures in Bangladesh's RMG industry for a period of five years.<sup>179</sup> The

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177. Although the U.S. sanctions have already ended, taking the Obama administration's recommendations and other diplomatic pressures into consideration can be advantageous to Bangladesh from a general, foreign policy standpoint. Such deference indicates the willingness of the country to accept advice from fellow states, which would make Bangladesh a more desirable partner in other international affairs.

178. See *supra* notes 13, 109.

179. Accord, *supra* note 22, at 1. Major trade unions that are parties to the agreement include IndustriALL and UNI Global. Moreover, a number of non-governmental organizations, such as Clean Clothes Campaign, Workers' Rights Consortium, and International Labour Rights Forum are witnesses to the agreement. BANGLADESH ACCORD FOUNDATION, *FAQs, ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH*, <http://www.bangladeshaccord.org/faqs/> (last visited Dec. 26, 2013). These NGOs are signatories to a Joint Memorandum to the Accord, stating their intent to support the implementation of the agreement's fire and building safety program. ACCORD, *supra* note 22, at 1.

agreement was executed just weeks after the Savar building collapse, in response to intense international pressure from labor and political groups on clothing retailers to take more responsibility in ensuring better safety standards within Bangladeshi factories.<sup>180</sup>

The Accord on Fire and Building Safety covers over two million workers and more than 1600 factories in the nation.<sup>181</sup> So far, over one hundred international brands with suppliers in Bangladesh have signed the Accord, including various popular European and American companies, such as H&M, Primark, Tesco, C & A, Abercrombie and Fitch, Adidas, Esprit, Marks and Spencer, Mango, and Puma, among others.<sup>182</sup> The signatories have also expressly agreed to coordinate their programs with Bangladesh's National Action Plan on Fire Safety ("NAP"), an earlier agreement established by Bangladesh's Ministry of Labour and Employment ("MoLE") in conjunction with RMG employers and workers for the improvement of fire safety.<sup>183</sup>

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180. See Steven Greenhouse, *Major Retailers Agree to Inspection Standards in Bangladesh*, N.Y. TIMES, Nov. 20, 2013, <http://www.nytimes.com/2013/11/21/business/international/major-retailers-agree-to-inspection-standards-in-bangladesh.html>. The Accord was also a culmination of previous efforts and negotiations between labor groups and for-profit companies to create a "multi-stakeholder mechanism for fire and building safety" since the Garib and Garib Sweater factory fire in 2010. Venkatesan, *supra* note 22.

181. *Safety Accord Welcomes 100 Brand Milestone*, INDUSTRIALL GLOBAL UNION (Oct. 17, 2013), <http://www.industriall-union.org/bangladesh-safety-accord-welcomes-100-brand-milestone>.

182. *Id.* For a full list of official signatories, see BANGLADESH ACCORD FOUNDATION, *Signatories, ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH SIGNATORIES*, <http://www.bangladeshaccord.org/signatories/> (last visited Dec. 27, 2013).

183. The NAP was established following the Tazreen Fashions Fire as well as the Smart Export Garments Fire, just five and three months, respectively, before the Savar collapse. A tripartite committee, chaired by Secretary of the MoLE, was established and met several times, with assistance from the ILO, to implement a Plan of Action to promote building safety standards. MINISTRY LAB. & EMP., NATIONAL TRIPARTITE ACTION PLAN ON FIRE SAFETY FOR THE READY-MADE GARMENT SECTOR IN BANGLADESH (Mar. 2013), [http://www.ilo.org/wcmsp5/groups/public/—asia/—ro-bangkok/—ilo-dhaka/documents/genericdocument/wcms\\_221543.pdf](http://www.ilo.org/wcmsp5/groups/public/—asia/—ro-bangkok/—ilo-dhaka/documents/genericdocument/wcms_221543.pdf); ACCORD, *supra* note 22, at 1.

### 1. Benefits of the Accord

There are a number of reasons why Bangladesh's RMG industry can benefit from the provisions of the Accord. First, unlike the current labor regulation structure of the Bangladeshi government, under which the Director of Labour and Chief Inspector exercise broad powers,<sup>184</sup> the Accord maintains a fairer governance system.<sup>185</sup> It is administered by a Steering Committee ("SC"), equally represented by the companies and trade unions that are parties to the agreement, holding a maximum of three seats each, as well as a representative from the ILO, as a neutral chair.<sup>186</sup> The Steering Committee is responsible for the selection and review of a Safety Inspector and Training Coordinator, oversight and approval of the Safety Program's budget, and other management duties "as may be required."<sup>187</sup>

Second, the Accord also provides for rigorous inspections of RMG factories,<sup>188</sup> under the direction of an independent and experienced Safety Inspector, whom the SC appoints.<sup>189</sup> Under the SC's current agenda, initial inspections to identify the most necessary repairs are to be completed by October, 2014.<sup>190</sup> These inspections involve investigating hazards that are "grave and immediate risks to workers," such as inadequate evacuation procedures, faulty emergency equipment, and infrastructure.<sup>191</sup> If an inspection determines that an RMG factory building is unsafe and imminently threatens worker safety, the relevant authorities shall be notified.<sup>192</sup> The owner of the factory must then suspend all operations and take corrective action, as identified by the Inspector, to bring the building into compliance with the proper safety standards.<sup>193</sup> Notably, even while manufacturing is suspended for building renovations, the Accord requires that

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184. 2006 Labour Act, §§ 317–18.

185. See ACCORD, *supra* note 22, at 2 for the Accord's governance provision.

186. *Id.* Again, government protections for trade unions are critical since these unions serve important roles under the Accord.

187. *Id.*

188. Greenhouse, *Major Retailers Join Bangladesh Safety Plan*, *supra* note 23.

189. ACCORD, *supra* note 22, at 3.

190. BANGLADESH ACCORD FOUNDATION, *supra* note 182.

191. *Committee Firms-up Plan to Apply Bangla Fire Safety Accord*, GLOBAL DATA POINT, July 8, 2013, available at 2013 WLNR 17016243.

192. See BANGLADESH ACCORD FOUNDATION, *supra* note 182.

193. ACCORD, *supra* note 22, at 4.

companies continue to employ and pay their workers regular wages for a period of up to six months.<sup>194</sup>

In contrast to the Bangladeshi government's inspection system, where a minimal number of inspectors perform sporadic examinations of RMG factories,<sup>195</sup> the Accord's "Credible Inspections" provisions are more practical and effective because they require safety personnel, acting under the direction of the Chief Inspector, to perform inspections of every factory covered by the agreement within a reasonable and a narrow timeframe.<sup>196</sup> Additionally, an Inspector who is wholly independent and chosen by both companies and labor unions with equal decision-making powers<sup>197</sup> also helps to assure that findings will not be biased toward one particular group. Moreover, the Accord also calls for transparency by requiring the Safety Inspector to complete written inspection reports of all factories within two weeks of the inspection date.<sup>198</sup> These reports must be submitted to the SC, the worker representatives, the signatory companies, factory management, and each factory's individual safety committees.<sup>199</sup> The Safety Inspector must also disclose these reports to the general public within six weeks, along with remediation plans for the factories, if any.<sup>200</sup>

Another major benefit of the Accord on Fire and Building Safety is its dispute resolution system. According to its provisions, any disputes between the parties must first be submitted to the SC for a majority vote decision.<sup>201</sup> This decision can then be appealed to a process of final and binding arbitration governed by the New York Convention.<sup>202</sup> Prominently, any arbitra-

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194. *Id.*

195. *See supra* notes 121–23.

196. ACCORD, *supra* note 22, at 3.

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.* at 3–4.

201. *Id.* at 2.

202. *Id.* The New York Convention, formally known as the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, is known as "the most significant contemporary legislative instrument relating to international commercial arbitration" since it provides somewhat of a "universal constitutional charter" for the process of international arbitration. BARRY E. CARTER & ALLEN S. WEINER, INTERNATIONAL LAW 361 (6th ed. 2011).

tion award will be enforceable in the domestic courts of the country of the signatory against whom the enforcement is sought.<sup>203</sup> Since domestic courts generally have a broad obligation to enforce foreign arbitral awards under the New York Convention,<sup>204</sup> the dispute resolution system set up by the Accord can serve as a useful and effective settlement process for the parties to the agreement.

Most importantly, the Accord requires the corporate buyers, who are parties to the agreement, to finance the execution of its provisions—not trade unions or the government.<sup>205</sup> Funding by these retailers includes two categories of costs: administration expenses and additional safety improvements.<sup>206</sup> Administrative costs are those that fund safety inspections, training, and other operations of the Accord’s program.<sup>207</sup> Funding for these activities is based on a sliding scale that is proportional to “the annual volume of each company’s garment production in Bangladesh relative to the respective annual volumes of garment production of the other signatory companies, subject to a maximum contribution of \$500,000 [USD] per year. . . .”<sup>208</sup> Significantly, companies to the Accord are also responsible for making sure that adequate funds are available to pay for repairs and other types of renovations suggested by the Safety Inspector.<sup>209</sup>

The Accord on Fire and Building Safety also incentivizes suppliers to comply with the standards and activities it sets out,

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203. ACCORD, *supra* note 22, at 2.

204. *See* CARTER & WEINER, *supra* note 202, at 359. The New York Convention has resulted in a generally pro-enforcement legal regime for international arbitral awards. *See id.* Several prominent cases have demonstrated that U.S. Courts will uphold an arbitration court’s decision, even against a U.S. company and in favor of another nation, in order to abide by the Convention. *See* Parsons & Whittemore Overseas Co., Inc. v. Societe Generale De L’Industrie Du Papier (RAKTA), 508 F.2d 969 (2d Cir. 1974) (upholding a foreign arbitral award in favor of an Egyptian corporation and rejecting the defenses of a U.S. company for breach of contract); *see also* National Oil Corp. v. Libyan Sun Oil Co., 733 F. Supp. 800 (D. Del. 1990) (upholding an international arbitral award against a U.S. oil corporation in favor of a Libyan national oil company).

205. Venkatesan, *supra* note 22.

206. BANGLADESH ACCORD FOUNDATION, *supra* note 182.

207. *Id.*

208. ACCORD, *supra* note 22, at 6.

209. Funding does not necessarily have to be direct payment by retailers. It can also include money generated through negotiated commercial terms, joint investments, or contributions from government grants and other donor support. BANGLADESH ACCORD FOUNDATION, *supra* note 182.

since failure to do so may lead to the termination of the business relationship between the RMG supplier and the corporate retailer.<sup>210</sup> Given that the Accord is a five-year binding contract, it also ensures that companies cannot simply take their business interests elsewhere.<sup>211</sup> By adopting the agreement, the signatory companies demonstrate that they will maintain a long-term sourcing relationship with Bangladesh,<sup>212</sup> which helps to provide a sense of security for the country's RMG workers.

## 2. The Necessity for a Compulsory Accord

While the Accord strives to reform conditions in RMG factories in Bangladesh in a practical and comprehensive manner, a key issue with the agreement is that a company's decision to become a party to the agreement is completely voluntary.<sup>213</sup> As a result, numerous massive corporate retailers have refused to sign the agreement, despite intense international pressures to do so.<sup>214</sup> One such company is Wal-Mart. Along with twenty-five other mainly American brands, such as the Gap and Target, certain companies have created their own agreement to deal with safety inspections, known as the Alliance for Bangladesh Worker Safety ("Alliance").<sup>215</sup> The Alliance's plan involves providing low-interest loans for safety improvements, inspections of factories to be performed within a year, and a hotline for workers to report concerns.<sup>216</sup>

However, the Alliance for Bangladesh Worker Safety is relatively weak, when compared to the Accord on Fire and Building Safety, for a number of reasons. Prominently, unlike the Accord, the Alliance is not legally binding.<sup>217</sup> In addition, the Alliance's

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210. ACCORD, *supra* note 22, at 5.

211. BANGLADESH ACCORD FOUNDATION, *supra* note 182.

212. ACCORD, *supra* note 22, at 6.

213. Venkatesan, *supra* note 22.

214. *Id.*

215. Steven Greenhouse, *Europeans Fault American Safety Effort in Bangladesh*, N.Y. TIMES, Nov. 18, 2013, [http://www.nytimes.com/2013/11/19/business/international/europeans-fault-american-safety-effort-in-bangladesh.html?\\_r=0](http://www.nytimes.com/2013/11/19/business/international/europeans-fault-american-safety-effort-in-bangladesh.html?_r=0).

216. *Accord, Alliance, or Disunity*, ECONOMIST (July 13, 2013), <http://www.economist.com/news/business/21581752-transatlantic-divide-among-big-companies-may-hinder-efforts-improve-workers-safety>.

217. BANGLADESH ACCORD FOUNDATION, *supra* note 182; Greenhouse, *Europeans Fault American Safety Effort in Bangladesh*, *supra* note 215; *Accord, Alliance, or Disunity*, *supra* note 216.

governance structure does not include an official role for worker representatives, and companies that are parties to it are only required to pay administrative costs, but unobligated to contribute funding for building and infrastructure repairs.<sup>218</sup> The Alliance has been criticized by various labor rights groups, including the AFL-CIO, which has released a statement that notes, “Rather than sign[ing] the binding Accord, Walmart and Gap are pushing a weak and worthless plan that avoids enforceable commitments.”<sup>219</sup> Thus, given that the Accord involves strong, substantive, and binding obligations on its parties,<sup>220</sup> it is imperative for the Bangladeshi government to mandate that all major retailers seeking to outsource from Bangladesh’s RMG suppliers sign this agreement.

Government legislation that mandates the Accord on Fire and Building Safety is critical for a number of reasons. First, requiring adherence to this one particular agreement allows for a uniform process of regulation by companies that employ Bangladeshi workers. If all major retailers are subject to the Accord, factories that are associated with them will maintain similar and consistent standards for workplace safety, as opposed to regulations that may vary greatly based on different models. In addition, the Accord’s commitment to transparency and reporting ensures that all groups involved in the RMG industry, from factory owners and companies to workers and unions, as well as the general public, are well aware of the corrections that must be made to health and safety standards.<sup>221</sup> The fact that signatories

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218. *Understanding the Alliance and the Accord on Bangladesh Worker Safety*, OXFAM AUSTRALIA (Dec. 5, 2013), <https://www.oxfam.org.au/2013/12/understanding-the-alliance-and-the-accord-on-bangladesh-worker-safety/>.

219. Jacob Davidson, *Walmart’s Worker-Safety Plan Draws Ire of Labor Activists*, TIME WORLD (July 11, 2013), <http://world.time.com/2013/07/11/wal-marts-smokescreen-worker-safety-plan-draws-ire/>.

220. Benjamin Hensler & Jeremy Blasi, *Making Global Corporations’ Labor Rights Commitments Legally Enforceable: The Bangladesh Breakthrough*, WORKER RIGHTS CONSORTIUM (June 18, 2013), <http://www.cleanclothes.org/resources/recommended-reading/making-global-corporations2019-labor-rights-commitments-legally-enforceable-the-bangladesh-breakthrough/view>.

221. In addition to publicized inspection reports, the Accord requires companies to release an aggregated list of all of their suppliers in Bangladesh, called a Quarterly Aggregate Report, as well as a public statement from the Safety Inspector identifying any factory that does not comply with his or her recommendations in a timely manner. ACCORD, *supra* note 22, at 5. The Accord Foundation is also active on social media. It maintains a website that explicates the stipulations of the agreement and provides news updates on its progress. *See*



to the Accord are responsible for funding its program and any improvements that may be necessary<sup>222</sup> also takes financial burdens off of the Bangladeshi government. The country, after Savar, can now support additional and rigorous inspections without significant costs to itself. Since the Accord explicitly provides for coordination with Bangladesh's National Action Plan, the government need not worry that the agreement's program may conflict with its own regulatory measures.<sup>223</sup> Finally, government legislation that mandates the Accord for all major brands and retailers implicates Bangladesh's recognition of the need for genuine corporate responsibility in the RMG sector.

### 3. Implementing a Mandatory Accord

Of course, concerns may arise as to whether or not a universal mandate for corporate responsibility via the Accord can be practically implemented. In other words, why would companies choose to comply with a binding agreement, rather than take their business elsewhere? There are a number of reasons for this. First, corporations have an "obvious economic interest" in making sure that their employees are safe.<sup>224</sup> The necessary security and other expenses of the Accord can be considered inexpensive when compared to the larger costs of replacing factories, goods, and equipment if an industrial disaster ensues due to inadequate maintenance and safety policies—as in the case of Savar.<sup>225</sup> If companies keep ignoring their duty toward better oversight, these costs will accumulate no matter where they go.

Economic losses are also linked to reputational costs that companies will incur if they choose to remain inactive or object to a uniform approach to safety in Bangladesh's RMG sector (i.e., the Accord), in preference for their own policies. Even if a company simply relocates to a different developing nation after Savar or another disaster in Bangladesh, it will still lose business due to public outcry over its corporate negligence and failure to remedy

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ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH, <http://www.bangladeshaccord.org/>, (last visited Dec. 29, 2013). It is even active on Twitter. *Bangladesh Accord*, TWITTER, <https://twitter.com/bangaccord>, (last visited Dec. 29, 2013).

222. ACCORD, *supra* note 22, at 6; Venkatesan, *supra* note 22.

223. ACCORD, *supra* note 22, at 1; *see supra* note 130.

224. Lagon & Reddie, *supra* note 2.

225. *See id.*

its involvement.<sup>226</sup> Moreover, there has already been negative international press associated with companies that have turned away from the Accord in favor of other policies, such as the Alliance, so it would behoove retailers to adopt the approach that has garnered the most positive momentum.<sup>227</sup>

While implementing a mandatory Accord may be challenging, it is nonetheless a reasonable and realistic option. Over one hundred companies have progressively signed on to the agreement<sup>228</sup> and, with additional pressure, more can be swayed to do so. Furthermore, the Bangladeshi government maintains much leverage over international retailers with its “cheapest-in-the-world” labor.<sup>229</sup> Even after the Savar Tragedy, business in Bangladesh’s RMG sector is booming, and retailers continue to outsource work to the country.<sup>230</sup> Companies that are heavily invested in Bangladesh’s RMG industry may comply with the Accord out of fear that they would not be able to find a similarly inexpensive labor source.<sup>231</sup> Ultimately, it is more reasonable, efficient, and cost-effective for international retailers to give in to joining the Accord than to find employees elsewhere.

## CONCLUSION

The poor labor standards in Bangladeshi factories, especially after the devastating effects of the Savar Tragedy, illustrate that improvements in Bangladesh’s Ready-Made Garments industry are imperative. To ensure better safety conditions for RMG industry employees, Bangladesh must reform its weak labor laws. Better labor provisions are needed to protect trade unions, so that the unions may rise from their current suppressed position and effectively protect workers’ rights through collective bargaining. The country’s weak penalties for labor violations also

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226. *Id.*

227. *See supra* note 221.

228. *Safety Accord Welcomes 100 Brand Milestone*, *supra* note 181.

229. Manik & Yardley, *supra* note 4.

230. *Bangladesh’s Clothing Industry: Bursting at the Seams*, *ECONOMIST* (Oct. 26, 2013), <http://www.economist.com/news/business/21588393-workers-continue-die-unsafe-factories-industry-keeps-booming-bursting-seams>.

231. Bangladesh’s labor wage is half of India’s and less than a third of China’s and Indonesia’s. Hussian Zahid, *Bangladesh: The Next China?*, *WORLD BANK* (Jan. 17, 2013), <http://blogs.worldbank.org/endpovertyinsouthasia/bangladesh-next-china>. Bangladesh is also superior to other nations in terms of its RMG sector’s scale, with over twice as many factories as Vietnam and Indonesia. *Bangladesh’s Clothing Industry: Bursting at the Seams*, *supra* note 230.

indicate that new legislation should be geared toward severe deterrence measures that exact harsher penalties for noncompliance. While Bangladesh's attempts to address its labor sector issues in response to Savar have been unsatisfactory, the Accord on Fire and Building Safety provides hope for safer Bangladeshi factories in the future. The country must, therefore, act quickly to take advantage of the Accord by making the agreement compulsory for all companies that seek to benefit from the nation's rapidly growing RMG sector. Through enhanced legislation, which requires the participation and coordination of the government, trade unions, employers, and corporate retailers, Bangladesh can ensure a multitude of avenues to promote the safety of RMG workers, so that disasters like Savar can be prevented from ever happening again.

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