

Does the Bangladesh Accord on Building and Fire Safety Provides a Sustainable Protection to Ready-Made Garment Workers?

Mohammed Al Bhadily
Curtin University, Law School

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ABSTRACT

The Ready-Made Garment (RMG) industry is a significant sector for the Bangladeshi economy. Worth US\$ 24.6 billion, it employs 3.6 million workers and positions Bangladesh as the second largest exporter in the world. Low cost production has made the Bangladesh RMG industry attractive to Western brands for outsourcing. However, RMG's lower prices have consequences such as low wages, long hours for shifts, human rights abuses and unsafe work environments caused by factory fires and collapses. The recent deadly collapse of the Rana Plaza factory on 24 April 2013, which killed and injured thousands of workers, generated public and political pressure to improve RMG workers' conditions in Bangladesh, leading to the 15 of May 2013 establishment of the Accord on Building and Fire Safety in Bangladesh (the Accord), which has been signed by the majority of Western retailers and brands. This paper aims to examine issues that undermined the Accord's effectiveness as a sustainable protective measure for Bangladeshi RMG workers, such as the Accord's limitation to a period of five years, the fact that it does not address human rights abuses, and that it has not been signed by all retailers. This paper explores potential alternatives to the Accord including extra-territorial legal solutions, such as criminal liability, class action and the Australian Corporate Code of Conduct Bill 2000, which may help to improve the RMG industry's work safety environment and address human rights concerns.

Keywords: Ready-Made Garment, unsafe work environment, the Bangladesh Accord on Building and Fire Safety, the Australian Corporate Code of Conduct Bill

1. Introduction

The Ready-Made Garment (RMG) industry is one of the most important sectors of the Bangladeshi economy. It is a 24.6 billion industry, which positions Bangladesh as the second largest exporter in world. The RMG industry employs 3.6 million workers in over 5000 factories, and 66% of Bangladesh's RMG products are exported to the US and Europe (Mckinsey & Company, 2011).

Western clothing brands and suppliers not only compete on quality but also on prices, which is one of the most important factors influencing companies to outsource their RMGs to low cost producers. In Bangladesh, low price production has differentiated its RMG industry from other countries' clothing producers. This has made the Bangladesh RMG industry more appealing to Western companies and brands to outsource from.

However, RMG's lower prices mean that, apparently, in the long run, they are unsustainable, and in some cases, deadly. Low wages, long shifts, human rights abuses and unsafe work environments caused by factories fires and collapses are some of the low price production consequences.

Bangladesh RMG workers' wages are the lowest among clothing producing countries. Workers have been forced to work long hours, sometimes without extra payments, facing threats, physical and sexual abuse that have been used by factories as a tool to increase production to meet schedules for delivering orders. To keep prices low, children have been employed in the RMG industry and they also have been subjected to abuse. Workers during their shifts have been treated like prisoners, with building entrances/exits locked.

To keep the RMG industry attractive through lower prices – and besides the above used price cutting measures, factory owners have been intent on further cutting expenses by compromising on workers' health and safety, which has been achieved by establishing RMG factories in residential and commercial buildings. Moreover, some owners have extended the use of unauthorised extensions and buildings to house more workers. This has led to overcrowded factories and the use of unsafe machinery and equipment. To make further savings, factory owners do not install the necessary fire safety equipment such as water sprinklers and fire alarms; and, to make the situation worse in fire incidents, most of the factories do not have enough fire exits.

One of the deadly consequences of providing RMGs at lower prices in Bangladesh has been fires and building collapses, which have caused thousands of workers' lives and injuries. However, it was the collapse of Rana Plaza on 24 April 2013, which killed and injured thousands of workers, which has generated debate on the safety and work environment conditions of RMG workers in Bangladesh.

The mount of public and political pressure sparked by the Rana collapse to improve RMG workers' conditions in Bangladesh, led to the establishment of the Accord on Building and Fire Safety in Bangladesh (the Accord) on the 15 of May 2013, which has been signed by the majority of Western retailers and brands from Australia, Europe, America and Canada. The Accord aims to improve the work environment conditions for RMG industry workers in Bangladesh.

This paper aims to examine the sustainability of the Accord in providing a safe work environment for Bangladeshi RMG workers. However, to understand clearly the extent of the issues and concerns involved with the RMG industry, this paper will examine briefly the industry development background. Discussion will also be conducted on the challenges that face the RMG industry such as low wages, human rights abuses, child labour and fire and building collapses. The paper will explore international legal avenues and measures such as class action and others that may be adopted by RMG workers to improve and protect their rights and work environment. Finally, the Australian Corporate Code of Conduct Bill 2000 will be explored as a solution that may help to improve the RMG industry's work safety environment and eliminate human right abuses.

2. The Bangladesh Garments Industry

Bangladesh, a country of 166.2 million people, is one of the world's most densely populated and poorest countries (CIA World, 2014). According to the United Nations Children's Fund (2013), 43.3 per cent of the population lives on less than \$1.25 a day. Three quarters of the population live in rural areas and depend on agriculture and fishing for their daily income. However, due to poverty and natural disasters many rural families have migrated to urban cities such as Dhaka, the capital city of Bangladesh, which is expected by 2025 to become the world's fourth largest city with 22 million people (Centre for Economic and Social Rights, 2009).

The RMG industry plays a significant role in Bangladesh's economy; it is a US\$24.6 billion industry, which positions Bangladesh as second largest exporter in the world. Recently, the RMG industry helped annual growth to reach 6 per cent of the economy (Yee, 2014). The garment industry employs 3.6 million workers in over 5000 garment factories. The RMG industry is one of the most attractive sectors among unskilled workers. This includes rural migrants. Bangladesh's RMG supply capacity is ahead of other Southeast Asian suppliers such as Indonesia, which has 2450 factories, Vietnam with 2000 and Cambodia's 260 factories (Mckinsey & Company, 2011).

Nevertheless, the current industry capacity has not been achieved overnight - it took decades of developments and planning. The development of the RMG industry started after the foundation of Bangladesh in 1971, when jute was one of the most exported products. However, jute fibre demand declined in the world market, which affected the jute industry tremendously (Spinanger, 1986). There is another factor which contributed to the growth of the RMG industry. In 1974 one million people died due to starvation caused mainly by flooding, which led to a rise in food prices. As a result the Bangladesh Government adopted a new policy to denationalise its economy and encouraged private and international investors to invest in Bangladesh (Nurul, 2007).

In the late 1970s and during the 1980s Korean companies played an important role in improving and modernising the RMG industry in Bangladesh. In 1978 a joint venture was established between Dosh Garment Ltd and Daewoo, a South Korean company. One of the advantages of this joint venture was sending 130 Bangladeshi garment workers and management staff to train for six months in South Korea. With Daewoo's technology and specifications Dosh was able to establish and build a modern factory, which employed 600 workers and produced 5 million pieces annually (Yunus & Yamagata, 2012).

In the early 1980s the Bangladesh Government established a policy to encourage private investment in the RMG industry. One of the measures of this policy was to issue duty free licences to companies that import machinery and equipment for textile export purposes (Yunus & Yamagata, 2012). This strategy helped the growth of the RMG industry. From 1984-85 the number of RMG factories increased to 632, which also had a significant effect on exports, increasing from US\$1.3 million to \$116.2 million (Yunus & Yamagata, 2012).

In 1995 an important development contributed to the growth of the Bangladesh RMG industry. From 1995 to 2005 the World Trade Organisation Agreement on Textiles and Clothing was in effect, which aimed to reduce developed countries textiles exports in favour of less industrialised countries increasing their export textile quotas (World Trade Organization, 2012). This agreement enormously benefited the Bangladesh RMG industry; it allowed quota-free access to European markets and generous quota access to American and Canadian markets. This was a significant opportunity that helped the Bangladesh RMG industry to enter European, American and Australian markets (Textiles Intelligence, 2003).

That said, Bangladesh was expected to suffer the most from the end of the Agreement on Textiles and Clothing in 2005, as it was expected to face strong competition from China (Mlachila & Yang, 2004). Nevertheless, Bangladesh's cheap labour was an important factor that enabled the industry to survive and continue its strong presence in the international market, even in the face of other strong competitors such as China. This was demonstrated in 2006 when RMG industry exports increased in value by US\$500 million (Haider, 2007).

At present, the RMG is the most important economic sector in Bangladesh, which contributed to \$24.6 billion in exports in 2014 (Claeson, 2012). According to the Export Promotion Bureau, Bangladesh RMG exports increased 5.78% last year, from \$23.5 billion to \$24.6 billion (Anonymous, 2014). The RMG industry constitutes 13% of the country's gross domestic product and more than 78% of total exports (Anonymous, 2014). There is huge potential for the RMG industry, and according to a McKinsey & Company (2011) survey 66% of Bangladesh RMGs are exported to the US and Europe. The sector expects to reach US\$30 billion in exports within the next three years (Anonymous, 2014). According to the Chief Purchasing Officers (CPOs) 2011 survey, Bangladesh remains the number one alternative to China, and 86% of those surveyed ranked labour costs the most important reason for sourcing from Bangladesh (McKinsey & Company, 2011). For example, t-shirts cost half the price in Bangladesh of its nearest competitor, China, children's cotton shirts cost 15% less in Bangladesh than the second cheapest country Cambodia; and sweaters in Bangladesh cost 15% less than its competitor Vietnam (Claeson, 2012).

In the same vein the US Ambassador to Bangladesh, Dan Mozena (2012), on June 6 2012, expressed his vision for the Bangladesh garment industry by stating "I believe that within a decade or two Bangladesh could be a middle income country, where its people have the means to create a good quality of life for themselves and their children, where people have ample and nutritious food, decent housing, access to quality education for their children, affordable and effective health care, and prospects for a secure and even better future for the next generation"

There is no doubt that the RMG industry has a vital role in the Bangladesh economy and has improved people's quality of life. In Bangladesh this sector is considered one of the ways to help people to get off the lowest rung of poverty. Furthermore, the RMG industry helps to improve gender equality and this is done by empowering women who comprise 80% of the RMG workforce in Bangladesh (Evans, 2013).

However, there are challenges that could be hurdles to RMG industry progression, and those challenges need to be addressed in order to sustain the RMG industry as a viable sector that could improve the Bangladeshi economy and people's lives. The following section discusses the most pressing issues that face the RMG industry, such as child labour, building fires and collapses that cause thousands of death and injuries, low wages and human rights abuses.

3. Bangladesh RMG Industry Challenges

3.1. Low wages

Srivastava observes that low wages are one of the consequences of the globalization, which encourages a "race to bottom, in terms of lower wages, this race has moved from (one) country to another (Srivastava, 2013). Until December 2013, Bangladesh RMG workers' minimum wage was less than \$40 a month and, working 15 hours a day, six days a week, it was the lowest in the world (Rowlands, 2013). As discussed above, one of the reasons that attracts foreign brands and companies to outsource to Bangladesh are the low costs. According to the McKinsey & Company survey, all CPOs participants in the survey indicated that price attractiveness was the most important reason for purchasing in Bangladesh (McKinsey & Company, 2011). Bangladesh's ready-made garments' wage is one of the lowest in world, even lower than the South Asian wage level. Stuart and Kristen observe that the Bangladeshi worker minimum wage per hour is US\$0.15, compared to Cambodia (\$0.33), Pakistan (\$0.41), India (\$0.51), China (\$0.55), Vietnam (\$0.85) and Thailand (\$1.75). On a

monthly basis a Bangladeshi ready-made garment worker's minimum wage is \$37 per month (Stuart & Kirsten, 2010).

In Bangladesh the first minimum wage was introduced for the RMG industry in 1985 at (US\$8) per month. This was only revised and increased in 1994 when wages increased to (US\$11). The third wage increase was after more than ten years, when in 2006 the minimum wage increased to (US\$20), and then due to massive protests the government in 2010 increased wages to (US\$37) (Claeson, 2012).

However, in November 2013 the Bangladesh Government announced it would raise the minimum wage for garment workers by 77% to US\$68, and this move had been taken after the distribution and closure of more than 250 RMG factories due to worker protests. Furthermore, international pressure also contributed to the above minimum wage increase, and one form of this pressure was demonstrated by a letter presented on June 21, 2012 by 15 foreign brands and retailers including H&M, Carrefour, Gap, Tesco and Levi Strauss, sent to Prime Minister Sheikh Hasina which stated that "The industry disruptions and worker grievances are now impacting our ability to direct business to Bangladesh (Claeson, 2012)." Nevertheless, the minimum wage increase was effective from December 1, 2013.

However, there were concerns as to whether such a wage rise would benefit or make tangible changes to the workers' wages. Furthermore, workers might not get the full raise. Smith argues that before the 2010 wage rise, workers used to be paid wages plus bonuses and after the 2010 wage rise those bonuses disappeared and were embedded as part of the wage rise; in other words, workers did not get the full claimed wage rise (Smith, 2013).

3.2. Child labour

Child labour has a long history of concern in Bangladesh, especially in the RMG industry. According to a 2002-2003 survey on child labour conducted by the Bangladesh Bureau of Statistics, (BBS) which was supported by the International Labour Organization (ILO), the population of working children between ages 5 and 17 is estimated to be 7.9 million. 73.5 per cent of them are boys and 26.3 per cent are girls, with 6.4 million children working in rural areas and 1.5 million in urban areas. 4.5 million of this age group are engaged in the agricultural sector, 2 million of them are in the service sector and 1.4 million are involved in the industry sector. 1.3 million of them are estimated to work 43 hours or more per week (International Labour Organisation, 2003).

According to the Center for Economic and Social Rights child labor is problematic across Bangladesh, as it threatens a child's right to education and health and wellbeing. 16.6 per cent of Rajshani city children, 5-14 years are child labourers, as well as 13.9 per cent of Dhaka's children, 12.1 per cent of Khulna's children, 11.6 per cent of Sylhet's children, 10 per cent of Barsal city children and 8.8 per cent of Chittagong city children (Center for Economic and Social Rights, 2009).

The United States Department of Labor's Bureau of International Labour Affairs (2013) emphasises that for child labour in Bangladesh, children are subjected to the worst practices of child labour. Children who are involved in the manufacturing sector are faced with hazardous substances and materials such as chemicals, and use sharp objects, carry heavy loads, face poor hygiene conditions and work long hours.

Due to international pressure the Bangladesh Government recently made changes to protect children. In 2012 it passed the Human Trafficking Deterrence and Suppression Act, which makes trafficking activities an offence. Moreover, the government has also approved and adopted the Child Labor Elimination Nation Plan of Action (NPA). However, despite all the above improvements introduced by the Bangladesh Government, children are still subjected to the worst forms of child labour (United State Department of Labor, 2013).

This was highlighted recently in a British documentary on ITV, which showed a 13 year old girl forced to work 11 hours in unsafe and appalling work conditions (Brignall & Butler , 2014). This abuse is happening despite the Rana Plaza collapse two years ago, which forced the Bangladesh Government and Western brands and retailers to pledge to improve RMG worker conditions and to eliminate human rights abuses in the workplace. This issue will be discussed further in the following section. The incident questions the Bangladesh Government's intention and commitment to tackle RMG industry concerns and in particular the protection of children.

3.3. Human Right Abuses

There is no doubt that the above mentioned practices such as low wages, long working hours, appalling work environment conditions and child labour and abuse are all breaches of fundamental human rights. Nevertheless, in this section specific incidents highlighting breaches of human rights related to the RMG industry will be discussed.

The above-mentioned human right abuses in the RMG sector often spark protests. That said, protesting workers become targets of security forces, which in some cases may lead to arrests, arbitrary detention and criminal procedures on the basis of false charges. Furthermore, in some cases protesting workers have endured beatings and physical threats (Claeson, 2012). Moreover, in 2010 the Bangladesh Government established a special security force, "the Industrial Police" to deal with unrest and crush any RMG worker protests (Industrial Police, 2010).

One of the incidents that attracted international attention on human rights abuses in the RMG industry was the disappearance of Aminul Islam, President of the Bangladesh Garments and Industry Workers' Federation's (BGIWF) and a senior organizer of the Bangladesh Center for Workers Solidarity, a well-known labour rights group. Aminul not only disappeared, but also was subjected to torture and then murdered in early April 2012 (Claeson, 2012).

Strong circumstances suggest that security forces murdered Aminul, in connection with his involvement in labour rights activities (Claeson, 2012). The suspicions behind Aminul's murder were expressed by eleven apparel associations from Europe and North America in a written letter to Prime Minister Hasina, which stated "the apparent circumstances leading up to and surrounding Aminul's death could be perceived to be part of a deliberate campaign to repress efforts to raise and address issues related to unsatisfactory working conditions in the RMG sector" (Claeson, 2012).

Furthermore, as indicated above, 80 per cent of RMG are women, who may be subjected to sexual and physical abuse. As revealed by the ABC's Four Corners program in Australia in June 2013 after the Rana Plaza factory collapse there were allegations of physical and sexual abuse committed by factories supplying clothes to Australian brands including Rivers, Coles, Target and Kmart (The ABC's Four Corners, 2013). Moreover, evidence shows in the workplace that they are discriminated against as women workers on different grounds, such as access to higher management positions, which is mostly restricted to male workers

(Ahmed, 2012). Moreover, it is common for RMG industry workers to be dismissed without payment and entitlements after months of hard work (Ahmed, 2012).

3.4 Fire and Building Collapses

The RMG industry is known for its fire accidents and the causes of these will be discussed later. The first recorded fire incident was in 1990, at Saraka Garments in Dhaka, killing more than 32 workers and injuring over 100. In 1997 three factories broke out in fire, Nouvelle Garments, Florence Fabric and Modern Garments, all of them in Dhaka. At least five workers died and 50 were injured (Claeson, 2012). In 2000, the Chowdhury Knitwear and Garments Factory fire occurred killing 52, most of them young women and teenage children (Barry, 2001). On 24 November 2012, a fire broke out in the Tazreen Fashion in Dhaka, the deadliest in Bangladesh's history, killing 112 workers and injuring 150 (Claeson, 2012).

Rana Plaza complex in Sava, twenty miles northwest of Dhaka, was an eight-story building; built without correct permits, with more than 3,000 workers, the majority of which were women. Rana Plaza collapsed on 24 April 2013. Over 1100 died and hundreds were injured, and 2500 workers were rescued from the rubble (Gomes, 2013). The eight-story building was constructed on a pond filled with sand; it only had planning approval for five stories. An engineer raised concerns about the building's safety after noticing cracks in the Rana Plaza a day prior to its collapse. There were allegations that workers left the building a day before it collapsed, however, management threatened workers with losing their jobs if they would not return to work (Gomes, 2013; Sketch, 2014).

It must be noted that more than two years after the Rana fire disaster, the owner Sohel Rana and other 40 individuals have been charged with murder of over 1100 workers (Australian Broadcasting Corporation, 2015).

One of the reasons behind numerous building fires and collapse incidents in the RMG industry is that factory owners and builders often do not follow building code safety standards, especially in crowded cities where land prices are expensive and they use cheap construction to reduce their expenses (Amin & Hussain, 2004). Most of the factories are designed for commercial or residential purposes; however factory owners break down the walls on floors and turn them into garment factories, housing more people than their capacity (Amin & Hussain, 2004). Consequently, an unsafe number of electronic appliances have been used such as fans and machines, which causes excessive electronic currents resulting in circuit damage, overheating and fires or explosions (Amin & Hussain, 2004). According to Bangladesh safety inspectors most RMG factories do not have enough or functional fire exists, water sprinklers, fire alarms and emergency exit signs. Workers are not provided training for safety procedures (Anonymous, 2010). These safety concerns have been affirmed by the recent inspection report on some of the RMG factories, which found safety irregularity such as overload ceilings, exposed cables and locked fire escapes are behind fire incidents discussed above (Thomassan, 2014).

The scale of Rana's collapse and its effects; which caused death and injuries to thousands of RMG workers, has sparked debate and concerns in Australia, Europe, the United States and Canada on building safety, workers' wages and human rights abuses. The public and political pressure has had an enormous effect on the RMG sector, which includes suppliers and retailers. Consequently, on 15 of May 2013, some of the Australian, European, American and

Canadian retailers signed the Accord on Building and Fire Safety in Bangladesh, which will be discussed in the following section.

4. The Bangladesh Accord on Building and Fire Safety

As mentioned above, the collapse of Rana Plaza factory sparked public outcry around the world. This led to growing public and political pressure on both the Bangladesh government and Western retailers to improve the work safety and conditions of the Bangladesh RMG industry.

Political pressure was exercised by Western countries, especially the United States and Europe, on the Bangladesh government to enforce domestic legislations and regulations that will help to improve the RMG industry work environment. However, to pressure the Bangladesh Government to take the necessary protective measures, in June 2013 the United States suspended the Generalized System of Preferences (GSP)¹ facility for Bangladesh.

At the same time public pressure mounted on Western retailers with brands outsourcing in Bangladesh to take measures to prevent fires and building collapses in the RMG industry, or otherwise their brand reputation would suffer and consumers would boycott their products.

Those above discussed factors have forced most Western retailers outsourcing in Bangladesh to take unprecedented steps which resulted in the establishment of the Accord on Building and Fire Safety in Bangladesh (the Accord).

The Accord describes fire and building safety measures and is a legally binding agreement that came into effect on the 15 of May 2013 by Western retailers and trade unions. Up till now there have been signatories from 190 brands and retailers from more than 20 countries, including H&M, PVH and Abercrombie & Fitch, and Australian retailers such as Kmart, Target, Woolworths, Coles, Cotton On and others. Retailers have signed the Accord. Nonetheless, there are some retailers who did not sign the Accord, such as Wal-Mart and Gap in the US and Just Group in Australia. The Accord is divided into nine parts: Scope, Governance, Credible Inspection, Remediation, Training, Complaints Process, Transparency and Reporting, Suppliers Incentives and Financial Support. The signatories of the Accord have agreed to establish a fire and building safety program in Bangladesh for five years. The programme will build on the National Action Plan on Fire Safety (NAP). The parties of this agreement have committed to align the Accord with NAP, by ensuring a close collaboration, such as establishing common programmes and advisory structures. Parties of the Accord should develop an Implementation Plan within 45 days of their signatures (The Accord on Building and Fire Safety in Bangladesh, 2013).

The Accord requires independent inspections by trained fire safety experts, mandatory repairs and renovations financed by Western retailers that outsource in Bangladesh, and it provides a central role for workers and their unions.

The Accord implicitly provides for voluntary monitoring by factories that failed to prevent fire and building collapse disasters in Bangladesh's RMG sector.

¹ It is a preferential tariff system which provides developing countries such as Bangladesh an exemption from the general rules of World Trade Organization (WTO).

There are significant measures that have been provided by the Accord to improve RMG worker health and safety and work conditions. Under the Accord the signatory companies and retailers have committed to take the following measures:

- The Accord is a binding agreement which enables parties to have arbitration support from the court of the home country of the retailer or company in question, used to solve disputes occurring between parties of the Accord (Section 5).
- Safety inspections should be done by independent inspectors, and all factories should be inspected within nine months (Sections 8 and 9).
- All suppliers are obliged to implement the fire safety experts' report and recommendation.
- Signatory companies and retailers are committed to provide the sufficient funds for all the necessary safety repairs and renovations (Section 12).
- The Accord provides a fundamental right to workers to refuse dangerous work or enter dangerous buildings (Section 15).
- Companies encourage and allow independent and union worker representatives.
- Cease outsourcing from any suppliers not complying with the Accord requirements (Section 16).

4.1. The Effectiveness of the Accord

Obviously the Accord is a historical step towards improving the work safety environment in the RMG industry in Bangladesh, particularly through reaching a binding agreement which aims to prevent disasters in the RMG industry. In addition, one of the Accord objectives is that suppliers should pay higher wages and provide safe work conditions to RMG workers.

Nevertheless, Venkatesan (2013) argues the effectiveness of this Accord should be tested through two factors, prevention and remediation. On this issue, there are concerns that question the effectiveness of the Accord in achieving its objectives that have been established, which can be discussed as following:

- i. As mentioned above, the Accord implementation and duration period is only for five years, which raises concern in particular about the scale of the RMG industry. There are over 5,000 RMG factories in Bangladesh. Although not all of them would be under the Accord, a fair number are, which makes the implementation of the Accord a very difficult task that needs more than five years and a lot of resources and expertise to improve the safety standards of the RMG industry in Bangladesh.
- ii. On the other hand, and as indicated above, Wal-Mart and Gap and other retailers – about fifteen in two countries - have established their own safety measure, the Alliance for Bangladesh Worker Safety (the Alliance). The Alliance is out of the scope of this paper; therefore it will be discussed briefly to give an idea on the Accord's opponent safety measure. The Alliance is not legally binding. Scott Nova, executive director of the Worker Rights Consortium has criticised the Alliance, arguing that inspections in those factories which supply RMGs to the Alliance signatories are done by inspectors hired by the companies and not by an independent body; and also that it does not provide incentives or penalties to encourage suppliers to adopt and provide a safe environment and improve work conditions in the RMG industry (Fox, 2013).

- iii. Furthermore, while the Accord and the Alliance cover about 1,984 factories, where international brands and retailers place their orders, this does not include subcontractor factories, which means over 3,000 RMG factory workers are unprotected by either measure (Yee, 2014).
There are allegations that for one of the signatories of the Accord, N Brown, a British company, one of its suppliers has abused children as young as 13 years old, forced to work 11 hours a day in an unsafe work environment. It is alleged that children, who are mostly girls, have been kicked, slapped and hit with used fabric roll (Brignall & Butler, 2014). Furthermore, these children have been physically abused and threatened. A fire escape at one of the RMG factories, 'Vase Apparel' was padlocked, even though many were killed by fire incidents in the past few years after being trapped in similar factories where exits had been locked (Brignall & Butler, 2014).
- iv. Some of the signatories are outsourcing not only to Bangladesh but also to other countries such as India, Vietnam, Cambodia, Sri Lanka, China and Pakistan, where there are similar concerns, including appalling and unsafe work conditions that exist in Bangladesh, such as fires. For example in Pakistan in September 11, 2012 a fire at Ali Enterprise killed at least 262 workers (Claeson, 2012). In India in May 2009 six workers died and 30 were injured (Claeson, 2012). In China on August 29, 2009 five workers were killed in a deadly fire (Claeson, 2012).
- v. The Accord focuses on fire safety for the RMG sector, but there are other outstanding important issues facing RMG workers such as working for long hours, being underpaid, and child labour and human rights abuses. These issues have not been addressed properly, which expose workers, especially the vulnerable such as women and children to further exploitation and abuse.
- vi. One of the features that has been recognised by the Accord which makes it different from previous similar initiatives is that it is a binding agreement. This provides parties the right to sue companies or retailers in question in their home jurisdictions. However, this measure may prove difficult to implement due to the fact that RMG worker incomes are low, and it is more likely they are not able to afford higher legal costs and expertise required to take court action against any company in breach of the Accord, unless this court action is taken by unions. However, Bangladesh's RMG unions in their current status suffer from Bangladeshi Government reprisal and suppression and are not able to take such action unless the government changes its policy by providing more freedom for worker representation.
- vii. An important factor encouraging companies to outsource in Bangladesh is the low cost of labour. As discussed above, Bangladesh's RMG worker wages are the lowest when compared with other RMG country competitors. This is the main competitive advantage factor that differentiates the Bangladesh RMG sector. It was clearly mentioned in the McKinsey report, that low prices are clearly the prime advantage for purchasing from Bangladesh (McKinsey & Company, 2011). The Accord introduced financial liability among Western brands and companies to improve the work safety environment. This was obviously an unpopular move that had been taken due to political and public pressure especially after Rana Plaza collapse. However, the Accord may cause the Bangladesh RMG sector to lose its low cost advantage and it is no surprise if some of outsourcing companies drag their feet on their commitments. The McKinsey (2013) survey indicates Bangladesh rank among RMG Western purchaser dropped after Rana Plaza collapse from 80% to 52%, this due to the fact of anticipation of price increase. Furthermore, the N Brown issue discussed above is an example of such intentions. Some of the Accord signatories may shift part of their businesses to other countries which may provide lower costs, such as China or

Cambodia. As an example, in 2011 Wal-Mart terminated its business with 49 Bangladesh RMG factories for fire safety issues. In this case Wal-Mart, rather than investing to improve the work environment safety in these factories decided to cease its business (Claeson, 2012).

- viii. Importantly, distinction should be drawn between recognising the right for a safe environment and sufficient wages for RMG workers and being forced to react to the Rana Plaza collapse to take measures to improve work conditions. Most Western brands and companies outsourcing to Bangladesh are not keen to improve work conditions. This is due to the fact that these companies had to take action by adopting the Accord, not because of their commitment to human rights but because they were pressured by the public and in particular because they were worried about their brand's reputation.

There is no doubt that the Accord is considered an important initiative for providing Bangladesh RMG workers with a safer work environment. However, and as discussed above, the Accord is not a sustainable long-term solution to address the outstanding RMG industry concerns. A sustainable long-term alternative should be adopted to provide the appropriate and required protection that industry workers need. This will be discussed in the following section.

5. Possible Protective Measures

Fire and building collapses indicate that Bangladesh law has failed in preventing workplace disasters and incidents such as fires and building collapses. The law is also unable to protect RMG workers from abuse, exploitation and child labour. This inability is due the fact that available domestic legislations are not implemented to provide appropriate action or procedures to prevent a disaster or abuse in the workplace. Part of this inability is because of insufficient health and safety inspectors, and according to the government there are only 20 health and safety inspectors to inspect 5000 registered garment factories, so each inspector is responsible for 250 factories (Claeson, 2012).

Arguably there are other issues which have contributed to the failure of domestic law to provide an appropriate solution to the current outstanding issues in the RMG industry. Bangladesh like any other developing country has to compete against other RMG countries, such as China, Cambodia, Vietnam and others, to attract potential investors to invest in the RMG sector. To do so they offer the cheapest labour force, especially in a country where the RMG sector is considered a vital industry. As one of the Bangladesh NGO workers stated "we will die" if Western retailers and brands cease their operations in Bangladesh (Yee, 2014). Consequently, countries like Bangladesh often compromise on their workers' rights, entitlements, work conditions and human rights, and this may explain why the Bangladesh government's policy is reluctant to regulate the RMG industry (Kinley & Joseph, 2002).

As discussed above domestic lawmakers are unable or unwilling to provide remedies to RMG industry problems. Therefore, the solution should be international; however, there are few potential international measures that could provide the appropriate protections to Bangladesh RMG workers.

In the next section, codes of conduct and extraterritorial measures - which includes class action, will be discussed as a possible solution to resolve the outstanding issues facing Bangladesh's RMG sector.

5.1 Code of Conduct

All foreign retailers outsourcing to Bangladesh have codes of conduct, which promote ethical principles, which should ensure equality in the workplace and provide a safe environment. For example, H&M the largest customer of Bangladesh RMGs has included in its code of conduct a subsection which states, “emergency exits on all floors must be clearly marked, well lit and unblocked all the way out of the building. Evacuation through emergency exits must always be possible during working hours. ... Everyone working on the premises, including managers and guards, must be regularly trained in how to act in case of fire or other emergency. Regular evacuation drills for all employees are required; evacuation plans and fire fighting equipment must be in place.” However, often the code of conduct does not provide the needed protection to the Bangladesh garment sector, for example H&M had an inspection at its Garib&Garib Sweater Factory safety four months prior to a fire in February 2010, which killed 29 workers (Claeson, 2012). Obviously H&M in its audit report failed to identify that there was inadequate firefighting equipment, lack of emergency exits and no smoke detectors (Claeson, 2012). In another example of code of conduct failure, The Gap inspected the That’s It Sportswear factory just before a December 2010 fire which killed 29 workers (Claeson, 2012). The code of conduct will be discussed further in the following section.

According to the above fire disaster examples, corporate codes of conduct have failed to provide the appropriate safety for Bangladesh RMG workers.

5.2. Extraterritorial solutions

5.2.1. Criminal Liability

In Australia there are provisions within different legislations which impose liability on Australian companies operating overseas. Furthermore, the Australian Criminal Code explicitly states that “[a][corporations] is no different than an individual, and a corporation may be found guilty of any offense, including one punishable by imprisonment”. The Bribery Convention was adopted in Australia through the Criminal Code Amendment, to make Australian companies liable for corruption committed in foreign jurisdictions (Kinley & Joseph, 2002). Most importantly the International Criminal Court (Consequential Amendment) Act 2002 (Cth) amended the Criminal Code to include the crimes of genocide, crimes against humanity and war crimes (Robinson, 2008). The other piece of legislation that may provide ground to prosecute Australian companies is the Trades Practice Act 1974. A provision in the Act prohibits ‘misleading and deceptive conduct’ which restrains a company that declared in its code of conduct certain ethical practices when they are on the grounds which are contradictory to its conduct (Robinson, 2008, Chatham House, 2006). However, these provisions have not been tested in court cases to prosecute Australian companies operating overseas. Magraw (2009) argues that the above discussed provisions makes it possible for the Australian Government to hold companies liable for human rights abuses. However, the question arises as to whether the Australian Government is willing to use those provisions to prosecute corporations for human rights violations, which will be shown in the next section.

There have been allegations of human rights abuses against some Australian companies which have overseas operations. Anvil was one of these companies that was accused of overseas human rights violations, as examined in the following section.

In 2005 a Four Corners (2005) report revealed that Anvil, a Perth- based mining company operating a copper and silver mine, had been implicated in a massacre of at least 100 people by the Government of Joseph Kabila in the Democratic Republic of Congo. In October 2004 during an uprising by a small group of rebels in the town of Kilwa, Anvil provided vehicles and a plane to shuttle troops from the 62nd brigade of the Congolese army to Kilwa. The company admitted to Four Corners (2005) that the plane made "three or four" trips to the regional capital to bring in 80 to 100 troops.

Anvil CEO Mr Bill Turner stated that "a request (came) from the military of the legitimate government of the country." "Look, a rebel group came in and took over the military establishment and took over the police, the police station in Kilwa. You don't do those things if you don't want to get shot at." However, Mr Turner denied allegations that he had knowledge of Anvil vehicles being used by the military to capture rebels for summary executions (The Four Corners, 2005). In 2005 a United Nations investigation found that Anvil has provided "logistical support" to the forces, and contributed to "the payment of a certain number of soldiers" (Nguyen, 2006).

Due to public exposure of the Kilwa massacre and Anvil being implicated, the three Anvil officials and some of the Congolese armed forces were trialled before a military court in Congo on charges of war crimes; all were acquitted (Kyriakakis, 2011). Furthermore, in September 2006 the Australian Federal Police investigated the Anvil case under the Commonwealth Criminal Code, and the investigation was closed without any charges being laid against Anvil officials (Kyriakakis, 2011).

Kyriakakis (2011) argues that Australia is reluctant to use the above discussed legal provisions to prosecute Australian companies operating abroad such as Anvil, which allegedly violated human rights.

However the question arises in Australia and as this case indicates, where human rights abuses have occurred in different jurisdictions which did not result in prosecution or compensation, do other jurisdictions have success in providing remedies through court action against foreign citizens?

In Australia there is no similar legislation to the United States Alien Tort Statute, which entitles foreign citizens to take class action demanding compensation from companies that were implicated in or caused human rights or workplace violations. However, it is worth examining this option to find out its viability for providing protection for RMG workers. The following section examines some of the class actions taken under the Alien Tort Statute for human rights and workplace violations. A joint court action was taken by workers from Bangladesh, China, Indonesia and others against Wal-Mart in United States of America (Brown, 2012). This case will be examined the following section.

5.2.2. Civil Liability

5.2.2.1. Class Action

5.2.2.1.1. *Jane Doe I v. Wal-Mart Stores Inc.*

In September 2005 workers from China, Bangladesh, Indonesia, Swaziland, and Nicaragua joined together to press a common class case, claiming that Wal-Mart knowingly used suppliers that deprived workers of basic rules and principles in Wal-Mart's code of conduct,

including fundamental protections of labour laws in the workers' home countries (Brown, 2012).

The deprivation of rights included long working hours, appalling and unsafe work conditions, threats and sexual and physical abuses. The basis of this case was that Wal-Mart's code of conduct created a contract with suppliers, and consequently the workers at the supplier factories were third party beneficiaries of the contract (Revak, 2012).

On March 30, 2007 the U.S. District Court Judge Andrew J. Guilford rejected claims that Wal-Mart was responsible for the working conditions of its suppliers' factories in China, Bangladesh, Indonesia, Swaziland, and Nicaragua. The judge also threw out allegations that Wal-Mart violated California Business and Professional Code section 17200 for advertising it only used responsible suppliers; and the court also dismissed claims that the federal Alien Tort Statute should be applied in this case for the allegation that Wal-Mart was aiding and abetting foreign supplier misconduct (Jane Doe I et al v. Wal-Mart Stores Inc).

The District Court decision was appealed and on July 10, 2009 the U.S. Court of Appeals for the Ninth Circuit issued a ruling that provided protection to U.S. companies from litigations over working conditions, when the overseas plaintiffs did not work for U.S. companies but rather worked for companies that supplied to U.S. companies (Brown, 2012). Wal-Mart's defending statement argued that businesses should be held responsible for working conditions at their own facilities, not at the facilities of other companies over which they have no control (Brown, 2012). The appeals court rejected the plaintiffs' claims that Wal-Mart should be deemed a "joint employer" with overseas employers; that it was negligent in failing to do a better job of monitoring overseas working conditions; and that it was unjustly enriched by being able to purchase goods at prices that would not have been possible but for the plaintiffs' low salaries (Doe v. Wal-Mart Stores, Inc).

The dismissal of this case affirmed that the code of conduct did not establish a duty on the part of Wal-Mart to monitor the suppliers' treatment of their employees, consequently, there is no legal basis provided to plaintiffs to take legal action against Wal-Mart as third-party beneficiaries.

The above case indicates that suing retailers to improve Bangladesh RMG workers work conditions and safety is not a viable option. However, can Bangladesh workers sue retailers for human right abuses?

In the following section, discussion will be conducted on concerns about the involvement of multinationals in overseas human rights abuses.

5.2.2.1.2 *Kiobel v. Royal Dutch Shell Petroleum*

This case was brought by Nigerian refugees to the United States, accusing the Royal Dutch Petroleum Co and its subsidiary, the Shell Petroleum Development Company of Nigeria Ltd, of helping the Nigerian military to torture and kill environmental activists during the 1990s (Center for Constitutional Rights, 2013).

The case was brought on behalf of the late Dr Barinem Kiobel and eleven other Nigerians from the Ogoni area of the Niger Delta. The court case sought damages and other relief for crimes against humanity, including torture and extrajudicial executions, and other international law abuses that were committed with Shell's assistance between 1992 and 1995 against the Ogoni people. This class action was based on the Alien Tort Statute, which makes

Shell complicit and liable for the human rights abuses committed by the Nigerian military regime (Center for Constitutional Rights, 2013).

However the federal appeals court ruled that corporations could not held liable for human right abuses. Shell argued that in any situation the law of nations does not attach civil liability to corporations. On the other hand, the plaintiffs argued that liability should be attached to corporations just as it would to individuals. On September 17, 2010 the Second Circuit affirmed dismissal of the lawsuit, ruling that the Alien Tort Statute did not apply to corporations. However, the court agreed to address the following issues: whether corporations were immune from tort liability for international law abuses such as torture; and whether survivor victims could sue under the Alien Tort Statute for human rights violations committed in a foreign jurisdiction (Revak, 2012).

On April 17, 2013 the US Supreme Court held that the Alien Tort Statute could not be used as a legal basis to sue Shell for assisting the Nigerian government to commit abuses and human rights violations against the plaintiffs and their families (*Kiobel v. Royal Dutch Petroleum Co. et al*).

Even though the Alien Tort Statute provides a measure which could be taken by workers who are subjected to human rights violations, this measure is limited to egregious human rights abuses - such as torture cases - which are sometimes and are not applicable to abuses occurring in the RMG workplace (Chatham House, 2006). Furthermore, this measure is only available in the United States, which limits further this option as a protective action against abuses that may occur in the RMG sector (Chatham House, 2006).

As the above cases suggest class action does not provide the needed measures to protect Bangladesh's RMG workers from unsafe work environments and human rights abuses. It encourages outsourcing brands and companies to continue the exploitation of RMG workers without proper deterrence.

6. What is the solution?

As discussed, the Accord has been perceived as a historical step towards providing a safe work environment for RMG workers in Bangladesh. However, the above discussed concerns about the Accord may be a hurdle and limit its ability to provide the intended protective safety measures. To overcome these limitations and concerns, and provide an appropriate safe environment in the RMG sector, revisiting the Australian Corporate Code of Conduct Bill 2000 is necessary as the basis of an international treaty and alternative solution to the Accord, in providing the needed protective measure to RMG workers. This bill shared similar objectives to others bills that were introduced in different countries which outsource to Bangladesh. For example in 1999 Belgium introduced a bill on a corporate code of conduct, the USA introduced the Corporate Code of Conduct Bill in 1999 and the UK in 2003 introduced similar bill. All bills shared the same fate in being rejected by their parliaments.

These bills failed to become legislation on the grounds that they would have adverse effects on their countries' economies, and may disadvantage corporations compared to those countries that had not adopted such legislative measures (Chatham House, 2006).

In Australia in 2000, the Corporate Code of Conduct Bill (the Bill) was introduced by Senator Vicki Bourne (2000) from the Australian Democrats Party into the Senate. The Bill was an attempt to introduce a model of extraterritorial legislation (Chatham House, 2006). The Bill

was to apply to Australian companies operating overseas which employed over 100 workers. It required companies to meet environmental, employment, health and safety and human rights standards (Section 3 (1) (a) of the Corporate Code of Conducts Bill 2000). The Democrats argued that this Bill was a necessary reaction to the failure of the voluntary corporate code of conduct, promoted corporate social responsibility to benefit all stakeholders and encouraged good corporate citizenship (Bourne, 2000; Bottomley & Forsyth, 2007).

Section 7 of the Bill focuses on environmental standards, whereby Australian companies with overseas operations must take all reasonable measures to prevent any material effect or damage to the environment (Section 7 (1) of the Corporate Code of Conducts Bill 2000). At least once a year these companies have to collect and evaluate data in relation to their environmental impact. They also need to monitor and assess, using established objectives, their environmental performance, and have appropriate policies on environmental safety, including how to handle hazardous materials (Section 7 (2) of the Corporate Code of Conducts Bill 2000).

In relation to health and safety standards, section 8 of the Bill obliges Australian companies with overseas operations to take all reasonable measures to promote health and safety for their employees. As an employment standard, companies must not use forced and compulsory labour (Section 9 (1) of the Corporate Code of Conducts Bill 2000.). Furthermore, companies should not use children under the age of fourteen years for labour (Section 9 (2) of the Corporate Code of Conducts Bill 2000). Moreover, this section protects workers' wages, provides the right to association and protects workers from dismissal due to illness and/or accident (Section 9 (3) of the Corporate Code of Conducts Bill 2000).

On human rights issues the Bill prohibits companies from discriminating against workers on the grounds of race, colour, sex, sexuality, religion, political opinion etc (Section 10(1) of the Corporate Code of Conducts Bill 2000).

Sections 16 and 17 of the Bill provide a safeguard to protect the rights of workers affected by the above discussed sections. Moreover, companies found in breach of the above provisions will be subjected to civil penalties and civil actions.

The Bill would be an effective and comprehensive measure if it were to be adopted as international treaty - especially when fair numbers of Western countries have tried to pass similar Bills to legislations- that obliges all signatories to comply with the discussed provisions (see Table 1). It provides a sustainable legislative base solution to the RMG industry which is unlike the Accord; it covers not only Bangladesh workers but also wherever those companies operate. Furthermore, this Bill offers an effective long-term solution and is not limited to five years as is articulated by the Accord. One of the issues that has been affecting Bangladesh RMG workers is corruption. The Accord assigns local inspectors and also involves other local organisations to inspect supplier factories which may undermine the objectives behind the Accord's establishment. On the other hand, the Bill makes Western brands and retailers liable for providing a safe environment and they are obligated by human rights principles. Accordingly, the Bill is considered a fairer, sustainable alternative to the Accord.

However, until such treaty is established a partial solution that helps to improve RMG workers' safety and work conditions should be found. This could be done by the Australian

Government enacting the Bill with the required amendment, to reflect its application to Australian companies that outsource from overseas.

Table 1: Comparison between the Accord and the Bill

Effect	The Accord	Corporate Code of Conduct Bill
Nature	Voluntary (Agreement)	Legislation base
Sustainable	None	Yes
Jurisdiction	Limited	Unlimited
Effective	Partial	Yes
Corruption	May encourage	None
Addressing Human Rights	Not clear	Yes
Addressing Environment	None	Yes
Fair	Partial	Fairer
Enforcement	Unsure	Yes

7. Conclusion

The collapse of Rana Plaza in 2013 attracted the whole world's attention and highlighted the awful work conditions that Bangladeshi RMG industry workers have endured. This industry is vital to Bangladesh. Bangladesh is the second largest RMG exporter in the world. The RMG sector contributes US\$24.6 billion to its economy, and employs over 3.6 million workers. The Rana Plaza disaster ignited public outcry and political pressure, which resulted in the establishment of the Bangladesh Accord on Building and Fire Safety, a fire and building safety measures legally binding agreement. It came into effect on May 15, 2013 between Western retailers and trade unions, and up until now there have been 190 brand and retailer signatories from more than 20 countries. The signatories of the Accord have agreed to establish a fire and building safety program in Bangladesh for five years. Signatory brands and retailers also have to contribute financially to fund the fire and safety program. The Accord has been considered a significant measure to improve the workplace safety environment in Bangladesh.

However, the Accord has its limitations; it focuses only on fire and building safety, and disregards other important issues such as child labour, human rights abuses, low wages and long hours for shifts. Furthermore, the Accord period is only for five years, and the question is how are workers going to be protected after the lapse of this period? Moreover, the Accord does not provide a global solution to RMG industry concerns, which are to a certain degree similar in other countries to Bangladesh's problems - namely child labour, human rights abuses and health and safety.

On the other hand, other measures such as criminal liability and class action have not provided remedies and justice for alleged victims. In relation to criminal liability, this is provided by the Australian Criminal Code which allows the Australian Government to hold companies liable for human rights abuses committed overseas. However, the Australian Government has been reluctant to prosecute Australian companies operating abroad for human rights abuses. This was demonstrated by the Anvil case, for which Anvil allegedly violated human rights in Congo 2006. Until today no one has been prosecuted.

In the USA both the Jane Doe I and Kiobel cases showed that victims of alleged deprivation of rights such as long working hours, appalling and unsafe work conditions, threats, sexual and physical abuse and human right violations have not been successful in getting justice from the Wal-Mart and Shell companies.

This leads to looking for more sustainable solutions that are capable of providing an effective protective measure, able to protect RMG workers' rights and provide a safe work environment. The Australian Corporate Code of Conduct Bill 2000 should be considered as an effective protective measure for the RMG industry, whether this is done through an international treaty or just as Australian legislation. The Bill (which has not been passed by the Parliament) was an attempt to introduce a model of extraterritorial legislation and was introduced by the Australian Democrats Party into the Senate. The Bill applies to Australian companies operating overseas. It requires companies to meet environmental, employment, health and safety and human rights standards.

This Bill provides a comprehensive solution on health and safety, human rights and the environment and not only provides protection for RMG industry workers but also for workers from other industries. Furthermore, it is not limited to a time frame or a particular country as has been designed in the Accord.

The Bill provides justice, dignity and security to those who are working in countries where their legal system has failed them in providing the appropriate and needed protection.

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