

WORK AND SOCIAL JUSTICE

LESSONS LEARNT FROM THE BAN- GLADESH ACCORD?

Insights for the Mandatory Due Diligence Debate

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The Bangladesh ACCORD on Fire and Building Safety is an example of an Enforceable Brand Agreement (EBA) that made garment industry workplaces much safer.



The ACCORD's success stems from its governance structure, scope for penalties for non-implementation, its great transparency and the option for workers to use an accessible, independent complaints mechanism. The mandatory arbitration clause is the key to enforcement, making the agreement legally binding.



Experts confirm that the ACCORD can be transposed to other areas of human rights worldwide; EBAs can be an important way for firms to fulfil human rights due diligence obligations.

INTRODUCTION

In April 2013 the Rana Plaza factory building in Bangladesh collapsed. 1,134 people died and at least twice as many were injured. The factory mainly produced garments for European and US companies. This was not the first industrial tragedy; it was preceded by other disasters, such as the fire in the Tazreen textile factory, with over 100 fatalities, and another fire in Pakistan's Ali Enterprises factory that killed over 250. Just a few months before the collapse, under the aegis of what is known as the amfori standard, the Rana Plaza textile factory had been audited by TÜV-Rheinland and other audit firms on behalf of the brands who purchased goods from it. The audit report did not mention any damage to the building, instead describing the building safety as "good".

The collapse of the Rana Plaza building highlighted the failure of voluntary corporate responsibility schemes and their monitoring tools. As a result, an international agreement on building and fire safety was created: the Bangladesh ACCORD on Fire and Building Safety. To this day, the ACCORD is considered one of the most successful international agreements safeguarding workers' rights. The ACCORD agreement is effective through May 2021 and there are strong indications that the signatories will further extend and expand the agreement. Currently, the recently created RMG Sustainability Council (RSC) acts as the ACCORD's local implementing body in Bangladesh.

CURRENT RELEVANCE: DISCUSSIONS ON SUPPLY-CHAIN LEGISLATION

Experience to date with voluntary corporate codes of conduct and with multi-stakeholder initiatives (MSI) tends to suggest that these contribute little to improving working conditions¹. That is often due to their weak governance structure and lack of options to apply penalties. Nevertheless, industry standards and multi-stakeholder initiatives are still on the rise.

One example of an effective industry initiative that has genuinely improved the working conditions of millions of workers in Bangladesh is the Bangladesh ACCORD on Fire and Building Safety. The ACCORD will be described below and serves as a basis to identify minimum requirements for an industry initiative that could be suitable for fulfilling human rights due diligence obligations under the UN Guiding Principles (UNGPs) and in the light of emerging mandatory human rights due diligence legislation.

STRUCTURE, COMPOSITION AND CONTENT OF THE AGREEMENT

The Bangladesh ACCORD² is a legally binding agreement between transnational companies in the fashion industry (“brands”)³ and both international and national trade unions, such as UNI Global Union and IndustriALL⁴, with the aim of working towards a safe and healthy garment and textile industry in Bangladesh. The agreement covers local factories producing ready-made garments, home textiles, and fabric or knit accessories⁵.

A key structural difference between the Bangladesh ACCORD and previous Corporate Social Responsibility (CSR) initiatives is that the agreement takes the form of a legally binding agreement between workers’ representatives and lead firms, while also committing companies to specific remediation measures.

The ACCORD (2013-2021) includes the following key features:

Scope: The ACCORD focuses on building safety and fire safety (occupational health and safety), along with workplace safety related to issues such as anti-union retaliation or the right to refuse unsafe work. It also includes provisions to ensure workers receive the wages due to them and, where applicable, severance payments if buildings close (temporarily) due to safety remediation. It applies to all suppliers who manufacture products for the signatory companies (“brands”). As the ACCORD is legally binding, companies that have acceded to it may not leave it unless they have fulfilled all the obligations to improve building and fire safety standards.

Governance structure: The ACCORD’s steering committee is composed of equal numbers of representatives from trade unions and companies. The ILO also appoints a neutral chairperson. The ACCORD is well equipped at the operational level with highly competent personnel. It is financed through signatory fees that signatories are required to pay as part of their obligations under the Agreement and which the ACCORD manages independently.

Safety inspections: Independent and competent auditors employed by the ACCORD conduct safety inspections of the factory buildings. The inspection department is headed by a highly qualified Chief Safety Inspector, who is empowered to take concrete measures to enforce building safety regulations either in his or her own capacity or together with the Head of the ACCORD. The ACCORD can request closure of a factory building if an acute structural risk is identified in the premises.

Improvements/remediation measures: The ACCORD obligates factories to eliminate safety hazards pursuant to its findings and by a stipulated deadline. If the supplier does not comply, the ACCORD will immediately issue a warning and, should this not be effective, require that signatory companies sever business relations with the supplier, which then also becomes ineligible to do business with other ACCORD signatories for a specified period of time. Signatory brands are obliged under the ACCORD (Art. 17) to ensure that remediation at their suppliers is financially feasible. This means that signatories are required to negotiate commercial terms with their suppliers that ensure it is viable in economic terms for factories to maintain safe workplaces.

Independently trained experts conduct training courses for all workers on fire protection and safety in all ACCORD factories.

Employee representatives are established in every factory with specific responsibility for fire and building safety issues.

Transparency: The complete list of all suppliers covered

1 MSI Integrity, Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance, July 2020; https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL_.pdf

2 The full title is “ACCORD on Fire and Building Safety in Bangladesh”. The first agreement (<https://bangladesh.wpengine.com/wp-content/uploads/2018/08/2013-Accord.pdf>), concluded on May 13th, 2013 was established as an immediate reaction to the collapse of the Rana Plaza building in Dhaka/Bangladesh on April 24th, 2013, caused by the dilapidated fabric of the building. This first ACCORD expired in 2018. In June 2020 the local operations transitioned to the RMG Sustainability Council (RSC). However, the ACCORD did not expire with the transition. The agreement between unions and each individual brand signatory is effective at least until the end of May 2021. (<https://bangladesh.wpengine.com/wp-content/uploads/2018/08/2013-Accord.pdf>) (<https://www.dhakatribune.com/bangladesh/2020/06/01/rmg-sustainability-council-launches-to-sustainworkplace-safety>).

3 <https://bangladeshaccord.org/signatories/company-signatories>.

4 <https://bangladeshaccord.org/signatories/trade-union-signatories>.

5 <https://bangladeshaccord.org/>.

by the ACCORD and all results of building inspections by the ACCORD are publicly available in English and Bengali, complete with photographs, as are the reports on the status of the individual remediation measures and employee complaints about violations of safety standards.

Conflict resolution: The steering committee also serves to resolve conflicts by majority vote. There is also the option of filing an appeal. As the ACCORD contains a binding arbitration clause, a dispute between ACCORD members can be brought before an arbitration court, e.g., regarding the failure of a signatory brand to implement its obligation to ensure that remediation is financially feasible⁶. This clause is the key to enforcement of the agreement and also renders it legally binding for its signatories.

Complaints mechanism: The complaints mechanism is established to enable workers in factories within the ACCORD system to report concerns about fire safety and building safety, which will be investigated promptly by the ACCORD. If a factory refuses to comply with the ACCORD and other workplace safety violations arise or if a factory will not comply with the ACCORD's decision on complaints resolution, the factory becomes ineligible for business with ACCORD signatories. That is also the case if a factory fails to implement remediation measures.

CRITERIA FOR THE ACCORD'S SUCCESS (2013-2021)

In summary, the following characteristics are decisive for the ACCORD's success: The ACCORD's governance structure ensured participation on an equal footing for unions and employees, i.e., despite limited resources, the unions have been able to participate in work related to the ACCORD as equal partners. Measures to ensure worker representation were provided for within the factories. The ACCORD is financially independent, i.e., it can manage the funds provided by the member companies independently. In addition, the ACCORD is able to implement its standards effectively; since its inception, factories have eliminated over 150,000 individual safety hazards as a result of the ACCORD's safety programme, saving countless lives. This was possible because the inspections were conducted by qualified individuals who were also independent, as they were accountable solely to the ACCORD. In addition, the ACCORD

6 Point 5 of the ACCORD, "Governance", stipulates: "Dispute resolution. Any dispute between the parties to, and arising under the terms of this Agreement shall first be presented to and decided by the SC, which shall decide the dispute by majority vote of the SC within a maximum of 21 days of a petition being filed by one of the parties. Upon request of either party, the decision of the SC may be appealed to a final and binding arbitration process. Any arbitration award shall be enforceable in a court of law of the domicile of the signatory against whom enforcement is sought and shall be subject to The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention), where applicable. The process for binding arbitration, including, but not limited to, the allocation of costs relating to any arbitration and the process for selection of the Arbitrator, shall be governed by the UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006)".

was empowered to demand implementation of improvements and to apply penalties for non-implementation, including making factories ineligible for business with ACCORD signatories. Such penalties could be introduced as a result of either inspections or the complaints mechanism. Furthermore, it should be emphasised that a high degree of transparency was one of the ACCORD's key hallmarks. There was public disclosure of corporate signatories of the ACCORD as well as their suppliers covered by the ACCORD. The audit reports for each factory were published on the ACCORD website. Workers in ACCORD factories could make use of a readily accessible complaints mechanism, which allowed complaints about shortcomings in the workplace to be properly investigated. If a breach was found thanks to the complaints mechanism, concrete redress was mandated. This has brought timely and tangible improvements for workers. The ACCORD was also a legally binding agreement between the companies ("brands") and the unions, with a formalised dispute resolution mechanism, including an arbitration process for disputes concerning the companies' obligations, with penalties built into the system.

CAN THE ACCORD BE TRANSFERRED TO OTHER CONTEXTS?

Experts confirm that the ACCORD could in principle be transposed to other countries and areas of labour and human rights⁷. However, it should be noted that such a standard will likely always relate to a single production/ industrial sector and may also be limited to a specific regional context. Given that the strength of the Enforceable Brand Agreement (or industry standard) lies in its specificity, it is currently difficult to imagine an industry standard that would encompass a complete value chain in the light of all conceivable human rights and environmental considerations.

The following quality parameters are vital for an industry initiative or an Enforceable Brand Agreement:

Quantifiable and binding obligations

The obligations of the member/signatory companies must be formulated clearly and include timebound results. In addition, clear responsibilities for implementation and improvements must be stipulated. In particular, responsibility for financing remediation and improvement measures must be determined clearly and must be incumbent primarily on the companies at the end of the value chain.

Representation on an equal footing and local empowerment

The governance structure must ensure participation on an equal footing of trade unions or representatives of the persons or groups affected and the corporate signatories to the agreement.

7 <https://library.fes.de/pdf-files/id-moe/13040.pdf>.

Independence of the industry standard from its members' vested corporate interests

The industry standard must be independent of the interests of the individual member/signatory companies. To this end, the officials in charge of running the industry standard must be able to enforce the standard's implementation and operation independently and, in particular, be financed in a manner that allows them to manage the standard's own budget independently.

Effective implementation of the standard (independent monitoring/enforcement)

The industry standard must be implemented effectively. On the one hand, monitoring must be carried out by independent, professionally qualified individuals who are accountable solely to the industry standard as an institution. On the other hand, staff employed by the industry standard must be authorised to require implementation of the standard and of corrective measures, whether shortcomings are uncovered as part of an inspection or while investigating a complaint, as well as to impose penalties for non-compliance if necessary. The penalties need to have sufficient deterrent effect. To that end, adequate funding of the industry standard is essential.

Transparency

There must be transparency about the implementation status of the industry standard, as well as about the companies, production facilities or plantations covered by this industry standard. That means that all information on the companies involved must be publicly accessible, including audit reports, progress reports and employee complaints, disaggregated on a factory-by-factory basis (or for each production facility/plantation) and making it possible to establish a link to the brand/buyers.

Complaints mechanisms for people affected

The people who are protected by the industry standard and whom it is intended to benefit (factory workers, agricultural workers, village communities) must have a way to complain about violations of the standard using trusted and effective procedures. Their complaints must be dealt with promptly and fairly and complainants must not have reason to fear direct or indirect disadvantages. Complainants should therefore have the option to remain anonymous. The complaints mechanism should have a mandate to require the employers and the brands to implement the remedy it stipulates.

Dispute resolution mechanism for member organisations

Disputes between the members of the industry standard about implementation of this standard must be addressed within a clearly structured dispute resolution mechanism. As the industry standard is legally binding, scope must be provided for a decision from a (arbitration) court on disputes.

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In 2013 the Rana Plaza factory building in Bangladesh collapsed. That highlighted the failure of voluntary corporate responsibility and its monitoring instruments. An international agreement was therefore established: the Bangladesh ACCORD on Fire and Building Safety. The ACCORD is viewed as one of the most successful international instruments improving the working conditions in the textile industry of Bangladesh. This legally binding agreement between transnational companies in the clothing industry and both international and national trade unions aimed to work towards a safe and healthy garment and textile industry.



A key structural difference between the ACCORD and previous CSR initiatives is its status as a legally binding agreement that links buyers with workers' representatives from the Global South in their supply chains and obliges brands and manufacturing companies to implement, finance and monitor necessary renovations and other improvements. Success is grounded in various criteria, e.g. governance structure, scope for penalties for non-compliance, a high degree of transparency and the option of using a readily accessible complaints mechanisms. The binding arbitration clause is the key to enforcing the agreement.

Experts confirm that the ACCORD can in principle be transposed to other areas of labour and human rights. This kind of standard will always relate to a production/industrial sector and may also be limited to a specific regional context.



Experiences with the ACCORD make it possible to devise various quality parameters, thus ensuring that such initiatives are a reasonable way of fulfilling human rights due diligence (HRDD) obligations as prescribed by the UN Guiding Principles (UNGPs) and emerging mandatory HRDD laws:

- Quantifiable and binding commitments
- Genuine worker participation through its governance and implementation
- Independence of the standard from its members' vested corporate interests
- Effective implementation of the standard
- Transparency
- Effective complaints mechanisms for persons affected
- Dispute resolution mechanism allowing parties to enforce commitments through binding arbitration for member organisations

Further information on the topic can be found here:

<https://www.fes.de/themenportal-die-welt-gerecht-gestalten/welt-wirtschaft-und-unternehmensverantwortung/>