

**After Rana Plaza: Women's Labour Rights in the Bangladesh Garment
Export Industry**

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Abstract

On April 24, 2013, the Rana Plaza building, located on the outskirts of Dhaka, the capital of Bangladesh, collapsed. The complex housed five garment factories that were supplying American and European companies. A total of 1,132 garment workers were killed. This tragedy occurred five months after a fire broke out in the Tazreen Fashion factory, also located on the outskirts of Dhaka, which led to the deaths of 112 workers. These disasters provoked global outrage over the hazardous working conditions of garment workers in Bangladesh. This thesis examines the issue of safety standards and labour rights in the Bangladesh garment export industry, in the context of the collapse of Rana Plaza, through a gendered lens, since women represent the vast majority of the garment workforce. My primary objective is to analyse the relationship among multinational corporations (MNCs), the state of Bangladesh, and the Bangladesh garment industry in order to reveal the power dynamics that govern this industry and which result in appalling working conditions for women garment workers. I will argue that the structure of the garment industry as set by MNCs allows them to dictate working conditions throughout their global supply chains. In response to the behaviour of MNCs, the state chooses to promote its own interests by sacrificing those of workers, who do not share the benefits of the trade. Pursuant to this, my objective is to analyse the reasons why legal frameworks both at the international and the domestic level fail to protect women garment workers adequately. I will argue that the main reasons are problems of implementation, enforcement, and lack of concern both by MNCs and the Bangladeshi state, which ultimately led to the tragic events of April 2013. In considering the legal responses of MNCs and the Bangladeshi state following the collapse of Rana Plaza, the final objective of my thesis is to assess the potential of these initiatives to protect the rights of women garment workers in Bangladesh, to ensure their safety, and to improve their working conditions.

Le 24 avril 2013, l'immeuble Rana Plaza situé en banlieue de Dacca, capitale du Bangladesh, s'est effondré. Le complexe abritait cinq fabriques de vêtements fournissant des compagnies américaines et européennes. Mille cent trente-deux travailleurs y ont perdu la vie. Cette tragédie s'est produite seulement cinq mois après qu'un incendie ait ravagé la fabrique Tazreen Fashion, aussi située en banlieue de Dacca, causant la mort de cent douze travailleurs. Ces désastres ont

provoqué une indignation à l'échelle mondiale quant aux conditions de travail dangereuses des travailleurs de l'industrie d'exportation du vêtement au Bangladesh. Ce mémoire examine le problème des normes de sécurité et des droits du travail dans l'industrie d'exportation du vêtement au Bangladesh dans le contexte de l'écroulement du Rana Plaza et adopte une perspective axée sur le genre féminin puisque les femmes représentent la vaste majorité de la main-d'œuvre. Mon objectif premier est d'analyser les relations entre les compagnies multinationales, l'état du Bangladesh et l'industrie du vêtement bangladaise afin de révéler les dynamiques de pouvoir qui gouvernent cette industrie et desquelles résultent les terribles conditions de travail infligées aux travailleuses du vêtement. Je soutiendrai que la structure de l'industrie du vêtement telle que mise en place par les compagnies multinationales leur permet de dicter les conditions de travail tout au long de leurs chaînes d'approvisionnement mondiales. En réponse au comportement des compagnies multinationales, l'état choisit de promouvoir ses propres intérêts en sacrifiant ceux des travailleurs et travailleuses qui sont laissés pour compte quant au partage des bénéfices. Mon objectif est ensuite d'analyser les raisons de l'échec des cadres juridiques international et national à protéger adéquatement les travailleuses du vêtement. J'argumenterai que les principales raisons de cet échec sont liées à des problèmes de mise en œuvre des instruments juridiques et à un manque d'intérêt de la part des compagnies multinationales et de l'état du Bangladesh, ce qui a ultimement mené aux événements tragiques d'avril 2013. Considérant les réponses juridiques des compagnies multinationales et de l'état du Bangladesh suite à l'écroulement du Rana Plaza, l'objectif final de mon mémoire est d'évaluer le potentiel de ces initiatives afin de protéger les droits des travailleuses bangladaises, assurer leur sécurité et améliorer leurs conditions de travail.

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Along the way that led to the final version of this thesis, several unforeseen events have shaped my work, from fast-moving developments in the Bangladeshi garment industry to a research trip to Dhaka that was postponed due to political turmoil in the capital. First of all I would like to thank my supervisor, Professor Vrinda Narain, who directed me through all the steps in writing this thesis, thoroughly revised my work, and encouraged me in the audacious project to travel to Bangladesh. From the beginning, I have been able to rely on her invaluable support and advice and this thesis could not have arrived at its current form without her help. I would also like to thank Professor Rosalie Jukier and Ms. Kate Glover, who provided me with precious guidance for laying out the groundwork of this thesis with the class *Legal Research Methodology*, and the staff members of the Graduate Programs in Law of McGill who have helped me with my numerous questions since I first applied to the program. I must express my appreciation for the *Graduate Research Mobility Award* I was granted by the Graduate Programs in Law of McGill, which allowed me to achieve my research trip to Dhaka. With regard to this research trip, I would like to extend my heartfelt thanks to my friends Hilary Clauson, Rokeya Chowdhury, and Mahdy Assan, who greatly helped make this project a reality. I am incredibly lucky to have known such outstanding and generous people in the organization of my trip, with whom I have established solid friendships. Thanks to Rokeya for welcoming me to her country, to Mahdy for accompanying me every day of my trip and translating Bangla for me, to Hilary for hosting me and showing me around town and to all people I met in Bangladesh who helped me in my research. Moreover, I am very grateful to Hilary who kindly offered to proofread my thesis, since English is my second language, and who has thus been a remarkable support all the way through this journey.

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Introduction

“Nearly three weeks after a Bangladesh garment-factory building collapsed, the search for the dead ended Monday at the site of the worst disaster in the history of the global garment industry. The death toll: 1,127.”¹

On April 24, 2013, the Rana Plaza building, located in Savar, on the outskirts of Dhaka, collapsed. The complex housed five garment factories supplying American and European companies employing more than 3,000 workers. A day before the collapse, workers noticed cracks in the walls and pillars of Rana Plaza, which was then shut down. The following day, the factories’ owners called them back to work, some threatening the workers with the loss of their jobs and others with the hold of their salaries if they did not obey. Forced to comply, the workers returned and, a few hours later, the building fell down. This tragedy occurred five months after a fire broke out in the Tazreen Fashion factory in Ashulia, a suburb near Dhaka, which resulted in the death of 112 garment workers. These disasters provoked global outrage over the hazardous working conditions of millions of garment workers in Bangladesh.² Together with abysmal safety standards, working conditions are generally very poor and wages are among the lowest in the world. This disaster resulted in renewed criticism toward the failure of the Bangladeshi government as well as of multinational corporations (MNCs) to ensure workers safe and decent labour conditions.

This thesis examines the issue of safety standards and labour rights in the Bangladesh garment export industry, in the context of the collapse of Rana Plaza, through a gendered lens, since women represent the vast majority of the garment workforce due to the structure of this industry. It focuses on the relationship among MNCs, the state of Bangladesh, and the garment export industry, and its primary objective is to reveal the power dynamics that govern this industry and result in hazardous and appalling conditions for garment workers, particularly women. Pursuant

¹ Julhas Alam & Farid Hossin, “Search for Bangladesh dead concludes; 1,127 bodies accounted for in worst disaster in history of garment industry”, *National Post* (13 May 2013), online: National Post <<http://news.nationalpost.com>>.

² See Julfikar Ali Manik & Jim Yardley, “Building Collapse in Bangladesh Leaves Scores Dead”, *The New York Times* (24 April 2013), online: The New York Time <<http://www.nytimes.com>>; “Bangladesh factory collapse blamed on swampy ground and heavy machinery”, *The Guardian* (23 May 2013), online: The Guardian <<http://www.theguardian.com>>.

to this, its objective is to analyse the reasons why legal frameworks both at the international and the domestic level have failed to protect women garment workers adequately and prevent tragedies such as Rana Plaza. In considering the legal responses of MNCs and the Bangladeshi state following the collapse of Rana Plaza, the final objective of this thesis is to assess the potential of these responses to protect the rights of women garment workers in Bangladesh and to ensure them safe and decent working conditions.

Having a keen interest in women's rights and international labour law, I knew for a long time that I wanted to write my thesis about the issue of women's labour rights in the garment export industry in developing countries in the context of globalization. After the deadly fire at Tazreen Fashion factory in November 2012, I decided to work on the specific case of Bangladesh. Until then, it was the worst garment industry accident in the history of Bangladesh.³ At that time, it was clear to me that the situation was critical for garment workers in this country, but I did not know how dramatic it was. In April 2013, the collapse of Rana Plaza with a total death toll of 1,132 workers became the deadliest garment industry accident in world history.⁴ As my principal source of information at that time was newspaper articles, I decided to travel to Dhaka in February 2014 to gain a better sense of the situation for my research. Therefore, in addition to secondary sources, I will draw on the experiential knowledge I acquired during my research trip to Bangladesh to build my analysis. While in Dhaka, I met with heads of NGOs, trade union leaders, labour law lawyers, factory managers, and garment workers to know their stories and their opinions about the issues I will discuss in this thesis. While I will not use their testimony directly, my perspective will be informed by these insights. There is a strong relationship between theory and experiential knowledge that must be acknowledged. Reflection must be informed both by theory and experience if one wants to make a change in the material reality of the lives of those who are most marginalized and disempowered. This was my aim when I traveled to Dhaka. Chandra Talpade Mohanty puts forward a Third World feminism approach, and she argues that "Third World women" cannot be regarded as a homogeneous category if we want "to better see the process of corporate globalization and how and why they recolonize

³ See US, Worker safety and labor rights in Bangladesh's garment sector: A majority staff report prepared for the use of the Committee on Foreign Relations United States Senate, 113th Congress 1st Session (U.S. Government Printing Office, Washington, 2013) at 5, online: Foreign Senate <<http://www.foreign.senate.gov/imo/media/doc/85633.pdf>> [US Report].

⁴ *Ibid.*

women's bodies and labor."⁵ According to her, it is "the lives, experiences, and struggles of girls and women of the Two-Thirds World that demystify capitalism in its racial and sexual dimensions – and that provide productive and necessary avenues of theorizing and enacting anticapitalist resistance."⁶ It is pursuant to this vision of a Third World feminism that I went to Dhaka so that, in the words of Mohanty, my analysis "begins from and is anchored in the place of the most marginalized communities of women (...),"⁷ in this case in Bangladesh within the community of women garment workers.

Notwithstanding the tragedies that hit Bangladesh in recent years, what I found throughout my journey was beyond my expectations. I met very welcoming and friendly people, kind and generous, whose resilience has no equal. Despite the challenges they face in their everyday life and the extreme poverty plaguing the country, they smile and greet you with a cup of tea and biscuits, keen to tell you their stories. Bangladesh is a beautiful country with lush green fields and it is rich in history and culture. Strolling around Dhaka was a unique experience. With an estimated population of seven million, Dhaka is the largest city in Bangladesh and, including its overall metropolitan area, is the ninth-largest city in the world. The population density is approximately 50,000 people per square mile.⁸ From early in the morning to late at night, the sound of car and CNG⁹ horns, the call to prayer that echoes several times a day, and lively music everywhere mingle all together to create a charming confusion. While clinging to my seat behind the rickshaw driver, I was thrilled to discover something new at every turn: merchants and their stalls of fresh fruits and vegetables, women wearing colourful saris or salwar kameez, mouth-watering street food, intriguing narrow alleys, and lovely green areas by the Buriganga river where students meet to relax and chat. I was charmed by this lively city and I returned to Montreal with a head filled with amazing memories.

⁵ Chandra Talpade Mohanty, "Under Western Eyes' Revisited: Feminist Solidarity through Anticapitalist Struggles" (2002) 28:2 *Signs: Journal of Women in Culture and Society* 499 at 516 [Mohanty, "Under Western Eyes Revisited"].

⁶ *Ibid* at 515.

⁷ *Ibid* at 510.

⁸ See World Population Statistics, online: World Population Statistics <<http://www.worldpopulationstatistics.com>>.

⁹ CNG is the abbreviation for Compressed Natural Gas vehicles. CNGs are auto-rickshaws and they are a very popular means of transport in Bangladesh, particularly in Dhaka.

Most importantly, this research trip enabled me to gain a perspective on the issues and challenges that women face in their everyday lives. One essential thing I learned is that, although the Rana Plaza disaster was a blow to the Bangladeshi population, they remain hopeful and see this as an opportunity to be heard and improve their condition. Back at my desk in Montreal, I was even more determined to continue my research and complete this thesis.

In Chapter I, I will set out the relevant background to contextualise my thesis. I will address the rise of the garment industry in Bangladesh in the context of globalization, the gendered division of labour, and the situation prevailing in garment factories with regard to industrial accidents and working conditions. I will then set out the roadmap of my thesis by addressing the research questions this thesis aims to answer, their importance, and the theoretical framework I will rely on for my analysis of these questions. In Chapter II, I will first analyse the relationships among MNCs, the Bangladeshi state, and the garment industry. I will then examine the reasons why both the international and the domestic legal frameworks have failed to ensure Bangladeshi women who work in the garment industry safe and decent conditions. In Chapter III, I will assess the potential of the legal responses following Rana Plaza to adequately protect these workers. In conclusion, I will look at questions raised throughout my analysis with regard to the future and what should be done to genuinely ensure the protection of women garment workers in Bangladesh.

Chapter 1 - Background: Globalization and the Bangladesh garment export industry

A. The growth of the Bangladesh garment industry from an international and a domestic perspective

Today Bangladesh is the world's second-largest exporter of garments, after China.¹⁰ The export-

¹⁰ See Martje Theuvs & al, "Fatal Fashion: Analysis of recent factory fires in Pakistan and Bangladesh: a call to protect and respect garment workers' lives", Centre for Research on Multinational Corporations (SOMO) & Clean Clothes Campaign (March 2013) at 10, online: SOMO <http://www.cleanclothes.at/media/common/uploads/download/fatal-fashion-analysis-of-recent-factory-fires-in-pakistan-and-bangladesh/Fatal%20Fashion_analysis%20of%20recent%20factory%20fires.pdf> [SOMO, "Fatal Fashion"]; "Workers' Voice Report 2013", Awaj Foundation, AMRF Society, and Consulting Service International

oriented garment industry is, from the point of view of the domestic economy of this country, an unprecedented success story.¹¹ Since the opening of its first factory in 1976 and its first exports in 1978, the industry has recorded spectacular growth and has become the backbone of the Bangladeshi economy.¹² This industrial rise allowed the country to integrate into the global economy.¹³ In 2013, the garment export industry accounted for 79.63% of the country's total exports (which represents US\$21.5 billion) and accounted for 10% of its gross domestic product.¹⁴ The garment sector is the biggest employer in Bangladesh, with four million garment workers, which represents two-thirds of its labour force.¹⁵ The European Union and the United States together make up the most important part of its market for garment exports, as 58.4% are destined for Europe and 23.22% for the United States. Canada represents 4.56%.¹⁶

The rapid expansion of the garment industry in Bangladesh has been propelled by interrelated factors at both an international and a national level, as MNCs relocated their production to developing countries and the Bangladeshi state encouraged them to grant their contracts to suppliers in the country.¹⁷

At the international level and in the context of globalization, MNCs have been at the centre of the emergence of a new economic model “characterized by its networked form and global reach.”¹⁸ During the 1970s, western companies began to establish subsidiaries in several countries, thus

Ltd (25 September 2013) at 15, online: Awaj Foundation <http://awaj.info/wp-content/uploads/2013/10/Workers_Voice_Report_2013.pdf> [Awaj Foundation, “Workers’ Voice”].

¹¹ *Ibid* at 15.

¹² *Ibid*; Khorshed Alam, Laia Blanch & Anna Smith, “Stitched Up: Women workers in the Bangladeshi garment sector”, War on Want (July 2011) at 2, online: War on Want <<http://www.waronwant.org/attachments/Stitched%20Up.pdf>> [War on Want, “Stitched Up”].

¹³ See Marilyn Rock, “Globalisation and Bangladesh: The case of export-oriented garment manufacture” (2001) 24:1 South Asia: Journal of South Asian Studies 201 at 224.

¹⁴ See Bangladesh Garment Manufacturers and Exporters Associations (BGMEA): Towards a Sustainable Garment Industry, online: BGMEA <<http://bgmea.com.bd>> [BGMEA website]; Sadid Nure Mawla, Sharif Ahmed Chawdhury & Nazmul Hud Mina, “The Readymade Garment Sector: Governance Problems and Way Forward”, Transparency International Bangladesh (31 October 2013) at 3, online: Transparency International <https://blog.transparency.org/wp-content/uploads/2014/04/2013_TIB_GarmentSectorExecSum_EN.pdf> [TIB Report].

¹⁵ See BGMEA website, *supra* note 14; TIB Report, *supra* note 14 at 3; US Report, *supra* note 3 at 3.

¹⁶ See BGMEA website, *supra* note 14.

¹⁷ See Pragma Khanna, “Making Labour Voices Heard During an Industrial Crisis: Workers’ struggles in the Bangladesh garment industry” (2011) 44:2 LC&S 106 at 109.

¹⁸ Angela Hale & Jane Wills, “Threads of Labour in the Global Garment Industry” in Angela Hale & Jane Wills, eds, *Threads of Labour: garment industry supply chains from the workers’ perspective* (Malden, MA: Blackwell Publishing, 2005) 1 at 5 [Hale & Wills, “Threads of Labour”].

becoming multinational corporations, and adopted a global mode of operation. They relocated their production to developing countries by means of global supply chains in order to maximize their own profits. They situated their manufacturing plants in these countries and/or distributed their orders to local suppliers. A combination of factors incentivized this new model. Communication innovations and cheaper transport made this production strategy feasible, and this model was very attractive to MNCs due to trade liberalisation and foreign investment incentives.¹⁹ However, labour costs were the main reason for this shift. Many developing countries chose to industrialize and embark on export-oriented business as a way to achieve economic growth, which changed the geography of the world's production. This resulted in a new international division of labour.²⁰

The garment industry was one of the pioneers of this global shift to low-cost production sites. Since it is one of the most labour-intensive industries, developing countries could offer a competitive advantage because of their abundance of cheap labour. By passing on the production of goods to developing countries, MNCs could focus their core business on the stages of this industry that are the most profitable, namely design, marketing, and retail.²¹ This shift opened up new opportunities for the newly industrialising countries of Southeast Asia.²²

Bangladesh became independent in 1971 following its Liberation War, whereby Bangladesh, formerly known as East Pakistan, separated from West Pakistan. Bangladesh thus gained independence “on the eve of neoliberal globalization.”²³ As the war left the newly-formed state in extreme poverty, Bangladesh focused its efforts on rapid industrialization in order to develop an independent economy. While the first independent Bangladeshi government initially promoted a

¹⁹ See Kate Raworth & Claire Harvey, “Trading away our rights: Women working in global supply chains”, Oxfam International (2004) at 33, online: <<http://www.oxfam.org/sites/www.oxfam.org/files/rights.pdf>> [Oxfam, “Trading away our rights”].

²⁰ See Jennifer Hurley & Doug Miller, “Threads of Labour in the Global Garment Industry” in Hale & Wills, *supra* note 18 at 17.

²¹ See “Labour practices in the footwear, leather, textiles and clothing industries: Report for discussion at the Tripartite Meeting on Labour Practices in the Footwear, Leather, Textiles and Clothing Industries”, International Labour Organization, TMLFI-R-2000-02-0003-28.Doc (2000) at 29, online: International Labour Organization <http://www.coc-runder-tisch.de/inhalte/texte_grundlagen/labour_practices_footwear_ilo.pdf> [ILO, “Labour practices in the footwear, leather, textiles and clothing industries”]; Hurley & Miller, *supra* note 20 at 22.

²² See Naila Kabeer, “Cultural Dopes or Rational Fools? Women and Labour Supply in the Bangladesh Garment Industry” (1991) 3:1 European Journal of Development Research 133 at 134 [Kabbeer, “Cultural Dopes or Rational Fools”]; Khanna, *supra* note 17 at 109; Rock, *supra* note 13 at 201.

²³ Khanna, *supra* note 17 at 107.

more socialist, state-led industrialization, this antagonistic attitude towards private entrepreneurship changed in 1973 following a change in the government.²⁴ In 1979, there was a breakthrough when an agreement to produce garments for export from Bangladesh was signed between a local Bangladeshi entrepreneur and a South Korean conglomerate, providing “the vital ‘catalyst’ for the subsequent development and prosperity of the Bangladeshi export-oriented garment sector.”²⁵

MNCs became highly interested in relocating their production to Bangladesh, as it was a very competitive country in terms of exploiting cheap labour, with the lowest wages in the world and an abundant workforce.²⁶ The competitive advantage of Bangladesh was also largely helped by its trade advantages under the schemes of the *1974 Multi-Fibre Agreement* (MFA)²⁷ and the European and American Generalised System of Preferences (GSP).²⁸ Under the MFA, major importing industrialised countries imposed quota restrictions on garment exports from the major Third World producers but left latecomers like Bangladesh quota-free; as for the GSP, it granted Bangladesh reduced or duty-free tariff rates.

In the early 1980s, Bangladesh embarked on structural economic reform that fuelled the growth of the garment export sector.²⁹ The government introduced economic policies in compliance with the International Monetary Fund and the World Bank, which were promoting economic liberalization to attract foreign direct investment.³⁰ Most important was the creation of Export

²⁴ See Khanna, *supra* note 17 at 107-108.

²⁵ Rock, *supra* note 13 at 201; See Rock, *ibid* at 212-14.

²⁶ See Bjorn Claeson, “Enemies of the Nation or Human Rights Defenders? Fighting Poverty Wages in Bangladesh”, SweatFree Communities (December 2010), online: SweatFree Communities <<http://www.sweatfree.org/docs/enemiesofthenation.pdf>> [SweatFree Communities, “Enemies of the Nation”] (“the first minimum wage for garment workers, established in 1985, was only 621 taka (\$9) per month” at 11); Hasanat Alamgir & al, “Garments Fire: History Repeats Itself” (2013) 56 AJIM 1113 at 1113; SOMO, “Fatal Fashion”, *supra* note 10 at 6; Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 15; Rock, *supra* note 13 at 218.

²⁷ See World Trade Organization, online: WTO <http://www.wto.org/english/tratop_e/texti_e/texintro_e.htm>.

²⁸ See Angela Hale, “Trade Liberalisation in the Garment Industry: Who is Really Benefiting?” (2002) 12:1 Development in Practice 33 at 36; Kabeer, “Cultural Dopes or Rational Fools”, *supra* note 22 at 134; Rock, *supra* note 13 at 220; Khanna, *supra* note 17 at 109; Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 15; US Report, *supra* note 3 at 3.

²⁹ See War on Want, “Stitched Up”, *supra* note 12 at 2.

³⁰ See Naila Kabeer, “Globalization, Labor Standards, and Women’s Rights: Dilemmas of Collective (In)action in an Interdependent World” (2004) 10:1 Feminist Economics 3 at 14 [Kabeer, “Dilemmas of Collective (In)action”]; Khanna, *supra* note 17 at 108-09.

Processing Zones (EPZs). In 1980, the *Bangladesh Export Processing Zones Authority Act*³¹ was adopted, introducing EPZs, and the Bangladesh Export Processing Zones Authority (BEPZA), in charge of establishing and managing EPZs, was created.³² These zones were intended to attract foreign direct investment and stimulate rapid growth of export manufacturing by state support “provided in the form of incentives like bonded warehouses, reduced taxes, liberal quotas, GSP facilities and reduced duty access to key buyer countries.”³³ Furthermore, in order to respond to the requirements for profit maximization and greater labour exploitation by MNCs, the BEPZA was granted immunity from the major labour laws and workers were not allowed to form trade unions.³⁴ The first EPZ in Chittagong became functional in 1983, followed by a second one on the outskirts of Dhaka in 1993. Given their success, the government planned to establish EPZs in underdeveloped regions, as well as others around the more developed centres.³⁵ In this context, an export boom took place in Bangladesh and the garment industry was at the heart of it.³⁶

At the beginning of 2005, following an agreement signed in 1994 regarding the termination of the *Multi-Fibre Agreement*, the phase-out of this regime was completed and, even though it was predicted that Bangladesh’s garment export industry would thenceforth decline, it kept growing steadily.³⁷ This was attributed to the fact that Bangladesh remained and still continues to be internationally competitive, with extremely low labour costs and high production capacity due to the efficiency of Bangladeshi workers.³⁸ The capacity to produce on-time quality garments satisfying the market’s exigencies and to react rapidly to changing demands has become very important because fashions change rapidly and consumers are more and more exigent in terms of diversification.³⁹

There are about 5,600 garment factories in Bangladesh, both registered and unregistered, concentrated within the Dhaka metropolitan area, and almost all of them are fully export-

³¹ *Bangladesh Export Processing Zones Authority Act*, 1980 (Act No. 36 of 1980) [*EPZs Authority Act*].

³² See Khanna, *supra* note 17 at 110; Sweatfree Communities, “Enemies of the Nation”, *supra* note 26 at 11.

³³ Khanna, *supra* note 17 at 110.

³⁴ See Khanna, *ibid*; Sweatfree Communities, “Enemies of the Nation”, *supra* note 26 at 11.

³⁵ See Khanna, *supra* note 17 at 110.

³⁶ See War on Want, “Stitched Up”, *supra* note 12 at 2.

³⁷ See Rock, *supra* note 13 at 208; Sweatfree Communities, “Enemies of the Nation”, *supra* note 26 at 11.

³⁸ See Shaheen Ahmed & al, “Labor Unrest in the Ready-Made Garment Industry of Bangladesh” (2013) 8-15 IJBM 68 at 68-69; US Report, *supra* note 3 at 3; Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 15.

³⁹ See ILO, “Labour practices in the footwear, leather, textiles and clothing industries”, *supra* note 21 at 29, 38, 116.

oriented.⁴⁰ While EPZs and foreign direct investment played a crucial role in the expansion of the Bangladesh garment industry, the vast majority of the factories are now located outside the EPZs and the industry is dominated by domestically-owned firms that obtain contracts from MNCs or through foreign and local agents.⁴¹

B. The gendered division of labour

The new international division of labour presents a gendered aspect.⁴² Bangladeshi women “have traditionally been excluded from taking part in social, political and economic activities on the basis of the institution of purdah which mandates women's seclusion from the society at large”⁴³ in some Islamic communities.⁴⁴ However, Bangladesh’s strong performance in garment export production was made possible through the reliance on women, as they occupy the overwhelming majority of labour-intensive jobs at the bottom of global supply chains, which is also true for other developing countries.⁴⁵ In Bangladesh, during the late 1980s, a first generation female workforce was created to fulfill the jobs in garment manufacturing, and, since then, female employment in this sector has seen unprecedented expansion.⁴⁶ Today, of the four million workers directly employed in the Bangladesh garment industry, about 85% are women, making

⁴⁰ See Momtaz Jahan, “Women Workers in Bangladesh Garments Industry: A Study of the Work Environment” (2012) 1-3 IJSSST 1 at 2; Shaheen Ahmed & al, *supra* note 38 at 77; US Report, *supra* note 3 at 3; Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 15.

⁴¹ See Rock, *supra* note 13 at 215; Khanna, *supra* note 17 at 109-10.

⁴² See Angela Hale & Jane Wills, “Women Working Worldwide: transnational networks, corporate social responsibility and action research” (2007) 7:4 Global Networks 453 at 457.

⁴³ Hishi Khosla, “The ready-made garments industry in Bangladesh: A means to reducing gender-based social exclusion of women?” (2009) 11:1 Journal of International Women’s Studies 289 at 289.

⁴⁴ See Kabeer, “Cultural Dopes or Rational Fools”, *supra* note 22 at 133; Kabeer, “Dilemmas of Collective (In)action”, *supra* note 30 at 14-15.

⁴⁵ See Amelita King Dejardin, “Gender Dimensions of Globalization” (Discussion paper delivered at the meeting on ‘Globalisation – Decent Work and Gender’, a side-event to the Oslo Conference on Decent Work – A key to Social Justice for a Fair Globalisation, 4 September 2008) at 4; Tiana O’Konek, “Corporations and Human Rights Law: The Emerging Consensus and its Effects on Women’s Employment Rights” (2010-2011) 17 Cardozo JL & Gender 261 at 265.

⁴⁶ See Kabeer, “Dilemmas of Collective (In)action”, *supra* note 39 at 15; Jahan, *supra* note 40 at 1; Khanna, *supra* note 17 at 115.

this industry the largest employer of women in the formal sector.⁴⁷ Most of them are young, below 28 years of age, and migrated to the capital city from poor rural areas.⁴⁸

Many Bangladeshi women choose to work in the garment industry because it is the only sector that offers them formal employment.⁴⁹ Since most women lack marketable skills and are poorly educated and since discrimination continues to pervade Bangladeshi society, their only other choices are to work as domestic servants or sex workers.⁵⁰ As garment workers, they earn a higher salary, are assured a relatively more stable source of income, and work in a safer environment. Furthermore, this form of employment is considered more respectable than informal jobs,⁵¹ initially, industrialists succeeded in making these jobs socially acceptable for women by promising to protect their honour and using spatial segregation between sexes.⁵² There are different reasons why women are driven into the labour market, including “both ‘push’ factors such as poverty, marital breakdown and family conflicts as well as ‘pull’ factors such as the desire to improve one's social and economic standing.”⁵³

With regard to garment factory employers’ preference for hiring women, it is premised on the exploitation of “the comparative advantages of women’s disadvantages.”⁵⁴ The garment sector is highly labour-intensive, and employers know that they need to reduce production costs and be highly productive in order to remain competitive in international markets. Since women have few labour market options and therefore have low bargaining power, they are cheap workers.⁵⁵ They are also more compliant and docile, consenting to enforced periods of overtime work.⁵⁶

Women are mainly employed as sewing operators or helpers.⁵⁷ While they dominate in these

⁴⁷ See Fauzia Erfan Ahmed, “The Rise of Bangladesh Garment Industry: Globalization, Women Workers, and Voice” (2004) 16-2 NWSA J 34 at 34; Jahan, *supra* note 40 at 1; US Report, *supra* note 3 at 3; TIB Report, *supra* note 14 at 3; Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 15.

⁴⁸ See Kabeer, “Dilemmas of Collective (In)action”, *supra* note 39 at 14-15; US Report, *supra* note 3 at 3; Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 15, 24.

⁴⁹ *Ibid* at 15.

⁵⁰ See Fauzia Erfan Ahmed, *supra* note 47 at 40; Rumana Jamaly & Ebel Wickramanayake, “Women Workers in the Garment Industry in Dhaka, Bangladesh” (1996) 6:2 Development in Practice 156 at 157.

⁵¹ *Ibid*; Khanna, *supra* note 17 at 115; Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 35.

⁵² See Fauzia Erfan Ahmed, *supra* note 47 at 38; Khanna, *supra* note 17 at 115.

⁵³ Khosla, *supra* note 43 at 292.

⁵⁴ Kabeer, “Cultural Dopes or Rational Fools”, *supra* note 22 at 134-35.

⁵⁵ See Kabeer, “Cultural Dopes or Rational Fools”, *ibid*; Khanna, *supra* note 17 at 115; Jahan, *supra* note 40 at 1.

⁵⁶ See Kabeer, “Cultural Dopes or Rational Fools”, *supra* note 22 at 134-35; Khosla, *supra* note 43 at 295.

⁵⁷ See War on Want, “Stitched Up”, *supra* note 12 at 2.

production jobs, men usually occupy positions such as production and line managers, or supervisors, illustrating a gendered division within the Bangladesh garment industry.⁵⁸

The large-scale entry of women workers into the industrial sector for garment production is one of the most striking characteristics of Bangladesh's export-led industrialisation.⁵⁹ Women have been and continue to be the driving force of the Bangladeshi garment sector for they provide the necessary labour to meet production requirements.⁶⁰ Given women's history of invisibility in Bangladesh, this is a remarkable phenomenon, despite a gendered division within the industry.

Indeed, the creation of employment in the garment sector granted women numerous advantages over employment in the informal sector, for which prospects are much worse. Their entry into the formal labour market has been viewed as a positive step towards their emancipation and empowerment, "by providing them with a means to gain economic and social independence (...)." ⁶¹ Naila Kabeer, a leading Bangladeshi scholar who has carried out extensive fieldwork in Bangladesh with women garment workers, insists on the importance of acknowledging that, "exploitative as these jobs appear to Western reformers, for many women workers in the South they represent genuine opportunities."⁶² Based on her work in Bangladesh, she found that:

Women valued the satisfaction of a "proper" job in contrast to the casualized forms of employment that had previously been their only options. Their ability to earn on a regular basis gave them a sense of self-reliance, of standing on their own feet. They also valued their access to new social networks on the factory floor, which replaced their previous isolation within the home; the greater voice they exercised in household decision-making because of the value of their economic contribution; their enhanced sense of self-worth; and, in some cases, greater personal freedom and autonomy.⁶³

The premise that employment in the garment sector represents a positive development for Bangladeshi women as pointed out by Kabeer will be at the core of my analysis in the next chapters.

⁵⁸ See Khanna, *supra* note 17 at 115; War on Want, "Stitched Up", *supra* note 12 at 2.

⁵⁹ See Shaheen Ahmed & al, *supra* note 38 at 69; Jahan, *supra* note 40 at 1.

⁶⁰ See War on Want, "Stitched Up", *supra* note 12 at 2.

⁶¹ Awaj Foundation, "Workers' Voice", *supra* note 10 at 17.

⁶² "Dilemmas of Collective (In)actions", *supra* note 30 at 3.

⁶³ *Ibid* at 18-19.

C. Poor working conditions in Bangladesh garment factories

Although the export-oriented industrialization of developing countries has provided women with greater employment opportunities, the global feminisation of the labour market made women the bearers of inferior labour for, in these countries, they are cast at the bottom of global supply chains, where jobs are characterized by low wages and poor working conditions.⁶⁴ Furthermore, due to pervasive gender discrimination within these societies, women are already more vulnerable and these poor conditions often have a greater impact on them in comparison to male coworkers who occupy the same positions. It is also the case of the Bangladesh garment industry: women are overrepresented at the bottom of supply chains, at the production stages. While the majority of Bangladeshi men working in the garment industry perform the better paid, more secure and more empowered jobs, women remain embedded in a highly exploitative context.⁶⁵ Even though the country has made considerable progress with regard to gender discrimination after separating from West Pakistan and gaining its independence, women becoming much more present in the public sphere and especially in the higher strata of the society, it is still ubiquitous in the society at large, and therefore in garment factories, in various forms.⁶⁶

Women garment workers work long hours for poverty wages. The minimum wage in the Bangladesh garment industry is still the lowest in the world for this industry.⁶⁷ In 2013, it was Tk3,000 a month, which is around US\$37, and before the 2010 increase, it was Tk1,662.50, which is around US\$24.⁶⁸ These fall far short of what is considered to be a living wage, which should be enough to meet the fundamental needs of a family. Women are forced to work extra hours to meet the production targets set by the employer, and these are often not considered overtime and are therefore unpaid. They also have to work further paid overtime, sometimes

⁶⁴ See Ruth Pearson, "Beyond Women Workers: gendering CSR" (2007) 28:4 Third World Quarterly 731 at 743.

⁶⁵ See War on Want, "Stitched Up", *supra* note 12 at 1.

⁶⁶ See generally Elora Shehabuddin, "Gender and democratic politics in Bangladesh" in Leela Fernandes, ed, *Routledge Handbook of Gender in South Asia* (Abingdon, Oxon: Routledge, 2014) 70 ("starting with the elections of February 1991, Bangladesh has been in the remarkable position of having two women alternated as prime minister" at 70).

⁶⁷ See SOMO, "Fatal Fashion", *supra* note 10 at 12.

⁶⁸ See Sweatfree Communities, "Enemies of the Nation", *supra* 26 ("Bangladesh garment workers are by far the world's most poorly paid workers (...) monthly minimum wages are US\$66 in Cambodia, US\$90 in Vietnam, US\$130 in India, and US\$166 in China" at 17); Alamgir & al, *supra* note 26 at 1114.

overnight, to provide their family with basic necessities.⁶⁹ A high percentage of women work 10 to 12 hours on a daily basis, and some up to 14 hours. The majority work six days a week, and some even work everyday.⁷⁰ About a third of them work 100 to 140 hours of overtime every month, while another third work 60-100 hours.⁷¹ Yet the monthly pay of almost all garment workers falls short of what is considered to be a living wage, even including overtime.⁷² In addition to being improperly paid, overtime in Bangladeshi factories is often systematic and compulsory. Excessive overtime affects women more than men since they carry out a double burden entrenched in the Bangladeshi culture; in addition to their work at the factory, they must fulfill their daily household chores and reproductive responsibilities.⁷³ Also, women workers often receive a lower wage than their male co-workers who perform the same job as them.⁷⁴

The issue of low wages and long working hours generates transportation and housing problems specific to women. There are no transport facilities or allowances for garment workers, and the transport system involves high costs for them. Women have to walk to work and back home, often late at night as they have to work extra hours, which puts them in a highly vulnerable position. They are often insulted and can face harassment.⁷⁵ Sexual harassment of women workers at night during commuting is recurrent.⁷⁶ With regard to housing problems, many women workers migrated from rural areas to find a job in garment factories, but factory owners do not provide them with housing facilities. Since their wages are very low, they must resort to slums and squatter settlements.⁷⁷ Moreover, housing prices keep increasing non-proportionally to the minimum wage.⁷⁸

⁶⁹ See War on Want, “Stitched Up”, *supra* note 12 at 4.

⁷⁰ See Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 45.

⁷¹ See War on Want, “Stitched Up”, *supra* note 12 at 4.

⁷² See Awaj Foundation, “Workers’ Voices”, *supra* note 10 at 17.

⁷³ See War on Want, “Stitched Up”, *supra* note 12 at 7.

⁷⁴ See Khana, *supra* note 17 at 125; Jahan, *supra* note 40 at 4; Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 42.

⁷⁵ See Jahan, *supra* note 40 at 4-5.

⁷⁶ See Marina Prieto-Carron, “Women Workers, Industrialization, Global Supply Chains and Corporate Codes of Conduct” (2008) 83 *Journal of Business Ethics* 5 at 5; Khosla, *supra* note 43 at 296-97; War on Want, “Stitched Up”, *supra* note 12 at 4, 7.

⁷⁷ See Jahan, *supra* note 40 at 4; Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 17.

⁷⁸ See Ibrahim Hossain Ovi, “As wages rise, so do rents”, *Dhaka Tribune* (27 November 2013), online: Dhaka Tribune <<http://www.dhakatribune.com>> [Hossain Ovi, “As wages rise”]; Jamaly & Wickramanayake, *supra* note 50 at 160.

Inside the factory, women are often victims of verbal, physical, and sexual harassment by employers, supervisors, or management staff, and the nature of these abuses is often based on discriminatory biases.⁷⁹ Verbal abuses like expletives, demeaning remarks, and threats of being dismissed or sent to prison are widespread in factories and make female workers nervous about making mistakes.⁸⁰ Diverse forms of physical abuses such as pulling hair, slapping, hitting the face, and being beaten are commonplace mistreatments reported by women workers, in addition to various forms of punishment like being forced to stand on tables.⁸¹ Sexual harassment of women workers is a constant menace. Women report being spoken to with obscene language, touched inappropriately, forced to undress, subjected to sexual advances, etc.⁸² Overtime work at night puts women in a situation even more menacing as it is at this time that most sexual abuses occur.⁸³ Moreover, the vulnerability of female workers to sexual harassment “gets increased due to the informal recruitment practices, lack of documented proof of employment, the fear of losing one's job, [and] fear of retaliatory violence in response to filing a complaint (...).”⁸⁴

Women workers are commonly denied their basic maternity rights; indeed, factory owners commonly dismiss pregnant women with no maternity benefits.⁸⁵ Thus, many women are compelled to work until the final stages of pregnancy to not lose their salary, compromising their health and that of their child.⁸⁶ Despite the prevalence of women in the factories, childcare facilities and facilities for breastfeeding mothers are scarce.⁸⁷ Overtime and night shifts are of great concern for women with children, especially those with young children who are breastfeeding, as they are separated from them for long periods of time.⁸⁸

Health conditions are very poor in the garment industry. This is partly due to the fact that

⁷⁹ See Khanna, *supra* note 17 at 115; Martin Hearson. “Cashing in: Giant retailers, purchasing practices, and working conditions in the garment industry”, Clean Clothes Campaign (February 2009) at 56, online: Clean Clothes Campaign <<https://archive.cleanclothes.org/resources/ccc/working-conditions/cashing-in>> [CCC, “Cashing in”]; Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 47.

⁸⁰ See Jahan, *supra* note 40 at 4-5; Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 47; War on Want, “Stitched Up”, *supra* note 12 at 6.

⁸¹ See Jahan, *supra* note 40 at 4-5; War on Want, “Stitched Up”, *supra* note 12 at 6.

⁸² See Jahan, *supra* note 40 at 5; War on Want, “Stitched Up”, *supra* note 12 at 6.

⁸³ See Jahan, *supra* note 40 at 4-5.

⁸⁴ Khosla, *supra* note 43 at 296.

⁸⁵ See TIB Report, *supra* note 14 at 5.

⁸⁶ See War on Want, “Stitched Up”, *supra* note 12 at 9.

⁸⁷ See Khanna, *supra* note 17 at 115; Jahan, *supra* note 40 at 4.

⁸⁸ See War on Want, “Stitched Up”, *supra* note 12 at 7-9.

factories were installed in buildings converted into factories. The physical working environment is uncongenial to good health; factory buildings are overcrowded, poorly lit and ventilated, and highly humid and warm. Adequate measures are not in place to control the continuous inhalation of dust and small particles of fabric.⁸⁹ Toilet facilities are inappropriate for women, safe drinking water is often unavailable, and resting places are non-existent.⁹⁰ Workers also suffer various physical injuries due to ergonomic hazards like repetitive movements and awkward postures. Among the health problems associated with garment factory employment, headaches, vision disorders, respiratory difficulties, and musculoskeletal disorders are most commonly reported by women workers. Moreover, women have limited access to quality health care and factories do not have treatment facilities.⁹¹

D. Industrial accidents in the Bangladesh garment industry

Bangladesh has a longstanding history of safety tragedies in garment production. Not surprisingly, most of the victims are women, as they comprise the vast majority of the workforce.⁹² Since the very beginning of the garment sector's rise, accidents have occurred. The first one that really shook the community took place in Dhaka on December 27, 1990, when a fire at the Saraka factory caused the deaths of 25 women and children.⁹³ Numerous other accidents followed, claiming hundreds of lives.⁹⁴ Among these, one of the most significant happened in 2005, when the Spectrum factory, a nine-storey building located in Dhaka, collapsed, killing 64 workers.⁹⁵ In February 2010, a fire at the Garib & Garib Sweater Factory gathered much media attention. 22 workers were killed as a fire broke out for the second time in six months in this factory located in Dhaka. Many died of suffocation since the windows were sealed with heavy

⁸⁹ See Jahan, *supra* note 40 at 3; Khanna, *supra* note 17 at 125.

⁹⁰ *Ibid*; TIB Report, *supra* 14 at 5.

⁹¹ See Alamgir & al, *supra* note 26 at 1114; Jahan, *supra* note 40 at 3.

⁹² See SOMO, "Fatal Fashion", *supra* note 10 at 40.

⁹³ See Khanna, *supra* note 17 at 116.

⁹⁴ In 1996, 22 workers were killed in a fire at Lusaka Garments in Dhaka; In 1997, 20 workers were killed in a fire at Jahanara Fashion in Narayanganj and 24 in a fire at Shanghai Apparels in Dhaka; In 2000, 12 workers were killed in a fire at Globe Knitting in Dhaka and 23 in a fire at Macro Sweater in Dhaka; In 2004, 23 workers were killed in a fire at Chowdhury Knitwear in Narsingdi; In 2005, 23 workers were killed in a fire at Shan Knitting, Narayanganj; In 2006, 62 workers were killed in a fire at KTS Garments in Chittagong and 3 in a fire at Saiem Fashions; In 2010, 25 workers were killed in a fire at Hameem Group factory, in Ashulia, Dhaka (See Sweatfree Communities, "Enemies of the Nation", *supra* note 26 at 14).

⁹⁵ *Ibid*.

metal shutters and exits had been locked by the security personnel to prevent theft by workers.⁹⁶

Workplace safety is very limited in the garment sector, as exemplified by these numerous accidents. Its rapid growth led to the demand for more production capacity in the 1980s, and apartments and other multi-use buildings not meant for manufacturing purposes were hastily converted into garment factories to increase production.⁹⁷ While fire and structural safety standards existed on paper, “Bangladesh’s government had neither the capacity nor the political will to enforce them.”⁹⁸ As a result, garment factories are highly prone to fire accidents. Inadequate electrical systems, malfunctioning machines, and highly inflammable materials used for garment confection are among the risk factors associated to factory fire.⁹⁹ In most cases, fire or emergency exits are absent, firefighting equipment is minimal, no explanation on how to use a fire extinguisher or safety training is given to workers, passages in the factories are very narrow, and the exit doors are locked during work time.¹⁰⁰ The structure of many garment factories is also unsafe, which led to the collapse of several of them. This is due to the fact that buildings were “not built to safely handle large numbers of workers and machines”¹⁰¹ and, often, storeys have simply been added as the demand grew.¹⁰²

More recently, on November 24, 2012, a fire broke out at the Tazreen Fashion factory, in Ashulia, on the outskirts of Dhaka, and led to the death of 112 garment workers.¹⁰³ It was the worst garment industry accident in the history of Bangladesh until that day.¹⁰⁴ When the fire alarm went off, the management staff ordered the employees to keep working to avoid slowdown in production. The flames spread rapidly and workers got trapped as it became impossible to

⁹⁶ See Sweatfree Communities, “Enemies of the Nation”, *supra* note 26 at 14.

⁹⁷ See Günseli Berik & Yana Van Der Meulen Rodgers, “Options for enforcing labour standards: Lessons from Bangladesh and Cambodia” (2010) 22 J Int Dev 56 at 70; Jahan, *supra* note 40 at 3; US Report, *supra* note 3 at 3.

⁹⁸ US Report, *ibid.*

⁹⁹ See Jahan, *supra* note 40 at 3; Khanna *supra* note 17 at 115; “Bangladesh Country Study 2013”, Fair Wear Foundation (2013) at 23, online: Fair Wear Foundation <<http://www.fairwear.org/ul/cms/fck-uploaded/documents/countrystudies/bangladesh/CSBangladesh2013.pdf>> [FWF, “Bangladesh Study 2013”].

¹⁰⁰ See Jahan, *supra* note 40 at 3; FWF, “Bangladesh Study 2013”, *supra* note 99 at 22-23; “Background Study Bangladesh”, Fair Wear Foundation (January 2006) at 58, online: Fair Wear Foundation <http://www.fairwear.org/ul/cms/fck-uploaded/archive/2010-01/bangladesh_fwf_country_study.pdf> [FWF, “Bangladesh Study 2006”].

¹⁰¹ US Report, *supra* note 3 at 3.

¹⁰² See FWF, “Bangladesh Study 2013”, *supra* note 99 at 22.

¹⁰³ “Chronology of recent events in the Bangladesh Ready Made Garment (RMG) sector”, *International Labour Organization* (28 November 2013) online: ILO <www.ilo.org> [ILO, “Chronology”].

¹⁰⁴ See US Report, *supra* note 3 at 5.

reach the main exit on ground level, where the fire started. Moreover, managers had locked the gates on several floors of the factory. Victims died of intoxication, were burned alive, or were killed as they jumped off the six-storey building to escape.¹⁰⁵ The fire was caused by an electrical short circuit, and investigations revealed that regulations had not been followed during construction and that many elements regarding fire safety had not been respected; among others, there were no emergency exits or stairways and there were insufficient fire defence materials.¹⁰⁶ Shortly after, on January 26, 2013, there was another fire in a garment factory in Dhaka, this time at Smart Export Garment, and eight workers died due to locked emergency exits.¹⁰⁷

On April 24, 2013, the Rana Plaza building, which housed five garment factories that employed more than 3,000 workers, collapsed, leading to the death of 1,132 workers.¹⁰⁸ The complex was located in Savar, on the outskirts of the capital. The previous day, the building had been shut down as workers spotted cracks in the walls and pillars. However, the workers were forced to come back to work the following day, some threatened by factories' owners with the hold of their salaries and others with the loss of their jobs.¹⁰⁹ The report of the committee appointed by the government revealed many defects in the construction of the building: it was built on swampy ground, the construction material was of very poor quality, and two floors were illegally added to the six-storey complex. Furthermore, the building was not meant for industrial use. Therefore, the weight and vibrations of the heavy machinery abetted the collapse.¹¹⁰ With such a high death toll, the Rana Plaza tragedy became the deadliest garment industry accident in world history.¹¹¹

According to a report published on November 22, 2013 by the US Committee on Foreign Relations, since the Rana Plaza accident, "at least 27 garment workers have been killed and

¹⁰⁵ See US Report, *supra* note 3 at 2; SOMO, "Fatal Fashion", *supra* note 10 at 39.

¹⁰⁶ *Ibid* at 40-41.

¹⁰⁷ See "Nouvel incendie dans une usine textile du Bangladesh", *RFI* (28 January 2013), online: RFI <<http://www.rfi.fr>>; SOMO, "Fatal Fashion", *supra* note 10 at 40-41; ILO, "Chronology", *supra* note 103.

¹⁰⁸ *Ibid*.

¹⁰⁹ See US Report, *supra* note 3 at 2.

¹¹⁰ See "After Rana Plaza: A report into the readymade garment industry in Bangladesh", Bangladesh All Party Parliamentary Group (2013) at 19, online: University of Westminster <http://www.annemain.com/pdf/APPG_Bangladesh_Garment_Industry_Report.pdf> [BAPPG, "After Rana Plaza Report"]; "Bangladesh factory collapse blamed on swampy ground and heavy machinery", *The Guardian* (23 May 2013), online: The Guardian <<http://www.theguardian.com>>.

¹¹¹ See US Report, *supra* note 3 at 5.

nearly 760 injured in factory fires across Bangladesh.”¹¹² Three days after the release of this report, a fire broke out in the warehouse of a garment factory and injured fifteen workers.¹¹³ Even though the tragedies of Tazreen and Rana Plana provoked global outrage, these events did not impact negatively the growth rate of garment exports from Bangladesh. Foreign buyers still identify the country “as the future of [garment] sourcing for their brands.”¹¹⁴

E. Roadmap of this thesis

This thesis looks at the issue of safety standards and labour rights in the Bangladesh garment industry, through a gendered lens, asking why the legal frameworks both at the international and domestic level have failed to adequately protect women garment workers and whether the legal responses of MNCs and the Bangladeshi state following the collapse of Rana Plaza have the potential to improve these women’s working conditions. It is important to examine these questions since millions of Bangladeshi women are currently facing appalling conditions in their day-to-day factory work, constantly risking their lives. The tragedies of Tazreen and Rana Plaza demonstrate that the labour situation in the Bangladesh garment sector is critical as there is a constant risk that such tragedies will recur and claim more lives. The main concern of this thesis is to improve labour and security standards in the Bangladesh garment industry in order to protect women workers. Furthermore, if another disaster such as Rana Plaza occurs in Bangladesh, it will lead MNCs to terminate business in the country. Thus, what is at stake is foremost the lives and wellbeing of women workers, but it is also their jobs in this industry; that is their future since, as Kabeer points out, these jobs represent a positive development for these women towards their emancipation and empowerment.

This insight from Kabeer’s work in Bangladesh is one of the premises at the basis of this thesis. The main focus of this thesis is therefore to improve safety and labour conditions for these women, but it also aims to preserve jobs created by this industry. As opposed to previous campaigns on child labour that aimed at stopping the work of children in “sweatshops,” this

¹¹² *Supra* note 3 at 2; See ILO, “Chronology”, *supra* note 103; See e.g. “Bangladesh garment factory fire kills at least 10 people”, *CBC News* (8 October 2013), online: CBC News <<http://www.cbc.ca/news/>>.

¹¹³ See “Warehouses of two factories burnt in Savar”, *Dhaka Tribune* (25 November 2013), online: Dhaka Tribune <<http://www.dhakatribune.com>>.

¹¹⁴ US Report, *supra* note 3 at 4.

thesis focuses on solutions that will not have the adverse effect of making it more difficult for these women to secure employment at garment factories.

It is crucial to examine the issue of labour and safety conditions in the Bangladesh garment industry at present because, since the collapse of Rana Plaza, the international eye is on Bangladesh and global pressure has been placed on MNCs and the government to redress the labour situation in the country. It is thus a turning point for the garment sector in Bangladesh that we must take advantage of to tackle labour issues faced by women workers and find sustainable solutions. Legal responses being developed and implemented at the domestic and international level to improve safety and working conditions in garment factories opens the door to genuine improvements for the protection of labour standards in Bangladesh. A lot is at stake for Bangladeshi women since, if there are no improvements, not only will they keep risking their lives, but they will also risk losing their place in the formal employment sector.

Since the 1980s, analysis and critiques have abounded regarding the role of women workers in the garment industry, the impact of MNCs on working conditions at the bottom of global supply chains, the complicity of developing countries' governments, and the limitations of codes of conduct (CoCs) to enhance labour standards at the bottom of these chains. In this thesis, I will look at these issues but in the specific case of Bangladesh. I believe feminist critiques should not consider women workers of developing countries as a unique and coherent group, facing the same problems and having the same needs. Women must be considered in their individuality, forming different groups with different problems and needs. As Mohanty points out, we must acknowledge women's "local cultural and historical contexts (...)." ¹¹⁵ This is essential if we want to make a real change in the material reality of these women who are marginalized and disempowered.

In this thesis, I will also look at the issue of labour rights in the garment industry from a new perspective, as it is claimed by MNCs and the Bangladeshi government that the legal developments following the collapse of the Rana Plaza are different from the previous domestic and international legal frameworks and present improved features. I thus aim to make a

¹¹⁵ Chandra Talpade Mohanty, *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity* (Durham & London: Duke University Press, 2003) at 34.

contribution to the existing literature on labour rights issues in the garment industry by analysing the potential of these new legal developments in comparison to the previous legal frameworks to address labour issues in Bangladesh. Although my analysis is based on the specific case of Bangladesh, it could be extended to future research on other countries facing similar situations.

Before continuing, I will provide the reader with a detailed overview of this thesis. Having set out the relevant background to contextualise my thesis in this chapter, in the next chapters, I will move to the analytic part.

Chapter II is divided in two parts. In Part I, I will examine the power dynamics among MNCs, the Bangladeshi state, and the garment industry, which result in dangerous and poor working conditions for garment workers. In Part II, I will analyse the failure of both the international and domestic legal frameworks to adequately protect women garment workers in Bangladesh.

With regard to Part I of Chapter II, I will first focus on the relationship between MNCs and the Bangladesh garment industry. At the core of this thesis is the theoretical assumption that the restructuring of the garment industry, whereby MNCs outsource their production in developing countries at low cost, has consolidated power and authority at the top of supply chains while simultaneously decreasing it at the bottom due to the fierce competition among suppliers; this has resulted in an industry based on buyer-driven chains instead of the traditional producer-driven chains.¹¹⁶ I will argue that this structure allows MNCs to serve their own interests and to dictate working conditions throughout their global supply chains, down to the lowest segments, which comprises Bangladeshi factories. I will then focus on the relationship between MNCs and the Bangladeshi state. I will look at the state response to the business strategies used by MNCs with regard to labour rights, and I will consider the extent to which it is complicit in an alliance with MNCs to extract maximum work for minimum costs. I will argue that there is a deep nexus between political and business interests in Bangladesh, and, as a result, the state chooses to promote its own interests by sacrificing those of workers, who do not receive their fair share of the trade; it is more interested in retaining business with MNCs than in ensuring safe and decent labour conditions for garment workers.

¹¹⁶ See O’Konek, *supra* note 45 at 264; Hale & Wills, “Threads of Labour”, *supra* note 18 at 5-6, 18.

With regard to Part II of Chapter II, I will first analyse the failure of the international legal framework to protect Bangladeshi women garment workers. I will look at the international soft law instruments pertaining to MNCs and labour standards - which I will call the international soft law framework - and codes of conduct (CoCs). In 1998, the International Labour Organization (ILO) adopted the *Declaration on Fundamental Principles and Rights at Work*,¹¹⁷ thereby stating officially what became the four core labour standards (CLS). The promotion of the CLS has generated strong reactions from labour law scholars as well as feminist critiques with respect to the resulting international labour law regime and the repercussions it had on the accountability of MNCs. Relying on the work of scholars who are leading critiques of the CLS approach with regard to MNCs' responsibility to respect labour standards, such as Philip Alston, Tiana O'Konek, and Juanita Elias, I will consider the weaknesses of the legal framework for MNCs to protect Bangladeshi women. I will argue that the problem mainly lies at the level of implementation. Some authors, such as O'Konek and Elias, have criticized the content of these instruments, arguing that they merely mirror the four CLS, which overlook the reality of women garment workers. Based on the work of Alston, I will suggest that the most serious consequence of the adoption of the CLS is that it gave to MNCs the green light for self-regulation, without any external monitoring. As a result, MNCs now all have their own CoC, but they mainly serve as a public relations tool aimed at enhancing their image rather than concretely improving working conditions at their suppliers' factories. As long as MNCs do not change their business practices and take their responsibilities seriously for labour rights issues in the Bangladeshi factories that produce their clothes, CoCs will remain empty promises. My perspective will also be informed by the work of Naila Kabeer, as her important work with women in Bangladeshi garment factories gave her a clear insight into the issue of labour rights in the specific case of Bangladesh. I will primarily rely on her work to analyse the implementation of CoCs and argue that these have failed to give birth to a culture of compliance in the country.

I will then analyse the failure of the relevant domestic legal framework to adequately protect the rights of garment workers, and particularly women. My perspective will be informed by the work of several scholars who have criticized the Bangladeshi labour law system with regard to the

¹¹⁷ *ILO Declaration on Fundamental Principles and Rights at Work*, 18 June 1998, 86th session [1998 *ILO Declaration*].

protections it ensures garment workers and its enforcement mechanisms. I will argue that, similar to the international legal framework and MNCs, the problem lies mainly at the level of implementation and enforcement, as the government does not fulfill its responsibility as a government to protect individuals on its territory. The *Bangladesh Labour Act 2006* covers most of the important labour areas for women workers, but it is useless if not implemented and enforced. Yet the government puts very little effort into implementing and enforcing the *Labour Act* since it prioritizes encouraging MNCs to renew contracts in the country over ensuring labour rights to garment workers. I will also rely on the work of Kabeer and argue that, if MNCs have not succeeded by means of their CoCs to give birth to a culture of compliance in Bangladesh, neither did the government to give birth to a culture of accountability. I will finally argue that acute problems related to trade unionism in Bangladesh are a serious impediment for female garment workers in their struggle for decent working conditions.

In Chapter III, I will address the legal responses that followed the collapse of Rana Plaza at the international and the domestic level to avoid the repetition of such a tragedy and to improve working conditions in Bangladeshi garment factories. These include a *Joint Statement*¹¹⁸ between the government, workers, and employers in Bangladesh in collaboration with the ILO, the *Accord on Fire and Building Safety*,¹¹⁹ the *European Sustainability Compact*,¹²⁰ the *Alliance for Bangladesh Worker Safety*,¹²¹ the *National Tripartite Plan of Action on Fire Safety and Structural Integrity*,¹²² the ILO programme *Improving Working Conditions in the Ready-Made*

¹¹⁸ *Joint Statement issued by the tripartite partners at the conclusion of the ILO's high-level mission sent to Dhaka, Bangladesh, following the Rana Plaza Building collapse* (Dhaka: 4 May 2013), online: ILO <http://www.ilo.org/global/about-the-ilo/activities/statements-speeches/WCMS_212463/lang--en/index.htm> [*Joint Statement*].

¹¹⁹ *Accord on Fire and Building Safety in Bangladesh*, Bangladesh Accord Foundation, 13 May 2013, online: Accord on Fire and Building Safety in Bangladesh <http://bangladeshaccord.org/wp-content/uploads/2013/10/the_accord.pdf> [Accord].

¹²⁰ *Joint Statement, Staying engaged: A sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh* (Geneva, 8 July 2013), online: IndustriAll: European Trade Union <<http://www.industriall-europe.eu/database/upload/pdf/BanglaEUcompact1.pdf>> [*EU Sustainability Compact*].

¹²¹ *The Alliance for Bangladesh Worker Safety: Statement of Purpose by Leaders of the Alliance for Bangladesh Worker Safety*, Alliance for Bangladesh Worker Safety, 10 July 2013, online: Alliance for Bangladesh Worker Safety <<http://www.bangladeshworkersafety.org/files/Alliance-Action-Plan-Package-FINAL.pdf>> [Alliance].

¹²² BD, Ministry of Labour and Employment, Government of the People's Republic of Bangladesh, *National Tripartite Plan of Action on Fire Safety and Structural Integrity in the Ready-Made Garment Sector in Bangladesh* (25 July 2013) online: International Labour Organization <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/genericdocument/wcms_221543.pdf> [*NTPA Fire Safety & Structural Integrity*].

Garment Sector,¹²³ and the amendments to the *Bangladesh Labour Act 2006*.¹²⁴ My objective is to assess the potential of these responses to strengthen the previous international and domestic legal frameworks, to protect the labour rights of women garment workers in Bangladesh, and to ensure these women safe and decent working conditions. I will argue that, if certain of these responses address the important weaknesses and flaws that led to the failure of the international and domestic legal frameworks, others merely reproduce these very same problematic elements and will ultimately most benefit the interests of their proponents rather than garment workers.

In conclusion, I will address questions that have been raised by my analysis of the failure of both legal frameworks to improve Bangladeshi garment workers' conditions and of the potential of the legal responses following the Rana Plaza collapse. Indeed, the main purpose of this thesis is to call for the rethinking of the entire legal framework for labour standards in the Bangladesh garment industry (both before and after the Rana Plaza disaster) in order to move forward and ensure garment workers, and especially women, a real and extensive protection in the long term, since it is by first challenging institutions in place that we can expect changes and improvements in the future.

Chapter 2 - Legal framework: The power relationships among multinational corporations, the Bangladeshi state and the garment industry, and the failure of the international and domestic legal frameworks

A. The relationships among multinational corporations, the Bangladeshi state, and the garment industry: an assessment of the power dynamics governing this industry

MNCs' relocation of their garment production to Bangladesh created a large number of jobs for women, but these women are cast in jobs at the bottom of global supply chains, where they suffer poor and dangerous conditions. One might wonder who is primarily responsible for these

¹²³ See *Improving Working Conditions in the Ready-Made garment Sector in Bangladesh*, 22 October 2013, a presentation by Srinivas Reddy, Director ILO Country Office in Bangladesh, International Labour Organization, online: International Labour Organization <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/presentation/wcms_226819.pdf> [*ILO programme 2013*].

¹²⁴ *Bangladesh Labour Act*, 2006 (Act No. 42 of 2006) [*Labour Act*]; *Bangladesh Labour (Amendment) Act*, 2013 (Act No. 30 of 2013) [*Amendments 2013*].

conditions. At the forefront, working conditions are determined by suppliers who employ garment workers because they determine the working conditions of their workers. However, two other important and powerful actors influence the way suppliers/employers treat their workers: MNCs and the Bangladeshi state. In the next two sections, I will discuss the role of MNCs and the Bangladeshi state in creating and allowing hazardous and poor working conditions in the garment industry, through a gendered lens.

1. The power dynamics between multinational corporations and the Bangladesh garment industry: Buyer-driven supply chains

The restructuring of the garment industry has increased power at the top of MNCs' supply chains while simultaneously decreasing it at the bottom.¹²⁵ Since MNCs began to relocate their garment production to developing countries, they constantly move to locations where labour is cheaper and where they can have sub-standard working conditions in order to maximize their profits.¹²⁶ The growth in the number of suppliers combined with the threat by MNCs to end business relationships has resulted in intense competition among suppliers, who are under great pressure to attract and renew contracts for MNCs' orders.¹²⁷ The industry is nowadays based on buyer-driven chains instead of previous producer-driven chains. Power and authority are consolidated in the hands of MNCs, which therefore have the ability to directly dictate working conditions throughout their global supply chains.¹²⁸

In Bangladesh, garment suppliers rely almost exclusively on contracts placed by MNCs since the industry is mainly locally owned and primarily export-oriented.¹²⁹ Their strategy to get MNCs' orders is to reduce their production costs and to deliver high efficiency, while satisfying quality standards.¹³⁰ This is all achieved by passing on the pressure to the garment workers, which has

¹²⁵ See O'Konek, *supra* note 45 at 263-64.

¹²⁶ See Chris Manning, "Does Globalisation Undermine Labour Standards? Lessons From East Asia" (1998) 52:2 AJIA 133 at 133.

¹²⁷ See Tugce Bulut & Christel Lane, "The Private Regulation of Labour Standards and Rights in the Global Clothing Industry: An Evaluation of its Effectiveness in Two Developing Countries" (2011) 16:1 New Political Economy 41 at 46; Oxfam, "Trading away our rights", *supra* note 19 at 38.

¹²⁸ See Hale & Wills, "Thread of Labour", *supra* note 18 at 5-6, 18; O'Konek, *supra* note 45 at 264.

¹²⁹ See Rock, *supra* note 13 at 215-16; Sweatfree Communities, "Enemies of the Nation", *supra* note 26 at 11; FWF, "Bangladesh Study 2006", *supra* note 100 at 9.

¹³⁰ See Kabeer, "Cultural Dopes or Rational Fools", *supra* note 22 at 134; Rock, *supra* note 13 at 215-16.

even more negative effects on female workers for they are already more vulnerable due to the pervasive gender discrimination within the Bangladeshi society and also within factories.¹³¹ As explained in a report by the Clean Clothes Campaign, “[d]iscrimination within the factory means that [women] are earning less to start with, and that they bear the brunt of supervisors’ abuse in the tense atmosphere created by time and cost pressure.”¹³²

Some giant MNCs induce competition among their suppliers, including Bangladeshi suppliers, through online auctions. The latter have to register to an electronic system to access the orders’ details. They can then take part in a real-time auction to obtain the contracts. Other MNCs prefer to select a list of suppliers to whom they send by email the orders with a target price. These suppliers can then propose their own price and compete online for the lowest price with the others suppliers listed. Suppliers knowing what others are offering maximizes the competition among them. There is little room for proper negotiation. Placing orders in this way results in driving down prices and terms of contracts, allowing giant MNCs to obtain the cheapest options at the expense of workers.¹³³ As noted in a report by the Clean Clothes Campaign, “[u]sing their size to dominate suppliers and push them into offering lower prices is how the Giants do business.”¹³⁴ Even though the minimum wage has risen in the last thirty years in Bangladesh, the price paid by MNCs for clothes has not correspondingly increased.¹³⁵

All this pressure to compete results in a race to the bottom whereby suppliers offer lower and lower prices due to MNCs purchasing practices, inevitably resulting in ever poorer working conditions in Bangladeshi garment factories: extremely low wages, excessive overtime, and flexible labour (that features instability, contractual employment, and easy dismissal). For suppliers who own smaller factories, it is a matter of necessity in order to remain in business, but for those who own the biggest factories producing in large quantities, it is a matter of generating

¹³¹ See Khanna, *supra* note 17 at 108; Khosla, *supra* note 43 at 196-97; Murray Worthy, “Race to the bottom: Olympic sportswear companies’ exploitation of Bangladeshi workers”, War on Want (March 2012) at 12, online: War on Want <<http://www.waronwant.org/attachments/Race%20to%20the%20Bottom.pdf>> [War on Want, “Olympic sportswear companies”]; Martin Hearson, “Cashing in: Giant retailers, purchasing practices, and working conditions in the garment industry”, Clean Clothes Campaign (February 2009) at 51, online: Clean Clothes Campaign <<https://archive.cleanclothes.org/resources/ccc/working-conditions/cashing-in>> [CCC, “Cashing in”].

¹³² CCC, “Cashing in”, *ibid* at 56.

¹³³ See CCC, “Cashing in”, *ibid* at 47-48, 51.

¹³⁴ CCC, “Cashing in”, *ibid* at 5.

¹³⁵ See CCC, “Cashing in”, *ibid* at 50.

as much profit as possible. Fast-paced delivery is a decisive criterion in granting contracts and MNCs impose tight shipment deadlines for large orders. According to a report by War on Want, “almost all garment workers’ wages are based on meeting production targets. These targets are in turn used as a powerful tool by managers to keep workers in factories beyond their legal working hours.”¹³⁶ To satisfy MNCs’ requirements, suppliers set unrealistically high targets, forcing workers to put in overtime if they want to receive their salary or merely keep their job. The tendency towards flexible labour is due to the seasonality of MNCs’ orders. Their orders follow the fashion seasons, which generates both intensive periods of production and very low periods depending on the time of the year. To cope with this, garment owners recruit more workers for the high season, who are in turn laid off during lower seasons.¹³⁷ They commonly do not provide these workers with an employment contract, and it is therefore easy to dismiss them without a notice period and the obligation to pay them the benefits they would be entitled to.¹³⁸ Suppliers mainly use women to fulfill these unstable jobs since they can be dismissed without much protest.¹³⁹ Moreover, without proof of employment, women’s vulnerability to sexual harassment is increased.¹⁴⁰

The pressure exerted by MNCs’ purchasing practices on their suppliers is also one of the main causes for inadequate attention being paid to safety issues in Bangladeshi garment factories. Since MNCs pay very low prices for their orders, suppliers are unwilling, if not unable, to make the necessary investments to adequately ensure building safety. Suppliers do not want to give up their profit margins, and, for those owning smaller factories, they simply cannot afford such expenses. This results in great risks of factory fire, and, to make matters worse, they can only afford minimal firefighting equipment.¹⁴¹ In addition, suppliers do not want or cannot afford to rent space in buildings that are safe and suitable to house garment factories. To reduce their costs, they rent space in buildings that were not meant for industrial purposes, which leads to higher risks of structural accidents, and these buildings often do not have fire or emergency exits and

¹³⁶ War on Want, “Stitched Up”, *supra* note 12 at 6.

¹³⁷ See War on Want, “Stitched Up”, *ibid* at 6; CCC, “Cashing in”, *supra* note 131 at 48-51.

¹³⁸ See Khanna, *supra* note 17 at 125; War on Want, “Stitched Up”, *supra* note 12 at 5.

¹³⁹ See Kabeer, “Cultural Dopes or Rational Fools”, *supra* note 22 at 134-35.

¹⁴⁰ See Khanna, *supra* note 17 at 125; Khosla, *supra* note 43 at 296.

¹⁴¹ See Berik & Rodgers, *supra* note 97 at 81; Jahan, *supra* note 40 at 3; Khanna, *supra* note 17 at 115; SOMO, “Fatal Fashion”, *supra* note 10 at 15; FWF, “Bangladesh Study 2006”, *supra* note 100 at 23.

passages are very narrow.¹⁴²

However, global supply chains are much more complex than a direct business relationship between MNCs and their suppliers. MNCs' business practices do not only adversely affect workers at their direct suppliers' factories. Many MNCs use mid-chain suppliers, who are either local or foreign agents operating in the country where MNCs do business to manage the production operations and entrust the orders to suppliers. At this level, the link between MNCs and their lead suppliers remains quite definite. However, it is at lower levels that supply chains become much less clear. In the case of Bangladesh, it is around 30 percent of garment factories outside the EPZs that deal directly with buyers or their supplying agents. The rest of the factories run mainly on orders subcontracted to them by larger factories.¹⁴³ Extensive subcontracting within Bangladesh garment industry results in dense and intricate networks of suppliers.¹⁴⁴

Bangladeshi suppliers who secured the orders initially must resort to subcontracting due to the way MNCs do business. Their relationships with MNCs are generally unstable as the latter constantly shift their production from supplier to supplier to obtain contracts' terms that are more profitable to them. Instead of building long and stable business relationships with their suppliers, MNCs just look for the cheapest options.¹⁴⁵ As suppliers cannot be assured of a long-term commitment from buyers and are thus uncertain about getting future orders, and as they must offer cheap prices to get these orders which leaves them with thinner profit margin, they must compete for each and every order. They therefore face an overload of work during intensive periods of orders and have no other choice but to resort to subcontracting. In addition to the seasonality, the size and urgency of orders also contribute to this trend as MNCs often expand the volume of their orders with very short notice.¹⁴⁶

The Bangladesh garment industry can be differentiated in general into three segments, in which somewhat different conditions prevail for workers. The "first tier" factories are the largest and are

¹⁴² See Jahan, *supra* note 40 3.

¹⁴³ See Kabeer, "Dilemmas of Collective (In)action", *supra* note 30 at 15.

¹⁴⁴ See Rock, *supra* note 13 at 215; Hurler & Miller, *supra* note 20 at 23; Stephanie Barrientos, "Global Production Systems and Decent Work" (Geneva, May 2007) Working Paper No. 77, Policy Integration Department, International Labour Office at 19.

¹⁴⁵ See SOMO, "Fatal Fashion", *supra* note 10 at 15.

¹⁴⁶ See CCC, "Cashing in", *supra* note 131 at 48, 51.

found in the EPZs. They have a direct relationship with MNCs and working conditions are higher. However, these represent less than 10 percent of the total employment in the sector. The “second tier” factories are located outside the EPZs and their size varies from large to medium. They receive the orders directly from MNCs or their agents and present generally better conditions. The “third tier” factories, which account for the rest of the industry, are often smaller, and they are low grade. They do not have a direct relationship with MNCs, but rely mainly on subcontracted orders that larger factories pass on to them. “This segment of the industry merges imperceptibly into the informal economy.”¹⁴⁷ It is in this segment that the worst conditions predominate. In most cases, profit margins of these suppliers are much thinner as they are at a lower level in the supply chain (which pushes suppliers to put even more pressure on workers), but there are also third tier suppliers who make wide profit margins due to their great production capacity, which allows them to take a large quantity of subcontracted orders.¹⁴⁸ These third tier factories are commonly unlicensed to operate in the international market.¹⁴⁹ Their production should not be destined for export as they do not have an Export Registration Certificate provided by the Office of the Chief Controller of Imports and Exports of Bangladesh.¹⁵⁰ Some are not even registered with the government as garment producers and are operating without authorization; these remain illegal undetected factories.¹⁵¹ Yet this does not hamper licensed export factories that deal directly with MNCs from making use of these unlicensed subcontracting factories.¹⁵²

¹⁴⁷ Kabeer, “Dilemmas of Collective (In)action”, *supra* note 26 at 15.

¹⁴⁸ See Kabeer, “Dilemmas of Collective (In)action”, *ibid*; Khanna, *supra* note 17 at 113-14.

¹⁴⁹ See Naila Kabeer, “Compliance Versus Accountability: Struggles for Dignity and Daily Bread in the Bangladesh Garment Industry” (2003) 29:3-4 *Bangladesh Development Studies* 21 at 42 [Kabeer, “Compliance Versus Accountability”]; FWF, “Bangladesh Study 2006”, *supra* note 100 at 13; BAPPG, “After Rana Plaza Report”, *supra* note 110 at 45.

¹⁵⁰ To obtain an Export Registration Certificate by the Office of the Chief Controller of Imports and Exports of Bangladesh, factory owners must, among other requirements, be a member of a recognized Trade Association (like BGMEA) and have a Trade Licence from the government (See CCI&E: Office of the Chief Controller of Imports and Exports, The Government of the People’s Republic of Bangladesh, online: CCI&E <<http://www.ccie.gov.bd/index.php>>; Bangladesh National Web Portal, The Government of the People’s Republic of Bangladesh, online: Bangladesh National Web Portal <<http://www.bangladesh.gov.bd>>).

¹⁵¹ See FWF, “Bangladesh Study 2013”, *supra* note 99 at 23.

¹⁵² See FWF, “Bangladesh Study 2006”, *supra* note 100 at 13.

2. The power dynamics between multinational corporations and the Bangladeshi state: The complicity of the state

Scholars have demonstrated that developing countries where MNCs have relocated their garment production generally have neither the capacity nor the willingness to carry out their legal duty by effectively imposing strict labour standards on factory owners supplying MNCs to protect their workers from labour rights abuses.¹⁵³ The intense competition generated by globalization among countries aiming to produce and export garments in order to strengthen their economies has pushed states to secure their position in the global garment industry by exploiting their abundant workforce, which has been resulting in a race to the bottom in term of labour standards and decent wages. MNCs are most attracted to states with low minimum wages and a corresponding weakening of national labour laws, in addition to a reluctance to enforce these laws.¹⁵⁴ Not surprisingly, there has been an accelerated trend towards the denial of labour rights and an increasing de-protection and deregulation of labour in garment producer countries. Therefore, one could argue that these states are complicit in MNCs' abuses to extract maximum profits by exploiting workers.¹⁵⁵

In the case of Bangladesh, the strategy of the government in its quest to expand its garment exports is firstly to offer the cheapest labour by remaining at the bottom wage in the global garment industry.¹⁵⁶ Bangladesh has the lowest minimum wage and ranks considerably lower than the next cheapest labour market, for which production is about 10-15% more costly.¹⁵⁷ It could thus consider raising wages and remain the cheapest country. Yet the government has neither considerably nor sufficiently increased wages because, since it identifies low wage labour

¹⁵³ See Lena Ayoub, "Nike Just Odes It – And Why the United States Shouldn't: The United States' International Obligations to Hold MNCs Accountable for Their Labor Rights Violations Abroad" (1999) 11 DePaul Bus LJ 395 at 422-23; Claire A. Cutler, "Critical reflections on the Westphalian assumptions of international law and organization: a crisis of legitimacy" (2001) 27 Review of International Studies 133 at 146; Juanita Elias, "International labour standards, codes of conduct and gender issues: A review of recent debates and controversies" (2003) 3 Non-State Act & Int'l L 283 at 283 [Elias, "A review of recent debates"].

¹⁵⁴ See Berik & Rodgers, *supra* note 97 at 58-59; Nazneen Ahmed & Jack H.M. Peerlings, "Addressing Workers' Right in the Textile and Apparel Industries: Consequences for the Bangladesh Economy" (2009) 37:3 World Development 661 at 661; Kanchana N. Ruwanpura, "Women workers in the apparel sector: a three decade (r)-evolution of feminist contributions?" (2011) 11:3 Progress in Development Studies 197 at 205 [Ruwanpura, "a three decade (r)-evolution"].

¹⁵⁵ See Oxfam, "Trading away our rights", *supra* note 19 at 45.

¹⁵⁶ See Berik & Rodgers, *supra* note 97 at 56, 61-62; BAPPG, "After Rana Plaza Report", *supra* note 110 at 40.

¹⁵⁷ See Berik & Rodgers, *supra* note 97 at 61-62; SOMO, "Fatal Fashion", *supra* note 10 at 12; BAPPG, "After Rana Plaza Report", *supra* note 110 at 26.

as its main asset value for MNCs' preference to source garments from the country, it is not willing to take the risk of losing orders.¹⁵⁸ Also, higher wages could lead to a reduction in employed labour, which in turn would lead to less production, and the government strongly fears undercutting its profits.¹⁵⁹ As the government sets the minimum wage, it claims that it is calculated in a way to "balance the interests of poor workers with (...) the need to remain competitive in a global market dominated by multinational retailers and brands, as well as the demands of their domestic garment manufacturers. As a result, minimum wages often bear little relation to the cost of living, and fall far short of what garment workers say is a living wage."¹⁶⁰

A very few MNCs have tried to establish a dialogue with the government of Bangladesh over the last few years to address the minimum wage issue because of the increasing unrest in the industry, which could damage their reputation, in addition to slowing down production. Yet "[t]he attempts by these few brands to use their leverage to engage with government in this instance proved ineffective. (...) [T]heir leverage was diminished by the fact that though unsatisfied, these brands continued to source large volumes from the [garment] sector and benefit from the low unit costs."¹⁶¹ Unsurprisingly, the government has not responded to these calls for increasing the wage.

The strong pressure induced by MNCs' way of doing business that Bangladesh experiences has also led the country to a poor adherence to domestic labour regulations, which further reduces production costs and thereby strengthens Bangladesh's comparative advantage.¹⁶² However, Bangladesh has not been dismantling its domestic legislation like other countries chose to do, except in export processing zones (EPZs). Significantly, it enacted the *Labour Act* in 2006,¹⁶³ which includes greater protection for workers than did the previous *Factories Act 1965*.¹⁶⁴ The major problem is rather that the country is marked by a culture of weak adherence by suppliers to

¹⁵⁸ See BAPPG, "After Rana Plaza Report", *supra* note 110 at 34.

¹⁵⁹ See Ahmed & Peerlings, *supra* note 154 at 661; BAPPG, "After Rana Plaza Report", *supra* note 110 at 15.

¹⁶⁰ CCC, "Cashing in", *supra* note 131 at 29-30.

¹⁶¹ BAPPG, "After Rana Plaza Report", *supra* note 110 at 34.

¹⁶² See Berik & Rodgers, *supra* note 97 at 68.

¹⁶³ *Labour Act*, *supra* note 124.

¹⁶⁴ *Factories Act*, 1965 (Act No. 4 of 1965) [*Factories Act*].

labour standards, and the government is unenthusiastic about the enforcement of its labour laws, turning a blind eye on labour abuses.¹⁶⁵

MNCs are equally responsible for this lack of enforcement and these insufficient wages by taking advantage of Bangladesh's low production costs, "in the full knowledge that workers in the Bangladeshi garment industry are regularly denied their basic rights,"¹⁶⁶ thus encouraging the state to pursue this race towards ever lower wages and lax labour standards and to ignore safety issues. Despite problems with labour standards compliance and numerous fire and industrial accidents, which could have made Bangladesh an unwanted business partner, the cost factor alone keeps prompting MNCs to do business in the country, allowing MNCs to take advantage of this gap in labour standards enforcement, which further reduces production costs.¹⁶⁷

However, even though MNCs have a great influence over labour standards in Bangladesh, they remain businesses; MNCs do not have the same legal duty as the Bangladeshi state to protect garment workers, and their motivation for improving working conditions is mainly to safeguard their reputation.¹⁶⁸ The Bangladeshi state, for its part, has a duty to respect, protect, and fulfil the rights of workers within its territory based on its international human rights and labour law obligations, including a duty to protect them against abuses by third parties, which comprise MNCs.¹⁶⁹ According to Kabeer, "[w]hile the interest of [MNCs] is focused on profits and working conditions in the export sector of Bangladesh, the state is, in principle, responsible for promoting the economic growth of the country *and the welfare of its citizens.*"¹⁷⁰ However, Bangladesh fails to fulfill its obligations and becomes complicit in the exploitation of garment workers by MNCs.¹⁷¹

While the government of Bangladesh claims that keeping the minimum wage low ensures the growth of the garment industry and is generally good for the national economy, garment workers

¹⁶⁵ See Berik & Rodgers, *supra* note 97 at 57, 61-62; War on Want, "Stitched Up", *supra* note 12 at 2.

¹⁶⁶ War on Want, "Stitched Up", *supra* note 12 at 10.

¹⁶⁷ See War on Want, "Stitched Up", *ibid*; BAPPG, "After Rana Plaza Report", *supra* note 110 at 26.

¹⁶⁸ *Ibid* at 33.

¹⁶⁹ See HRC, *Protect, Respect and Remedy: a Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*, UN Doc A/HRC/8/5, 7 April 2008 at paras 27-32 [*Protect, Respect and Remedy Framework*]; SOMO, "Fatal Fashion", *supra* note 10 at 11.

¹⁷⁰ Kabeer, "Compliance Versus Accountability", *supra* note 149 at 27 [emphasis added].

¹⁷¹ See Ruwanpura, "a three decade (r)-evolution", *supra* note 154 at 199.

are far from getting their fair share of the trade benefits. Yet the garment industry had “a greater potential than any other sector to contribute to the reduction of poverty in Bangladesh. The sector rapidly became important in terms of employment, foreign exchange earnings and its contribution to Gross Domestic Product (GDP).”¹⁷² Despite the success of the industry, the country remains plunged into utter poverty. Although garment workers have employment, they remain very poor, in addition to facing unsafe working conditions. Indeed, the government sacrifices the workers for profits, from which workers themselves are excluded.

So one must ask who then reaps the benefits from the garment industry in Bangladesh. Neoliberal reforms and the lack of distributional justice have resulted in the enrichment of the business and industrial class and the widening of disparities in income and wealth between this class and the working class. Benefits are not distributed among the different societal groups composing the industry, and the growth of the industry has fashioned a new millionaire class in the country, consisting of owners of the most important garment factories.¹⁷³ Owners of the biggest factories, dealing directly with MNCs or a few receiving subcontracted orders, have become “a small group of 40 to 50 families who effectively control the total industrial and financial assets of this poor nation.”¹⁷⁴ Even though their profit margin is thin in comparison with that of MNCs, they still make considerable profits at the expense of garment workers. This elite excludes owners of smaller factories, whose business is not as profitable, with a very low profit margin, and who are thus not as powerful.

Most importantly, this small and powerful elite group has become a major political force.¹⁷⁵ It not only dominates the garment industry and the economy of the country, but also the political institutions of the state, which have authority over the garment industry.¹⁷⁶ The enormous political influence wielded by these powerful garment owners is in reality the first factor behind

¹⁷² Ferdous Ahamed, “Background of History of Bangladesh and Ready-made Garment Industry: Key Challenges in the RMG Industry” (2013) 8:1 Middle East Journal of Business 33 at 33.

¹⁷³ See Fauzia Erfan Ahmed, *supra* note 47 at 43.

¹⁷⁴ David T. Rowlands, “Bangladesh: What Has Changed After Rana Plaza?”, *Green Left Weekly* (3 August 2013), online: Green Left Weekly <www.greenleft.org>.

¹⁷⁵ See Shahidur Rahman, *Broken Promises of Globalization: The Case of the Bangladesh Garment Industry* (Plymouth UK: Lexington Books, 2014) at 97.

¹⁷⁶ See Ataur Rahman Belal, “A study of corporate social disclosures in Bangladesh” (2001) 16:5 Managerial Auditing Journal 274 at 277.

the lack of political will to address labour abuses and the extreme poverty of garment workers.¹⁷⁷ Moreover, the garment industry is highly politicized; both the government and the parliament are directly and indirectly run by factory owners, which greatly explains the state's greed for profits.¹⁷⁸ This is thus a three-way equation: There is a nexus between this elite of factory owners and MNCs, who both act in a way to serve their own interest and maximise their profits, and another deep nexus between the business interests of this elite and those of the political class of Bangladesh. All of this takes place at the expense of garment factory workers, whose interests are marginalised.

With regard to the government, many ministers directly own garment factories, and, as for the parliament, an estimated 10% of current Members of Parliament are garment factory owners and at least 56% admit to being engaged in the garment business.¹⁷⁹ Nearly the entirety of the other official and elected representatives have close ties to the industry and get indirect benefits from it since they have family members and relatives who are engaged in the garment industry.¹⁸⁰ Therefore, the government rules in a way to cater to the personal interests of its members involved in the industry, and the parliament can influence government decisions in the interest of its members.¹⁸¹ Members of Parliament are also the ones who approve legal changes and they can create obstacles to positive reforms if they could harm the business.¹⁸² The status quo can thereby be maintained despite appalling working conditions in garment factories, while profits are kept in the hands of the business elite.

The Bangladeshi elite of factory owners can also exert political influence without being members of the government and parliament or using their family ties with politicians.¹⁸³ Being the richest strata of the society, they have strong bargaining power and thereby exercise significant control

¹⁷⁷ See US Report, *supra* note 3 at 4.

¹⁷⁸ See BAPPG, "After Rana Plaza Report", *supra* note 110 at 15.

¹⁷⁹ See FWF, "Bangladesh Study 2006", *supra* note 100 at 29; TIB Report, *supra* note 14 at 6; Jahan, Rounaq, "The Parliament of Bangladesh: Challenges and way forward", *The Daily Star* (3 June 2012), online: [The Daily Star <http://www.thedailystar.net>](http://www.thedailystar.net).

¹⁸⁰ See US Report, *supra* note 3 at 4; TIB Report *supra* note 14 at 6.

¹⁸¹ *Ibid*; FWF, "Bangladesh Study 2006", *supra* note 100 at 29.

¹⁸² See TIB Report, *supra* note 14 at 6.

¹⁸³ See US Report, *supra* note 3 at 4.

over government decisions, through pervasive collusion and corruption.¹⁸⁴ They are granted special privileges by politically influential actors in return for their support, often to generate party funds and bear the costs of elections.¹⁸⁵ This business environment also encourages owners of all size of factories not to care about labour standards issues.¹⁸⁶

Due to this nexus between political and business elites, corruption is widespread in the political system and the garment industry in Bangladesh, and it keeps increasing. In the 2013 Transparency International Corruption Perceptions Index, Bangladesh was classified 136 out of 177 countries.¹⁸⁷ This represents a highly problematic situation for garment workers, who are the ones who pay the price for this pervasive and costly corruption.¹⁸⁸

Thus, while the economic development of Bangladesh based on the garment industry might be impressive, the high level of politicization of this industry, the influence and strong bargaining power of the factory owner elite, and the widespread corruption result, for garment workers, in a tremendous lag in wages, working conditions, and safety at work.¹⁸⁹ Indeed, the rule of law is very weak in Bangladesh and workers do not have the power to challenge the government about it. In the terms of Kabeer, the vertical “state-society relations” are not democratized in Bangladesh.¹⁹⁰ The “state-society relations” are characterized by this unwillingness and even incapacity on the part of the state to guarantee the basic rights of its citizens despite the formal recognition of these rights. Not all citizens have their rights recognized based on their place in the society, to the advantage of powerful elites.¹⁹¹ These elites can thereby make exploitive use of the labour of the poorest and most vulnerable people in “patron-client relationships” and keep control over the country’s resources.¹⁹² Poor and vulnerable people have no other option than to bind themselves into these highly unequal relationships because they are in a survival mode; they are

¹⁸⁴ See Rahman Belal, *supra* note 176 at 277; TIB Report, *supra* note 14 at 9; FWF, “Bangladesh Study 2006”, *supra* note 100 at 10.

¹⁸⁵ See Kabeer, “Compliance Versus Accountability”, *supra* note 149 at 24; Shahidur Rahman, *supra* note 175 at 97.

¹⁸⁶ See Rahman Belal, *supra* note 176 at 286; BAPPG, “After Rana Plaza Report”, *supra* note 110 at 15.

¹⁸⁷ See Transparency International, *Corruption Perceptions Index 2013*, online: Transparency International <<http://www.transparency.org>>.

¹⁸⁸ See Rahman Belal, *supra* note 176 at 277-78; FWF, “Bangladesh Study 2006”, *supra* note 100 at 10.

¹⁸⁹ See Rahman Belal, *supra* note 176 at 286; BAPPG, “After Rana Plaza Report”, *supra* note 110 at 15.

¹⁹⁰ See Naila Kabeer, “Citizenship narratives in the face of bad governance: the voices of the working poor in Bangladesh” (2011) 38:2 *The Journal of Peasant Studies* 325 at 326 [Kabeer, “Citizenship narratives”].

¹⁹¹ *Ibid* at 325-26.

¹⁹² *Ibid* at 326-27.

uncertain of being able to meet their basic needs on a daily basis, and it is only through these “patron-client relationships” that they have a chance to secure their ability to fulfill their primary needs, in exchange for labour and loyalty.¹⁹³ According to Kabeer, “[s]urvival and prosperity does indeed require conforming to the rules of the game and hence remaining imprisoned within these rules.”¹⁹⁴ Yet these rules are based on the power relations in the country and not on the rule of law.

The Bangladesh Garment Manufacturer and Exporters Association (BGMEA) is the most important organisation in the export garment industry of Bangladesh, representing export-oriented garment suppliers, and, as an organisation, it commands important political clout.¹⁹⁵ According to its main function, the BGMEA should ensure the interests and rights of both suppliers and workers, and it should be lobbying for the interests of the garment industry as a whole.¹⁹⁶ However, as an association of factory owners, it tends to promote their interests first, and it “has historically opposed reforms that would give workers more rights.”¹⁹⁷ Members and BGMEA lobbyists use their political leverage to influence laws and policies in the interests of factory owners.¹⁹⁸ It even sometimes has more control over factory owners than the government itself; owners may refuse orders by the government to remedy to address labour abuses, but they become more receptive to fulfill these same orders when required by the BGMEA, which uses the threat of revoking their certification for export as a member of the organisation.¹⁹⁹ Indeed, to obtain an Export Registration Certificate issued by the government and legally supply MNCs, one of the conditions is to be a member of a recognized trade association, like the BGMEA.²⁰⁰

The Bangladesh garment industry is therefore characterized by deeply unequal power relationships from both an international and a domestic perspective, and MNCs and their Bangladeshi elite collaborators take advantage of their position of power to serve their own

¹⁹³ See Kabeer, “Citizenship narratives”, *supra* note 190 at 326.

¹⁹⁴ “Citizenship narrative”, *supra* note 190 at 352.

¹⁹⁵ See generally BGMEA website, *supra* note 14; See FWF, “Bangladesh Study 2013”, *supra* note 99 at 10; TIB Report, *supra* note 14 at 6.

¹⁹⁶ *Ibid*; US Report, *supra* note 3 at 4.

¹⁹⁷ US Report, *ibid*.

¹⁹⁸ See TIB Report, *supra* note 14 at 6.

¹⁹⁹ See US Report, *supra* note 3 at 4.

²⁰⁰ See *supra* note 150 and accompanying text.

interests and satisfy their greed for profits.²⁰¹ Garment workers are by far the weakest actors among these power struggles. Despite the impressive growth of the garment industry in Bangladesh, which has been carrying with it the promise to leverage the country out of extreme poverty, exploited workers do not receive their fair share of the trade and remain the poorest and most vulnerable group.²⁰² In Part II of this chapter, I will turn to the relevant legal frameworks for labour standards both at the international and domestic level, and I will examine why these frameworks have failed to protect garment workers, and especially female workers, from the actions of these powerful actors and to ensure them safe and decent working conditions.

B. Failure of the international and domestic legal frameworks

1. International and domestic legal frameworks

a. International legal framework

International soft law instruments

During the 1980s, MNCs' power rapidly increased and spread globally. However, international law is state-centered and it is states that are the subjects of international law. If they consent to be bound, they have duties that are enforceable against them. On the other hand, MNCs are non-state actors and are considered objects of international law. They have no original duties under international law and therefore international treaties regarding human rights and labour standards do not directly regulate their practices. They are not accountable under international law, and their actions are not imputable to states. They only have responsibilities deriving from states' international engagements and domestic law, which are enforceable by states. However, as MNCs began to outsource their production in developing countries and operate in global spaces, thereby transcending national boundaries to become transnational, enforcement by states has become impractical if not impossible. This has resulted in the emergence of a governance deficit at a global level.²⁰³

As concerns were raised over poor working conditions at the bottom of MNCs' supply chains,

²⁰¹ See Rowlands, *supra* note 174.

²⁰² See BAPPG, "After Rana Plaza Report", *supra* note 110 at 28.

²⁰³ See O'Konek, *supra* note 45 at 261.

“there [had] been calls for international regulatory action aimed at bringing MNCs to account in the areas of labour and human rights standards.”²⁰⁴ Despite the pressure for international legally binding standards for MNCs, no legally binding instruments could be adopted. However, the efforts of international organizations led to the adoption of a number of non-legally binding instruments for MNCs and labour standards since the 1970s. These instruments endeavour to regulate the behaviour of MNCs but are of soft law nature, which means that “they are not legally binding and do not have any enforcement mechanisms but they aim to establish principles and standards of good practices.”²⁰⁵ The adoption of these soft law instruments resulted in what I call the international soft law framework for MNCs.

In 1976, the Organization for Economic Cooperation and Development (OECD) adopted the *Guidelines for Multinational Enterprises*, which have been reviewed in 2000 and in 2011.²⁰⁶ They stipulate voluntary principles and standards for responsible business conduct in different fields, including labour.²⁰⁷ These guidelines apply to MNCs operating in or from countries that are members of the OECD.²⁰⁸ With respect to their implementation, governments have to create National Contact Points for handling enquiries and complaints. When these cannot solve an issue, they should submit it to the Investment Committee for it to provide clarifications without naming the particular MNC.²⁰⁹

In 1977, the ILO adopted the *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*,²¹⁰ covering a comprehensive set of aspects related to labour and enunciating principles to be observed on a voluntary basis.²¹¹ It was developed by the three

²⁰⁴ Elias, “A review of recent debates”, *supra* note 153 at 290-91.

²⁰⁵ Elena Pariotti, “International Soft Law, Human Rights and Non-state Actors: Towards the Accountability of Transnational Corporation?” (2009) 10 Human Rights Review 139 at 145; See Cutler, *supra* note 153 at 146.

²⁰⁶ OECD, *OECD Guidelines for Multinational Enterprises* (2011), online: OECD <<http://www.oecd.org/daf/inv/mne/48004323.pdf>> [*OECD Guidelines*].

²⁰⁷ See EC, Commission, *Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: Promoting Core Labour Standards and Improving Social Governance in the Context of Globalisation*, COM(2001) 416 final (Brussels: 18 July 2001) at 9 [*Communication from the European Commission*].

²⁰⁸ *OECD Guidelines*, *supra* note 206 at 3.

²⁰⁹ *Ibid* at 67-69; See also O’Konek, *supra* note 45 at 270.

²¹⁰ *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*, 16 November 1977, ISBN 92-2-119010-2 [ILO] [*ILO Tripartite Declaration*] (amended in 2000 and 2006).

²¹¹ See Aishwarya Padmanabhan, “Human Rights and Corporations: An Evaluation of the Accountability and Responsibility of MNCs under the ILO framework” (2011) 42 JCC 8 at 9.

groups that compose the ILO's governing body: governments, MNCs, and labour.²¹² The Declaration was revised for the first time in 2000, then a second time in 2006. The Sub-Committee on Multinational Enterprises is the implementing body. It is in charge of conducting a survey of governments and of employers' and workers' organizations to gather information about the implementation of the Declaration, which is submitted to the ILO's governing body.²¹³ Governments and organizations are in charge of asking MNCs for data and reports regarding their implementation of the Declaration, which are transmitted to the Sub-Committee then to the ILO's governing body.²¹⁴

In 1999, UN Secretary-General Kofi Annan proposed an initiative to reinforce responsible corporate citizenship and challenge MNCs to voluntarily promote and apply ten core principles pertaining to human rights, labour, environment, and anti-corruption.²¹⁵ In 2000, the *United Nations Global Compact* was formally launched.²¹⁶ The *Global Compact* is different from the two previous instruments as it is not a regulatory instrument per se. Any company, multinational or not, can adhere by submitting a commitment letter signed by its chief executive and filling the online registration form.²¹⁷ Participating companies are then required to present *Communications on Progress* on an annual basis to report their progress on implementing the ten principles. If they do not, they will eventually be removed.²¹⁸ This initiative "is an attempt to 'benchmark' good companies and their codes, making this information publicly available and easily accessible."²¹⁹

In 2005, the UN Commission on Human Rights approved a mandate for a Special Representative of the Secretary-General (SRSG) on the question of human rights and MNCs, and John Ruggie was appointed. Ruggie's primary contribution was his *Protect, Respect and Remedy: a*

²¹² See O'Konek, *supra* note 45 at 271.

²¹³ See ILO, *Resolution concerning follow-up to the World Employment Conference*, 1979, 65th ILC session [ILO, *Resolution WEC*]; See also O'Konek, *supra* note 45 at 271.

²¹⁴ See ILO, *Resolution WEC*, *supra* note 213; See also Padmanabhan, *supra* note 211 at 10.

²¹⁵ See O'Konek, *supra* note 45 at 272.

²¹⁶ See United Nations Global Compact, *The Ten Principles*, online: United Nations Global Compact <<http://www.unglobalcompact.org>> [*UN Global Compact*].

²¹⁷ See United Nations Global Compact, *How To Participate*, online: United Nations Global Compact <<http://www.unglobalcompact.org>>; See also O'Konek, *supra* note 45 at 272.

²¹⁸ See United Nations Global Compact, *What is a COP?*, online: United Nations Global Compact <<http://www.unglobalcompact.org>>.

²¹⁹ O'Konek, *supra* note 45 at 273.

Framework for Business and Human Rights,²²⁰ which was included in his 2008 report and was endorsed by the Human Rights Council in the same year. It introduces three principles: the state duty to protect, the corporate responsibility to respect, and access to remedies. It has thus recognized that MNCs have a corporate responsibility to respect human rights (including labour rights). However, it is not a legal obligation, but an expected behaviour.²²¹ It comprises a “responsibility of compliance to national law and human rights”²²² and an inherent responsibility of due diligence. This means that MNCs should “not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it.”²²³ Subsequently, a second mandate was given to Ruggie and he issued his final report in 2011, introducing the *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*,²²⁴ which again did not set legal obligations on MNCs, but only a responsibility of due diligence. It however specified that the due diligence process includes four components: “a statement of policy articulating the company’s commitment to respect human rights; periodic assessment of actual and potential human rights impacts of company activities and relationships; integrating these commitments and assessments into internal control and oversight systems; and tracking and reporting performance.”²²⁵

Codes of conduct

In the early 1990s, MNCs faced public outcries and civil society campaigns over poor working conditions at the bottom of their global supply chains, which made them fear massive reputation costs. In order to silence criticism and decrease the pressure on them, MNCs began to voluntarily issue codes of conduct (CoCs)²²⁶ that were pledges to prevent exploitation and abuse of the

²²⁰ *Protect, Respect and Remedy Framework*, *supra* note 169.

²²¹ See O’Konek, *supra* note 45 at 276.

²²² *Protect, Respect and Remedy Framework*, *supra* note 169 at para 54.

²²³ *Ibid* at para 25.

²²⁴ HRC, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Business and Human Rights: further steps toward the operationalization of the “protect, respect and remedy” framework*, UN doc A/HRC/1427, 9 April 2010.

²²⁵ *Ibid* at para 83.

²²⁶ The name given by MNCs to designate their codes of conduct varies from one MNC to the other; for this thesis, I will use the term code of conduct (CoC).

workers in the factories where they source their goods.²²⁷ In 1992, Levi's was one of the first MNCs to introduce a CoC after allegations of sweatshop factories. The same year, Nike issued its own CoC as it was facing allegations that workers at its supplying factories were paid below subsistence wage.²²⁸

CoCs are a public statement by MNCs on the labour standards they expect compliance with on the part of their suppliers and some throughout their entire production chain.²²⁹ CoCs are adopted and implemented by MNCs themselves on a voluntary basis, thus self-regulatory instruments, and, since they are not legally binding, they are soft law instruments.²³⁰ There are different types of CoCs. Some are developed by and for an individual MNC, and others are "ready-made" CoCs for a wider application by groups of MNCs, cross-sectoral groups of MNCs, or all MNCs operating in a given sector.²³¹ In contrast to the soft law instrument developed by international organizations, CoCs are not universal tools but are applicable to specific firms, thus to specific groups of workers at a specific time.²³² At first, few MNCs stated that they would do monitoring at their suppliers' factories abroad to ensure compliance with their CoC, but social auditing eventually became common practice for all MNCs.²³³ MNCs perform audits at their suppliers' factories before accreditation is gained and during the contract period. Audits are carried out either by a monitoring division internal to the company or by an independent auditing firm. They usually comprise three elements: document review, site inspection, and interviews with

²²⁷ See O'Konek, *supra* note 45 at 265; Elias, "A review of recent debates", *supra* note 153 at 291; King Dejardin, *supra* note 45 at 10; Ayoub, *supra* note 153 at 403; Ruth Pearson & Gill Seyfang, "New Hope or False Dawn?: Voluntary Codes of Conduct, Labour Regulation and Social Policy in a Globalization World" (2011) 1 Global Social Policy 48 at 49.

²²⁸ See Elias, "A review of recent debates", *supra* note 153 at 292.

²²⁹ There is no international general code ruling MNCs' practices. In 1974, the United Nations Economic and Social Council (ECOSOC) created the Commission on Transnational Corporations to develop such an instrument, but a consensus over the Draft Code of Conduct for Transnational Corporations could never be reached, and, in 1992, the United Nations Centre on Transnational Corporations, Secretariat to the Commission, was dismantled due to the opposition of the United States to the project and a lack of funds (See Cutler, *supra* note 153 at 146, n 81).

²³⁰ See King Dejardin, *supra* note 45 at 10; Pearson & Seyfang, *supra* note 227 at 49, 52; Ayoub, *supra* note 153 at 420-21; Céline Etre. "Valeur Juridique des Codes de Conduite d'entreprise et Étude de leur Portée au sein de la Distribution" (Paper delivered at the 1re Journée de Recherche Relations entre Industrie et Grande Distribution Alimentaire ComIndus, Avignon, 29 Mars 2007) at 0.

²³¹ See King Dejardin, *supra* note 45 at 10; Pearson & Seyfang, *supra* note 227 at 52.

²³² *Ibid.*

²³³ See Ayoub, *supra* note 153 at 403; Duncan Pruet, "Looking for a quick fix: How weak social auditing is keeping workers in sweatshops", Clean Clothes Campaign (2005) at 12, online: Clean Clothes Campaign <<http://www.cleanclothes.org/resources/publications/05-quick-fix.pdf>> [CCC, "Looking for a quick fix"].

managers, supervisors and workers.²³⁴

By adopting CoCs, MNCs follow the business model of corporate social responsibility (CSR). This is a concept whereby companies voluntarily include social and environmental considerations in their business practices. It implies that companies must not only carry out business with regard to the interests of their shareholders, but also respect human rights, labour law, and environmental regulations, limit the adverse effects of their actions on the wide range of stakeholders with whom they interact, and contribute to the social and environmental development of these stakeholders. This concept thus combines an ethical and a legal perspective.²³⁵

The adoption of a CoC has become essential to maintain the positive image of MNCs in the eyes of their customers and shareholders.²³⁶ As the Clean Clothes Campaign puts it, “[i]t is commonly accepted that the first thing a company needs to do, if it wants to trade ethically and ensure that the rights of workers at its suppliers are upheld, is to make a public statement of the rights those workers can expect.”²³⁷ The adoption of a CoC can be interpreted as an attempt by MNCs to fulfill their responsibility of due diligence as enunciated in the international soft law framework for MNCs.

b. Domestic legal framework

At the beginning of the Bangladesh garment export boom in the 1980s, workers’ rights were mainly laid out in the *Factories Act 1965*,²³⁸ which was the basis of all labour rights at the time, and the *Industrial Relations Ordinance of 1969*,²³⁹ which guaranteed workers’ freedom of association. In May 2006, an explosion of strikes and demonstrations took place in and around

²³⁴ The document review component involves looking at wage sheets, timekeeping, personnel records; the site inspection involves checking for health and safety problems and observing workers at work; the interview component involves interviewing managers, supervisors and workers (See Khorshed Alam & Martin Hearson, “Fashion Victims: The true cost of cheap clothes At Primark, Asda and Tesco”, War on Want (December 2006) at 10, online: Clean Clothes Campaign <<http://www.cleanclothes.org/resources/national-cccs/06-12-fashion-victims.pdf>> [War on Want, “Fashion Victims”]).

²³⁵ See Pariotti, *supra* note 205 at 143; *Communication from the European Commission*, *supra* note 207 at paras 20-23.

²³⁶ See Etre, *supra* note 230 at 1.

²³⁷ “Cashing in”, *supra* note 131 at 21.

²³⁸ *Supra* note 164.

²³⁹ *The Industrial Relations Ordinance, 1969* (Act No. 23 of 1969) [*Industrial Relations Ordinance*].

Dhaka. Women garment workers were at the center of this movement, demanding a higher minimum wage and better working conditions. Facing this uproar, the government tried to raise the minimum wage, but factory owners refused the increase and the existing wage was maintained.²⁴⁰ However, the government undertook a major legal reform by enacting the new *Bangladesh Labour Act 2006*,²⁴¹ which aimed at protecting and promoting workers' rights. This new law repealed both the *Factories Act* and the *Industrial Relations Ordinance*.²⁴² In 2010, a new minimum wage was finally put in effect, raising the minimum monthly wage from Tk1,662.50 to Tk3,000.²⁴³

Discrimination on the basis of sex is addressed in section 345 of the *Labour Act*, which states that men and women should be paid equal wages for equal work. Such a provision was absent from the *Factories Act*. Discrimination, inter alia on the basis of sex, is also generally prohibited in the *Constitution of the People's Republic of Bangladesh*²⁴⁴ with regard to the law and all spheres of state and public life, and Bangladesh ratified ILO Conventions 100 and 111 pertaining to equality of treatment.²⁴⁵ The *Prevention of Oppression Against Women and Children Act* was adopted in 2000 and has made sexual harassment a crime, but it does not stipulate that it has a specific application in workplaces.²⁴⁶

Freedom of association and the right to collective bargaining is dealt with in Chapter 13 of the *Labour Act*, allowing unions in factories and recognizing the right to strike. It covers mostly the same questions as the *Industrial Relations Ordinance* did. The right to form trade unions is also included in the *Constitution*,²⁴⁷ and Bangladesh ratified ILO Conventions 87 and 98 protecting

²⁴⁰ See Khanna, *supra* note 17 at 120.

²⁴¹ *Supra* note 163.

²⁴² See International Labour Organization: NATLEX, online: ILO <http://www.ilo.org/dyn/natlex/natlex_browse.home> [ILO: NATLEX website].

²⁴³ See Alamgir & al, *supra* note 26 at 1114; FWF, "Bangladesh Study 2013", *supra* note 99 at 20.

²⁴⁴ *The Constitution of the People's Republic of Bangladesh*, 1972, ss 27-28 [*Constitution*].

²⁴⁵ *Equal Remuneration Convention (No. 100)*, 29 June 1951, 34th ILC session [ILO] [*ILO Convention 100*]; *Discrimination (Employment and Occupation) Convention (No. 111)*, 9 July 1948, 31st ILC session [ILO] [*ILO Convention 111*].

²⁴⁶ *The Prevention of Oppression Against Women and Children Act*, 2000 (Act No. 8 of 2000) [*Prevention of Oppression Act*]; See also Khosla, *supra* note 43 at 297.

²⁴⁷ *Constitution*, *supra* note 244, s 25.

the right to organise.²⁴⁸

Chapter 2 of the *Labour Act* sets the conditions of service and employment, which include a requirement to provide every worker with a letter of appointment and an identity card and the mandatory compensation and notice period in case of lay-off.²⁴⁹ This is an important improvement in comparison to the *Factories Act*, which did not contain such obligations for employers.

The rights to maternity benefits for women are laid out in Chapter 4 of the *Labour Act*. The *Factories Act* also had (albeit a little more limited) provisions for maternity leaves.²⁵⁰

Health and safety standards are specified in Chapters 5, 6, and 7 of the *Labour Act*, including precautions to prevent fires and measures related to dangerous buildings and machinery.²⁵¹ These provisions are similar to those contained in the *Factories Act*.²⁵² Although Bangladesh did not ratify ILO Convention 155 for occupational safety and health,²⁵³ the right for a healthy and safe working environment is enunciated in the *International Covenant on Economic, Social and Cultural Rights*, which Bangladesh acceded.²⁵⁴ With regard to building safety in particular, the *Bangladesh National Building Code*²⁵⁵ was adopted in 1993 and was made legally binding in 2006, and therefore all buildings built after 2006 must comply with these minimum standards for design, construction, materials, use, occupancy, and maintenance.²⁵⁶ Buildings that were built before 2006 do not have to undergo alterations.²⁵⁷

²⁴⁸ *Freedom of Association and Protection of the Right to Organise Convention (No. 87)*, 9 July 1948, 31st ILC session [ILO] [*ILO Convention 87*]; *Right to Organise and Collective Bargaining Convention (No. 98)*, 1 July 1949, 32nd ILC session [ILO] [*ILO Convention 98*].

²⁴⁹ *Labour Act*, *supra* note 124, ss 5, 16-18, 26.

²⁵⁰ *Factories Act*, *supra* note 164, s 78(3)(d).

²⁵¹ *Labour Act*, *supra* note 124, ss 61-62.

²⁵² *Factories Act*, *supra* note 164, c 3, 4, 9.

²⁵³ *Occupational Safety and Health Convention (No. 155)*, 22 June 1981, 67th ILC session [ILO].

²⁵⁴ *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 UNTS, s 7.

²⁵⁵ *Bangladesh National Building Code*, 2006 [Building Code].

²⁵⁶ See Zia Wadud, Fuad Yasin Huda & Nizam Uddin Ahmed, "Assessment of Fire Risk in the Readymade Garment Industry in Dhaka, Bangladesh" (2014) 50:5 *Fire Technology* 1127 at 1129; Salma A Shafi, *Round Table Discussion on Implementation of National Building Code: Keynote Paper on National Building Code and its Implementation* (30 June 2010) BLAST: Bangladesh Legal Aid and Services Trust at 4, online: BLAST <<http://www.blast.org.bd/content/key-note/national-building-code-29June.pdf>> [BLAST, *Implementation of Building Code*].

²⁵⁷ *Ibid* at 5.

Chapter 8 of the *Labour Act* addresses the areas related to the welfare of workers, and requires that, if a certain number of workers are employed in an establishment, some facilities must be provided, like a sick room with medical and nursing staff, canteens, lunch rooms, and rooms for children under the age of six.²⁵⁸ These provisions were similarly included in the *Factories Act*.²⁵⁹

Chapter 9 of the *Labour Act* deals with working hours and leaves. Among other things, it establishes the maximum daily and weekly hours an adult can work, a mandatory weekly holiday, and the extra allowance workers should receive for overtime, and it specifies that women should not be forced to work between 10pm and 6am.²⁶⁰ These requirements are similar to those of the *Factories Act*.²⁶¹ Bangladesh ratified ILO Convention one limiting the hours of work and ILO Convention 14 regarding weekly rest.²⁶²

Chapter 10 of the *Labour Act* addresses the different aspects related to wages and payments and Chapter 11, the role and functions of the Minimum Wage Board, which did not exist under the *Factories Act*. Bangladesh did not ratify ILO convention 26 and 131 related to minimum wage fixing and ILO Convention 95 for the protection of wages.²⁶³

Finally, sections 318 and 319 of Chapter 20 of the *Labour Act* establish the power of the government to appoint a Chief Inspector and the powers of the latter to carry out inspections in workplaces, like the *Factories Act* did.²⁶⁴

From the start, factories located in export processing zones (EPZs) are not governed by the same labour laws than those in the rest of the country. EPZs were introduced in 1980 with the *Bangladesh Export Processing Zones Authority Act*,²⁶⁵ which gave to the government the power to exempt certain zones from the operation of selected laws, including the *Factories Act* and the

²⁵⁸ *Labour Act*, *supra* note 124, ss 89(5), 92-94.

²⁵⁹ *Factories Act*, *supra* note 164, c 5.

²⁶⁰ *Labour Act*, *supra* note 124, ss 100, 102-03, 108-09.

²⁶¹ *Factories Act*, *supra* note 164, c 6, 8.

²⁶² *Hours of Work (Industry) Convention (No. 1)*, 28 November 1919, 1st ILC session [ILO] [*ILO Convention 1*]; *Weekly Rest (Industry) Convention (No. 14)*, 17 November 1921, 3rd ILC session [ILO].

²⁶³ *Minimum Wage-Fixing Machinery Convention (No. 26)*, 16 June 1928, 11th ILC session [ILO]; *Minimum Wage Fixing Convention (No. 131)*, 22 June 1970, 54th ILC session [ILO]; *Protection of Wages Convention (No. 95)*, 1 July 1949, 32nd ILC session [ILO].

²⁶⁴ *Factories Act*, *supra* note 164, c 2.

²⁶⁵ *EPZs Authority Act*, *supra* note 31.

Industrial Relations Ordinance.²⁶⁶ Instead, the government issued special non-legally enforceable “instructions” dealing with issues related to wages and working conditions.²⁶⁷ Workers were thereby not allowed to form trade unions. In 2004, as the government was facing pressure from the working class and from abroad, it adopted the *Export Processing Zones Workers Association and Industrial Relations Act*,²⁶⁸ which was supposed to lead to union-like activities in EPZs.²⁶⁹ The 2004 Act was originally meant to expire in November 2008 but was extended to November 2010.²⁷⁰ In August 2010, the *Export Processing Zones Workers Welfare Association and Industrial Relations Act*²⁷¹ was adopted for similar purposes and replaced the 2004 EPZ Act.

With regard to the political institutions in Bangladesh that have authority over the garment industry, there is no specific ministry for this industry; the Ministry of Labour and Employment is responsible for the formulation and implementation of labour laws, trade union registration, and labour inspections in all sectors of employment.²⁷² The Minimum Wage Board, established following Chapter 11 of the *Labour Act*, is a department of the Ministry of Labour making periodic recommendations to the government to reconsider the minimum wage.²⁷³ The Directorate of Labour is an important department of the Ministry of Labour. It is responsible for the implementation and monitoring of labour laws, and it is also in charge of industrial relations, according accreditation to trade unions and providing a conciliatory service for settlement of disputes.²⁷⁴ The Department of Factories and Establishment is the inspection section of the Directorate of Labour, in charge of factory inspections with regard to labour laws’

²⁶⁶ *EPZs Authority Act*, *supra* note 31, s 11(A)(f)(o).

²⁶⁷ See Khanna, *supra* note 17 at 114; Sweatfree Communities, “Enemies of the Nation”, *supra* note 26 at 11.

²⁶⁸ *Export Processing Zones Workers Association and Industrial Relations Act*, 2004 (Act No. 23 of 2004).

²⁶⁹ See Khanna, *supra* note 17 at 119; Sweatfree Communities, “Enemies of the Nation”, *supra* note 26 at 11.

²⁷⁰ See ILO: NATLEX website, *supra* note 242.

²⁷¹ *Export Processing Zones (EPZ) Workers Welfare Association and Industrial Relations Act*, 2010 (Act No. 43 of 2010).

²⁷² See Ministry of Labour and Employment, The Government of the People’s Republic of Bangladesh, online: Ministry of Labour and Employment <<http://www.mole.gov.bd>> [MOLE website]; FWF, “Bangladesh Study 2006”, *supra* note 100 at 27; TIB Report, *supra* note 14 at 9; BAPPG, “After Rana Plaza Report”, *supra* note 110 at 55; *Bangladesh: Decent Work Country Programme 2012-2015*, November 2012, International Labour Organization, at 6, online: ILO <<http://www.ilo.org/public/english/bureau/program/dwcp/download/jordan.pdf>> [ILO, *Decent Work Programme*].

²⁷³ *Labour Act*, *supra* note 124, c 11.

²⁷⁴ See Department of Labour, The Government of the People’s Republic of Bangladesh, online: Department of Labour <<http://dol.gov.bd>> [DOL website]; FWF, “Bangladesh Study 2013”, *supra* note 99 at 16.

implementation and enforcement.²⁷⁵ The Fire Services and Civil Defence Authority is a government department responsible for fire safety in all sectors, including the garment sector. It inspects fire safety mechanisms at factories and issues fire safety certificates on the basis of the Health and Safety chapter of the *Labour Act*, the *Building Code*, and its own regulations for fire safety.²⁷⁶ Finally, there are the Labour Court and the Appellate Tribunal, which are in charge of cases filed by workers against their employer for labour law violations.

2. Failure of the international legal framework for multinational corporations

As MNCs' power increased, "a world-wide 'race to the bottom' associated with deteriorating standards of work"²⁷⁷ arose. This phenomenon was most obvious in Bangladesh. The international soft law instruments and the *Protect, Respect and Remedy Framework* in particular have led to the recognition by the international community of MNCs' responsibility to respect labour standards and due diligence, although it is not a legally binding obligation. Acknowledging that they have a direct impact on working conditions at their suppliers' factories, MNCs claim to take their responsibility seriously by adopting CoCs. Yet "it is no secret that poor working conditions and violations of the standards that the [MNCs] themselves have signed up to are widespread in the workplaces where their products are made."²⁷⁸ This is especially true in the case of Bangladesh. The Bangladeshi state does not hold MNCs accountable for labour issues since they neither own nor control Bangladeshi factories from where they outsource their production. Their transnational mode of operation allows them to escape legal responsibility and shift risks onto their suppliers, who are the only ones having a legal responsibility for poor working conditions and industrial accidents.²⁷⁹ It is the Bangladeshi state that has the legal duty to undertake adequate inspections in garment factories to ensure the implementation and enforcement of domestic laws by factory owners and to take actions accordingly when laws are violated.²⁸⁰ However, it has proved reluctant to do so, thereby encouraging factory owners not to

²⁷⁵ See MOLE website, *supra* note 272; TIB Report, *supra* note 14 at 6; FWF, "Bangladesh Study 2013", *supra* note 99 at 9; FWF, "Bangladesh Study 2006", *supra* note 100 at 27-28.

²⁷⁶ See Wadud, Yasin Huda & Uddin Ahmed, *supra* note 256 at 3, 8; TIB Report, *supra* note 14 at 8.

²⁷⁷ Elias, "A review of recent debates", *supra* note 153 at 284.

²⁷⁸ CCC, "Cashing in", *supra* note 131 at 12.

²⁷⁹ See War on Want, "Olympic sportswear companies", *supra* note 131 at 12.

²⁸⁰ See *Protect, Respect and Remedy Framework*, *supra* note 169 at paras 27-32; SOMO, "Fatal Fashion", *supra* note 10 at 11.

care about their compliance with the law.

In the next sections of this part of Chapter II, I will look at the reasons why the international soft law framework for MNCs and codes of conduct and then the Bangladeshi legislation for labour standards have failed to protect workers' rights in garment factories from a gendered perspective. For each one, I will first establish a theoretical framework. For the international legal framework, I will look at the work of international labour law and feminist scholars who have criticized the soft law framework for MNCs and CoCs, and, for the domestic legal framework, I will look at the work of scholars who have focused their research on the specific case of Bangladesh. Drawing upon the work of these scholars, I will then proceed to my own analysis of the causes of the failure of these legal frameworks. I will assess whether it is mainly due to the provisions contained in these legal instruments per se or if the main cause of their failure is due to their implementation and enforcement. I will finally look at issues related to trade unionism in Bangladesh and their consequences with regard to the failure of the domestic legal framework.

a. Literature review

In 1998, the ILO adopted the *Declaration on Fundamental Principles and Rights at Work*,²⁸¹ thereby stating officially what became the four core labour standards (CLS) that all ILO members should respect and promote whether they ratified the relevant eight fundamental conventions or not.²⁸² These standards are: the elimination of all forms of forced or compulsory labour; the abolition of child labour; the elimination of discrimination in the workplace; and the freedom of association and the right to collective bargaining. The international soft law instruments for MNCs present a visible axis of convergence when it comes to labour; they all incorporate explicitly or implicitly the four ILO CLS. The *OECD Guidelines* are clearly in line with the eight fundamental conventions, and this is expressly stated in the commentaries since the Guidelines' revision in 2000.²⁸³ The *ILO Tripartite Declaration* was revised for the first time in 2000 in the

²⁸¹ *Supra* note 117.

²⁸² *Forced Labour Convention (No. 29)*, 28 June 1930, 14th ILC session [ILO]; *ILO Convention 87*, *supra* note 248; *ILO Convention 98*, *supra* note 248; *ILO Convention 100*, *supra* note 245; *Abolition of Forced Labour Convention (No. 105)*, 25 June 1957, 40th ILC session [ILO]; *ILO Convention 111*, *supra* note 245; *Minimum Age Convention (No. 138)*, 26 June 1973, 58th ILC session [ILO]; *Worst Forms of Child Labour Convention (No. 182)*, 17 June 1999, 87th ILC session [ILO].

²⁸³ See *Communication from the European Commission*, *supra* note 207 at 9.

light of the *1998 ILO Declaration* and the CLS. With regard to the *UN Global Compact*, the four principles that are related to the labour field mirror the CLS.²⁸⁴ Finally, the *Protect, Respect and Remedy Framework* purposefully avoid enumerating an exhaustive list of rights that MNCs should respect, but it states that MNCs should, at a minimum, look at the international bill of human rights and the eight ILO core conventions to fulfill their responsibility of due diligence.²⁸⁵

Since the first international soft law instruments for MNCs were launched and MNCs began to adopt CoCs, international labour law and feminist scholars have raised concerns with regard to these instruments and their adequacy to protect workers who are at the bottom of global supply chains in developing countries. A starting point of many of these critiques has been the ILO CLS approach. These critiques are concerned with both the content of the soft law instruments and CoCs and with their implementation, i.e. making these instruments effective. I choose to firstly build my theoretical framework upon the work of these critiques because the promotion of the CLS by the ILO caused a paradigm shift in international labour law in the context of globalization, and I will argue that this event had a direct repercussion on the accountability of MNCs. For my analysis, I will extend the work of these scholars to the specific case of Bangladesh.

Tiana O’Konek, a legal consultant and scholar who worked for the United Nations Development Programme, criticizes the international soft law instruments for MNCs with regard to the CLS approach and her critique is related to their content. She argues that these instruments fail to address women’s employment rights in developing countries due to their narrow focus on the CLS, as this limited selection of labour standards overlooks women’s experiences and does not reflect their central concerns. First, she argues that, “[w]hile the core labour standards reflect a few important rights, they seem to overlook the remainder of the human rights corpus. This narrow focus is inadequate to address the concerns surrounding corporate activities and their effects on women's employment rights.”²⁸⁶ As examples of other rights recognized by the human rights corpus which would benefit more women workers, she cites inter alia the right to just and favourable remuneration, the right to safe working conditions, the right to work reasonable hours,

²⁸⁴ See *Communication from the European Commission*, *supra* note 207 at 10.

²⁸⁵ See *Protect, Respect and Remedy Framework*, *supra* note 169 at para 58.

²⁸⁶ *Supra* note 45 at 279.

the right to social security, the right to paid leave, and the prohibition to discrimination based on marriage or maternity.²⁸⁷ Secondly, O’Konek argues that male experiences served “as the metric for ‘universal’ experience”²⁸⁸ during the selection process of the CLS; therefore, the CLS fail to reflect women’s priorities insofar as they differ from those of male workers. The two main reasons why their priorities differ is because “women’s experience is increasingly characterized by confinement to the informal workforce” and because “women are forced to balance any paid labor with the continuing familial and care-taking roles placed on them by societal gender relations.”²⁸⁹ Thus, “these aspects of women’s experiences are reflected in their priorities.”²⁹⁰ However, the CLS do not protect workers within the informal economy, such as contract and home workers, since these workers are hard to trace and factory inspections overlook their existence. Moreover, the CLS focus on the right to collective bargaining, but this standard is disconnected from women’s experience and does not envisage the obstacles that women face to unionize based on their experience as women. Finally, O’Konek argues that the general anti-discrimination provision included in the CLS “fails to address the ways in which gender discrimination is built into the structure of the garment industry.”²⁹¹ Such a provision does not succeed in fighting stereotyped gender roles following which women fall into unstable and lower positions and are paid less.

Juanita Elias, an associate professor at the University of Warwick who specializes in women’s work in the global economy and labour standards, looks at the CLS and their effects on CoCs through a feminist lens. Like O’Konek, Elias is concerned about the content of the legal instruments for MNCs’ responsibility; but, while O’Konek’s work is directed towards the international soft law instruments, the focus of Elias’ critique is specifically on CoCs. She argues that, since CoCs are drawn upon the CLS with regard to the issues they cover, these have also adopted the CLS paternalistic approach that reifies the status of male workers and thus fails to confront the problems faced by women workers and to improve their status. “Global labour markets contain structures of gender inequality and (...) firms have both perpetuated and drawn

²⁸⁷ See O’Konek, *ibid* at 279-80.

²⁸⁸ O’Konek, *ibid* at 281.

²⁸⁹ *Supra* note 45 at 281.

²⁹⁰ *Ibid.*

²⁹¹ *Ibid* at 284.

upon these gendered inequalities in order to secure a supply of low cost female labour.”²⁹² She first argues that, despite a commitment to non-discrimination, the CLS approach is drawn upon a universalistic human rights perspective and has “emerged without significant recognition of the problems faced by women workers both inside and outside multinational systems of production.”²⁹³ For example, issues such as low wages and workplace harassment are not considered human rights concerns and were therefore not included in the CLS whereas these problems affect women particularly. Thus, like O’Konek, she argues that the selection of the CLS is too narrow to protect women’s interests and fails to refer to the human rights paradigm; but, as opposed to O’Konek, who believes that the CLS should be more inspired by the broader human rights corpus, she argues that the fact that the CLS approach was drawn upon a universalistic human rights perspective is the very reason why other rights that would benefit more women were excluded from the CLS selection. Elias further argues that the CLS regime, which was designed in accordance with a neoliberal development paradigm, is “basically supportive of an unequal gender order.”²⁹⁴ A commitment to non-discrimination obscures the reproductive and domestic private sphere of women. The absence of the right to a living wage is of great importance for women since they dominate in the lowest-paid jobs, but this absence is not surprising since the dominant economic development model is focused on the attraction of foreign direct investment. Similarly to O’Konek, Elias argues that the CLS are mostly applicable to male workers in formal employment; the emphasis put on trade union rights reiterates the privileged status of formal employment and fails to acknowledge the pervasive gender discrimination within trade unions’ structures, and the CLS do not offer protection to workers in the informal sector where women are overrepresented. “It is in this sense that the establishment of the CLS approach is a particularly significant reaffirmation of the secondary status of women workers in the global economy,”²⁹⁵ and, since CoCs are drawn upon the CLS approach, they too fail to meet women workers’ needs and enhance their status in the global economy.

Like O’Konek and Elias, Linda Shaw and Angela Hale, both scholars who work on the question of corporate responsibility and labour rights in the global economy, suggest that the CLS

²⁹² Juanita Elias, “Women workers and labour standards: the problem of ‘human rights’” (2007) 33 *Review of international studies* 45 at 56 [Elias, “Problem of human rights”].

²⁹³ *Ibid* at 46.

²⁹⁴ *Supra* note 292 at 51.

²⁹⁵ *Ibid* at 52.

selection is inadequate in meeting the needs of women workers at the bottom of global supply chains. A high number of women garment workers are part of the informal sector and cannot access these rights for they have no official record of their employment or are kept on casual contracts. They argue that women face a wider range of problems than those covered by the CLS, such as compulsory overtime, low pay, casualization, lack of employment stability, sexual harassment, and lack of childcare. However, as opposed to Elias, Shaw and Hale argue that CoCs go further than the CLS and do attempt to address many of these problems that women face. According to them, “[c]odes themselves are not especially limited in this respect. In fact it could be argued that, with their wider agenda, they have the potential to reflect the expressed concerns of women workers in a way that the core labour standards do not.”²⁹⁶

Philip Alston was one of the first scholars to raise concerns about the CLS selection and to warn against the probable harmful effects of this approach. According to him:

The choice of standards to be included in the CLS was not based on the consistent application of any coherent or compelling economic, philosophical, or legal criteria, but rather reflects a pragmatic political selection of what would be acceptable at the time to the United States and those seeking to salvage something from what was seen as an unsustainably broad array of labour rights.²⁹⁷

The four CLS therefore “represent a highly selective, even arbitrary, choice from a lengthy list of worthy candidates.”²⁹⁸ Pursuant to this, he recognizes that there is a general agreement among critiques of the CLS that the list should include more rights, such as a right to a safe and healthy workplace, limits on working hours, reasonable resting periods, and protection against abusive treatment in the workplace. However, he also highlights the fact that these critiques do little to explain how a longer list would work in practice. Indeed, for him, the most problematic dimension of the CLS approach is not the specific selection of the rights that were included to the

²⁹⁶ Linda Shaw & Angela Hale, “The emperor’s new clothes: what codes mean for workers in the garment industry” in Chris Owen Jenkins, Ruth Pearson & Gill Seyfang, eds, *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (London, UK: Earthscan, 2002) 101 at 111.

²⁹⁷ Philip Alston, “Core Labour Standards’ and the Transformation of the International Labour Rights Regime” (2004) 15-3 EJIL 457 at 485 [Alston, “Core Labour Standards”].

²⁹⁸ *Ibid* at 483.

CLS per se, but the lack of definable content for the relevant principles and the new implementation arrangements encouraging promotional monitoring.

As for the first major flaw of the CLS approach highlighted by Alston, he explains that the CLS were originally separated by the ILO from the specific legal provisions of the eight fundamental conventions and are not meant to be interpreted nor applied in line with ILO jurisprudence. The CLS are therefore undefined for practical purposes, and this empties them of their full potential. Detailed labour rights are left aside in favour of vague concepts of principles, with no specific content and limitations. According to Alston, “[t]he non-discrimination ‘principle’, for example, cannot be defined or even further specified by reference to the many legal clarifications that have been worked out, in painstaking negotiations and on the basis of broad experience over many years. Instead, the principle is reduced to a hollow and hortatory statement of aspiration.”²⁹⁹ It is thus “open to other actors to devise their own means by which to evaluate compliance with the relevant norms as they interpret them.”³⁰⁰ According to Alston, consequences to be feared with regard to the liberty allocated to other actors than the ILO to give content to labour standards have concretized when it comes to measuring compliance with standards included in legal instruments for MNCs’ responsibility. The *Global Compact* reflects the CLS with regard to labour standards; but, as the United Nations launched this compact, it was very evasive with regard to its relationships with the relevant fundamental conventions. As for CoCs, they do not refer explicitly to the ILO conventions, which allows MNCs to attribute the content they want to the principles included in their CoCs. For example, many CoCs contain a provision calling for freedom of association, but such a provision separated from the ILO conventions (thus without detailed standards) is difficult to measure in terms of its level of compliance. Some CoCs do not even specify the right to form and join trade unions even though these are at the core of freedom of association. For Alston, “[i]t is hardly surprising then that the term CLS is said to have ‘come to mean different things to different individuals and entities’.”³⁰¹

The second major flaw resulting from the CLS approach, according to Alston, is the “privatization of enforcement”. Since the Declaration was only provided with a strictly

²⁹⁹ *Supra* note 297 at 519.

³⁰⁰ *Ibid* at 510.

³⁰¹ *Ibid* at 520.

promotional follow-up mechanism, “the ILO is essentially engaged in little more than a paper-shuffling exercise (...),”³⁰² which leaves the responsibility for its implementation in the hands of other actors. Thus, “an important consequence of the Declaration has been to facilitate or validate the efforts of actors external to the ILO who seek to develop alternatives to the ILO’s own monitoring system.”³⁰³ For Alston, this approach based on “voluntarism in relation to implementation and enforcement, [is] combined with an unstructured and unaccountable decentralization of responsibility, and a willingness to accept soft ‘promotionalism’ as the bottom line.”³⁰⁴ This major flaw of the CLS regime implies heavy consequences for the accountability of MNCs. The irony is that the weakness of such a system based on voluntary compliance with no supervisory mechanism had already been identified after the OECD adopted its guidelines in 1976 and the ILO its *Tripartite Declaration for MNCs* in 1977. The failed implementation strategies of these instruments “have been the subject of a great deal of criticism and relatively little praise outside of institutional or corporate commentaries,” but “the model used is very similar to that subsequently followed by the 1998 Declaration: non-binding instruments, general and determinedly soft standards, promotional means of enforcements, and ambivalence at best on the part of outsider evaluators.”³⁰⁵ As a result, MNCs did exactly what this new ILO regime allowed them to do – they adopted CoCs that they vow to implement through their own self-monitoring systems, external to the supervisory system of the ILO, without being legally bound to fulfill these promises. In 2000, only two years after the adoption of the *1998 CLS Declaration*, the UN launched the *Global Compact*, which followed the same no-accountability path. The same year, the *OECD Guidelines* and the *ILO Tripartite Declaration* were revised to explicitly refer to the CLS, reinforcing the voluntary approach that was previously chosen in the 1970s. In Alston’s opinion, “[o]n the basis of these developments it is difficult to avoid the conclusion that a façade of labour rights protections is being painstakingly constructed in order to defuse the pressure from those concerned about the erosion of workers’ rights as a result of some aspects of globalization.”³⁰⁶

³⁰² *Supra* note 297 at 513.

³⁰³ *Ibid* at 510.

³⁰⁴ *Ibid* at 518.

³⁰⁵ *Ibid* at 507.

³⁰⁶ *Ibid* at 520.

Nevertheless, Alston is not categorically rejecting the new international labour law regime resulting from the CLS approach:

I should make it clear that in arguing in favour of a right-based approach, in calling for the Declaration to be interpreted and applied in line with ILO jurisprudence, and in emphasizing the importance of meaningful monitoring, I am not suggesting a return to the ‘old’ system of ILO supervision. It is abundantly clear that this system is in need of major reforms, very few of which are really being contemplated at present. It needs to become more flexible. Various forms of decentralization along with the mobilization of a much broader range of actors are indispensable. The system needs to be more adaptable and capable of learning lessons from approaches which work and other which do not. Corporate and other codes need to be factored into the overall equation.³⁰⁷

He is therefore not completely opposed to the system of CoCs and soft law instruments for MNCs’ responsibility with regard to labour standards, but he argues that major improvements must be undertaken in order to make this new system effective.

Other feminist scholars who have criticized the effectiveness of CoCs to protect women’s labour rights at the bottom of global supply chains did not base their analysis on the CLS approach, but the concerns they raise closely meet those of scholars who did. Similarly, they do not focus their work on a specific country but raise general concerns pertaining to women garment workers in developing countries.

One of the biggest issues noted in this literature, as highlighted by many CLS critiques, is the limited scope of CoCs to formal sector employment whereas women represent the vast majority of the informal labour force, which would be due to the voluntary nature of CoCs’ implementation. According to Amelita King Dejardin, an ILO expert and reporter, the “[s]cope of implementation does not extend all the way down the lower segments of the supply chain where casual, temporary and informal workers are concentrated and receive fewer benefits.”³⁰⁸ For Rohini Hensman, a scholar who works on the question of development and global economy, CoCs should include a provision requiring a proper contract and employment relationship with all

³⁰⁷ *Supra* note 297 at 517.

³⁰⁸ *Supra* note 45 at 10.

workers at the factories with which MNCs directly do business; but, with regard to subcontracting factories, she insists that it is mainly the role of the government and not MNCs to ensure that all workers have an employment contract. For her, “the task of registering all workers and employers has to be undertaken by the government. And while monitoring by buyers and independent monitors can be effective in a limited number of units, defending worker’s rights on a large scale cannot be achieved without government intervention.”³⁰⁹

The fact that, despite a commitment to non-discrimination, CoCs generally neglect gender issues whereas they are meant to be applied in sectors where women represent the vast majority of the labour force is one of the main arguments of this feminist literature. CoCs fail to deal with aspects of discrimination within factories such as sexual harassment, maternity leave, reproductive health, childcare, and low wages. By ignoring these issues, they fail to address the underlying source of inequality within global supply chains.³¹⁰

Finally, some feminist critiques point to the auditing mechanisms of MNCs to ensure compliance with their CoCs as failing to take into account issues faced by women workers since auditors do not talk to women workers themselves. Due to flexible employment, women are often asked to stay off site during auditing, and auditors often rely on information provided by factory managers.³¹¹

Naila Kabeer, as opposed to the previous feminist scholars who criticize the soft law instruments for MNCs’ and CoCs from a general perspective, focuses on the specific case of Bangladesh. Following the proliferation of CoCs, Kabeer asks whether they had brought a “culture of compliance” to Bangladesh. Such a culture “refers to the willingness to abide by a given set of regulations (whether laws or codes).”³¹² If CoCs were an authentic attempt by MNCs to give effect to their social responsibility and implement the standards they set, there would be a chance that they had successfully brought this culture of compliance. This “suggests the internalization

³⁰⁹ Rohini Hensman, “Defending Workers’ Rights in Subcontracted Workplaces” in Hale & Wills, *supra* note 18 at 207.

³¹⁰ See Prieto-Carron, *supra* note 76 at 12-13; Stephanie Barrientos & Naila Kabeer, “Enhancing Female Employment in Global Production” (2004) *Global Social Policy* 4:2 153 at 158.

³¹¹ See Ruwanpura “a three decade (r)-evolution”, *supra* note 154 at 204; Elias, “A review of recent debates”, *supra* note 153 at 298.

³¹² “Compliance Versus Accountability”, *supra* note 149 at 23.

of the norms embedded in the codes of conduct, so that they become a routine and accepted part of the way that business is done.”³¹³ On the other hand, if CoCs were merely a public relations tool aimed at enhancing MNCs’ image, it would be most likely that the concept of social responsibility has not been internalized by neither MNCs nor their suppliers, putting aside the possibility that a culture of compliance was born in Bangladesh. According to Kabeer, although there have been some improvements in the Bangladesh garment sector, it is difficult to conclude that it represents the evidence of a culture of compliance on the part of MNCs and suppliers.

From the perspective of Bangladeshi suppliers, there have been changes in their practices, and higher labour standards now prevail in major factories. Some started to care about the negative image they had and made significant efforts on their own initiative to improve working conditions in their factories, espousing the principles of social responsibility. Nevertheless, this remains a small minority. For the most part, suppliers consider the imposition of CoCs on them as another condition to stay in business, as they are always under the threat of MNCs to disallow orders. According to Kabeer, “[i]t is thus the vulnerability of the export garment producers within a buyer-driven global value chain which has led to ‘compliance’ on their part.”³¹⁴ From the perspective of MNCs, the adoption of CoCs does not represent a sincere will to enforce their responsibility to respect labour standards, and they have not internalized this responsibility. CoCs and auditing systems allow MNCs to maintain a facade of social responsibility; but, as Kabeer stresses, “[a]lthough [MNCs] made sure that their suppliers were monitored for code compliance, they generally used the threat of withholding orders rather than any positive incentives to promote compliance.”³¹⁵ Therefore, it cannot be concluded that CoCs, as genuine efforts on the part of MNCs to enforce these codes, have enabled a culture of compliance to develop in Bangladesh. In sum, “[i]f most Bangladeshi employers have not internalized the concept of corporate social responsibility, neither have most of their buyers. Consequently, employers sought to comply with buyers’ codes of conduct in response to the threat of withdrawal of orders,

³¹³ “Compliance Versus Accountability”, *supra* note 149 at 42.

³¹⁴ *Ibid.*

³¹⁵ *Ibid* at 43.

while buyers sought to impose the codes in response to the threat of negative publicity and the accompanying loss of sales.”³¹⁶

b. Problem of implementation and a lack of commitment

O’Konek, Elias, and Shaw and Hale criticize the content of the international soft law instruments and CoCs and argue that the problem is the disjuncture between the standards they include and the material reality of working conditions of women workers who are at the bottom of global supply chains. It could be true in certain countries, but it cannot be claimed that all women have the same universal needs. In my analysis, I will first argue that, if there is a gap between the rights protected by these instruments and the needs of Bangladeshi women in particular, it is not one of the most important reasons why these instruments are not as effective in reality as they are conceived of in theory. Drawing on Alston’s insight, I will argue that their failure is related to their implementation. Since MNCs’ responsibility to respect labour rights is not legally binding and CoCs are solely voluntary initiatives, if MNCs do not implement them, they are only of scanty utility. Unfortunately, this is what has been happening in Bangladesh.³¹⁷ Thus, the real tremendous gap does not lie between the provisions of these instruments and the actual needs of women workers with respect to their material reality, but between promises made by MNCs and what is actually occurring in Bangladeshi garment factories.

Content of the legal framework

With respect to the content of the legal framework for MNCs, O’Konek argues that the failure of the international soft law instruments (and by the same token CoCs since their drafting is based on the soft law instruments) is due to their narrow focus on the ILO CLS, which excludes concerns that are of great importance for women workers, just like Elias argues with regard to CoCs. I argue that this is not true anymore, since CoCs now extend well beyond this selection of four standards, as stated by Shaw and Hale. To demonstrate my point, I looked at the CoCs of four major brands and retailers doing business in Bangladesh: H&M, Walmart, Gap, and

³¹⁶ “Compliance Versus Accountability”, *supra* note 149 at 43

³¹⁷ See e.g. CCC, “Cashing in”, *supra* note 131 at 22-26; War on Want, “Fashion Victims”, *supra* note 234 at 4, 8.

JCPenney.³¹⁸ Their CoCs indeed incorporate the CLS (with the exception of Walmart, which does not state the interdiction to discriminate). Yet the four CoCs go further. They include various standards pertaining to health and safety, prohibition of harassment, hiring and employment practices, wages, benefits, deductions, working hours, overtime, leave, housing, migrant workers, etc. In addition, the four CoCs under assessment minimally require compliance with domestic law.³¹⁹ H&M’s code states: “Our general rule is that all our suppliers and other business partners must, in all their activities, follow the national laws in the countries in which they operate.”³²⁰ In the particular context of Bangladesh, this last point is very important. Since the adoption of the *Labour Act* in 2006, Bangladeshi laws with regard to labour rights offer a wide range of protections for workers, including women workers, such as maternity benefits, childcare centres, and restrictions on working hours. Therefore, it cannot be concluded that the failure of CoCs is due to their narrow focus on the CLS and to not addressing concerns that are important for women workers.

CoCs have become MNCs’ primary reference with regard to their responsibility to respect labour standards and working conditions at their suppliers’ factories. Thus, although I agree with O’Konek that the focus of the international soft law instruments on the CLS is too narrow, it does not explain the failure of the entire legal framework for MNCs since the CLS critique does not apply to CoCs, and these have outweighed the international soft law instruments.

Arguably, even though CoCs extend well beyond the four CLS, they still present some important

³¹⁸ *H&M Code of Conduct* (2010) H&M, online: H&M <http://about.hm.com/content/dam/hm/about/documents/en/CSR/codeofconduct/Code%20of%20Conduct_en.pdf> [H&M CoC]; *Standards for Suppliers* (January 2012) Walmart, online: Walmart <http://cdn.corporate.walmart.com/3a/58/bccc2d774ef88e9c6b5dfd3021f0/standards-for-suppliers-poster_129884072278822736.pdf> [Walmart CoC]; *Gap Inc.: Code of Vendor Conduct* (2007) Gap Inc., online: Gap Inc. <http://www.gapinc.com/content/attachments/gapinc/COVC_070909.pdf> [Gap CoC]; *Supplier Principles*, JCPenney, online: JCPenney <http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAA&url=http%3A%2F%2Fphx.corporate-ir.net%2FExternal.File%3Fitem%3DUGFyZW50SUQ9MTg5NjA4fENoaWxkSUQ9LTF8VHlwZT0z%26t%3D1&ei=PMYIVijYGYLqggSWh4KYBg&usq=AFQjCNGJS4ly2zuBBkGhPL5VVR4qWC8J5A&sig2=1_Auw0J2nrx1G8YLVsB9IQ&bvm=bv.81456516,d.eXY> [JCPenney CoC]; See Pamela Engel, “Here are Some of the Biggest Brands That Make Clothes in Bangladesh”, *Business Insider* (13 May 2013), online: Business Insider <www.businessinsider.com>.

³¹⁹ H&M CoC, *supra* note 318 at 1; Walmart CoC, *supra* note 318; Gap CoC, *supra* note 318 at 4; JCPenney CoC, *supra* note 318 at 2; See Elias, “A review of recent”, *supra* note 153 at 292.

³²⁰ H&M CoC, *supra* note 318 at 1.

omissions and flaws in their content regarding women's protection, which result from or have at least been supported by the CLS approach. O'Konek, Elias, and Hale and Shaw are concerned that the CLS do not include a right to a living wage, which is of particular importance for Bangladeshis, considering how the national minimum wage is so low and how women workers, given their secondary status in the global economy, are systematically poorly paid. Indeed, CoCs often require that suppliers pay their workers the legal minimum wage, but they fail to ask for a living wage, like the CLS fail to. If ever CoCs mention the right to a living wage, it is merely an encouragement for suppliers to do so, aspirational rather than mandatory.³²¹ For example, Gap's CoC stipulates that "[w]orkers shall be paid at least the minimum legal wage (...). Factories are *encouraged* to provide wages and benefits that are sufficient to cover workers' basic needs and some discretionary income."³²² Moreover, a simple statement encouraging suppliers to pay a living wage is of no use if MNCs keep asking for increasingly lower prices when they place their orders. This contradiction is of significant importance in the case of Bangladesh since one of the main aspects of Bangladeshi suppliers' competitiveness to attract MNCs' orders is the low costs they offer them. Indeed, CoCs have no utility as long as MNCs do not adjust their buying practices in a way that makes their requirements achievable by their suppliers. What I suggest here is that an important part of the problem with CoCs must lie at the level of the implementation of CoCs.

Another important omission with regard to wages is a provision prohibiting gender differentials in pay for the same job. It is common practice that women workers are paid less than male workers for the same job in the same position. Although most CoCs contain a provision prohibiting discrimination, it is related to employment.³²³ Of the four CoCs I looked at for my analysis, only Gap's CoC requires that workers must be paid without regard to gender.³²⁴ It is true however that the *Labour Act*, for which CoCs require compliance, already states that men

³²¹ See CCC, "Cashing in", *supra* note 131 at 31; H&M CoC, *supra* note 318 at 3; Walmart CoC, *supra* note 318; JCPenney, *supra* note 318 at 2.

³²² Gap CoC, *supra* note 318 at 10 [emphasis added].

³²³ See e.g. H&M CoC, *supra* note 318 at 3; Gap CoC, *supra* note 318 at 8; JCPenney CoC, *supra* note 318 at 2.

³²⁴ Gap CoC, *supra* note 318 at 8.

and women should be paid equal wages for work, but including this requirement in CoCs would accentuate its importance.³²⁵

One last important concern raised by feminist critiques of the CLS is the fact that the CLS fail to reflect women's confinement to the informal labour force. This is an important concern in the case of Bangladesh, where women of the informal sector are mostly found inside garment factories but are either denied an employment contract or are working at subcontracting factories. According to Günseli Berik and Yana Van der Meulen Rodgers, respectively professor at the Economics Department of the University of Utah and professor at the Women's and Gender Studies department of Rutgers University, “[b]etween 70 to 80 per cent of employers continue to hire workers informally and only half of the large employers provide them with an appointment letter”, and they qualify this problem as “a mild form of forced labour.”³²⁶ Of the four CoCs I looked at, only H&M requires that “[a]ll employees are entitled to a written employment contract, in the local language, stipulating the employment terms and conditions.”³²⁷ However, the requirement to provide workers with an employment contract is included in the *Labour Act*, and it thus depends on MNCs to implement their CoC. Yet if CoCs were clearly stating that suppliers should provide their workers with an employment contract instead of having to refer to the *Labour Act*, it would emphasize the importance of this right, and it could increase suppliers' compliance and auditors' awareness with respect to this requirement during factory visits.

I have identified some significant flaws and omissions with regard to the content of the legal framework for MNCs in the Bangladeshi context such as the absence of a mandatory requirement to pay workers a living wage, a provision for men and women to be paid equal wages for equal work, and a requirement to provide workers with an employment contract. However, although these are major weaknesses, the standards included in CoCs should have the overall potential to provide Bangladeshi women workers with adequate basic protection. These cannot in themselves explain the failure of CoCs to protect Bangladeshi women workers. MNCs cannot replace the Bangladeshi state in its role to enact a complete labour legislation. The fact that CoCs ask for compliance with domestic laws is sufficient in many areas, and MNCs' role should thereby

³²⁵ *Labour Act*, *supra* note 124, s 345.

³²⁶ *Supra* note 97 at 67.

³²⁷ H&M CoC, *supra* note 318 at 3.

mainly be to help the government in ensuring the compliance of Bangladeshi suppliers with these laws. Thus, I will argue that there are many issues with the implementation of the legal framework for MNCs in Bangladesh, which result in an overall very low degree of compliance with CoCs in Bangladeshi factories, and that this is the primary reason why this legal framework has failed to protect garment workers in Bangladesh and above all women workers.

Implementation

With regard to the implementation of CoCs by suppliers, one problematic aspect is that before placing their import orders in Bangladesh, MNCs ask their suppliers for compliance with their CoC, requiring compliance with domestic laws, in addition to demanding compliance with specific and complex requirements related to health and safety at work, which vary among MNCs. These requirements can be very difficult to achieve for Bangladeshi suppliers, especially those who own smaller factories, as they do business with several MNCs and are thus asked to comply with various CoCs, the Bangladeshi laws, and multiple health and safety requirements. The absence of common standards especially with regard to health and safety at work represents an important impediment for the implementation of CoCs and “creates a sort of compliance indiscipline.”³²⁸ Referring to applicable domestic laws and requiring compliance with those should be enough and would address Alston’s critique, with whom I agree, according to whom CoCs’ standards are undefined for practical purposes. In its CoC, Gap already proceeds in a way similar to this by referring to applicable laws for almost all of its standards, but this is not the case for many CoCs.³²⁹ The *Labour Act* is already a complete and complex legislation that covers a large spectrum of areas related to health and safety, in addition to the *Building Code* and the regulations of the Bangladesh Fire Services and Civil Defence Authority. Ultimately, MNCs cannot and should not replace the state in its role to enact laws.

Another problematic aspect with regard to the implementation by suppliers is that, despite asking for compliance with their CoCs and additional requirements, MNCs make it very unlikely that their suppliers will be in compliance with those since they have not changed their buying practices in accordance with their requests. It is MNCs’ buying practices that have largely

³²⁸ TIB Report, *supra* note 14 at 9.

³²⁹ Gap CoC, *supra* note 318.

contributed to poor and dangerous working conditions in Bangladeshi factories, and simply drafting CoCs stating aspirational standards is of no use if MNCs do not change their buying practices that created the need for CoCs in the first place.³³⁰ MNCs keep paying suppliers very low prices for their order and thereby just pass on to them the cost of compliance.³³¹ If MNCs do not increase the prices they pay for their orders, many suppliers can hardly make the necessary improvements, especially with regard to health, safety and wages, while the richest ones will refuse to cut into their profits. Also, if MNCs do not change their delivery time exigencies, it is unlikely that suppliers will reduce the hours and overtime they require from their employees. Moreover, as MNCs do not allocate permanent contracts, suppliers have even less motivation to undertake sustainable improvements since shortly they might be doing business with another MNC, which has different requirements.³³² As Kanchana Ruwanpura, a scholar who is specialised in labour rights and feminism in South Asia, and Neil Wrigley, geography professor, emphasize, “buyers’ sourcing strategies are in fundamental ways inherently incompatible with and undermine the implementation of corporate codes of conduct at sites of production.”³³³ Suppliers will not comply with CoCs and thus CoCs will not improve working conditions in garment factories as long as MNCs do not change their own buying practices, rendering it at least possible for suppliers to implement CoCs; at present, MNCs not only discourage improvements on the part of their suppliers, but they also inhibit them and make violations of their CoCs almost inevitable.³³⁴

With respect to the implementation of CoCs by MNCs themselves, Alston is correct to point out that the most serious consequence of the CLS approach on MNCs’ responsibility is not primarily related to the selection of these four rights per se and consequently the content of the legal framework for MNCs but is much more practical. Alston points to the lack of definable content for the relevant principles and the new implementation arrangements encouraging promotional monitoring, and he expressed fears with regard to the overall resulting regime. Indeed, the promotion of the CLS by the ILO allowed MNCs to become their own regulatory agent with

³³⁰ See Shaw & Hale, *supra* note 296 at 108.

³³¹ See Kabeer, “Compliance Versus Accountability”, *supra* note 149 at 32.

³³² *Ibid* at 33; SOMO, “Fatal Fashion”, *supra* note 10 at 15.

³³³ Kanchana Ruwanpura & Neil Wrigley, “The cost of compliance? Views of Sri Lankan apparel manufacturers in time of global crisis” (2011) 11 *Journal of Economic Geography* 1031 at 1045.

³³⁴ See CCC, “Cashing in”, *supra* note 131 at 12.

regard to their responsibility to respect labour standards throughout their global supply chains and exercise due diligence. They do so by voluntarily adopting and implementing CoCs, putting in place their own monitoring systems, and having the possibility to give the signification they want to the principles included in their CoCs as they perform social auditing. Furthermore, MNCs decide by themselves how and if they remediate violations detected during social audits at their suppliers' factories. Extending Alston's argument to the case of Bangladesh, the implementation arrangements resulting from the CLS approach is the most important cause of the failure of CoCs to improve garment workers' conditions. It allows MNCs to put little effort into practical implementation of their CoCs through their monitoring systems of social auditing, and therefore CoCs have not done much in practice to improve the situation in Bangladeshi factories. CoCs have mainly been used by MNCs to defend their brand image and divert criticism.

In their CoCs, JCPenney, Gap and H&M pledged to do monitoring to assess their suppliers' compliance. H&M's code specifies that "[they] reserve the right to make unannounced visits to all units producing goods (...) for H&M, at any time. [They] also reserve the right to appoint an independent third party of [their] choice to conduct audits in order to evaluate compliance with [their] Code of Conduct. (...) During audits [they] require unrestricted access to all areas of the premises, to all documents and to all employees for interviews."³³⁵ Yet even though MNCs praise the robustness of their monitoring mechanisms, there are discrepancies between their claims and the concrete results. Social audits are failing as a due diligence tool to assess CoCs' compliance in Bangladesh for multiple reasons.³³⁶

Firstly, as suppliers often get prior notice well in advance of audit visits, they can prepare and deceive auditors.³³⁷ They can falsify records and instruct workers on what information to convey if they are interviewed.³³⁸ Time cards and wage slips are forged, and it is even common that two sets of books are permanently kept – one containing the right information and the other one for audits.³³⁹ Suppliers can open childcare centres on the auditing day only and ask women to bring

³³⁵ H&M CoC, *supra* note 318 at 5.

³³⁶ See SOMO, "Fatal Fashion", *supra* note 10 at 13, 15.

³³⁷ See War on Want, "Fashion Victims", *supra* note 234 at 10-11.

³³⁸ *Ibid*; CCC, "Cashing in", *supra* note 131 at 46, 51.

³³⁹ See War on Want, "Fashion Victim", *supra* note 234 at 11; "The real Asda price: Poverty and abuse in George's showcase factories", Actionaid (May 2011) at 3, online: Actionaid <https://www.actionaid.org.uk/sites/default/files/doc_lib/the_real_asda_price.pdf> [Actionaid, "Asda"].

their children.³⁴⁰ As women workers are ill-informed about the content of CoCs and do not trust that what they say will not be passed on to their managers, they do not speak up.³⁴¹ On the other hand, owners are aware that, if they do not set up artificial working conditions to get a positive evaluation, they will stop getting orders; dissimulating real working conditions of their workers is one of the solutions they have found to relieve the pressure created and maintained by MNCs' business practices.³⁴² As for workers, the reason why some of them do not talk is that they do not want to risk their factory losing orders and them not having work anymore.³⁴³

Secondly, social auditors fail to detect these subterfuges. A checkbox approach in a yes/no format based on a list drawn up beforehand is often the means used when audits are conducted, but such an approach only provides a superficial assessment, not requiring auditors to dig up the truth.³⁴⁴ Since provisions such as the prohibition of discrimination have no definitional content, auditors commonly fail to detect the multiple mostly hidden aspects of gender-based discrimination, as feared by Alston with regard to the vagueness and thus emptiness of CoCs' principles. Checklists on which audits are based are largely incomplete, especially with regard to health and safety. These lists refer to the additional requirements specific to each MNC but miss some of them, and, despite the fact that CoCs require compliance with national laws, these lists used for Bangladeshi factories are not prepared in accordance with Bangladeshi laws. Yet all together, the *Labour Act*, the *Building Code*, and the Fire Service and Civil Defense Authority regulations offer a much more complete protection and could allow the drafting of a much more detailed evaluation grid for social audits than MNCs' specific requirements.³⁴⁵ In addition to problems related to standards included in checklists, social audits themselves are too short, careless, and not thorough enough to identify violations of the few standards listed in auditors' checklist.³⁴⁶ Auditors only interview a few workers who are selected by management, and sometimes they even limit their

³⁴⁰ See CCC, "Cashing in", *supra* note 131 at 46, 56.

³⁴¹ See War on Want, "Fashion Victims", *supra* note 234 at 10.

³⁴² See CCC, "Cashing in", *supra* note 131 at 51.

³⁴³ *Ibid* at 30, 46.

³⁴⁴ See SOMO, "Fatal Fashion", *supra* note 10 at 13-15; War on Want "Fashion Victims", *supra* note 234 at 10; Stephanie Clifford & Steven Greenhouse, "Fast and Flawed Inspections of Factories Abroad", *The New York Times* (1 September 2013), online: The New York Times <<http://www.nytimes.com>> [Clifford & Greenhouse, "Fast and Flawed"].

³⁴⁵ See BAPPG, "After Rana Plaza Report", *supra* note 110 at 48; Clifford & Greenhouse, "Fast and Flawed", *supra* note 344.

³⁴⁶ *Ibid*; War on Want, "Fashion Victims", *supra* note 234 at 11; SOMO, "Fatal Fashion", *supra* note 10 at 13-15.

interviews to management members. They also frequently lack the expertise to assess the electrical installations and construction defects.³⁴⁷ Finally, collusion and corruption are common practices; auditors turn a blind eye in order to satisfy the auditing requirements, or artificial compliant conditions are set up with the consent of MNCs' representatives.³⁴⁸

Beyond these major flaws with regard to social audits as they are performed in Bangladeshi garment factories, another major problem is that, when alarming conditions are detected, MNCs often fail to redress them. By not putting in place effective remediation despite negative reports by audits, they fail to assume their responsibility of due diligence.³⁴⁹ Indeed, the due diligence principle “implies more than just an assessment of risks for the company; the purpose is to understand and *address* risks and abuses that the company’s activities pose to rights holders, such as factory workers (...). Moreover, due diligence demands companies to see to it that future violations of human rights are *prevented* and that adverse impacts are mitigated.”³⁵⁰ However, what happens in reality is rather far from what MNCs’ responsibility of due diligence implies. Both JCPenney and Gap state in their CoC that, if they determine that a factory is in breach of their code, they may set up a corrective action plan to be implemented by the supplier, but they reserve their right to cancel current contracts and terminate the business relationship at any time.³⁵¹ As Kabeer stresses, MNCs generally use “the threat of withholding orders rather than any positive incentives to promote compliance.”³⁵² If suppliers do not make the necessary improvements by themselves in short order, MNCs usually just leave the factory. Despite their recognition that improvements are much needed, they refuse to commit to pay for them.³⁵³ In addition to failing to fix the problems, MNCs also fail to inform relevant stakeholders of the audit results when they leave factories. This lack of transparency based on the sacrosanct

³⁴⁷ See SOMO, “Fatal Fashion”, *supra* note 10 at 13-15; CCC, “Cashing in”, *supra* note 131 at 30, 46, 51.

³⁴⁸ See TIB Report, *supra* note 14 at 9; CCC, “Cashing in”, *supra* note 131 at 46.

³⁴⁹ See SOMO, “Fatal Fashion”, *supra* note 10 at 13-15.

³⁵⁰ SOMO, “Fatal Fashion”, *supra* note 10 at 13-15 [emphasis added].

³⁵¹ JCPenney CoC, *supra* note 318 at 4; Gap CoC, *supra* note 318 at 14.

³⁵² “Compliance Versus Accountability”, *supra* note 149 at 43.

³⁵³ See “Gap and Walmart in Bangladesh: A History of Irresponsibility and Empty Promises”, *Clean Clothes Campaign* (July 2013), online: [Clean Clothes Campaign <https://www.cleanclothes.org/resources/background/history-gap-and-walmart-bangladesh>](https://www.cleanclothes.org/resources/background/history-gap-and-walmart-bangladesh) [CCC, “Gap and Walmart in Bangladesh”].

confidentiality of audit reports and supplier lists inhibits other actors, like worker representatives, the government, other buyers and the workers, to take effective steps to redress the situation.³⁵⁴

One important problem with MNCs promptly cutting their business relationship with non-compliant suppliers without putting in place positive incentives to redress the situation, apart from not assuming their responsibility of due diligence and putting garment workers at risk in the immediate term, is that these suppliers will continue to produce garments and thus keep workers at risk in the future. If suppliers cannot get orders from other MNCs directly, most of the time they do not do the necessary improvements by themselves but instead turn to subcontracting, out of reach of any MNCs' monitoring systems. Indeed, "it regularly happens that the same supplier reappears in the supply chain by means of (unauthorised) subcontracting as has been the case for Walmart (...) production at Tazreen Fashions."³⁵⁵ Before the fire broke out at Tazreen factory, Walmart audited the factory and serious fire safety hazards were identified. Walmart requested its supplier to set up an action plan to improve the situation within the next six months, but the company eventually just decided to end its relationship with Tazreen for an unclear reason, without disclosing any of its audit reports.³⁵⁶ "Records and evidence recovered on site proved that at least six Walmart suppliers were sourcing Walmart goods from Tazreen in 2012 and that Walmart was the biggest producer in the months leading up to the fire."³⁵⁷ After the accident, Walmart claimed that its suppliers had subcontracted to Tazreen without its knowledge.³⁵⁸

The primary reason for CoCs' failure to improve working conditions in Bangladeshi garment factories thus lies at the implementation level. Even if CoCs' content responded to all Bangladeshi women's needs, they are of no use if they are not implemented. Drawing on Kabeer's insight, according to whom a culture of compliance did not grow in Bangladesh neither on the part of MNCs nor on the part of suppliers following the proliferation of CoCs, I argue that this is due to MNCs not taking effective actions to implement these codes and collaborate with their suppliers. Their social auditing systems present too many flaws to effectively detect labour

³⁵⁴ See SOMO, "Fatal Fashion", *supra* note 10 at 13-15, 58-59, 65.

³⁵⁵ SOMO, "Fatal Fashion", *ibid* at 15.

³⁵⁶ See SOMO, "Fatal Fashion", *ibid* at 12-15, 49-50, 58-59; CCC, "Gap and Walmart in Bangladesh", *supra* note 353.

³⁵⁷ CCC, "Gap and Walmart in Bangladesh", *ibid*.

³⁵⁸ See SOMO, "Fatal Fashion", *supra* note 10 at 59.

abuses and dangerous conditions, and MNCs use their codes merely as public relation tools to protect their brand image in the eyes of their consumers. Suppliers are aware that, if they are found not to be in compliance with CoCs' standards following MNCs' social audits, MNCs will just terminate business instead of putting in place incentives to promote real improvements. Consequently, if suppliers try to make any improvements at all in their factories, these are minimal and superficial; suppliers only seek to comply with the most visible aspects of CoCs and otherwise just try to hide their lack of compliance during visits in order to maintain their business relationships, and poor and dangerous working conditions in Bangladeshi garment factories are concealed.

As Alston warns, based on the CLS approach, MNCs became their own regulatory agents, drafting their own codes and putting in place their own monitoring systems with no external supervision; however, counting on MNCs themselves to fulfill their responsibility to respect labour standards and exercise due diligence has proved to be wrong in the Bangladeshi context since MNCs have repetitively failed to report and redress poor and dangerous working conditions in Bangladeshi garment factories and to prevent fatal accidents. Yet following a tragedy like Tazreen or a scandal regarding appalling working conditions in a garment factory in Bangladesh, MNCs do not face legal consequences and are not held legally responsible, even though they were doing business directly with the factory concerned and have failed to duly fulfill their responsibility to respect labour standards and exercise due diligence by neglecting to ensure their supplier's compliance with their CoC.³⁵⁹ MNCs themselves do not consider Bangladeshi factory workers as their employees from a legal point of view and, as such, they do feel that they are liable to them.³⁶⁰

Subcontracting factories

The problem of subcontracting factories is another highly important issue pertaining to CoCs' implementation in Bangladesh. Subcontracting factories are small units that employ a large part of the female labour force, and it is there that most appalling and dangerous conditions prevail.

³⁵⁹ See SOMO, "Fatal Fashion", *supra* note 10 at 15.

³⁶⁰ See Anabelle Nicoud & Isabelle Ducas, "Condition de travail au Bangladesh: à qui la responsabilité?", *La Presse* (13 avril 2014), online: La Presse <<http://www.lapresse.ca>>.

Yet they remain beyond the reach of MNCs and their CoCs. I argue that this is one of the main culprits of the failure of CoCs to protect Bangladeshi women, who are overrepresented in this branch of the informal employment sector.

MNCs are aware that their Bangladeshi suppliers have no choice but to resort to subcontracting due to the strong pressure their business practices and requirements put on them. Since MNCs ask for cheap prices for their orders and do not engage in long-term business relationships, they know that suppliers continually compete to obtain as many orders as they can. Thus, it can reasonably be expected that the capacity of factories will be overburdened at a certain point.³⁶¹

Some CoCs state that they apply to suppliers and to their subcontractors, like Walmart's CoC, which specifies that "[a]ll suppliers and their manufacturing facilities, including all subcontracting (...) facilities, will be held to these standards."³⁶² Other CoCs remain vague about the subject, like Gap's CoC, which states that it "applies to all factories that produce goods for Gap (...)." ³⁶³ In any case, the overwhelming majority of MNCs only do audits at their first tier suppliers and consider that it is their suppliers' responsibility to ensure that subcontractors are in compliance with their CoCs. ³⁶⁴ According to H&M's CoC, "[i]t is the responsibility of H&M's suppliers (...) to inform their subcontractors about H&M's Code of Conduct (...), and to ensure that these are implemented in every factory and workplace that produces (...) goods (...) for H&M."³⁶⁵ Likewise, JCPenney's CoC states that they "expect [their] suppliers to support the fulfillment of these Principles by incorporating them in their own internal business processes, which they consistently apply and communicate to their (...) suppliers (...)." ³⁶⁶ While a few MNCs ask for certifications on behalf of their Bangladeshi suppliers before the latter transfer orders to subcontractors, most MNCs do not insist on this requirement. ³⁶⁷ Since MNCs' monitoring systems do not extend to factories that operate on the basis of subcontracted orders and since their direct suppliers have neither the means nor the incentive to ensure compliance on the part of their subcontractors, subcontracting factories commonly do not even try to comply

³⁶¹ See SOMO, "Fatal Fashion", *supra* note 10 at 15.

³⁶² Walmart COC, *supra* note 318.

³⁶³ Gap COC, *supra* note 318 at 1.

³⁶⁴ See Barrientos, *supra* note 144 at 20.

³⁶⁵ H&M CoC, *supra* note 318 at 1.

³⁶⁶ JCPenney CoC, *supra* note 318 at 4.

³⁶⁷ See CCC, "Cashing in", *supra* note 131 at 47.

with the most visible aspects of CoCs. Moreover, as they are lower in supply chains, they get even worse paid for orders and cannot afford to pay for any improvements. Thus, working conditions remain highly poor and dangerous for women workers at subcontracting factories.³⁶⁸ Subcontracting is in the informal sector, and MNCs do not even know exactly where their clothes are produced in the end.³⁶⁹ When an accident occurs at a subcontracting factory, MNCs disclaim responsibility alleging that the subcontracting was unauthorised and therefore illegal, even though the clothes that were produced at that factory were for them.³⁷⁰

Thus, even if MNCs' monitoring systems to ensure compliance with their CoCs were efficient to detect labour violations and dangerous conditions and were accompanied by MNCs' commitment to put in place effective action plans to redress the situation, as these procedures to implement CoCs are not meant to be applied to subcontracting factories, CoCs would still fail to address the worst labour rights abuses. For her part, Hensman argues that subcontracting factories should fall mainly under the government's responsibility and not MNCs'. However, even though I believe that the government has a large share of responsibility in this issue, I argue that MNCs also have a role. They take a large advantage from these subcontracting supply chains but are relieved of all responsibilities, whereas they have the power and means to address the highly problematic situation of subcontracting factories in Bangladesh. But for this, they must genuinely intend to make their CoCs effective instruments to improve working conditions for all those involved in the production of their garments in Bangladesh.

CoCs and soft law instruments for MNCs' responsibility have thus failed to protect Bangladeshi women workers, and this is mainly due to the lack of genuine efforts by MNCs to implement them. This primarily comes from the nature of these instruments as non-legally binding soft law instruments for which we have to count on MNCs themselves to be their own regulator. If, for now, soft law instruments are the only way to recognize MNCs' responsibility to respect labour standards, this system has not proved to be effective. MNCs are capitalist entities, and they only make efforts to improve working conditions at their suppliers' factories and implement CoCs if

³⁶⁸ See Kabeer, "Compliance Versus Accountability", *supra* note 149 at 30, 43.

³⁶⁹ See War on Want, "Fashion Victims", *supra* note 234 at 11.

³⁷⁰ See SOMO, "Fatal Fashion", *supra* note 10 at 15; Nicoud & Ducas, *supra* note 360.

their image and thus their profits are at stake. This is not enough to make a real difference and prevent tragedies such as Rana Plaza.

3. Failure of the domestic legal framework

a. Literature review

Some scholars argue that the main problem with Bangladeshi labour laws is that the standards they set are not high enough to offer adequate protection to women workers. Some scholars also argue that the problem mainly stems from the implementation and enforcement level. Yet as Syeda Sharmin Absar, a scholar who worked for UNICEF in Bangladesh, points out, “[w]hether modification is needed or strict implementation should be the norm needs more scrutiny by policy maker. While that is done, violations of existing laws will continue to affect poor, helpless but hardworking workers.”³⁷¹

With regard to scholars who criticize the content of the domestic legislation, I have focussed my research on articles (mainly peer-reviewed) and books that were published after 2006 since the *Labour Act* was enacted that year and repealed the *Factories Act* of 1965 and the *Industrial Relations Ordinance* of 1969. Oddly, many of these pieces written by well-known scholars and published as recently as 2014 refer to the *Factories Act* without mentioning the *Labour Act* or to both as if the two were still in force.

One of the main criticisms levelled in the literature against the Bangladeshi labour legislation is that there is no obligation for factory owners (who are the employers) to provide workers with an employment contract or an appointment letter. More recently, this criticism was put forward in 2009 in an article by Nazneen Ahmed, member of the Bangladesh Institute of Development Studies, and Jack H.M. Peerlings, professor at Wageningen University in the Netherlands, who have worked on many projects together in Bangladesh, and in 2014 in a book by Shahidur

³⁷¹ Absar Syeda Sharmin, “Health Hazards and Labour Laws in Bangladesh: A Narrative-based Study on Women Garment Workers” (2003) 31:2 AJSS 452 at 475.

Rahman, professor at BRAC University in Dhaka.³⁷² However, both of them only refer to the *Factories Act*, which did not include such an obligation, but the *Labour Act* does.³⁷³

With regard to issues in the labour legislation that are specific to women, discrimination based on gender is highlighted by some scholars. Rahman critiques the fact that there is no provision for equal pay for equal work, but he refers here to the *Factories Act*.³⁷⁴ Pragya Khanna, a scholar who focuses her work on labour and gender issues in India and Bangladesh, also deplors the fact that there is neither a provision for equal pay for equal work nor a provision that prohibits gender discrimination in employment in the *Labour Act*.³⁷⁵ Yet even though it is accurate to point at the absence of a prohibition for gender discrimination in employment in the *Labour Act*, section 345 requires that “[i]n determining wages or fixing minimum rates of wages for any worker, the principle of equal wages for male and female workers for work of equal nature or value shall be followed and no discrimination shall be made in this respect on the ground of sex.”³⁷⁶ Nidhi Khosla, a scholar who also works on the specific case of Bangladesh, criticises the *Labour Act* for not addressing sexual harassment against women. She recognizes that the *Prevention of Oppression Against Women and Children Act of 2000* has made sexual harassment a criminal offence, but she regrets the fact that it does not include any provisions for the workplace and that it “uses language that is obsolete and vulnerable to misinterpretation (...).”³⁷⁷ For Momtaz Jahan, a scholar who has made significant contributions to the research on vulnerable groups in Bangladesh, one serious omission in the Bangladeshi labour legislation for women is that there is no requirement for employers to provide workers with a safe place to live, which was neither included in the *Factories Act* nor is it in the *Labour Act*. According to her, housing is an important need for women workers since the majority of them are rural migrants. It is very hard for women to find a residence in Dhaka, in addition to being costly, and factory owners do not provide housing facilities. Women workers “live in slums, messes along with other workers or relatives in deplorable and unhealthy condition.”³⁷⁸

³⁷² Ahmed & Peerlings, *supra* note 154 at 662; Shahidur Rahman, *supra* note 175 at 77.

³⁷³ *Labour Act*, *supra* note 124, s 5.

³⁷⁴ Shahidur Rahman, *supra* note 175 at 77.

³⁷⁵ Khanna, *supra* note 17 at 125.

³⁷⁶ *Labour Act*, *supra* note 124, s 345.

³⁷⁷ *Supra* note 43 at 297.

³⁷⁸ *Supra* note 40 at 4.

As for other provisions that include both male and female workers, Rahman points to the fact that the requirement limiting the working week to 48 hours with an additional 12 of overtime is disapproved by employers, who claim that it is impossible to respect this requirement during peak times as deadlines for delivery approach.³⁷⁹ Although Rahman refers to the *Factories Act*, these limitations were maintained in the *Labour Act*.³⁸⁰ He also points to the disapproval of employers with regard to the prohibition for women to work after 8 p.m. for this same reason, but this prohibition was not maintained in the *Labour Act*.³⁸¹ Conversely, according to Khosla, this prohibition was one of the few mechanisms that protect women workers, and the main problem was its implementation (but oddly, she refers to the *Labour Act* as if this prohibition had been kept).³⁸² Finally, as regards to wages, one of the main issues for Ahmed and Peerlings is that there is no mechanism that adjusts the minimum wage to inflation.³⁸³ Yet the *Labour Act* has required the establishment of the Minimum Wages Board, and it states that “[i]n making its recommendation the wages board shall take into consideration cost of living, standard of living (...).”³⁸⁴ Rahman points at the “widening gap between employees’ minimum wage and the rising price of essential commodities.”³⁸⁵

In the opinion of many other scholars, the *Labour Act* offers an extensive protection to workers, and the main problem is rather its weak implementation and enforcement.³⁸⁶ This is one of the conclusions of the ILO in its *Decent Work Country Programme 2012-2015*, according to which “[t]he 2006 Labor Act seeks, inter alia, to protect and promote rights of the workers. Although legal provisions exist to uphold the fundamental principles and to protect rights at work, their implementation and enforcement remain challenging.”³⁸⁷ With regard to the implementation of the *Labour Act* by garment factory owners, one of the main non-compliance issues identified in the literature is related to employment contracts and appointment letters. Issues on this matter were also stressed under the *Factories Act*, but criticisms were based on the absence of provisions

³⁷⁹ Shahidur Rahman, *supra* note 175 at 77.

³⁸⁰ *Factories Act*, *supra* note 164, s 50; *Labour Act*, *supra* note 124, s 102.

³⁸¹ Shahidur Rahman, *supra* note 175 at 77; *Factories Act*, *supra* note 164, s 65(1)(b).

³⁸² Khosla, *supra* note 43 at 297.

³⁸³ Ahmed & Peerlings, *supra* note 154 at 661.

³⁸⁴ *Supra* note 124, s 141.

³⁸⁵ *Supra* note 175 at 75.

³⁸⁶ See e.g. Barrientos, *supra* note 144 at 20; Rock, *supra* note 13 at 219; Berik & Rodgers, *supra* note 97 at 60.

³⁸⁷ ILO, *Decent Work Programme*, *supra* note 272 at 2; This problem was also stressed under the *Factories Act* by many scholars (See Sharmin Absar, *supra* note 371 at 452; Jamaly & Wickramanayake, *supra* note 50 at 160).

making it mandatory for employers to provide their workers with an employment contract; yet, despite the inclusion of such a provision in the *Labour Act*, the situation has remained highly problematic with regard to its weak level of implementation.³⁸⁸ According to many scholars, the main problem with not giving an employment contract or appointment letter is that, with no proof of employment, workers cannot claim their rights and the benefits they are entitled to and they merge into the informal workforce.³⁸⁹ Other scholars highlight that the provisions that are the most widely violated are those related to matters that affect women directly and specifically, like maternity benefits and childcare centres.³⁹⁰

With regard to the enforcement of the labour legislation by the Bangladeshi government, Rahman emphasizes the fact that in such a context where factory owners do not comply with the laws, it is the government's responsibility to force them to comply.³⁹¹ According to Hensman, it is the role of the government to ensure compliance with labour legislation in all garment factories, but especially in subcontracting factories, at the bottom of global supply chains, for which it should take most responsibility and not count on monitoring by MNCs. She argues that “[t]he deeper we plunge into the murky depths of subcontracting chains, the less it makes sense to defend the rights of workers as employees of a particular company, and the more important it becomes to defend their rights simply as garment workers.”³⁹²

Yet it is argued that the Bangladeshi state fails to fulfill its responsibilities. Marilyn Rock argues that the state is unwilling to address the problem of implementation, and consequently, the state monitoring and inspection system led by the Department of Factories and Establishment is really weak and does not have enough inspectors, which encourages factory owners to keep violating the laws.³⁹³ Khanna, Berik, and Rodgers agree that there are not enough government inspections taking place in Bangladeshi garment factories, and Khanna insists that in the rare cases that inspections are performed, inspectors mostly interact with factory owners.³⁹⁴ Rahman also agrees

³⁸⁸ See Berik & Rodgers, *supra* note 97 at 67.

³⁸⁹ See e.g. Ahmed & Peerlings, *supra* note 154 at 662; Sharmin Absar, *supra* note 371 at 467; Hensman, *supra* note 309 at 207.

³⁹⁰ See e.g. Berik & Rodgers, *supra* note 97 at 70-71; Rock, *supra* note 13 at 219.

³⁹¹ *Supra* note 175 at 74.

³⁹² *Supra* note 309 at 207.

³⁹³ *Supra* note 13 at 219.

³⁹⁴ Khanna, *supra* note 17 at 126; Berik & Rodgers, *supra* note 97 at 68.

that there are not enough inspectors, but he further argues that, “in some cases, it is not only a lack of officers, but also the lack of effective action from existing officers.”³⁹⁵ According to him:

These officers are keen to file cases (...) in labor courts against unsafe garment factories rather than take strict action because factory owners negotiate with them and make payments (bribes) for withdrawal of the cases. For this reason, the number of cases pending at different labor courts has increased significantly (...). There is no time frame for delivering a decision from the Labor Court after filing a case. For this reason, a worker often gives up on the hope of obtaining justice from the government due to its excessively bureaucratic nature and its ineffectiveness.³⁹⁶

Rock also points out the issue of bribes paid by owners to inspectors for them to turn a blind eye to their non-compliance with the labour legislation.³⁹⁷ For Berik and Rodgers, corruption is the main reason why the enforcement of labour legislation is so difficult in many developing countries of Asia.³⁹⁸

Zia Wadud, Fuad Yasin Huda, and Nizam Uddin Ahmed focus their research on safety inspections in Bangladeshi garment factories, specifically the “effectiveness of existing fire prevention and fire fighting rules, regulations and practices”³⁹⁹ with regard to what they call “soft issues”. Soft issues are related to “soft parameters”, as opposed to “hard parameters”. Soft parameters refer to day-to-day fire safety management practices (e.g. whether there is water in the water tank for firefighting), whereas hard parameters refer to structural parameters of fire safety through construction and buying of equipment (e.g. whether there is a water tank for firefighting).⁴⁰⁰ Garment factories must have their fire safety certification renewed every month by the Fire Services and Civil Defense Authority (BFSCDA), but the inspection process commonly focuses on hard parameters. Indeed, inspection checklists draw upon the *Building Code* and the BFSCDA regulations, and the parameters included are mainly hard in nature. However, soft issues often have a critical impact in the event of a fire incident. Yet soft

³⁹⁵ *Supra* note 175 at 80.

³⁹⁶ *Ibid.*

³⁹⁷ *Supra* note 13 at 219.

³⁹⁸ *Supra* note 97 at 72.

³⁹⁹ *Supra* note 256 at 2.

⁴⁰⁰ *Ibid* 3-4.

parameters are difficult to regulate. Following their research, Wadud, Huda, and Uddin conclude that an alarming situation prevails in garment factories, most importantly with regard to soft issues.

With regard to hard parameters, the three researchers stress that “strict adherence to the [*Building Code*] would reduce fire risk of the buildings to an acceptable limit;” however, “the adherence to fire safety design is not always strict, due to a lack of enforcement and safety culture.”⁴⁰¹ They agree with other scholars on the fact that there are many issues with the performance of factory inspections. According to them, “inspection of the factories takes place once or twice a year due to a shortage of manpower. (...) Also obtaining the certificates is not very difficult due to suspected corrupt practices and lack of competence among the inspectors.”⁴⁰² Yet they note that “in recent years, there have been significant efforts to improve the structural elements of fire safety.”⁴⁰³ However, according to them, “there still is a large scope to improve the fire safety in the garment factories in Bangladesh, especially with regard to *the soft measures*.”⁴⁰⁴ They deplore the fact that inspection checklists contain very few soft parameters and that the yes/no format of the checklist approach cannot offer a real assessment of soft parameters, while there is no other standard set by another authority for management practices. Moreover, since there is often an announcement prior to inspections, factory owners have time to prepare and to make temporary changes, which is all the easier for soft parameters because these are related to management practices, which can be quickly fixed. Thus, according to the three, “although on paper all the garment factories are compliant with fire regulations at the time of inspection, they may not always remain so at any random point in time, which is more important from the safety perspective.”⁴⁰⁵

For their study, the three researchers have inspected garment factories for soft parameters. Since these factories were certified, it could be expected that they were at least in compliance with the soft parameters common to the BFSCDA’s checklist. However, they “found clear evidence that

⁴⁰¹ *Supra* note 256 at 3.

⁴⁰² *Ibid* at 4.

⁴⁰³ *Ibid* at 18.

⁴⁰⁴ *Ibid* [emphasis added].

⁴⁰⁵ *Ibid* at 4.

on-site fire safety situation is substantially different than the certified situations.”⁴⁰⁶ They conclude that the major issue with fire safety in factories is the day-to-day management practices and that the inspection system is inadequate to accurately assess these. However, they found out that factories that are members of the BGMEA perform better than non-members for many parameters, including the most important, and often by a wide margin. According to them, “[s]ince BGMEA membership is not conditional on fire safety performance of the factories, it can be concluded that membership improves the day-to-day safety management practices. This is possibly due to better dissemination of information on safety practices and strategies through BGMEA workshops and peer-to-peer learning among the members.”⁴⁰⁷

Finally, looking back to Kabeer and her analysis of a culture of compliance in the Bangladeshi garment industry following the introduction of codes of conduct (CoCs) by MNCs, she pushes her analysis further and asks whether a culture of accountability has been established in the country. A culture of accountability refers to “national labor laws drawn up by the state to set out the rights of all citizens of Bangladesh, including its garment workers,”⁴⁰⁸ and accountability is essential to make these rights real. “There are two key elements to the concept of accountability: answerability, the right to make claims and demand responses; and enforceability, the mechanisms for ensuring that answers are backed by actions and for sanctioning non-responsiveness. Accountability thus gives ‘teeth’ to the concept of rights (...).”⁴⁰⁹ She concludes that no culture of compliance has been established with CoCs, but she asks whether the state itself succeeded in establishing a culture of accountability in the garment industry. Again, she concludes that it has not. With regard to the implementation and enforcement of the labour legislation, Kabeer (like other scholars) looks at issues related to factory inspections:

Because the number of inspectors is far lower than is required, there is an implicit institutional bias in the inspections carried out in favour of more dramatic accidents and “dangerous occurrences” at the expense of the routine violations of labor rights that the more vulnerable sections of the workforce are likely to face. And a blind eye is often turned to those violations that do come to the attention of inspectors if factory owners

⁴⁰⁶ *Supra* note 256 at 13.

⁴⁰⁷ *Ibid* at 16.

⁴⁰⁸ “Compliance Versus Accountability”, *supra* note 149 at 23.

⁴⁰⁹ *Ibid*.

obtain necessary clearances through the payment of bribes to poorly paid and generally overworked inspectors.⁴¹⁰

She also asserts that penalties for factory owners who violate the labour legislation are not severe enough to deter them (she however refers to the *Factories Act*). According to her, there are obvious flaws in the procedures for enforcing legislation through Labour Courts since there are over 10,000 cases pending at Labour Courts and fines are rarely imposed.⁴¹¹ When Kabeer wrote this article, in 2003, the *Labour Act* was still only a project of the government, and she expresses her expectations towards this reform of labour laws to develop a unified labour code; she emphasizes that, although having a new labour code will be a step in the right direction, the real challenge will be to implement it.⁴¹²

b. Problem of enforcement and the sacrifice of garment workers

There are certainly important limitations and omissions in the *Labour Act*, especially with regard to matters that affect women directly, but I argue that ultimately, what causes the failure of the domestic laws to fulfill their stated goal of adequately protecting garment workers is negligence by both factory owners and the government to implement and enforce these.

With regard to these limitations and omissions in the law, most of these are specific to women. For example, it stipulates that women with two or more children are not entitled to such benefits, and it is very regrettable that such a provision was added to the *Labour Act* because it imposes pregnancy-related decisions upon them since families cannot afford to reduce incomes during women's leave.⁴¹³ However, there are some improvements in the *Labour Act* in comparison to the *Factories Act* with regard to maternity benefits since it now specifies that women workers are entitled to a paid maternity leave of 16 weeks instead of 12, and that they must have been employed for six months to be entitled for a maternity leave instead of one year.⁴¹⁴ There is a section that requires equal wages for equal work, but this is not comprehensive enough to protect

⁴¹⁰ "Compliance Versus Accountability", *supra* note 149 at 28.

⁴¹¹ *Ibid.*

⁴¹² *Ibid* at 29, 44 .

⁴¹³ *Labour Act*, *supra* note 124, s 46(2).

⁴¹⁴ *Ibid*, s 46(1); *Factories Act*, *supra* note 164, ss 78(1), 78(3)(d).

women adequately considering that many other forms of gendered discrimination are highly problematic, especially with regard to promotions and opportunities. I agree with Khosla, who points to the absence of sexual harassment in the *Labour Act* as a serious flaw, and I argue further that there should also be a provision against verbal and physical harassment.⁴¹⁵ It is very regrettable that there is no more prohibition of women's work between 8:00 pm and 7:00 am, which was one of the few actual protections women had,⁴¹⁶ and that the *Labour Act* instead states that "[n]o women shall, without her consent, be allowed to work in an establishment between the hours of 10.00 PM and 6.00 AM."⁴¹⁷ The problem with the prohibition of the *Factories Act* was that it was not implemented, but with the softer formulation of the *Labour Act*, is it even more easily overridden by factory owners.⁴¹⁸ The absence of provisions making it mandatory for factory owners to provide their workers with secure means of transport and a safe place to live is a major flaw of the *Labour Act*, just like it was for the *Factories Act*, since these are very important issues for women workers. According to the Fair Wear Foundation, "some factories are beginning to provide such services, but such cases are still few and far between."⁴¹⁹ This shows that it is something that could be possible for factory owners to commit to, and adding such an obligation would force them to all embark on this movement.

Yet with regard to provisions applying to both male and female workers, the *Labour Act* has remediated some major issues of the *Factories Act* and thereby presents a more comprehensive protection to garment workers than before. Firstly, the *Labour Act* has indeed rectified one of the most important critiques raised in the literature with regard to the Bangladeshi labour legislation since it now includes an obligation for factory owners to provide workers with a letter of appointment.⁴²⁰ Another very important improvement is the inclusion of provisions to ensure that workers who are laid-off, retrenched, dismissed for misconduct, or whose employment is terminated can benefit from a notice period and/or receive compensation, while there was no provision for notice periods and compensations in the *Factories Act*.⁴²¹ Moreover, as there is now

⁴¹⁵ See Khosla, *supra* note 43 at 297.

⁴¹⁶ *Factories Act*, *supra* note 164, s 65(1)(b).

⁴¹⁷ *Supra* note 124, s 109.

⁴¹⁸ See Shahidur Rahman, *supra* note 175 at 77; Khosla, *supra* note 43 at 297; War on Want, "Stitched Up", *supra* note 12 at 4.

⁴¹⁹ FWF, "Bangladesh Study 2006", *supra* note 100 at 63.

⁴²⁰ *Labour Act*, *supra* note 124, s 5.

⁴²¹ *Ibid*, ss 16, 20, 23-24, 26.

an obligation for employers to provide their workers with a letter of appointment, all workers should now be in a position to claim these rights and benefits when owners do not comply with the law since they should have a proof of their employee status and employment duration.⁴²² In addition to this, many important provisions contained in the *Factories Act* for the protection of workers' interests were retained in the *Labour Act* and some further improved.⁴²³ Regarding limitations in working hours,⁴²⁴ even though Rahman points to the fact that, according to factory owners, it is not possible to comply with these exigencies, these are reasonable limits that should not be exceeded, despite owners' complaints. This is also what the ILO convention one, signed by Bangladesh, states.⁴²⁵ It requires owners to find other solutions during peak seasons, like hiring temporary workers as the *Labour Act* allows them to do, as long as they treat these temporary workers in accordance with the law.⁴²⁶

It is thus true that there are important limitations with regard to the provisions of the *Labour Act*, and especially for the protection of women's interests, which prevent it from offering a solid and complete protection to women workers, but, on the other hand, it offers a large basic protection to garment workers in general on several issues, some of which are also of high importance for women. This leads me to what is, in my opinion, the main problem with Bangladeshi labour laws; if the *Labour Act*, despite its flaws and weaknesses, was actually implemented, it would already make a massive difference in women workers' lives. This point of view is also held by Nazma Akter, founder of the Awaj Foundation for garment workers' rights advocacy and one of the most respected and influential labour leaders of Bangladesh.⁴²⁷ She emphasizes that, even though the Bangladeshi labour legislation is "decent" in comparison to that of other countries, the problem is

⁴²² See FWF, "Bangladesh Study 2006", *supra* note 100 at 63.

⁴²³ Provisions for workers' right to annual holidays and for casual and sick leaves were maintained in the *Labour Act* (*Factories Act*, *supra* note 164, ss 78-80; *Labour Act*, *supra* note 124, ss 115, 117-118) as were provisions for welfare facilities like first-aid appliances, washing facilities, canteens, and rest rooms (*Factories Act*, *supra* note 164, c 5; *Labour Act*, *supra* note 124, c 8).

⁴²⁴ The *Labour Act* states that workers may work eight hours a day (for a maximum of ten hours) and 48 hours a week (for a maximum of 60 hours) and that all accomplished work exceeding this shall be paid as overtime at twice the ordinary rate; the only difference with the *Factories Act* is that it stated that workers could work nine hours a day before overtime (*Labour Act*, *supra* note 124, ss 100, 102, 108; *Factories Act*, *supra* note 164, ss 50, 53, 58).

⁴²⁵ *Supra* note 262, s 2.

⁴²⁶ *Labour Act*, *supra* note 124, s 4(5).

⁴²⁷ See generally Awaj Foundation, online: Awaj Foundation <<http://awaj.info/>>.

that the law is not enforced.⁴²⁸ Drawing on Kabeer's insight that there is no culture of accountability in Bangladesh, I argue that it is precisely because of the government's lack of concern regarding the enforcement of labour laws and safety standards and its failure to establish effective mechanisms that would ensure factory owners' compliance that, in turn, owners do not feel compelled to comply with the law. This all results in a vicious circle of marginalization of workers' needs, rights, and safety. The garment industry in Bangladesh is deeply marked by a culture of non-enforcement, resulting in a corresponding culture of non-implementation. This alarming situation takes its roots in the unequal power dynamics that characterize the industry and which are based on the deep nexus between politics and business, with the factory owner elite at its top. Barrientos and Kabeer write in a joint article that, "[t]o be effective, government policies need to be backed up by machinery for enforcement (...) if these changes are to be implemented."⁴²⁹ Indeed, even if labour laws contained all the necessary provisions to respond to women workers' needs, if they are not backed up by machinery for enforcement, they can do very little to improve these women's lives. Kabeer further writes that, "[i]n the absence of a democratic and responsive state, economic improvements in the lives of individuals are constantly undermined by various forms of unruly practice on the part of more powerful sections of society."⁴³⁰ It is thus the government's responsibility to ensure the enforcement of labour laws and safety standards for workers' protection, and it is its failure to do so that is the root cause of the failure of the domestic legal framework to offer real protection to garment workers, especially women, to protect their rights, and to prevent deadly accidents.

Firstly, with regard to problems of implementation by factory owners, these exceed and underscore issues related to the content of the *Labour Act*, despite how weak the provisions are. It is indeed regrettable that women cannot ask for paid maternity leave if they already have two children as stated in the law,⁴³¹ but the problem goes further because they cannot even benefit from this leave for their first two children since they are commonly denied this basic entitlement, sometimes partially but most of the time totally.⁴³² Thus, even though the *Labour Act* entitled

⁴²⁸ See Tim Ryan, "Experts: Bangladesh Accord is a Game Changer", *AFL-CIO* (18 September 2013), online: AFL-CIO America's Unions <<http://www.aflcio.org>>.

⁴²⁹ *Supra* note 310 at 159.

⁴³⁰ "Citizenship narratives", *supra* note 190 at 352.

⁴³¹ *Labour Act*, *supra* note 124, s 46(1).

⁴³² See Sharmin Absar, *supra* note 371 at 467; FWF, "Bangladesh Study 2006", *supra* note 100 at 33-34, 56; War on

women with more benefits or conditions imposed on women to access maternity benefits were lower, this would not translate into a concrete advantage for women. It is also problematic that the *Labour Act* ignores other forms of gender discrimination besides equal pay for equal work;⁴³³ yet despite such a provision, discrimination over wages remains an important issue for women workers.⁴³⁴ Thus, even if there was a much more comprehensive provision against gender discrimination, it is most likely that this would not be enough to make a real difference for them based on implementation issues. Regarding the absence of a prohibition against sexual harassment in the *Labour Act*, it is a very important question for women's safety, but such a prohibition is already stated in the *Prevention of Oppression Against Women and Children Act*,⁴³⁵ and it does cover factory owners despite making no specific mention of workplaces. Yet factory owners just ignore it, and gender-based harassment is an effective tool to keep workers afraid and submissive.⁴³⁶ Merely including this prohibition in the *Labour Act* would definitely not solve the problem instantly. As for a specific provision prohibiting the work of women at night, it is unfortunate that the prohibition after 8:00 pm was removed, but, since there was little implementation of this provision, it does not make a notable difference for women.⁴³⁷ The same argument goes for provisions that actually offer extensive and decent protection to women workers, at least on paper, with regard, for example, to mandatory appointment letters,⁴³⁸ notice periods and compensations in case of dismissal,⁴³⁹ forced overtime,⁴⁴⁰ the right to sick leave and

Want, "Stitched Up", *supra* note 12 at 8-9; TIB Report, *supra* note 14 at 5; "Minimum Wage Implementation in Bangladesh's Garment Sector", Alternative Movement for Resources and Freedom Society and Fair Wear Foundation (June 2012) at 6, online: <<http://www.fairwear.org/ul/cms/fck-uploaded/documents/countrystudies/bangladesh/MinimumWageImplementationBangladesh.pdf>> [FWF, "Minimum Wage"]; War on Want, "Olympic sportswear companies", *supra* note 131 at 9; "Anti-harassment committee and violence prevention system in export-oriented garment factories (Bangladesh): Report on Baseline Survey (Draft)", Alternative Movement for Resources and Freedom Society, Awaj Foundation & Fair Wear Foundation (December 2013) at 13 [AMRF, "Anti-harassment committee"].

⁴³³ *Supra* note 124, s 345.

⁴³⁴ See FWF, "Bangladesh Study 2006", *supra* note 100 at 33-34; FWF, "Bangladesh Study 2013", *supra* note 99 at 17-18; AMRF, "Anti-harassment committee", *supra* note 432 at 6.

⁴³⁵ *Supra* note 246.

⁴³⁶ See CCC, "Cashing in", *supra* note 131 at 55.

⁴³⁷ *Factories Act*, *supra* note 164, s 65(1)(b); See War on Want, "Stitched Up", *supra* note 12 at 4; Khosla, *supra* note 43 at 297; Shahidur Rahman, *supra* note 175 at 77.

⁴³⁸ Workers are commonly not provided with a formal appointment letter, or they may be provided with such a letter but it omits important terms of employment like specific services, duties, responsibilities, and benefits or it is not accurate, showing higher salaries than what workers are paid in reality (See War on Want, "Stitched Up", *supra* note 12 at 5; TIB Report, *supra* note 14 at 5-6; AMRF, "Anti-harassment committee", *supra* note 432 at 14; FWF, "Bangladesh Study 2013", *supra* note 99 at 23).

⁴³⁹ Workers are often dismissed without notice period or compensation, and it is common that factory owners had

holidays,⁴⁴¹ and mandatory facilities such as medical and childcare centers, in addition to safety regulations.⁴⁴² Despite that the *Building Code* was made legally binding in 2006, owners keep setting up factories in inappropriate buildings for manufacturing purposes that lack the required structures and equipment, in violation of this code and of the safety provisions of the *Labour Act*.⁴⁴³ Factory owners ignore the law to promote their own business interests and make profits, and the government allows them to do so and even encourages them.

The government has the responsibility to protect workers by ensuring that factory owners implement the laws, and, drawing on Kabeer's view of a culture of accountability,⁴⁴⁴ this can be realized through effective mechanisms for enforcement and dispute settlement. Yet the government has failed to fulfill its obligations towards garment workers since the *Labour Act* remains largely abused by factory owners with no sanction imposed on them and workers cannot call anyone to account for abuses of their rights because disputes in court are rarely resolved.⁴⁴⁵ With regard to safety, the government failed to ensure the application of its safety regulations in the early stages of its rapid industrialization in the 1980s, and it has failed to address this situation over the years. Despite adopting the *Building Code* in 1993, which has set a much more solid legal framework for workers' safety, it has failed to establish a robust inspection regime for fire and structural accident prevention.⁴⁴⁶ As a result, factory owners do not feel compelled to comply with labour laws and safety standards because they feel confident that the government will not sanction them or will even support their actions, which follows from the close ties between the

required them to sign their retrenchment letters when they started working so they can be dismissed whenever it is convenient for factory owners (See Khanna, *supra* note 17 at 125; TIB Report, *supra* note 14 at 5-6).

⁴⁴⁰ Forced overtime is common practice as factory owners set unrealistic production targets (See FWF, "Bangladesh Study 2006", *supra* note 100 at 33-34; FWF, "Bangladesh Study 2013", *supra* note 99 at 21; FWF, "Minimum Wage", *supra* note 432 at 6; War on Want, "Stitched Up", *supra* note 12 at 4; Awaj, "Workers' Voice", *supra* note 10 at 45; Sharmin Absar, *supra* note 371 at 467-68).

⁴⁴¹ Workers are often denied their right to sick leave, including pregnant women, and to holidays (See FWF, "Bangladesh Study 2006", *supra* note 100 at 33-34; War on Want, "Stitched Up", *supra* note 12 at 8-9).

⁴⁴² Many factories have no medical facilities and childcare facilities or, if they do, such facilities are not usable (See FWF, "Bangladesh Study 2006", *supra* note 100 at 33-34; War on Want, "Stitched Up", *supra* note 12 at 8-9; War on Want, "Olympic sportswear companies", *supra* note 131 at 9).

⁴⁴³ See TIB Report, *supra* note 14 at 5-6.

⁴⁴⁴ "Compliance Versus Accountability", *supra* note 149 at 23.

⁴⁴⁵ See FWF, "Bangladesh Study 2006", *supra* note 100 at 27, 29; SOMO, "Fatal Fashion", *supra* note 10 at 5, 12, 58; BAPPG, "After Rana Plaza Report", *supra* note 110 at 20.

⁴⁴⁶ See Sweatfree Communities, "Enemies of the Nation", *supra* note 26 at 14; FWF, "Bangladesh Study 2013", *supra* note 99 at 22-23; BAPPG, "After Rana Plaza Report", *supra* note 110 at 53-54.

business and the political classes.⁴⁴⁷ Even when the Ministry of Labour gives them orders to remedy reported labour abuses, it is common that they refuse to fulfill these orders since their disobedience is rarely followed by significant consequences.⁴⁴⁸

The first glaring problem with the government's enforcement of the *Labour Act* for decent working conditions is the absence of effective monitoring mechanisms. The number of government inspectors working for the Department of Factories and Establishment for the application of the *Labour Act* and at the Fire Service and Civil Defense Authority for fire prevention is significantly insufficient to cover all garment factories (even without counting subcontracting ones) not only on a regular basis but even once a year, which also leads to very superficial assessment.⁴⁴⁹ The absence of regular inspections is a major problem especially with regard to safety since it is too easy for owners to unlock doors and release fire exits only on the inspection day, ignoring what Wadud, Huda, and Uddin call "soft issues". Furthermore, there is simply no authority in charge of enforcing the *Building Code* as a whole.⁴⁵⁰ According to section 2.2 of chapter two of part two of the *Building Code*, the government was supposed to establish an authority in charge of the enforcement of the code after it was made legally binding in 2006, but it did not.⁴⁵¹ In the absence of a monitoring body for structural safety, the Tazreen factory kept running production on its nine floors despite having permission for only three floors, production activities were taking place at Rana Plaza even though it had not been built for industrial purposes, and two floors were illegally added to the Rana Plaza building, all this never reported by any authorities.⁴⁵²

Another glaring problem with inspection mechanisms is the acute corruption that pervades the inspection mechanism, which is an important reason for weak enforcement. Despite Bangladesh's

⁴⁴⁷ See Khanna, *supra* note 17 at 124.

⁴⁴⁸ See US Report, *supra* note 3 at 4.

⁴⁴⁹ See TIB Report, *supra* note 14 at 6-8; FWF, "Bangladesh Study 2006", *supra* note 100 at 27-28.

⁴⁵⁰ The Capital Development Authority of Bangladesh (Rajdhani Unnayan Kartripakkha – RAJUK) is in charge of construction planning and urban development controlling and is responsible for the enforcement of laws related to development, but its mandate does not extend to the *Building Code* (See MOLE website, *supra* note 272; BAPPG, "After Rana Plaza Report", *supra* note 110 at 11, 48-49, 54; BLAST, *Implementation of Building Code*, *supra* note 256 at 9).

⁴⁵¹ *Building Code*, *supra* note 255, c 2, p 1, s 2.2; See BLAST, *Implementation of Building Code*, *supra* note 256 at 5.

⁴⁵² See "One Year After the Rana Plaza Catastrophe: Slow Progress and Insufficient Compensation", *FIDH* (21 April 2014), online: [FIDH <https://www.fidh.org>](https://www.fidh.org); SOMO, "Fatal Fashion", *supra* note 10 at 58; BAPPG, "After Rana Plaza Report", *supra* note 110 at 15-19; FWF, "Bangladesh Study 2013", *supra* note 99 at 22.

ranking as one of the most corrupt countries in the world for consecutive years, the government keeps overlooking this issue that plagues the country. Factory owners can bribe inspectors for not reporting law abuses because they have the financial means for it, and inspectors are often easily amenable to corruption, not to mention the fact that the government pays them low wages.⁴⁵³ Aside from this dynamic among owners and inspectors based on “service exchange,” there is also a power relationship dominated by owners due to their political connections, which is reflected in inspectors’ unwillingness to take legal actions against owners for law violations for fear of reprisal.⁴⁵⁴ There are, however, penalties laid out in the *Labour Act*, but since these are rarely applied, their dissuasive effect is virtually nil, and, as Kabeer says it, the law has thus no teeth.⁴⁵⁵ With regard to safety provisions, it is all the more problematic since, in addition to being rarely applied, penalties for *Labour Act* violations that result in loss of life or cause injury or dangers to workers are far too weak to deter violators.⁴⁵⁶ In the event of a worker’s death, or even in the event of more than one thousand workers killed like in the Rana Plaza tragedy, the maximal penalty is only four years of imprisonment and/or Tk100,000, which is around US\$1,300.⁴⁵⁷

The second highly problematic aspect with the enforcement of the *Labour Act* is the absence of an effective mechanism for dispute resolution between employers and workers. While garment workers may file complaints against their employer for labour violations through Labour Courts, these are of little use given the pervasive presence of the government – and thus of the garment elite – in the judicial system, underlying corruption, and the significant backlog of cases that has been building up for several years.⁴⁵⁸ Thus, garment workers have very little ability to hold their employers to account when they believe that their rights are violated.

Looking further to subcontracting factories, it is in this segment of the garment industry that problems of enforcement and implementation are the most severe and become the most visible. It

⁴⁵³ See Sharmin Absar, *supra* note 371 at 474; Berik & Rodgers, *supra* note 97 at 72; Rahman Belal, *supra* note 176 at 277; FWF, “Bangladesh Study 2006”, *supra* note 100 at 27; TIB Report, *supra* note 14 at 6-7.

⁴⁵⁴ *Ibid*; Emran Hossain, “Bangladesh’s Labor Reform Puts Profits Before Workers”, *The Huffington Post* (25 July 2013), online: The World Post <<http://www.huffingtonpost.com>>.

⁴⁵⁵ *Labour Act*, *supra* note 124, c 19; Kabeer, “Compliance Versus Accountability”, *supra* note 149 at 23.

⁴⁵⁶ See Emran Hossain, *supra* note 454.

⁴⁵⁷ *Labour Act*, *supra* note 124, s 309(1)(a) (one lakh taka is equal to Tk100,000 which is around \$US1,290); See also *Labour Act*, *supra* note 124, s 308 (according to which a penalty can be doubled if a person who has been convicted of a punishable offense under the *Labour Act* is convicted again under the same provision, but the second offense must not be have been committed more than two years after the first offense).

⁴⁵⁸ See CCC, “Cashing in”, *supra* note 131 at 36; FWF, “Bangladesh Study 2006”, *supra* note 100 at 29.

is indeed part of the government's responsibility to trace these factories, to verify their legal status with regard to their operations, and to ensure the enforcement of the *Labour Act* upon them as well. However, the government is really flexible with regard to subcontracting practices despite the fact that many of these factories do not have an Export Registration Certificate and thus should not produce garments for export or are not even registered with the government as an active garment producer. The government has loosely allowed these practices of subcontracting by neither asking factory owners who subcontract their orders to these subcontracting factories to register as subcontractor factories nor asking them to make sure that the factories to which they transfer their orders are certified for export or even registered with the government.⁴⁵⁹ It has in fact been reported by the Transparency International Bangladesh organization that there is no complete database listing all garment factories in the country, and the data often lack factories' category and location.⁴⁶⁰ This demonstrates the low level of interest of the government for these factories and its unwillingness to change the situation of subcontracting practices since these raise the production capacity of the country and thus allow for more orders and, most importantly, increase profits of top factory owners. It is therefore not surprising that the level of enforcement of the *Labour Act* in these factories is the lowest, that problems related to government inspections are the most severe, and that corruption is the most acute. As the government fails even more lamentably to ensure the enforcement of the *Labour Act* in these factories, owners care even less about their degree of compliance, which contributes greatly to poor conditions for workers.

At the core of the failure of the domestic legal framework to protect Bangladeshi garment workers is thus the absence of a culture of enforcement, implementation, and safety. A combination of effective actions by the government and genuine attitude changes from factory owners is essential for greater respect of workers' rights. Furthermore, another force is essential to achieve this, and this one must start at the grass-root level, from workers themselves. Through organizations, they can make their voices heard and have a concrete impact on their conditions. However, the trade union movement is a highly problematic sphere for Bangladesh, especially from a gendered perspective.

⁴⁵⁹ See Emran Hossain, *supra* note 453.

⁴⁶⁰ See TIB Report, *supra* note 14 at 6-7.

c. Issues related to trade unionism

The absence of a genuinely representative, independent, and upright trade unionism in the Bangladesh garment industry (one that would actually promote women's participation) has a significant impact on the failure of Bangladeshi labour laws to protect women garment workers' needs and lives. According to Kabeer, organizations are essential if changes are to take place for the most vulnerable, and trade unions are the concretization of the right to organize.⁴⁶¹ In Bangladesh, the level of unionization among garment workers is very low, and women are largely underrepresented even though they represent the vast majority of the garment workforce.⁴⁶² There are about 160 registered trade unions, among which only 40-50 are active, which amount to an estimate of less than 5% of garment workers who are formal members of a union.⁴⁶³

Problems related to trade unionism in the garment industry are partly related to the legal provisions, which make it arduous for workers to unionize. On the other hand, the highly problematic situation of trade unionism in the garment industry is strongly rooted in unequal power dynamics among the actors at the top; in addition to having close ties with the garment owner elite, political parties are closely related to the union movement, and these three intertwined powerful groups take advantage of this triangular scheme of force to foster their own interests, marginalizing those of workers. Owners would rather not have active trade unions on the floor in order to not slow down their production, and the government uses unions as a vehicle to serve its own political interests. The legal provisions for unionism are therefore overlooked, illegal practices are commonly used by factory owners to defeat unionization at the factory level, and the government is not interested in offering a strong response to this situation.

Yet a genuinely representative trade union movement could have a significant impact on the protection of women workers' rights and the representation of their needs since it can empower the most vulnerable by giving them a collective and unified voice. Not guaranteeing workers' right to organize is not only a violation of one of the ILO core labour standards (CLS), but it also

⁴⁶¹ "Accountability Versus Compliance", *supra* note 149 at 33.

⁴⁶² See TIB Report, *supra* note 14 at 8; FWF, "Bangladesh Study 2013", *supra* note 99 at 10; ILO, *Decent Work Programme*, *supra* note 272 at 6.

⁴⁶³ See TIB Report, *supra* note 14 at 8; FWF, "Bangladesh Study 2013", *supra* note 99 at 10.

importantly impedes workers' capacity to claim their other labour rights.⁴⁶⁴ Real trade unions are essential for ensuring the respect of labour laws by allowing workers to unify their strengths and stand in front of powerful government representatives and factory owners for their rights, especially in countries like Bangladesh where the rule of law is weak.

Issues related to trade unionism in Bangladesh are longstanding, even before the creation of the state in 1971. During the independence struggle, unions played a substantial role; they divided into multiple federations and were each aligned to the different political parties with which they joined forces for the independence of the country.⁴⁶⁵ Nowadays, the most influential federations and trade unions remain highly politicized and are influenced or even controlled by political parties. According to Kabeer, they consequently "tend to represent the competing political agendas of their parties rather than the interests of their members,"⁴⁶⁶ which has been confirmed by several reports.⁴⁶⁷ Disruptive and informal strikes called *hartals* are often organized for political ends.⁴⁶⁸ Federations could use their power to influence the state's decisions in favour of workers, but due to this deep nexus between government members and factory owners, this is not happening.⁴⁶⁹ There is also extensive collusion between union leaders and factory owners, which results in leaders negotiating for owners' interests instead of those of their members.⁴⁷⁰ According to Kabeer, this is "either because of shared political affiliation, in which case management is given an easy ride, or because they have been bought off."⁴⁷¹ Trade union leaders "do not have a great deal of incentive to be accountable to their membership because their bargaining power with employers comes from their party-political affiliation and is largely independent of their membership base."⁴⁷² In fact, leaders are often not elected democratically

⁴⁶⁴ See CCC, "Cashing in", *supra* note 131 at 35; US Report, *supra* note 3 at 1.

⁴⁶⁵ See Khanna, *supra* note 17 at 108, 111; US Report, *supra* note 3 at 8; FWF, "Bangladesh Study 2006", *supra* note 100 at 25.

⁴⁶⁶ "Compliance Versus Accountability", *supra* note 149 at 34.

⁴⁶⁷ See e.g. TIB Report, *supra* note 14 at 8; FWF, "Bangladesh Study 2006", *supra* note 100 at 23-24; FWF, "Bangladesh Study 2013", *supra* note 99 at 15; BAPPG, "After Rana Plaza Report", *supra* note 110 at 43; See Berik & Rodgers, *supra* note 97 at 67; Petra Dannecker, "Collective Action, Organisation Building, and Leadership: Women Workers in the Garment Sector in Bangladesh" (2000) 8:3 Gender & Development 31 at 35.

⁴⁶⁸ See Kabeer, "Compliance Versus Accountability", *supra* note 149 at 34; BAPPG, "After Rana Plaza Report", *supra* note 110 at 43; Steven Greenhouse, "Under pressure Bangladesh adopts new labor law", *The New York Times* (17 July 2013), online: The New York Time <<http://www.nytimes.com>> [Greenhouse, "Under Pressure"].

⁴⁶⁹ See Khanna, *supra* note 17 at 111-12.

⁴⁷⁰ See TIB Report, *supra* note 14 at 8.

⁴⁷¹ "Compliance Versus Accountability", *supra* note 149 at 35.

⁴⁷² *Ibid* at 34.

among members, and, even when it appears like it, the selection is commonly pre-determined by factory owners, as pointed out by Khanna.⁴⁷³ Many trade unions do not function at the factory level but only outside factories, thereby having rare contact with workers.⁴⁷⁴ As Kabeer states, “[w]orkers in turn do not appear to have much faith in unions.”⁴⁷⁵ However, owners of smaller factories who do not receive the same handouts from the government as the Bangladeshi elite and do not have such close ties with trade unions will rather resist the entry of such politicized trade unions in their factory because these often take part in disruptive protests for political purposes, which results in shutdowns of production or important turndowns and gives them no advantage.⁴⁷⁶

On the other hand, if workers try to create new unions, some key provisions in the *Labour Act* make it arduous for garment workers to unionize due to significant legal constraints. The two main elements constituting trade unions’ rights encompass “the right to freedom of association, that is, to form and join a trade union of one’s own choosing; and the right to collective bargaining, meaning to have that union negotiate the terms and conditions of your employment on your behalf,”⁴⁷⁷ both aspects recognized in the Bangladeshi legislation but not easily accessible to workers.⁴⁷⁸ Yet the most important constraint that workers face is the resistance of owners of factories of all sizes. They ignore the law or make use of its gaps, they embark on several anti-union activities, they bribe whomever they need to, and they even resort to the use of force and strong-arm interventions to undermine workers’ projects to unionize.⁴⁷⁹ As for the government, it proves to be complicit in owners’ resistance to factory-level unions.

For a trade union to be granted registration by the Director of Labour, a minimum of 30 percent of the workers employed at a factory must have signed to be members, which is a high threshold to reach in this context since many factories are massive, there are often multiple unions in the

⁴⁷³ *Supra* note 17 at 119; See TIB Report, *supra* note 14 at 8.

⁴⁷⁴ See FWF, “Bangladesh study 2013”, *supra* note 99 at 10.

⁴⁷⁵ “Compliance Versus Accountability”, *supra* note 149 at 35.

⁴⁷⁶ See US Report, *supra* note 3 at 8; BAPPG, “After Rana Plaza Report”, *supra* note 110 at 43; Greenhouse, “Under Pressure”, *supra* note 468.

⁴⁷⁷ CCC, “Cashing in”, *supra* note 131 at 35.

⁴⁷⁸ *Constitution*, *supra* note 244, s 25; *Labour Act*, *supra* note 124, c 13; See FWF, “Bangladesh Study 2006”, *supra* note 100 at 23-24.

⁴⁷⁹ See Khanna, *supra* note 17 at 114; Kabeer, “Dilemmas of Collective (In)action”, *supra* note 30 at 15; US Report, *supra* note 3 at 10; TIB Report, *supra* note 14 at 9.

same factory (many of which are already linked to political parties), and members must not come from outside the specific factory.⁴⁸⁰ It is common that registration is given upon political considerations and can thus be denied despite the fulfillment of the legal exigencies.⁴⁸¹ Those difficulties are also compounded by the fact that it is common practice for owners to select informers among workers to report projects of unionization in exchange for a promotion or pay increase, in addition to colluding with security forces to scrutinize workers' activities.⁴⁸² Moreover, on receipt of workers' applications, the director must notify factory owners, and the list of members' names is frequently passed on to them since it is not legally prohibited.⁴⁸³ As a result, while it is forbidden for owners to dismiss workers in such a context,⁴⁸⁴ this does not stop them to counter unionization projects, harass workers to withdraw their names from the list in order to bring the percentage of members below the required 30 percent, or to just get rid of them.⁴⁸⁵ Arbitrary firings are common practice.⁴⁸⁶ As highlighted in a report by the Awaj Foundation, a well-established Bangladeshi foundation promoting the welfare of garment workers:

Workers are considered a disposable resource. A concept of human *resource* dominates over a concept of human *relations*. (...) The management needs not to worry, as they have access to a seemingly inexhaustible pool of workers flocking in from rural areas seeking a means of survival. There is no other sector in Bangladesh that competes for this abundant, mainly female, workforce.⁴⁸⁷

Owners can also force workers to leave the neighbourhood to make sure they will not cause them trouble anymore, and many are even willing to resort to coercive tactics and physical violence to

⁴⁸⁰ *Labour Act*, *supra* note 124, s 179(2); See Emran Hossain, *supra* note 453; FWF, "Bangladesh Study 2013", *supra* note 99 at 19.

⁴⁸¹ See BAPPG, "After Rana Plaza Report", *supra* note 110 at 20; TIB Report, *supra* note 14 at 8; FWF, "Bangladesh Study 2006", *supra* note 100 at 23-24.

⁴⁸² See Fauzia Erfan Ahmed, *supra* note 47 at 38-39; Emran Hossain, *supra* note 453; CCC, "Cashing in", *supra* note 131 at 35; FWF, "Bangladesh Study 2013", *supra* note 99 at 19, 25.

⁴⁸³ See Greenhouse, "Under Pressure", *supra* note 468.

⁴⁸⁴ *Labour Act*, *supra* note 124, s 186.

⁴⁸⁵ See Greenhouse, "Under Pressure", *supra* note 468; TIB Report, *supra* note 14 at 5-6; CCC, "Cashing in", *supra* note 131 at 36; FWF, "Bangladesh Study 2006", *supra* note 100 at 23-24, 39-40.

⁴⁸⁶ See Khanna, *supra* note 17 at 123; US Report, *supra* note 3 at 10; FWF, "Bangladesh Study 2013", *supra* note 99 at 19; FWF, "Bangladesh Study 2006", *supra* note 100 at 23-24; CCC, "Cashing in", *supra* note 131 at 35-36, 38; Moriah Balingit, "In Bangladesh's garment factories, workers face an uphill battle for better safety", *Pittsburgh Post-Gazette* (August 31 2014), online: Pittsburgh Post-Gazette <<http://www.post-gazette.com/news/world>>.

⁴⁸⁷ Awaj Foundation, "Workers' Voices", *supra* note 10 at 19-20 [emphasis in original].

achieve their goal.⁴⁸⁸ They mistreat and threaten workers inside the factory, or they hire musclemen and ask the police to intimidate workers and particularly union leaders outside the factory, sometimes by brutalizing, beating or torturing them.⁴⁸⁹ The government overlooks this violence and fails to impose punishments on factory owners, even though the *Labour Act* imposes specific penalties for this.⁴⁹⁰ Furthermore, it takes an active role in workers' intimidation by allowing its police force to take part in this. The most glaring example took place in 2012, when the prominent labour organizer Aminul Islam, who was at that time trying to organize workers in the Ashulia district, was found dead.⁴⁹¹ So far, very little effort has been made by the government to solve this crime and find the perpetrators. Yet it was reported that before his death, Mr. Islam had been tortured by the National Security Intelligence of Bangladesh (the leading body of the government for civilian intelligence and internal security) to admit that he was instigating workers' unrest.⁴⁹² Criminal cases can also be filed against workers on a false basis or, with the collaboration of the police, factory owners arrange for workers to be arrested under false criminal charges, often related to 'anti-union activities', and to be jailed.⁴⁹³ Consequently, workers are very reluctant to join unions for all associated risks at stake, including regarding their physical safety. As Kabeer puts it, workers know that "[t]here is therefore a high cost associated with exercising the right to organize in Bangladesh."⁴⁹⁴ This is especially true for women, who do not want to jeopardize their jobs considering that their options outside the factory are much worst.⁴⁹⁵ They therefore prefer to organize within their neighbourhood instead of their work place but not as a formal union.⁴⁹⁶

⁴⁸⁸ See CCC, "Cashing in", *supra* note 131 at 38; FWF, "Bangladesh Study 2006", *supra* note 100 at 23-24.

⁴⁸⁹ See Kabeer, "Compliance Versus Accountability", *supra* note 149 at 34; Kabeer, "Citizenship narratives", *supra* note 190 at 332; FWF, "Bangladesh Study 2006", *supra* note 100 at 23-24, 39-40; FWF, "Bangladesh Study 2013", *supra* note 99 at 19; TIB Report, *supra* note 14 at 5-6; US Report, *supra* note 3 at 10; CCC, "Cashing in", *supra* note 131 at 36, 38; Balingit, *supra* note 486.

⁴⁹⁰ *Labour Act*, *supra* note 124, s 291-301; See Khanna, *supra* note 17 at 114.

⁴⁹¹ See Rowlands, *supra* note 174; Balingit, *supra* note 486.

⁴⁹² See Sweatfree Communities, "Enemies of the Nation", *supra* note 26 at 24.

⁴⁹³ See Kabeer, "Compliance Versus Accountability", *supra* note 149 at 34; Khanna, *supra* note 17 at 123; Balingit, *supra* note 486; TIB Report, *supra* note 14 at 5-6; FWF, "Bangladesh Study 2006", *supra* note 100 at 39-40; CCC, "Cashing in", *supra* note 131 at 35-36, 38.

⁴⁹⁴ "Compliance Versus Accountability", *supra* note 149 at 34.

⁴⁹⁵ See Kabeer, "Compliance Versus Accountability", *ibid* at 38; Kabeer, "Dilemmas of Collective (In)action", *supra* note 30 at 25; Jamaly & Wickramanayake, *supra* note 50 at 159; CCC, "Cashing in", *supra* note 131 at 55.

⁴⁹⁶ See Kabeer, "Citizenship narratives", *supra* note 190 at 330, 332; War on Want, "Fashion Victims", *supra* note 234 at 9.

Once trade unions are created in factories, section 195 of the *Labour Act* offers a more comprehensive protection to workers who wish to join a union or continue their membership,⁴⁹⁷ which could be useful since the registration of a union may be cancelled at any moment if its membership falls below 30 percent; yet this is not greatly respected.⁴⁹⁸ Genuine collective bargaining is rare since owners refuse to negotiate salaries and working conditions or do so in bad faith and in an abusive manner, which gives no concrete results for workers.⁴⁹⁹ In case of a dispute, three-fourths of the trade union's members must give their support through a secret ballot for a legal strike to be possible.⁵⁰⁰ According to Khanna, "[t]his time consuming process provides employers ample time to intimidate workers and to undermine bargaining."⁵⁰¹ Moreover, the government has the power to prohibit a strike if it lasts more than 30 days or before the expiry of this delay if it "is causing serious hardship to the community or is prejudicial to the national interest,"⁵⁰² a power that has been used quasi-systematically in the past, defeating workers' right to strike.⁵⁰³

Indeed, what is glaringly problematic with this situation is neither the thresholds and conditions set by the *Labour Act* provisions nor their limitations for workers' protection but the use that the government and factory owners make of these gaps and their general disregard for the law in order to thwart workers' unionization. The main incentive for owners to resist the formation of trade unions at the factory level is their fear of losing control over workers' exploitation, and the government sides with them, which is not surprising considering the deep nexus between politics and the garment industry.⁵⁰⁴ The government makes good use of its ties with politicized and older trade unions to promote its interests.⁵⁰⁵ As Kabeer states, "[n]ot only have the political parties failed to curb the rent-seeking activities of trade union leaders, but they have actively benefited

⁴⁹⁷ *Supra* note 124, s 195.

⁴⁹⁸ *Ibid*, s 190(i)(f).

⁴⁹⁹ See Dannecker, *supra* note 467 at 32; Fauzia Erfan Ahmed, *supra* note 47 at 38-39; Awaj Foundation, "Workers' Voice", *supra* note 10 at 19-20; CCC, "Cashing in", *supra* note 131 at 35-37.

⁵⁰⁰ *Labour Act*, *supra* note 124, s 211(1).

⁵⁰¹ *Supra* note 17 at 126.

⁵⁰² *Labour Act*, *supra* note 124, s 211(3).

⁵⁰³ See Emran Hossain, *supra* note 453; FWF, "Bangladesh Study 2013", *supra* note 99 at 15.

⁵⁰⁴ See Kabeer, "Compliance Versus Accountability", *supra* note 149 at 26; Berik & Rodgers, *supra* note 97 at 67; Fauzia Erfan Ahmed, *supra* note 38-39; US Report, *supra* note 3 at 8; Awaj Foundation, "Workers' Voice", *supra* note 10 at 20; SOMO, "Fatal Fashion", *supra* note 10 at 12; BAPPG, *supra* note 110 at 20.

⁵⁰⁵ See Kabeer, "Dilemmas of Collective (In)action", *supra* note 30 at 22-23; Kabeer, "Citizenship narratives", *supra* note 190 at 37; TIB Report, *supra* note 14 at 8.

from their partisan activities.”⁵⁰⁶ Factory owners’ and the government’s adverse attitude towards the formation of trade unions is further worsened by MNCs’ stance for the protection of workers’ right to organize. Even though the majority of MNCs’ codes of conduct (CoC) contain a provision to protect freedom of association and the right to collective bargaining, MNCs have never emphasized the importance of this standard and have ignored its non-implementation by their suppliers.⁵⁰⁷ Furthermore, their business practices can be interpreted as an encouragement for suppliers’ resistance to trade unionism.⁵⁰⁸ For some MNCs, the absence of trade unions is even an advantage for the fulfillment of their orders.⁵⁰⁹ MNCs are thus also complicit in the failure of a representative and upright trade unionism in the Bangladesh garment industry.⁵¹⁰

Besides the triangular power dynamics ruled by factory owners, the government and trade unions, defeating workers’ right to organize, another significant power relationship among trade unions themselves further undermines this right for women specifically.⁵¹¹ Indeed, many trade unions are based on a male-dominated hierarchy, treating women in an authoritarian and patriarchal way.⁵¹² This results in the advancement of male interests and the marginalization of women’s needs and priorities.⁵¹³ Women workers do “not dare to openly criticise the way they [are] treated by union and federation officials, since the norms regulating male-female behaviour, and the hierarchy between them and the union leaders, would not allow open complaints or questioning of the representatives’ knowledge. Instead, women often chose to show resistance by non-attendance of meetings (...).”⁵¹⁴ There are however some trade unions that are led by women and have the goal to protect the interests of women particularly. Some of these have been recently

⁵⁰⁶ “Compliance Versus Accountability”, *supra* note 149 at 44.

⁵⁰⁷ See Berik & Rodgers, *supra* note 97 at 68.

⁵⁰⁸ See Khanna, *supra* note 17 at 107.

⁵⁰⁹ See Berik & Rodgers, *supra* note 97 at 68.

⁵¹⁰ See Kanchana N. Ruwanpura, “Global governance initiatives and garment sector workers in Sri- Lanka: tracing gender and development politics” in Fernandes, *supra* note 66 at 214 [Ruwanpura, “Sri-Lanka”].

⁵¹¹ Indeed, despite the fact that most garment workers are women, their participation in trade unionism is relatively low, let alone their leadership (See TIB Report, *supra* note 14 at 8; ILO, *Decent Work Programme*, *supra* note 272 at 6).

⁵¹² See Kabeer, “Compliance Versus Accountability”, *supra* note 149 at 35; Kabeer, “Dilemmas of Collective (In)action”, *supra* note 30 at 23-24; Dannecker, *supra* note 467 at 34-35, 38; Khosla, *supra* note 43 at 295; FWF, “Bangladesh Study 2006”, *supra* note 100 at 26; Awaj Foundation, “Workers’ Voice”, *supra* note 10 at 19-20.

⁵¹³ See Khosla, *supra* note 43 (trade unions are still dominated by males, and they do not necessarily address concerns specific to women such as child care, sexual harassment and problems in getting safe transportation, especially when working late at night at 295); Dannecker, *supra* note 467 at 34; Kabeer, “Dilemmas of Collective (In)action”, *supra* note 30 at 22-23; FWF, “Bangladesh Study 2006”, *supra* note 100 at 25-26.

⁵¹⁴ Dannecker, *supra* note 467 at 35.

created but some are older and, despite being affiliated to political parties, represent women's interests.⁵¹⁵ However, trade unions in which women have a strong role to play remain a small minority.

In her work, Kabeer emphasizes the role and importance of organizations to address the needs and interests of those who are the most vulnerable within the global economy. With regard to her conclusion of the absence of a culture of accountability in the Bangladesh garment industry, she states that such a culture within which workers' rights are enforceable could grow through the organization of workers, and particularly women workers who are indeed the most vulnerable element of this industry, since they could thereby stand for their rights collectively:

It is in this willingness to take on the challenge of organizing those who are most vulnerable within the economy, who have little strategic importance internationally because they do not earn the country's foreign exchange or compete with workers in the North, but who nevertheless make up the majority of the working poor in the country that we may find the seeds of a genuine culture of democratic accountability being sown.⁵¹⁶

Yet garment workers are subordinated in an exploitive "patron-client relationship" with factory owners and fear to lose the patronage that secures their survival, in a state where their rights are not guaranteed. Such a fear "has profound implications for the capacity of subordinate groups to express voice on their own behalf and to exercise political agency in pursuit of their rights."⁵¹⁷ For Kabeer, a transformation must occur in these women's attitude to overcome the constraints of their imposed status, acquire the capacity to challenge these constraints, and ask for justice, and she argues that such a transformation must come from their association:

While such transformation begins at the level of individual consciousness, the recognition of the injustice of one's own situation, it is most often through interaction with others who share their oppressed status that this transformation of individual consciousness is likely to occur. It is only through their collective efforts that individuals find the capacity to challenge injustice: as history has shown, it is not the political protests of isolated individuals but the 'collective struggles of the dispossessed' that

⁵¹⁵ For examples, see Kabeer, "Compliance versus Accountability", *supra* note 149 at 36-37.

⁵¹⁶ "Compliance Versus Accountability", *supra* note 149 at 44-45.

⁵¹⁷ "Citizenship narratives", *supra* note 190 at 326.

have won the ‘rights of citizenship’.⁵¹⁸

Yet she cautions that not all forms of associations will foster the necessary transformation for these women to be able to claim their rights:

Indeed, many may set out to reinforce pre-existing inequalities or to promote new ones. Associations are most likely to promote personal transformation and democratic practice when they are ‘chosen’ rather than ‘given’ by one’s place in the social order; when they are inclusive (open) rather than exclusionary (closed) in their membership; when they draw on horizontal rather than hierarchal loyalties; when they embody democratic rather than autocratic principles of operation; and when they seek to challenge the arbitrary exercise of power rather than to bolster the status quo.⁵¹⁹

Thus, by only allowing politicized and corrupt trade unions to operate in garment factories and by refusing workers’ right to create and become members of unions of their own, factory owners and the government are far from promoting such a transformation for women workers.

Organizations indeed are a strong and valuable means for women workers’ empowerment. Acting collectively and in unity, with the support of trade union leaders representing their real interests, they could neutralize the threat of dismissal that factory owners quasi-systematically inflict on them when they try to organize and stand up for the respect of their rights.⁵²⁰ With a forum for effective dialogue and negotiation with factory owners, they could ask for higher standards than what is stipulated in the legislation. They could demand owners a higher wage than the national minimum wage for example, and they could even use their leverage to pressure the government itself in order to raise the national minimum wage to a closer level to a living wage.⁵²¹ Yet in the absence of trade unions to rely on, it is hard for women workers crushed by powerful actors coming from all sides to speak up when their rights are violated, and therefore, they simply

⁵¹⁸ “Citizenship narratives”, *supra* note 190 at 327.

⁵¹⁹ *Ibid.*

⁵²⁰ See Balingit, *supra* note 486; BAPPG, “After Rana Plaza Report”, *supra* note 110 at 43.

⁵²¹ See Berik & Rodgers, *supra* note 97 at 68; Balingit, *supra* note 486; Samantha Maher, “The Living Wage: Winning the fight for social justice”, War on Want (September 2013) at 16, online: War on Want <<http://www.waronwant.org/attachments/The%20Living%20Wage%20-%20War%20on%20Want.PDF>> [War on Want, “Living Wage”]; FWF, “Bangladesh Study 2013”, *supra* note 99 at 15; CCC, “Cashing in”, *supra* note 131 at 35.

remain exploited.⁵²² It has been reported by several organizations that, had Rana Plaza workers been represented by a trade union with real membership, they could have collectively defeated owners' threats by unifying their forces and refusing to enter the building from the moment cracks appeared in the walls of the building, and the Rana Plaza's tragic ending could have been avoided.⁵²³

When faced with criticism as to the limited influence of trade unions with regard to the promotion of women workers' needs and rights, the government and factory owners just divert attention from these problems by pointing at the success of Participation Committees in that matter. As stated in the *Labour Act*, in a factory of fifty or more workers, owners shall constitute a Participation Committee, which must be formed with representatives of owners and workers, elected by them, whose aim is to improve cooperation between the two groups.⁵²⁴ They must meet at least once every two months to discuss workers' concerns and agree on specific recommendations to be implemented within the factory.⁵²⁵ It is true that these committees can give workers some voice, and it has in fact yielded positive and concrete results in some factories.⁵²⁶ Yet such committees are still missing in many factories or are often non-functional or dysfunctional. In my opinion, the most problematic aspects of these committees is that they are presented to workers as an alternative to trade unions whereas they cannot be since they are not constituted through the same supposedly independent process and, most importantly, do not have powers as extensive as those of trade unions.⁵²⁷ Indeed, it is common that owners influence the selection of workers' representatives or literally name them.⁵²⁸ Many workers are not aware of their participation committee's activities and others do not even know about their existence.⁵²⁹ Most importantly, participation committees have no real leverage when they negotiate with employers and thereby depend on employers' good faith and word, which makes them basically

⁵²² See CCC, "Cashing in", *supra* note 131 at 35.

⁵²³ See SOMO, "Fatal Fashion", *supra* note 10 at 67-68; BAPPG, "After Rana Plaza Report", *supra* note 110 at 20; US Report, *supra* note 3 at 2.

⁵²⁴ *Supra* note 124, s 205-206; See also US Report, *supra* note 3 at 11.

⁵²⁵ *Labour Act*, *supra* note 124, s 207-208; See also US Report, *supra* note 3 at 11.

⁵²⁶ See US Report, *ibid*; FWF, "Bangladesh Study 2013", *supra* note 99 at 15.

⁵²⁷ See TIB Report, *supra* note 14 at 5-6; FWF, "Bangladesh Study 2013", *supra* note 99 at 25; US Report, *supra* note 3 at 11.

⁵²⁸ *Ibid*; FWF, "Bangladesh Study 2006", *supra* note 100 at 40; TIB Report, *supra* note 14 at 5-6.

⁵²⁹ *Ibid*; AMRF, "Anti-harassment committee", *supra* note 432 at 5.

powerless.⁵³⁰ Some committees are even used by owners who exert a strong influence over them, and thereby, “[r]ather than being a force to empower workers, they can become a tool of management to undermine them.”⁵³¹ If these committees represent a positive first step towards worker representation and awareness, by their very legal nature and constitution, they cannot be the bearer of women’s collective voice with as much force and independence as genuine and independent unions have the potential for and cannot offer a genuine representation of women’s most important needs.

It is through representative, independent, and upright trade unions that have genuine powers to change the material reality of workers and in which women play a significant role that women can have a strong voice and achieve their aspirations. Women workers themselves are in the best position to oversee their real needs and concerns, to promote their own interest, and to ensure that these very rights that belong to them are enforced.⁵³² Building respect for workers’ rights in the garment industry will require combined efforts by workers and the most powerful actors of the industry, including a sincere commitment on the part of the government, a drastic change in factory owners’ thinking and attitude, the involvement of MNCs, and the empowerment of workers through strong trade unions.⁵³³ Ultimately, the failure of the government to ensure workers’ right to organize, the lack of concern by MNCs for the respect of these rights, and the consequent absence of representative and independent trade unions in which women can raise their voice and concerns are significantly contributing to the failure of both the domestic and international legal frameworks to protect women workers in the Bangladesh garment industry.

Through Chapter II, my aim has been to emphasize that core reasons for the failure of both the international and domestic legal frameworks to protect garment workers in Bangladesh are all related to the absence of strong and genuine implementation and enforcement and to the lack of concerns by those to whom this responsibility belongs, which has been further exacerbated by workers’ lack of a collective voice to ask for the respect of their rights. Blaming it on the law itself is overlooking the actual problem and skipping too quickly to the next phase since the essential basic structures and institutions for a legal culture to exist are not even built yet.

⁵³⁰ See US Report, *supra* note 3 at 11; Sweatfree Communities, “Enemies of the Nation”, *supra* note 26 at 12-13.

⁵³¹ War on Want, “Olympics sportswear companies”, *supra* note 131 at 10.

⁵³² See US report, *supra* note 3 at 1, 3.

⁵³³ See Kabeer, “Citizenship narratives”, *supra* note 190 at 334.

However, for solid improvements in implementation and enforcement mechanisms to be achieved, there must first be a restructuring of the grossly unequal power dynamics ruling the Bangladesh garment industry since these are the root causes of the failure of both legal frameworks to protect garment workers. Once this is achieved, it will be the time for scholars and labour activists to challenge provisions included in the international and legal frameworks and further expand the scope of protection for women workers on many levels.

Chapter 3 - The potential of the legal responses following the Rana Plaza collapse in April 2013

After the fire broke out at Tazreen Fashion factory, the government of Bangladesh issued an action plan to improve fire safety in garment factories, but MNCs did not feel compelled to initiate any changes in their business practices. However, after the Rana Plaza collapse, both the government and MNCs had no choice but to offer a concrete response to ensure the safety of garment workers. The government was pressured by the international community and most importantly by Europe and the United States, its two most important economic partners for exports, to react and improve the condition of workers, and MNCs could not elude all responsibilities this time since their commercial image was greatly tarnished, with the threat of further deteriorating if they remained passive. They therefore responded by issuing different legal documents to enhance the previous legal frameworks. In addition, the government made some amendments to the *Labour Act* and raised the minimum wage. After looking at these legal responses and the progress that has been made for their implementation since they were issued in 2013, I will assess their potential to improve safety measures and working conditions in Bangladeshi garment factories and offer adequate protection to garment workers, especially women. I will do so by analysing these legal responses considering the main flaws and weaknesses that I identified in the previous international and domestic legal frameworks to explain their failure to prevent a tragedy such as Rana Plaza and ensure workers decent working conditions.

A. Legal responses of the Bangladeshi government and multinational corporations

On March 24, 2013, four months after the deadly fire at the Tazreen Fashion factory, the Bangladeshi government issued the *National Tripartite Plan of Action on Fire Safety for the Ready-Made Garment Sector of Bangladesh* in response to this accident.⁵³⁴ This instrument involves changes in the areas of policy, legislation, and administration, in addition to more practical activities, and it requires the establishment of a National Tripartite Committee to ensure its implementation through monitoring with the assistance of the ILO.⁵³⁵

Following the Rana Plaza disaster, the ILO sent a high-level mission to Dhaka at the beginning of May 2013 to identify key areas for actions, and the first legal response that was signed after Rana Plaza was a *Joint Statement*⁵³⁶ by the tripartite partners (government, workers, and employers) on May 4, 2013, which builds upon the *National Tripartite Plan of Action on Fire Safety*. This *Joint Statement* set out a six-point agenda: a labour law reform; the assessment of the structural building safety and fire safety of all garment export factories and the initiation of remedial actions; the launch of a skills and training program to rehabilitate disabled workers following accidents in the industry; the recruitment of 200 inspectors at the Department of Factories and Establishment within the next six months and the upgrading of the Department to a Directorate with an annual budget allocation that allows the recruitment of 800 more inspectors; the expansion of the *National Tripartite Plan of Action on Fire Safety* to add to its scope structural integrity of buildings; and the establishment of a *Better Work programme* with the ILO.

On May 13, 2013, the first response by MNCs was announced with the *Accord on Fire and Building Safety in Bangladesh*, which also involves the government of Bangladesh, two global unions (Industrial and UNI Global), and some Bangladeshi unions.⁵³⁷ The ILO acts as a neutral chair. The Accord is a new type of legal instrument since it is the first legally binding instrument for MNCs in the labour area. To be legally bound, MNCs must, however, agree to sign the

⁵³⁴ BD, Ministry of Labour and Employment, Government of the People's Republic of Bangladesh, *National Tripartite Plan of Action on Fire Safety for the Ready-Made Garment Sector in Bangladesh* (March 2013) online: International Labour Organization <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/genericdocument/wcms_209285.pdf> [*NTPA fire safety*].

⁵³⁵ See ILO, "Chronology", *supra* note 103.

⁵³⁶ *Joint Statement*, *supra* note 118.

⁵³⁷ *Accord*, *supra* note 119.

Accord. It is mainly European MNCs that have agreed to be signatories.⁵³⁸ It is a five-year program that aims to improve health and safety measures in Bangladeshi garment factories, whereby MNCs commit to undertake independent inspections and to make the necessary repairs and renovations for safety upgrading at their suppliers' factories, for which they guarantee to provide the funds. Approximately 1600 factories are covered by this instrument.⁵³⁹ The project of the Accord had been developed by local and global unions and labour rights organizations even before the Tazreen fire and, following the fire, Bangladeshi trade unions and international organisations issued a set of demands including to sign and implement the Accord, which did not happen before the Rana Plaza collapse.⁵⁴⁰ In addition to the ILO, this project has been endorsed by the UN Secretary General, US senators and representatives, the European Parliament, and the OECD (Organisation for Economic Co-operation and Development).⁵⁴¹ Up to now, more than 200 MNCs have signed the Accord.⁵⁴²

On July 8, 2013, the *Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh*⁵⁴³ was issued, in line with the earlier *Joint Statement*. It is a joint initiative between the European Union and the government of Bangladesh, in collaboration with the ILO, for labour rights, safety and health at work, and responsible business conduct. Under this compact, Bangladesh commits to reform its labour legislation to be in conformity with the ILO core labour standards (CLS), to improve building and fire safety by June 2014, and to recruit 200 additional inspectors by the end of 2013.

On July 10, 2013, the *Alliance for Bangladesh Worker Safety*⁵⁴⁴ was launched, which is the second initiative by MNCs. It was developed by Walmart and Gap, and it mainly brings together

⁵³⁸ See generally Accord on Fire and Building Safety in Bangladesh: Bangladesh Accord Foundation, online: Accord on Fire and Building Safety in Bangladesh <<http://bangladeshaccord.org>> [Accord website].

⁵³⁹ See *List of factories covered by the Accord* (1 November 2014) The Bangladesh Accord Foundation, online: Accord on Fire and Building Safety in Bangladesh <<http://bangladeshaccord.org/wp-content/uploads/Accord-Public-Disclosure-Report-1-November-2014.pdf>>.

⁵⁴⁰ See SOMO, "Fatal Fashion", *supra* note 10 at 52-52.

⁵⁴¹ See *Comparison: The Accord on Fire and Building Safety in Bangladesh and the Gap/Walmart scheme* (July 2013) Clean Clothes Campaign, online: Clean Clothes Campaign <<http://www.cleanclothes.org/resources/background/comparison-safety-accord-and-the-gap-walmart-scheme>> [CCC, *Comparison Accord Alliance*].

⁵⁴² See Accord website, *supra* note 538 (as of November 29, 2014).

⁵⁴³ *EU Sustainability Compact*, *supra* note 120.

⁵⁴⁴ *Alliance*, *supra* note 121.

North American MNCs.⁵⁴⁵ Similarly to the Accord, it is a five-year program that MNCs can agree to sign and by which they commit to ensure the inspection of their suppliers' factories within the next year, to make inspection results public, and to implement health and safety measures. However, the Alliance is not legally binding. It covers approximately 600 factories.⁵⁴⁶ MNCs have not committed to provide funds to support renovations, but they have agreed to provide \$100 million in low-interest loans for factory upgrade factories, as well as a total \$40 million fund towards security. To date, more than 26 MNCs are members of the Alliance.⁵⁴⁷

On July 15, 2013, the government adopted amendments to the *Labour Act* as it had committed to do in the *Joint Statement* and the *Sustainability Compact*, and these were notified in the Bangladesh Gazette on July 22.⁵⁴⁸ As required by the *Joint Statement*, these amendments were mainly meant to improve the protection of the rights to freedom of association and to collective bargaining by making trade union activities easier, in addition to enhancing safety measures to bolster occupational safety and health.⁵⁴⁹

On July 25, 2013, as it had been recommended in the *Joint Statement*, the *National Tripartite Action Plan on Fire Safety* has been expanded to include building safety also integrating the *Joint Statement*, resulting in the *National Tripartite Plan of Action on Fire Safety and Structural Integrity in the Ready-Made Garment Sector in Bangladesh*.⁵⁵⁰ It was then stated that all active garment factories would be inspected before the end of 2014.⁵⁵¹ 30 technical teams from Bangladesh University of Engineering and Technology would conduct inspections. A commitment by the BGMEA to develop “a transparent and accountable industry subcontracting system”⁵⁵² was also included. The National Tripartite Committee remains in charge of the

⁵⁴⁵ See generally Alliance for Bangladesh Worker Safety, online: Alliance for Bangladesh Worker Safety <<http://www.bangladeshworkersafety.org>> [Alliance website].

⁵⁴⁶ See *Factory List* (15 November 2014) The Bangladesh Accord Foundation, online: Accord on Fire and Building Safety in Bangladesh <<http://www.bangladeshworkersafety.org/files/Alliance%20Factory%20Profile%20November%202014.pdf>>.

⁵⁴⁷ See Alliance website, *supra* note 545 (as of November 29, 2014).

⁵⁴⁸ *Amendments 2013*, *supra* note 124;

⁵⁴⁹ *Joint Statement*, *supra* note 118; See ILO, “Chronology”, *supra* note 103; BD, Ministry of Labour and Employment, Government of the People’s Republic of Bangladesh, *Steps taken by Government and other Agencies after the incidents at Tajreen Fashions Ltd., Smart Garments and Rana Plaza as of 03-07-2013* (3 July 2013) at 2, online: Ministry of Labour and Employment <www.mole.gov.bd> [MOLE, *Steps July 2013*].

⁵⁵⁰ *NTPA fire safety & structural integrity*, *supra* note 122.

⁵⁵¹ *Ibid* at 9.

⁵⁵² *Ibid*; See also US Report, *supra* note 3 at 5.

implementation.

On September 7, 2013, the ILO brought together the lead members of the Alliance and the Accord and experts from Bangladesh University of Engineering and Technology representing the *National Tripartite Plan of Action on Fire Safety and Structural Integrity*, and it was then agreed that common standards for assessing fire safety and structural integrity would be developed.⁵⁵³

On October 22, 2013, the Bangladeshi government launched a project with the ILO to improve working conditions in the garment industry: *Improving Working Conditions in the Ready-Made Garment Sector*.⁵⁵⁴ It results from the combination of the *Sustainability Compact* and the *National Tripartite Plan of Action on Fire Safety and Building Integrity*. It is a US\$24.21 million programme of three-and-a-half yearly financed by the government of Canada, the government of the Netherlands, and the UK Department for International Development. It has five components. The first one is the verification of factories for building and fire safety in line with the *National Tripartite Plan of Action on Fire Safety and Structural Integrity*, with the help of the ILO in order to facilitate the work of the National Tripartite Committee. It was then anticipated that only around 1,500 factories would be inspected under the authority of the committee, since this component of the ILO programme thereby became complementary to the Accord and Alliance, which would together cover 2,000 factories, for a total of approximately 3,500 factories inspected.⁵⁵⁵ It was expected that all active garment factories would be covered. The four other components of the ILO programme include strengthening of the Department of Inspection for Factories and Establishments as first stated in the *Joint Statement*, training on occupational safety and health for all stakeholders (including owners, workers and trade union leaders), rehabilitation and skills training of injured workers, and introduction and implementation of a *Better Work programme* as suggested in the *Joint Statement*. The *Better Work programme*⁵⁵⁶ is a joint

⁵⁵³ See Moinul Haque & Jasim Uddin, “\$24m RMG sector safety project to be launched Oct 22”, *The New Age* (15 October 2013), online: The New Age <<http://www.newagebd.com>>; “RMG factory inspection begin today”, *Dhaka Tribune* (22 November 2013), online: Dhaka Tribune <<http://www.dhakatribune.com>>.

⁵⁵⁴ See *ILO Programme 2013*, *supra* note 123.

⁵⁵⁵ See BD, Ministry of Labour and Employment, Government of the People’s Republic of Bangladesh, *Implementation Status of “National Tripartite Plan of Action on Fire Safety and Structural Integrity in the Ready-Made Garment Sector in Bangladesh”* (15 January 2014), at 5 online: Ministry of Labour and Employment <www.mole.gov.bd> [MOLE, *Implementation Status January 2014*].

⁵⁵⁶ See *Better Work Bangladesh: Improving Working Conditions in the RMG Sector*, 22 October 2013, Stakeholder Workshop by Lejo Sibbel, Senior Design Advisor, International Labour Organization, online: International Labour

initiative between the ILO and the International Finance Corporation and is a collaboration among the government, factory owners, workers, and MNCs that aims to help factory owners to improve their practices in order to be in compliance with the ILO CLS and the national labour laws. This will be accomplished by the means of factory-level activities further funded by the governments of Switzerland and the US.

On November 8, 2013, an agreement was reached on common minimum standards for structural, fire and electrical safety factory inspection consistent with Bangladeshi national laws and especially the *Building Code*, for the implementation of the Accord, the Alliance, and the *National Tripartite Plan of Action on Fire Safety and Structural Integrity*.⁵⁵⁷ The ILO is in charge of the coordination among all the stakeholders.⁵⁵⁸ It was agreed that these guidelines are only applicable to existing factories and that the *Building Code* would apply to those to come.⁵⁵⁹

On November 21, 2013, the Minimum Wage Board raised the minimum wage to Tk5,300, expenses included, as worker leaders and factory owners finally came to a consensus.⁵⁶⁰ The basic salary was fixed at Tk3,000, in addition to Tk1,200 for house rent, Tk250 as a medical allowance, Tk200 for transportation, and Tk650 as a food subsidy.⁵⁶¹ This represents an increase of 76.66% compared to the previous wage of Tk3,000. It was also established that there would be a 5% yearly increase in basic salary for entry-level garment workers.⁵⁶² The new wage became effective on December 1, 2013, and on December 5, the government notified the minimum wage in the Gazette.⁵⁶³

Organization <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/presentation/wcms_226920.pdf> [ILO, *Better Work*].

⁵⁵⁷ See MOLE, *Implementation Status January 2014*, *supra* note 555 at 5; See also Syed Zain Al-Mahmood, “Safety Groups Agree on Standards for Bangladesh Garment Factories”, *The Wall Street Journal* (20 November 2013), online: *The Wall Street Journal Asia edition* <<http://online.wsj.com/asia>>; “RMG factory inspection begins today”, *Dhaka Tribune* (22 November 2013), online: *Dhaka Tribune* <<http://www.dhakatribune.com>>.

⁵⁵⁸ See “Industry stakeholders call for immediate inspection at the factories”, *Dhaka Tribune* (10 December 2013), online: *Dhaka Tribune* <<http://www.dhakatribune.com>>.

⁵⁵⁹ See “RMG building manual finalised”, *Dhaka Tribune* (29 December 2013), online: *Dhaka Tribune* <<http://www.dhakatribune.com>>.

⁵⁶⁰ See Ibrahim Hossain Ovi, “Owners-workers reach consensus on RMG wages”, *Dhaka Tribune* (21 November 2013), online: *Dhaka Tribune* <<http://www.dhakatribune.com>> [Hossain Ovi, “Consensus on wages”].

⁵⁶¹ See Karim Mohosinul, “RMG minimum wage gazette published”, *Dhaka Tribune* (5 December 2013) online: *Dhaka Tribune* <<http://www.dhakatribune.com>>.

⁵⁶² See Hossain Ovi, “Consensus on wages”, *supra* note 560.

⁵⁶³ *Ibid*; See Mohosinul, *supra* note 561.

B. Steps and progress

Since these instruments were launched, the Ministry of Labour and Employment and the Accord and Alliance groups have issued reports and press releases on their progress towards meeting their engagements within the set timeframes.

With regard to the government's engagement to perform inspections to assess fire, electrical, and structural safety of factories, it reported in July 2013 that its first step had been to set up 23 special inspection teams at the Department of Factories and Establishment for preliminary assessments to find out non-registered factories. Around 3,500 factories were visited and 300 cases were filed with the Labour Court against non-compliant factories.⁵⁶⁴ At the end of November 2013, it announced that the 30 teams of engineers from Bangladesh University of Engineering and Technology had been formed and that they would assess 200 factories in the next eight weeks.⁵⁶⁵ As of the end of December 2013, they reported that 120 factories had been assessed, and, in their last report issued on January 14, 2014, it was expected that the assessment of the structural integrity of all active factories would be done by December 31, 2014, as established in the *National Tripartite Plan of Action on Fire Safety and Structural Integrity*.⁵⁶⁶ Regarding its remediation programme, it is stated in this last report that the development and implementation of such a programme will be based on the findings and recommendations from the assessments by the engineer teams.⁵⁶⁷ Regarding the government's engagement to recruit 200 additional inspectors by the beginning of November 2013 and to upgrade the Department of Factories and Establishment to a directorate with a budget for 800 additional inspectors, the department was in fact upgraded to a directorate at the end of 2013 and around 400 posts of inspectors were approved.⁵⁶⁸ Yet at the end of November 2013, only four new inspectors had

⁵⁶⁴ See MOLE, *Steps July 2013*, *supra* note 549 at 2; BD, Ministry of Labour and Employment, Government of the People's Republic of Bangladesh, *Steps taken by Government, Ministry of Labour & Employment and other organizations regarding devastating fire incident in Tajreen Fashions Ltd at Ashulia, on 24-11-2012, Smart Export Garments Ltd at Mohammadpur on 26-01-2013 and Rana Plaza Collapse at Savar on 24-04-2013 causing huge loss of lives and properties* (28 October 2013) at 6, online: Ministry of Labour and Employment <www.mole.gov.bd> [MOLE, *Steps October 2013*].

⁵⁶⁵ See "RMG factory inspection begins today", *Dhaka Tribune*, *supra* note 557.

⁵⁶⁶ *NTPA fire safety & structural integrity*, *supra* note 122 at 9; MOLE, *Implementation Status January 2014*, *supra* note 555 at 4-5; See "RMG building manual finalised", *Dhaka Tribune*, *supra* note 559.

⁵⁶⁷ MOLE, *Implementation Status January 2014*, *supra* note 555 at 5.

⁵⁶⁸ See *Joint Statement*, *supra* note 118; *EU Sustainability Compact*, *supra* note 120; MOLE, *Implementation Status January 2014*, *supra* note 555 at 2.

been hired, and in January 2014, it was stated that the recruitment process of the additional 200 inspectors was still under process and would hopefully be completed by March 31, 2014.⁵⁶⁹ Finally, regarding the government's engagement to raise awareness among stakeholders, it was planned that, by September 30, 2013, a fire safety "crash course" for factory management and supervisors would be delivered, and, as of January 2014, it was only stated that "training capacity will be build, and methodologies and tools will be provided for the training of Safety Committees."⁵⁷⁰ It was also planned that by December 31, 2013, mass worker education tools would be delivered, and, as of January 2014, it remained under development.⁵⁷¹

For its part, on October 3, 2013, the Accord made public a list of the factories that would be covered by this pact, amounting to nearly 1,600 factories.⁵⁷² In the same press release, it stated that a website would be launched on October 7, 2013 to make these factory data public, which would also include information on the ongoing inspection process.⁵⁷³ Factory inspections officially started at the end of November 2013.⁵⁷⁴ When questioned about the possibility that inspections by the Accord and the Alliance could overlap since some factories are supplying members of both groups, the Accord leading group responded that the two would "decide among themselves who will inspect what factories. It will basically depend on the amount of orders the retailers and brands are placing with the factories."⁵⁷⁵ On October 14, 2014, an announcement was made that "the initial inspections of Accord producing factories have been completed within the agreed timeline at the end of September 2014. For over 400 factories out of the 1,106 that were inspected, Corrective Action Plans have been finalised by the factories and company signatories and approved by the Accord Chief Safety Inspector."⁵⁷⁶ (The difference in the number of factories between the list of October 2013 and the inspection results of October 2014 could be

⁵⁶⁹ See US Report, *supra* note 3 at 5; MOLE, *Implementation Status January 2014*, *supra* note 555 at 3.

⁵⁷⁰ See *Joint Statement*, *supra* note 118; *EU Sustainability Compact*, *supra* note 120; *ILO Programme 2013*, *supra* note 123; MOLE, *Implementation Status January 2014*, *supra* note 555 at 6.

⁵⁷¹ *Ibid* at 7.

⁵⁷² See *Bangladesh Safety Accord Publishes Unprecedented Wealth of Factory Data: Nearly 1,600 Factories and More than 2 Million Workers Are Covered by the Accord, with New Signers Still to Disclose Their Factories* (3 October 2013) Press release, The Bangladesh Accord Foundation, online: Accord on Fire and Building Safety in Bangladesh <<http://www.workersrights.org/linkedddocs/BangladeshAccordFactoryListRelease.pdf>> [Accord Press release October 2013].

⁵⁷³ *Ibid*.

⁵⁷⁴ See "RMG factory inspection begins today", *Dhaka Tribune*, *supra* note 557.

⁵⁷⁵ "RMG factory inspection begins today", *Dhaka Tribune*, *supra* note 557.

⁵⁷⁶ Accord Press release October 2013, *supra* note 572.

due to an agreement between the Accord and the Alliance to avoid overlapping inspections since they share about 350 factories.)⁵⁷⁷ For around 110 factories inspected, it was evaluated that immediate actions were required to bring them above the acceptable level of safety before production could continue, which was submitted as a recommendation to the government.⁵⁷⁸ Pursuant to this, the Alliance announced that “[t]he next phase of the Accord will focus on the implementation and monitoring of the corrective action plans and rolling out the training and worker participation program – including establishing credible labour-management occupational safety and health committees at the factory level.”⁵⁷⁹

On November 22, 2013, the Alliance disclosed a list of 686 factories that would be visited by its inspectors, and, at the beginning of December 2013, it officially opened its office in Dhaka, planning to begin inspections in the same month.⁵⁸⁰ In July 2014, the Alliance issued its last report, stating that inspections had been performed at 100% of their 587 factories, in accordance with the engagement timeline.⁵⁸¹ Pursuant to this, ten factories were closed by the government on their recommendation, and half of the factories visited were in line for remediation.⁵⁸² It also announced that publication of inspection reports and Corrective Actions Plans should be on their website soon.⁵⁸³ With regard to funding, members had raised a fund of \$100 million in capital and had begun to loan money to factories to undertake remediation.⁵⁸⁴ The Alliance also developed the Alliance Basic Fire Safety Training module and claimed to have trained more than one million garment workers and managers.⁵⁸⁵ With the aim of improving worker empowerment, the Alliance reported that it appointed three important Bangladeshi labour leaders to their Board

⁵⁷⁷ See US Report, *supra* note 3 at 7.

⁵⁷⁸ See Accord Press release October 2013, *supra* note 572.

⁵⁷⁹ Accord Press release October 2013, *ibid*.

⁵⁸⁰ See “RMG factory inspection begins today”, *Dhaka Tribune*, *supra* note 557; “Industry stakeholders call for immediate inspection at the factories”, *supra* note 558; “Alliance may start RMG factory inspection next week”, *Dhaka Tribune* (28 November 2013), online: Dhaka Tribune <<http://www.dhakatribune.com>>.

⁵⁸¹ See *Milestones: A Five-Year Commitment*, Alliance for Bangladesh Worker Safety, online: Alliance for Bangladesh Worker Safety <<http://www.bangladeshworkersafety.org/files/Bangladesh-Alliance-Timeline.pdf>>.

⁵⁸² See “Protecting the Lives and Livelihoods of Bangladesh’s Garment Workers: First Annual Report of the Alliance for Bangladesh Worker Safety”, Alliance for Bangladesh Worker Safety (July 2014) at 1, online: Alliance for Bangladesh Worker Safety <<http://www.bangladeshworkersafety.org/files/2014-annual-report/Alliance%20Annual%20Report,%202014.pdf>> [Alliance Annual Report 2014].

⁵⁸³ *Ibid*.

⁵⁸⁴ *Ibid*.

⁵⁸⁵ *Ibid* at 2.

of Advisors and that is created a Board committee composed of seven trade union leaders.⁵⁸⁶ It also reported that it invited worker representatives to be part of the inspection process by accompanying inspectors during their visits and that it had conducted surveys with workers to evaluate their progress in safety awareness.⁵⁸⁷ On November 25, 2014, the Alliance launched the program Training of the Trainers to provide safety training to factory security guards in order to ensure safe evacuation of workers in case of fire.⁵⁸⁸

With regard to positive effects following the *2013 Amendments of the Bangladesh Labour Act 2006*,⁵⁸⁹ the Ministry of Labour and Employment proudly announced, in a July 2013 progress report, that 29 trade unions (21 in Dhaka and eight in Chittagong) had been given registration within the first six months of the year 2013, and, in a report from October 2013, that the registration of trade unions was continuing, with an additional 43 trade unions registered.⁵⁹⁰

C. Assessment of the potential of these legal responses: Reproducing the same flaws and weaknesses?

These legal responses by both MNCs and the government were praised by their initiators for being concrete and positive developments for garment workers' protection, clearly reinforcing the previous domestic and international legal frameworks for labour standards. Yet many non-governmental organizations, international observers, and labour critiques have expressed a great scepticism as to whether these legal responses make a real difference and have the potential to improve the protection of garment workers in Bangladesh. Unfortunately, I am afraid that their scepticism is well-founded since, to a large extent, some of these initiatives reproduce the same flaws and weaknesses identified in the failure of the domestic and international legal frameworks and the praised improvements are merely smoke and mirrors.

⁵⁸⁶ See Alliance Annual Report 2014, *supra* note 582 at 2.

⁵⁸⁷ *Ibid.*

⁵⁸⁸ See “Alliance to train RMG security on fire safety”, *Dhaka Tribune* (25 November 2014), online: Dhaka Tribune <<http://www.dhakatribune.com>>.

⁵⁸⁹ *Amendments 2013*, *supra* note 124.

⁵⁹⁰ MOLE, *Steps July 2013*, *supra* note 549 at 2; MOLE, *Steps October 2013*, *supra* note 564 at 10; See also US Report, *supra* note 3 at 10.

1. Legal initiatives beyond the domestic level

Members of the Accord, members of the Alliance, and the government have committed to perform inspections in all garment factories in the country in order to target those that need to be repaired and renovated to meet their common minimum standards for structural, fire and electrical safety, in addition to committing to help fixing them. Firstly, their agreement on common standards is a much-awaited positive development. The three have developed together a comprehensive set of standards, and this will improve chances of compliance on the part of factory owners and help reduce counter-productivity in factory inspections. Beyond this, coordination in their actions and efforts will also be paramount, and it will have to go further than agreeing on the share of factories that each has to inspect. They must share their knowledge, experience, and results in order to ensure coherence in their actions and the optimization of their efforts to maximize their chances of having a positive impact on garment workers' safety.⁵⁹¹

Indeed, considering this obvious need for coherent and cooperative efforts, one must wonder why Alliance members have preferred to create their own group instead of joining the Accord, since both seem to have the same mission. This fragmentation has been highly criticized.⁵⁹² In reality, despite sharing the same goal to improve worker safety through inspections and remediation plans, the Accord and Alliance differ on very important aspects, which explains Walmart and Gap's reluctance to join the Accord. These differences ultimately have a great impact on the potential effectiveness of each agreement. From a rhetorical point of view, both instruments have similar content, but, in substance, the Accord sets much more stringent commitments while the Alliance omits important features that make a commitment meaningful, reproducing the same model as CoCs.⁵⁹³

⁵⁹¹ See "ILO, EU, Bangladesh government adopt new compact on garment factory safety", *International Labour Organization* (10 July 2013) online: ILO <www.ilo.org>; "The Rana Plaza building collapse... 100 days on", *International Labour Organization* (5 August 2013) online: ILO <www.ilo.org>.

⁵⁹² See e.g. Amu Merrick, "Are clothing companies moving fast enough to fix factory problems?", *The New Yorker* (13 September 2013), online: The New Yorker <<http://www.newyorker.com>>; "Accord, alliance or disunity?", *The Economist* (13 July 2013), online: The Economist <<http://economist.com>>; Julie McCarthy, "Bangladesh Collapse: The Garment Workers Who Survived" *NPR* (10 July 2013), online: NPR <<http://www.npr.org>>.

⁵⁹³ See "Safety scheme Gap and Walmart only 'empty promises'", *Clean Clothes Campaign* (7 July 2013), online: Clean Clothes Campaign <<http://www.cleanclothes.org>> [CCC, "Safety scheme"]; Stephanie Clifford & Steven Greenhouse, "U.S. Retailers Offer Plan for Safety at Factories", *The New York Times* (10 July 2013), online: The New York Time <<http://www.nytimes.com>> [Clifford & Greenhouse, "U.S. Retailers"].

Firstly, there are important differences in their decision-making authority, and this has a direct impact on their alleged independence. Within the Accord group, most decisions rest in the hands of the executive committee (Steering Committee), which has equal representation between MNCs' signatories and trade union representatives, as opposed to the Alliance, which lets individual MNCs make most of their own decisions.⁵⁹⁴ Initially, the involvement of worker representatives was not envisioned in the Alliance, which had been greatly criticized, but according to its July 2013 report, it seems that labour leaders were included in its Board of Advisors.⁵⁹⁵ However, since MNCs are not subject to the authority of this board for decision-making, it does not give a strong role to these trade union leaders. Ensuring trade unions a central role in the implementation of such instruments allows interactions between workers' representatives and MNCs' representatives, which is essential for the understanding of real issues at the grass-root level by MNCs, which are at the top of global supply chains.⁵⁹⁶ For Amirul Haque Amin, President of the National Garment Workers' Federation, the largest national trade union in Bangladesh, this "is the reason we, the local trade unions, as well as global trade union federations, with the support of foreign labour rights groups, initiated the Bangladesh Fire and Building Safety Accord; a union Accord."⁵⁹⁷ In contrast, the Alliance remains a "company-developed and company-controlled scheme,"⁵⁹⁸ with no room for genuine worker involvement, as it was the case under the CoC regime. Consequently, members of the Alliance have complete control over their inspection processes, hiring and paying their own inspectors, with no external supervision apart from MNCs checking on each other, which has little chance of effectiveness since they all know that if they criticize other MNCs, they in turn may be targets of criticism.⁵⁹⁹ This goes back to the problem of "self-monitoring", as Alston warned us with regard to CoCs.⁶⁰⁰ Inspection processes under the Accord have much more potential for independence since it is the

⁵⁹⁴ Accord, *supra* note 119 at paras 4, 7; Alliance, *supra* note 121 at 5; See CCC, *Comparison Accord Alliance*, *supra* note 541; US Report, *supra* note 3 at 7, 8, 11.

⁵⁹⁵ See Alliance Annual Report 2014, *supra* note 582 at 2.

⁵⁹⁶ See Ryan, *supra* note 428.

⁵⁹⁷ Amirul Haque Amin speech to TUC Congress 2013 (8 September 2013), Trade Union Congress, online: TUC <<http://www.tuc.org.uk>>.

⁵⁹⁸ "Frequently Asked Questions (FAQs) about the Bangladesh Safety Accord", *Clean Clothes Campaign* (July 2013), online: Clean Clothes Campaign <<http://www.cleanclothes.org>> [CCC, "FAQs"].

⁵⁹⁹ See CCC, *Comparison Accord Alliance*, *supra* note 541; US Report, *supra* note 3 at 7-8; CCC, "FAQs", *supra* note 598; CCC, "Safety scheme", *supra* note 593; Sara Shannon, "Bangladesh Factory Victims Wait as Compensation Meeting Delayed" *Bloomberg* (7 August 2013), online: Bloomberg <<http://www.bloomberg.com>>.

⁶⁰⁰ *Supra* note 297 at 518.

executive committee, including trade union representatives, that is in charge of hiring inspectors, in addition to making the final decision as to whether members can continue to contract work from a supplier or not based on inspection results.⁶⁰¹ Cooperation with local actors also has the potential for long-term results since it helps to build their capacity in order for them to eventually oversee the safety of garment factories by themselves. Another positive aspect of including trade unions in the project is that it emphasizes their importance and strengthens their position as workers' representatives, which could in turn lead to an enlargement of the union's scope of action beyond safety issues under the Accord to include a broader approach towards workers' protection.⁶⁰²

Secondly, the Accord includes the basic but absolutely necessary right for workers to refuse dangerous work, including to refuse entering a dangerous building, whereas there is still no mention of this right in the Alliance despite it being a response to the Rana Plaza tragedy.⁶⁰³ It could be an unintentional omission by the Alliance, but it results in no clear prohibition against factory owners forcing workers to enter dangerous buildings or stay inside in case of fire and thus in no real consequences for them if they do so.

Thirdly, with regard to costs of safety repairs and renovations, the Accord sets a contractual commitment for MNCs to provide all necessary funds, and the executive committee is in charge of supervising this process.⁶⁰⁴ This is a real improvement in comparison with the previous system, under which MNCs would just leave unsafe factories and switch to a different supplier. In contrast, members of the Alliance do not have to pay anything for needed repairs and renovations; it is merely stated that they will make loans available for factory owners, but their participation in the loan program, solely administrated by MNCs themselves, is voluntary and it is not a condition of membership.⁶⁰⁵ Factory owners decide for themselves if they take these loans or not, provided that MNCs agree to grant them loans, and if they pay for the

⁶⁰¹ Accord, *supra* note 119 at paras 4, 7, 11-12; See CCC, "Comparison Accord Alliance", *supra* note 541; US Report, *supra* note 3 at 7-8.

⁶⁰² *Ibid* at 11; Ryan, *supra* note 428.

⁶⁰³ Accord, *supra* note 119 at para 15; See CCC, "Comparison Accord Alliance", *supra* note 541.

⁶⁰⁴ Accord, *supra* note 119 at paras 24-25; See CCC, "Comparison Accord Alliance", *supra* note 541.

⁶⁰⁵ Alliance, *supra* note 121 at 1, 5; See CCC, "Comparison Accord Alliance", *supra* note 54; CCC, "Safety scheme", *supra* note 593; Clifford & Greenhouse, "U.S. Retailers", *supra* note 593.

improvements.⁶⁰⁶ However, an important impediment for this loan program to be functional is that there is nothing in the Alliance agreement that requires MNCs to stop setting very low prices for their orders, which makes such investments quasi-impossible for owners of smaller factories. If factory owners decide not to take the loan and not to do the required improvements, MNCs are allowed to terminate business with them.⁶⁰⁷ This voluntary approach set by the Alliance, with no financial obligation or long-term commitment towards factory owners, closely resembles the CoC approach, which has already proven to be ineffective considering MNCs' trend of switching suppliers in order to avoid financial implication.

The last important difference between the Accord and the Alliance is their enforceability. The Accord is a legally binding and enforceable agreement, which is a significant improvement over the previous soft law instruments. It gives the Accord a considerably greater potential for making a real difference on garment workers' conditions. It is indeed high time for MNCs to take responsibility for abysmal conditions at their suppliers' factories and stop ignoring their direct impact on these conditions. Trade union leaders, who are much more susceptible to have a genuine interest in the enforcement of the agreement than MNCs themselves, can initiate binding arbitration against a member of the Accord for non-compliance or solve disputes at a court in the MNC's home country, which is a valuable point since Bangladesh Labour Courts are inefficient.⁶⁰⁸ Unfortunately, the Alliance still lacks this binding aspect. Its members still do not have to keep any promises, and they will not face any important repercussions for this; they are subject to no independent external supervision. The only way for workers to report non-compliance is to MNCs themselves through a "hotline", and only MNCs can initiate arbitration against other MNCs, with the only consequence being expulsion from the Alliance.⁶⁰⁹ Furthermore, MNCs can terminate their agreement with the Alliance at any time, and, at worst, they may have to pay small administrative fees.⁶¹⁰ The Alliance therefore reproduces the very same weak and problematic aspects of the model of CoCs and self-monitoring that have led to

⁶⁰⁶ See Clifford & Greenhouse, "U.S. Retailers", *supra* note 593; CCC, "FAQs", *supra* note 598.

⁶⁰⁷ See US Report, *supra* note 3 at 7-8; Clifford & Greenhouse, "U.S. Retailers", *supra* note 593.

⁶⁰⁸ Accord, *supra* note 119 at para 5; See CCC, "Comparison Accord Alliance", *supra* note 541; US Report, *supra* note 3 at 7-8.

⁶⁰⁹ Alliance, *supra* note 121 at 5; See CCC "Safety scheme", *supra* note 592; CCC, "Comparison Accord Alliance", *supra* note 541; US Report, *supra* note 3 at 7-8.

⁶¹⁰ See CCC, "Comparison Accord Alliance", *supra* note 541; Clifford & Greenhouse, "U.S. Retailers", *supra* note 593.

their failure to ensure protection of garment workers and prevent many tragedies. It merely recasts individual CoCs in a general agreement for multiple MNCs while allowing them to pursue their activities under minimal disturbance and to preserve their commercial image in the eye of consumers.⁶¹¹

With regard to government's efforts for the inspection of factories that are neither covered by the Accord nor the Alliance, it is unclear as to whether the *National Tripartite Plan of Action on Fire Safety and Structural Integrity* represents a real improvement in comparison to the government's previous inspection system. According to its last report issued in January 2014, all factories had not been inspected yet, while the expected date of completion, scheduled in December 2014, is now imminent.⁶¹² However, since this last report goes back eleven months, inspections could have been completed in the meantime. One thing is however certain: the government's system still greatly lacks transparency. For their part, the Accord and Alliance groups have both completed factory inspections according to their set deadlines. Regarding the government's commitment to recruit hundreds of additional inspectors, as of January 2014, it still had not hired the first 200 additional inspectors like it promised would be done by November 2013.⁶¹³ It thus again remains promises on paper that do not translate into real and substantial improvements, whereas the lack of inspectors had been identified as a major problem under the previous national inspection system.

Looking beyond inspections, the most important step is yet to come, that is enforcement and remediation. Over the years, both MNCs and the government have performed inspections in garment factories with no conclusive results; for this time to be different, their real commitment to enforcement and remediation is essential.⁶¹⁴ The government of Bangladesh should now impose sanctions on owners who are not in compliance with safety standards, and it should work on a factory improvement programme as it committed to in the *National Tripartite Plan of Action on Fire Safety and Structural Integrity*. Yet since punishments for serious violations stipulated in

⁶¹¹ See Shannon, *supra* note 599; CCC, "Safety scheme", *supra* note 593; CCC, "Gap and Walmart in Bangladesh", *supra* note 353.

⁶¹² See *NTPA fire safety & structural integrity*, *supra* note 122 at 9; MOLE, *Implementation Status January 2014*, *supra* note 555 at 4-5.

⁶¹³ See *Joint Statement*, *supra* note 118; *EU Sustainability Compact*, *supra* note 120; MOLE, *Implementation Status January 2014*, *supra* note 555 at 2; US Report, *supra* note 3 at 5.

⁶¹⁴ See Clifford & Greenhouse, "U.S. Retailers", *supra* note 593.

the *Labour Act* remain weak even after the amendments of 2013 and since the government stated that it would start working on its programme only when inspections are completed, I remain sceptical as to the government's real intentions.⁶¹⁵ As for MNCs, there is more potential for successful remediation under the Accord than the Alliance due to the legally binding commitment of Accord members to provide funds for necessary repairs and renovations. The Alliance depends on the will of factory owners, which is far from reassuring considering their inaction under the CoC model. Yet it is still too soon to make any conclusions since remediation programs are still under development and have not started.

It is, however, clear that deeper changes addressing the glaringly unequal power dynamics within the Bangladesh garment industry are essential for real improvements to take place. Performing more inspections and hiring additional inspectors is not sufficient if problems of corruption are not addressed by the government and political parties remain ruled by self-interested factory owners using their position and connections to promote their own business interests. The same way, the Accord and Alliance will hardly have a real positive impact if MNCs keep asking factory owners for low prices and short delivery times, which are at the root of safety issues in Bangladeshi garment factories. A meaningful restructuring of power relationships challenging the actual business model based on profit and loss calculation and the exploitation of the most disempowered is essential.

Finally, a serious problem identified in both the domestic and international frameworks that has neither been properly addressed by the government nor by MNCs is the problem of subcontracting factories, revealing an important gap in the tripartite inspection structure created by the *National Tripartite Plan of Action on Fire Safety and Structural Integrity*, the Accord, and the Alliance. MNCs have only committed to inspect the factories of their suppliers with whom they directly deal, and, consequently, most unsafe factories are left out and the positive impact that the Accord and Alliance can have on factory safety is significantly reduced. MNCs still fail to recognize their responsibility towards these factories and the direct impact their business practices have on safety and working conditions at these lower levels. As for the government, it pledged that its preliminary assessment of factories was aimed at finding non-registered factories.

⁶¹⁵ See MOLE, *Implementation Status January 2014*, *supra* note 555 at 5.

However, only 3,500 factories were visited, of which 2,000 were thereafter considered covered by the Accord and Alliance, leaving 1,500 factories to be inspected by the government.⁶¹⁶ These numbers fall short of the estimated 5,600 active garment factories in the country; hence subcontracting factories are once again ignored by the government.⁶¹⁷ In addition, the commitment of BGMEA to creating a transparent and accountable system for subcontracting in the industry is inconclusive so far since, in the government's report of January 2014, it is merely stated that the Ministry of Labour and Employment and the BGMEA were "working on this activity,"⁶¹⁸ which is a rather weak and evasive statement. Both the government and MNCs once again fail to protect garment workers who suffer the most appalling and hazardous working conditions, even though it is the government's duty to protect all garment workers in Bangladesh, especially those who are the most vulnerable, and buying practices of MNCs, which take a large advantage of the subcontracting practice, have a direct and strong impact on this serious problem.

The Accord, Alliance, and *National Tripartite Plan of Action on Fire Safety and Structural Integrity* only address safety issues, but important improvements are also highly needed regarding general working conditions of garment workers. The *Better Work* programme with the ILO is the only collaborative project following Rana Plaza that focuses on workers' concerns beyond safety, and it plans to include the participation of MNCs in order to ensure a strong dialogue between them and their suppliers, as well as the participation of trade unions.⁶¹⁹ Yet even though this programme makes great promises, its concrete implementation will only start once inspections are completed and an action plan is then elaborated.

2. Domestic legal responses

While the amendments made to the *Labour Act* changed 87 sections and have been introduced by the government as strong pro-worker improvements, in reality, they barely improve workers' protection and, in many cases, they even weaken those that existed. The enactment of these amendments seems more like an attempt by the government to escape the international pressure exerted on the country since the Rana Plaza disaster, and ultimately, they will most benefit

⁶¹⁶ See MOLE, *Steps October 2013*, *supra* note 572 at 6.

⁶¹⁷ See Awaj Foundation, "Workers' Voices", *supra* note 10 at 15; US Report, *supra* note 3 at 3.

⁶¹⁸ MOLE, *Implementation Status January 2014*, *supra* note 555 at 6.

⁶¹⁹ See ILO, *Better Work*, *supra* note 556.

factory owners' interests rather than workers.⁶²⁰

The first aim of these amendments was to make trade union registration more accessible for garment workers, and, in fact, some problems identified in the *Labour Act* were addressed. There is no obligation for the Director of Labour to notify factory owners on reception of workers' application for registration, and it has been asked by the government that the list is no longer passed on to factory owners anymore, even though it would not be surprising that this practice be continued due to pervasive collusion and corruption.⁶²¹ However, it stops there as for the improvements for garment workers' right to organize. For the rest, the amendments have left unchanged many provisions that impose significant burdens on workers' right to organize, in addition to making changes that will clearly have a negative impact on their right. The requirement of the 30 percent minimum membership was not modified even though workers asked for a 10 percent threshold, and workers still cannot select their leader outside the factory.⁶²² According to the new amendments, registration of trade unions is now conditional on the Director's approval, who can deny it at his/her discretion.⁶²³ The Director can also decide to shut down a union following its discretionary power.⁶²⁴ This is foremost problematic considering serious corruption issues within the government. It is also easier now for factory owners to dismiss workers by accusing them of "misconduct" since they are not required to give them severance benefits anymore, which can be used by owners to target workers who have unionization projects.⁶²⁵ The right to strike is now subject to a requirement of two-thirds of the union's membership in favour,⁶²⁶ which is a slight improvement in comparison to the previous requirement for three-quarters, but the government maintains its power to end strikes if it deems it necessary for the good of the community or the national interest.⁶²⁷ Finally, the amendments

⁶²⁰See Emran Hossain, *supra* note 453; "Bangladesh: Amended Labor Law Falls Short", *Human Rights Watch* (15 July 2013), online: Human Rights Watch <<http://www.hrw.org>> [HRW, "Falls Short"].

⁶²¹ *Amendments 2013*, *supra* note 124, s 50; See FWF, "Bangladesh Study 2013", *supra* note 99 at 25.

⁶²² See *ILO Statement on reform of Bangladesh labour law*, International Labour Organization (Geneva: 22 July 2013) [*ILO Statement on reform*]; HRW, "Falls Short", *supra* note 620.

⁶²³ *Amendments 2013*, *supra* note 124, s 51; See Emran Hossain, *supra* note 453; Rick Westhead, "Why sweatshop owners may start sweating", *The Star* (13 October 2013), online: The Star <<http://www.thestar.com>>.

⁶²⁴ *Labour Act*, *supra* note 124, s 190; See Emran Hossain, *supra* note 453; Westhead, *supra* note 623.

⁶²⁵ *Amendments 2013*, *supra* note 124, s 11; See Emran Hossain, *supra* note 453; Celest Drake, "The AFL-CIO Reacts to Recently Passed Amendments to the Bangladesh Labor Law of 2006", *AFL-CIO* (23 October 2013), online: AFL-CIO America's Unions <<http://www.aflcio.org>>.

⁶²⁶ *Amendments 2013*, *supra* note 124, s 59.

⁶²⁷ *Labour Act*, *supra* note 124, s 211(3).

have expanded the government's control over foreign assistance and funding for trade unions, thereby expanding its control over trade unions themselves.⁶²⁸ Indeed, as the government reported it, many new trade unions have been registered since these amendments were enacted, but changes in the law were not necessarily needed for this; what was rather needed was an opening on the part of the Director of Labour's attitude towards unionism.⁶²⁹ Moreover, it has been reported that some of these new unions are management-sponsored unions established with the aim of defeating workers' project of creating independent unions.⁶³⁰ Most of these changes in the *Labour Act* are thus "false improvements" which, instead of promoting workers' right to organize, are mainly serving factory owners' interests.

Beyond the amendments to the *Labour Act*, imperative changes for strong trade unionism in the Bangladesh garment industry are highly needed, and these must come from a different level. It involves a transformation in the government's attitude towards workers' right to organize, the enforcement of sanctions against factory owners who are involved in anti-union activities, and the de-politicization of trade unions.⁶³¹ As Kabeer puts it:

It is, therefore, the responsibility of the political leadership in Bangladesh to transform their relations with the trade union movement in such a way that they can perform their function of representing the interests of their membership and ensuring that employers are held accountable. Such reform is difficult but essential if an environment is to be created that will allow a genuine workers' movement to flourish.⁶³²

As long as this longstanding and highly problematic situation with trade unionism in Bangladesh is not addressed, garment workers, and especially women, will have no strong and loud voice with which to demand the respect of their rights and little power to change their condition.

Most of the other amendments are superficial and meaningless; there are updates in words and names, clarification of language, and even punctuation marks correction, but no substantial

⁶²⁸ *Amendments 2013*, *supra* note 124, s 63; See HRW, "Falls Short", *supra* note 620.

⁶²⁹ *ILO Statement on reform*, *supra* note 622.

⁶³⁰ See US Report, *supra* note 3 at 10.

⁶³¹ *Ibid* at 1, 14; "Bangladesh: Tragedy Shows urgency for Worker Protections", *Human Rights Watch* (25 April 2013), online: Human Rights Watch <<http://www.hrw.org>>.

⁶³² "Compliance Versus Accountability" *supra* note 149 at 44.

changes.⁶³³ In the meantime, important issues for women remain unaddressed, such as sexual harassment and gendered discrimination beyond wages.⁶³⁴ In sum, this gives a clear insight into the government's real intentions when it was elaborating these amendments to the *Labour Act*. In order to decrease the international pressure placed on the country since the Rana Plaza disaster and the international eye to look at another tragedy in the world, the government made great promises of improvements in its garment industry by amending the *Labour Act*. Yet the 2013 amendments only serve the purpose of concealing the hardship of millions of garments workers while furthermore promoting selfish interests of the government and the factory owner elite and responding to their greed for profits.

Finally, with regard to the raise in minimum wages, it unsurprisingly still falls short of what is considered to be a living wage, meeting basic needs of workers and their family.⁶³⁵ Moreover, shortly after this increase, house rents were raised even more than were minimum wages, which is a frequent phenomenon in Dhaka, offsetting any positive impacts that the increase could have brought on workers' condition.⁶³⁶ On the other hand, factory owners have complained that the raise was too high, and they have consequently highly reduced the hiring of workers while owners of smaller factories have simply cut jobs.⁶³⁷ The need for MNCs to stop asking for extremely low costs for their garment orders has not been addressed in the legal responses following the Rana Plaza disaster, which is an important concern with regard to the potential of these responses. Indeed, if problems are solely addressed at a superficial level and we keep ignoring their deeper causes, sustainable improvements will not take place.

Therefore, some positive points can be raised as to the potential of the legal responses following the Rana Plaza collapse to make a real difference in the lives of garment workers in Bangladeshi factories; however, important flaws and weaknesses have been reproduced in these new instruments, and improvements praised by the government mainly serve the purpose of reducing

⁶³³ See Emran Hossain, *supra* note 453.

⁶³⁴ See *ILO Statement on reform*, *supra* note 622; HRW, "Falls Short", *supra* note 620.

⁶³⁵ See "Bangladesh urged to work on living wage", *Dhaka Tribune* (29 November 2013), online: Dhaka Tribune <<http://www.dhakatribune.com>>.

⁶³⁶ See Hossain Ovi, "As wages rise", *supra* note 78.

⁶³⁷ See Hossain Ovi, Ibrahim, "New wages trigger RMG jobs at stake", *Dhaka Tribune* (22 December 2013), online: Dhaka Tribune <<http://www.dhakatribune.com>>.

international pressure on the country while representing no concrete gain for garment workers. Unfortunately, it is thus not possible to conclude that these legal initiatives represent a genuine development for the protection of garment workers' rights and have a strong potential to succeed where the previous international and domestic legal framework has failed.

Conclusion

On April 24, 2013, the collapse of the Rana Plaza building in Dhaka and the death of 1,132 garment workers shocked the entire world and provoked global outrage over the hazardous and abysmal working conditions of millions of garment workers in Bangladesh. Criticism was therefore strongly renewed regarding the failure of the Bangladeshi government and MNCs to fulfill their responsibilities towards workers and ensure them safe and decent conditions. Both responded with new legal initiatives intended to improve safety in garment factories. It is in this context that I decided to write this thesis and that I traveled to Dhaka in order to inform my perspective on the issue of working conditions in Bangladeshi garment factories. One essential thing that I learned during my research trip is that, despite the Rana Plaza tragedy, the Bangladeshi population remains hopeful as to a brighter future and stands together to fight for workers' rights and improve their condition. Bangladeshis' unbelievable strength and resilience are at the core of my analysis and have been the most important incentive to my work.

Bangladesh is the second largest exporter of garments in the world.⁶³⁸ From an economic perspective and considering the small size of this country, the spectacular growth of the garment export industry in Bangladesh since it gained its independence in 1971 is a definite success story. Today this industry is the backbone of the Bangladeshi economy and of the four millions workers it directly employs in factories, about 85% of whom are women.⁶³⁹ However, for these women at the bottom of global supply chains who suffer inferior labour standards, the reality is different. Jobs in garment factories are characterized by extremely low wages and appalling working conditions, and workers' lives are constantly on the line due to serious risks of fire and industrial accidents in these factories. Despite the development of an international and a domestic legal framework to protect workers' labour rights and ensure their safety, these have failed to improve working conditions in garment factories and prevent tragedies such as the Rana Plaza collapse. The primary objective of this thesis was to analyse, through a gendered lens, the reasons for the failure of these legal frameworks to fulfill their purposes.

⁶³⁸ See SOMO, "Fatal Fashion", *supra* note 10 at 10; Awaj Foundation, "Workers' Voices", *supra* note 10 at 15.

⁶³⁹ See Fauzia Erfan Ahmed, *supra* note 47 at 34; Jahan, *supra* note 40 at 1; TIB Report, *supra* note 14 at 3; US Report, *supra* note 3 at 3; Awaj Foundation, "Workers' Voice", *supra* note 10 at 15.

To achieve the above objective, I first needed to understand the power dynamics that rule the Bangladesh garment industry, and I argued that these deeply unequal power relationships are at the root of the failure of these legal frameworks. MNCs are at the top of this power-driven network; by constantly increasing their production exigencies and using the threat of terminating business if their requirements are not met, they put intense pressure on their Bangladeshi suppliers. The Bangladeshi elite composed of owners of the biggest and most profitable garment factories has become the most powerful actor in this industry at the domestic level (and even of the whole Bangladeshi state) by exercising control over the government's decisions and the parliament and by taking advantage of the export business model set by MNCs. Exploited and marginalized garment workers are completely crushed in these power struggles, and their interests and needs are grossly ignored in favour of those of the most powerful actors.

In order to inform my analysis of the failure of the international legal framework for MNCs, of which codes of conduct (CoCs) are the main instrument, I looked at the work of scholars who have raised important concerns with regard to the adequacy of this framework to protect workers at the end of global supply chains. These scholars base their critiques on the core labour standards (CLS) approach created by the ILO in 1998 since this has catalyzed a paradigm shift in international labour law in the context of globalization. According to Alston, the most serious consequence of the adoption of the CLS by the ILO is that, since these were not provided with an enforceable mechanism, it created a voluntarist and unaccountable approach in the international labour law sphere that allowed the self-regulation of MNCs, with no external monitoring. With regard to the specific case of Bangladesh, Kabeer concludes that CoCs have failed to give birth to a culture of compliance in the garment industry since MNCs use them for the sole purpose of enhancing their commercial image and CoCs have thus done very little in encouraging compliance by suppliers. Drawing mainly on the work of these scholars, I argued that the fundamental reason for the failure of the international framework for MNCs is based on its soft law nature. Counting on MNCs to be their own regulator has proved to be insufficient since their interests contradict those of vulnerable women garment workers at the bottom of global supply chains. Indeed, business practices of MNCs are strikingly incompatible with the implementation of their CoCs. Moreover, their monitoring systems are weak and ineffective, and their lack of willingness for any commitments towards their suppliers prevent improvements from taking place.

My analysis of the failure of the domestic legal framework, mainly composed of the *Labour Act 2006* and the *Bangladesh National Building Code*, was informed by the work of several scholars who have criticized the Bangladeshi labour law system with regard to the protection it ensures garment workers and its enforcement mechanisms. Drawing on Kabeer's insight, according to whom there is no culture of accountability in Bangladesh due to the government's failure to realize labour rights beyond paper, I argued that it is precisely because of the government's lack of concerns regarding the implementation of labour laws and the ineffectiveness of its enforcement mechanisms that workers' rights are widely violated by factory owners, resulting in a vicious circle of workers' marginalization. At the root of this ineffective legal system is the deep nexus between the Bangladeshi elite and political institutions.

There is indeed a two-way relationship between the failure of MNCs to implement CoCs and the failure of the government to enforce the national labour laws. Even if MNCs had sincere intentions for the implementation of CoCs, due to the absence of a culture of accountability, the context of Bangladesh is unfavourable for the development of a culture of compliance since solid national legal institutions provide the necessary initial framework for the collaboration of MNCs and suppliers towards the promotion of a labour standard.⁶⁴⁰ Correspondingly, MNCs that are not concerned with the implementation of CoCs and turn a blind eye to violations by their suppliers compromise the establishment of a culture of accountability in the country, encouraging suppliers and even the government to adopt the same attitude and not care about compliance.

I argued that workers themselves also have an important role to play in the respect of labour rights, but acute problems related to trade unionism in Bangladesh are a serious impediment to garment workers exercising their right to organize. While existing trade unions are highly politicized and are used to serve the government's interests, factory owners resist the creation of new independent trade unions at the factory level in order to continue to exploit workers. Women workers are further precluded from exercising their right to organize since trade unions themselves are often based on a male-dominated hierarchy and therefore ignore their specific concerns, which leads to women's disinterest in the trade union movement. The absence of independent and representative trade unions is an important reason for the failure of legal

⁶⁴⁰ See Ruwanpura & Wrigley, *supra* note 333 at 1045; King Dejardin, *supra* note 45 at 11-12; Ruwanpura, "Sri-Lanka", *supra* note 510 at 212.

frameworks to protect garment workers and especially women because, with no collective strength, workers are disempowered; they have no voice to demand the respect of their rights and cannot have a significant impact on the improvement of their condition.

The final objective of this thesis was to assess the potential of the legal initiatives undertaken by MNCs and the government following the Rana Plaza tragedy to make a real difference for Bangladeshi garment workers and ensure them strong protection of their rights. My assessment was based on the flaws and weaknesses I identified as the main causes of the failure of the previous international and domestic legal frameworks. From an international perspective, I argued that the *Accord on Fire and Building Safety*⁶⁴¹ elaborated by European MNCs has the greater potential to succeed due to its legally binding nature and a collaboration with local actors, thereby addressing some of the most significant issues identified in the self-monitoring approach of CoCs. In contrast, the *Alliance for Bangladesh Worker Safety*⁶⁴² by American MNCs and the *National Tripartite Plan of Action on Fire Safety and Structural Integrity*⁶⁴³ of the government simply reproduce the very same flaws and weaknesses identified in the previous legal frameworks but under a different name and form, which clearly raises doubt as to their potential for concrete improvements. At the domestic level, the amendments made to the *Labour Act* fall short of expectations.⁶⁴⁴ Despite the government's promises to improve the protection of workers' right to organize, these amendments are false improvements that will ultimately benefit factory owners' interests more and further disempower workers.

Considering the failure of the international and domestic legal frameworks to protect Bangladeshi garment workers and the potential of the legal responses following Rana Plaza, we shall now ask what needs to be done to move forward and ensure real and robust protection of garment workers and especially women. There is a primordial need for deeper changes that tackle the root causes of hazardous and abysmal working conditions in garment factories, which must be addressed through concrete and meaningful actions by actors at both the domestic and the international levels. It is essential to challenge the power structure of the Bangladesh garment industry to put

⁶⁴¹ Accord, *supra* note 119.

⁶⁴² Alliance, *supra* note 121.

⁶⁴³ NTPA fire safety & structural integrity, *supra* note 122.

⁶⁴⁴ Amendments 2013, *supra* note 124; *Labour Act*, *supra* note 124.

an end to power struggles among MNCs, factory owners, and the government, in order for these actors to finally fulfill their responsibility to implement and enforce labour standards.

To rebalance forces among the Bangladesh garment industry and ensure the sustainability of current efforts for factory safety and the respect of labour standards in the long-term, it is of primary importance that garment workers themselves be empowered through independent and upright trade unions, in which women workers are strongly represented. With no strong collective voice, workers' ability to ask for the respect of their rights and to tip the balance in their favour even just a little is virtually non-existent. Considering how actions of all garment industry protagonists are greatly interrelated in their effects, it is essential that they all collaborate and make genuine efforts in order to have a significant impact on the concretization of workers' rights. Yet neither the Alliance nor the Accord (despite involving the participation of existing trade unions) explicitly includes an actual capacity-building component for workers to be able to exercise their right to organize or an education program for factory owners to respect workers' right to organize and build constructive relationships with factory-level trade unions.⁶⁴⁵ As for the government, the amendments to the *Labour Act* fall short of expectations and do not represent real improvements of workers' protection to create and join trade unions and to collective bargaining. It is imperative that fundamental changes in the attitude of MNCs, the government, and factory owners toward trade unionism in the Bangladeshi garment industry occur in order to develop and expand the role of independent trade unions in this industry.

Therefore, we must ask how to initiate these fundamental changes among the Bangladesh garment industry in order to tackle unequal power dynamics and empower garment workers for ensuring the implementation and enforcement of workers' rights for safe and decent working conditions. From a legal perspective, we need to question whether we should continue on the same path as set by the legal responses following the Rana Plaza collapse or consider different legal avenues, at both the domestic and international levels. For example, we should reflect on: the weakness of the international soft law system to regulate profit-centered MNCs as opposed to the potential of the legally binding nature of the Accord; the potential of the agreement on common standards for factory safety by the international and domestic actors and the possibility

⁶⁴⁵ See US Report, *supra* note 3 at 11.

to reach such an agreement for labour standards in general; and the government's ability to escape international pressure by simply making superficial amendments to its domestic legislation. Ultimately, the regulation of labour conditions must come from domestic law, but international law definitely has an important part to play. Efforts at both levels need to be integrated for mutual reinforcement in order to tackle issues effectively, and we need to analyse what are the best means to build such coordination among MNCs and Bangladeshi actors' efforts.

An integrated response involving other forces, such as economic pressure and consumers' activism, in tandem with law should also be considered for real changes in the Bangladesh garment industry. For example, as opposed to Europe that has chosen the legal avenue through the *Sustainability Compact*, the United States government decided to suspend Bangladesh's tariff benefits under the Generalized System of Preference program on July 19, 2013, due to concerns around safety issues in Bangladeshi garment factories.⁶⁴⁶ It has established an action plan that includes a series of steps that Bangladesh needs to implement to improve factory safety and labour standards in factories in order for its tariff benefits to be reinstated.⁶⁴⁷ However, if the government has first reacted quickly through public statements promising to do everything necessary to ensure the reinstatement of its trade advantages, substantial parts of the action plan have still not been implemented.⁶⁴⁸

Another force that can be considered is that of on-site improvements, through the education and training of workers in order to increase their capacities. This could be realized with the help of strong local organizations led by women workers, assisted by independent international organizations for workers' solidarity. Kabeer cites as an example the Bangladesh Independent Garment Workers Union Federation (BIGUF), which "pursues a variety of strategies to organize garment workers, visiting them in their homes, organizing cultural programs to motivate them,

⁶⁴⁶ See Leonie Barrie, "US: Action plan sets out Bangladesh GSP safety steps", *Just-Style* (22 July 2013), online: Just-Style <<http://www.just-style.com>>.

⁶⁴⁷ US, US Government, *Statement by the US Government on Labor Rights and Factory Safety in Bangladesh* (Office of the Spokesperson, Washington DC: 19 July 2013), online: <<http://www.state.gov/r/pa/prs/ps/2013/07/212209.htm>>; See US Report, *supra* note 3 at 6.

⁶⁴⁸ *Ibid.*

encouraging them to engage in collective bargaining with management and providing legal education as well as legal support in disputes with management.”⁶⁴⁹

Finally, another example of a force that could work in tandem with law in order to make a difference in the Bangladesh garment industry is that of western consumers. However, boycotting is definitely not an option since jobs created in garment factories represent an important and positive development for women toward their emancipation and empowerment, and this should not be compromised in any way. Consumers could instead have an impact by making informed decisions regarding their purchases and, by joining their efforts, could send a message to higher actors of the industry regarding the necessity for them to change their buying practices in Bangladesh in order not to lose customers and thus profits.

In the end, despite the fact that the Bangladesh garment industry has faced the most tragic garment industry accidents in the world and that this will leave a deep scar in the history of the country, if we succeed in improving working conditions in Bangladeshi garment factories, we could have a spectacular ripple effect on the global garment industry and enable other developing economies facing similar issues to finally raise their labour standards and offer real and robust protection to workers.

⁶⁴⁹ “Compliance Versus Accountability”, *supra* note 149 at 36.

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