



Memo

April 2017

From: Clean Clothes Campaign, International Labor Rights Forum, Maquila Solidarity Network, and Worker Rights Consortium
To: Interested Parties
Re: **Bangladesh Accord: Brief Progress Report and Proposals for Enhancement**

Executive summary

Founded in 2013, three weeks after the deadliest disaster in the history of the global apparel industry, the Bangladesh Accord on Fire and Building Safety has made factories safer for more than two-and-a-half million garment workers.

As we approach the final year of the Accord, it is clear to see the significant progress that has been achieved through this agreement. The improvements in structural, fire, and electrical safety accomplished under the Accord have helped avert further factory fires and building collapses in an industry long plagued by grossly unsafe working conditions. In the past four years, no Accord-covered factory with an active or completed action plan has seen a workplace fatality due to fire, electrical or structural hazards. These accomplishments are all the more impressive considering that the Accord is the first binding supply chain agreement ever implemented in global supply chains.

The Accord owes much of its achievements to the pioneering work of the Accord staff in the past years. Despite the immensely challenging circumstances, their efforts have been tireless, effective and of the highest integrity. We would like to praise them for the work they have done and all they have achieved.

We also appreciate the leadership shown by the two Global Union Federations, IndustriALL and UNI Global Union, in setting up and participating in this ground-breaking programme, and the courage and perseverance of the Bangladeshi unions that signed on to the Accord. We also must commend the efforts of those signatory brands that have worked to ensure the Accord functions and to meet their commitments

There remains much to be done before the Bangladesh garment industry can be declared to be safe, and this will not be achieved in just one year. For this progress to continue it is clear that the Accord must not be both extended and expanded. As witness signatories to the Accord, we offer in this memorandum a concise assessment of the Accord's performance to date and our concrete recommendations for the continuation of the Accord for another five years, beyond its current 2018 expiration date.

Background

On April 24, 2013, the Rana Plaza building collapsed, killing 1,134 garment workers and injuring 2,500 more. In the wake of the tragedy, international media attention focused on the Western apparel brands and retailers sourcing from Bangladesh and the need for dramatic reforms in the way these companies address workplace safety in their overseas supply chains.

In an effort to address the fundamental problems that led to the Rana Plaza collapse and previous deadly disasters, an international coalition of labour rights advocates worked to create a legally binding agreement on building safety between labour unions and apparel brands and retailers. This coalition included IndustriALL Global Union, UNI Global Union, Bangladeshi trade unions, and four non-governmental labor rights organizations: Clean Clothes Campaign, International Labor Rights Forum, Maquila Solidarity Network, and Worker Rights Consortium. The agreement, known as the Accord on Fire and Building Safety in Bangladesh, obligates its 217 signatory brands to require their factories to undergo essential safety renovations, to provide financial assistance to factories that need it, and to stop doing business with factories that fail to undertake renovations by deadlines established by the Accord's independent inspectorate. Throughout the programme, workers were to be trained and empowered to ensure that such renovations were both undertaken and maintained.

An agreement that holds signatory companies legally responsible for the commitments they make to worker safety is unprecedented in the modern global apparel industry. Brands and retailers had been promising for years to protect workers' rights and safety in their supply chains. In reality however, their own low-price, high-pressure sourcing model had created overwhelming incentives for factories to hold down cost and speed up production by ignoring labour standards. The weak factory auditing systems of the brands and retailers did little to address burgeoning labour rights abuses. Nowhere was this failure more obvious and more destructive than in Bangladesh, where virtually every mass fatality disaster in the garment industry, including Rana Plaza, occurred in factories that had been repeatedly inspected by industry auditors.

Accord requirements and progress summary

Since the Accord formed in May of 2013, it has conducted independent fire, structural and electrical safety inspections at over 1,600 factories; has carried out more than 7,000 follow-up inspections to monitor remediation progress; and has overseen more than 80,000 safety renovations, repairs and upgrades – from installation of fire doors, to replacement of faulty electrical wiring, to repair of weak structural columns.¹

Unlike previous industry audits which ignored the most critical safety issues, Accord inspections are carried out by qualified safety engineers with deep expertise in fire, building and electrical safety. In most cases, when an Accord inspector arrived at a factory to carry out the Accord's initial assessment, it was the first time a qualified building safety engineer had ever set foot on the premises.

¹ The data in this paragraph is from the Accord's February 2017 update, available at <http://bangladeshaccord.org/wp-content/uploads/accord-progress-factsheet-february-2017.pdf>

For every factory it inspected, the Accord has published a copy of the inspection report. These are available in both English and Bangla on its website,² and describe every identified safety hazard, including photographs.

Corrective Action Plans

The Accord also posts a Corrective Action Plan (CAP) for each factory, which specifies the action that the factory must take to address each of the hazards identified by the inspection, and the deadline by which each action must be completed.³ The Accord regularly updates the progress status of each required action for each factory on its website; thus, it is easy for workers, consumers, and the general public to determine how much or how little each factory has done to address the safety violations uncovered by the Accord inspections. To date, Accord engineers have identified a total of 118,494 violations of the Accord's fire, electrical and structural standards.

Of the 85,995 violations identified in the original Accord inspections 79% have been corrected. In addition, the Accord's structural engineers identified 32 factory buildings with structural flaws so extreme as to create the risk of catastrophic structural failure. All of these buildings were either closed, in some cases with virtually immediate evacuation of workers required, or compelled to make swift renovations to ensure basic structural integrity. These efforts may well have prevented another Rana Plaza.

While completion of 79% of required renovations is laudable progress, the figure does not fully capture the extent of work that still remains or the substantial delays the Accord has encountered. Not all remedial actions are equal. Among the 21% of actions still to be completed, there is a large over-representation of more expensive upgrades, such as installation of automated sprinkler systems and major structural renovations. Many of the uncorrected hazards involved pose particularly serious risks to workers. Moreover, while 79% of all remediation items are complete, the great majority of factories still have work to do. For example, of the 1,649 covered factories, only about one hundred have either completed all required remediations or have reported doing so and are awaiting verification by the Accord. Roughly 300 more have completed at least 90% of required renovations, repairs and upgrades. And, in most cases of uncompleted renovations, original deadlines have passed.⁴

The Accord's record is simultaneously one of enormous practical accomplishment and of frustrating delays and deficiencies. Relative to all prior workplace safety initiatives in the contemporary garment industry, in Bangladesh and elsewhere, the level of concrete, documented

² The inspection reports are available at

<http://accord.fairfactories.org/ffcweb/Web/ManageSuppliers/InspectionReportsEnglish.aspx>

³ The Accord's engineers monitor the extent to which factories have implemented the various actions required in the CAP by the relevant deadline. The Accord regularly updates the progress status of each required action for each factory on its website, designating each item as "in progress," meaning that the factory has not reported completion of that item, "pending verification," meaning the factory has reported the issue to be corrected but the Accord has not yet verified it, or "corrected," meaning that the Accord has verified that correction of the item is complete. The regularly updated Corrective Action Plans are available at

<http://accord.fairfactories.org/ffcweb/Web/ManageSuppliers/InspectionReportsEnglish.aspx>

⁴ See <http://bangladeshaccord.org/wp-content/uploads/Accord-Progress-Factsheet-February-2017.pdf>

progress the Accord has achieved represents a massive advance for worker safety. Even in factories that still have remediation work to do, the partial completion of action plans has substantially reduced the risk of injury and death. At the same time, the delays in the completion of remedial actions and the amount of actions that are past the Accord's mandated deadlines are not excusable and leave workers at risk. This major weakness in the Accord's performance is a product of less-than-full compliance by a substantial number of brand and retailer signatories and foot-dragging by far too many factories. That is why, even at this late date, there is still substantial remediation work to be done.

Financing for Remediation

Among the primary reasons for delays in remediation progress is the failure in some cases of brands and retailers to provide sufficient financial assistance to factories. Articles 12 and 21 of the Accord make clear the responsibility of signatory corporations to ensure that factories carry out all required remediation⁵ and Article 22 requires brands to ensure that it is financially feasible for the factories to do so, which means providing some viable form of financial assistance with renovation costs when factories need it.⁶ Unfortunately, the Accord does not contain a requirement for brands to disclose to the Accord the specific nature of their financial arrangements made with each factory, nor the overall dollar amount they have devoted to remediation assistance. Thus, while we know that lack of financing has been a problem in a number of specific cases, and while there is strong reason to believe it has been a problem more broadly, it has not been possible to document and analyse this concretely. We know a substantial number of factories have received significant financial help; we know a substantial number have requested it and been inappropriately denied or failed to make requests out of fear of offending buyers. Beyond this, the picture is not clear.

Termination of Recalcitrant Suppliers

Under Article 21 of the Accord, brands and retailers are required to cease doing business with any factory that persistently refuses to carry out mandated safety improvements. This mechanism, which produces clear and grave economic consequences for recalcitrant suppliers, is a crucial element of the Accord. It constitutes a large improvement over industry auditing systems, where brands decide solely in their own discretion, when to take action against a supplier. This form of auditing thereby allows brands to continue doing business with

⁵ Article 12 states: "Where corrective actions are identified by the Safety Inspector as necessary to bring a factory into compliance with building, fire and electrical safety standards, the signatory company or companies that have designated that factory as a Tier 1, 2, or 3 supplier, shall require that factory to implement these corrective actions, according to a schedule that is mandatory and time-bound, with sufficient time allotted for all major renovations."

Article 21 states: "Each signatory company shall require that its suppliers in Bangladesh participate fully in the inspection, remediation, health and safety and, where applicable, training activities, as described in the Agreement."

⁶ Article 22 states: "In order to induce Tier 1 and Tier 2 factories to comply with upgrade and remediation requirements of the program, participating brands and retailers will negotiate commercial terms with their suppliers which ensure that it is financially feasible for the factories to maintain safe workplaces and comply with upgrade and remediation requirements instituted by the Safety Inspector. Each signatory company may, at its option, use alternative means to ensure factories have the financial capacity to comply with remediation requirements, including but not limited to joint investments, providing loans, accessing donor or government support, through offering business incentives or through paying for renovations directly."

irresponsible suppliers when it suits them financially and leaving suppliers to believe they can evade accountability.

Under the Accord, factories know that if they do not complete remediation, they will ultimately face severe economic sanctions. Indeed, under the Accord rules, when a recalcitrant factory owner is “terminated” due to the failure of one of that owner’s factories to carry out mandated safety improvements, the termination applies to every factory that owner owns and controls. All them lose their eligibility to produce for Accord signatory brands and retailers. To date, 64 factories have been terminated for failure to remediate (or for other serious infractions, such as submitting fraudulent safety test results to the Accord inspectorate). While no one wants to see factories terminated, the presence of this sanction is a powerful and necessary motivator for factory owners otherwise inclined to delay action. Equally important, the transformation of an entire national garment industry, from one replete with death-trap factories to one defined by strong protection for worker safety, unavoidably requires getting the most reckless and ruthless operators out of the apparel business.

Training and Safety Committees

Articles 16 and 17⁷ of the Accord provide for the establishment of OSH committees in each factory, accompanied by a training programme for the members of those Committees and for the wider workforce.

The original intention of the Accord was to supporting independent elections for the worker representatives on these Committees. In late 2015 the Bangladesh government published the Implementation Rules for the reformed Labour Act, which had been passed in 2013. These rules mandated that Safety Committee members would not be elected, but would be appointed, either by the registered trade union or by Worker Participation Committees (WPC).⁸

As a result, the focus of the Accord shifted to developing a high quality training and support programme for those Safety Committees that were established under the law; the Accord’s Safety Committee Training Programme (SCTP) was launched in late 2015. The programme consists of two All Employee Meetings and seven Safety Committee trainings. It covers a range of topics from safe evacuation of a factory, identifying hazards, use of the Accord complaints mechanism and the role of a Safety Committee.⁹

⁷ The relevant Accord provisions are: “The Accord shall establish an extensive safety training program covering basic safety procedures” (article 16); “Signatory companies shall require their suppliers to provide access to their factories to training teams” (article 16); “Safety Committees shall be required by the signatory companies in all Bangladesh factories that supply them” (article 17).

⁸ In 2015, the government of Bangladesh issued implementation rules to accompany the 2013 reforms to the Bangladesh Labour Act (BLA). These rules specified that Safety Committees would not be elected, but would be appointed by Worker Participation Committees that were legally required to be established in each factory (unless workers were already represented by a registered trade union). As a result the Accord had to establish a new process, that did not involve elections, but did ensure that Safety Committees were being established and that they were sufficiently trained to serve a useful function in the factory.

⁹ For more detail on the training programme see <http://bangladeshaccord.org/safety-committee>

The training programme was initially piloted in factories with a registered trade union, and then rolled out to factories, nominated by supplier brands and which had a WPC-appointed Safety Committee. 61 unionised factories were selected for the pilot; of these 41 factories have completed the training programme. The programme has now been initiated in 286 non-unionised factories and will be rolled out to a additional 140 factories at the end of April. Around 10 of the non-unionised factories have completed the programme.

As of March 2017, around 500,000 participants have joined All Employee training meetings and around 1,500 people have participated in the Safety Committee training programme. The fact that the Accord training team have achieved such rapid progress in such a short period of time is a formidable achievement, particularly given that its implementation is taking place in an environment that is hostile to any form of worker representation and in the context of labour laws that are at best weak, and at worst repressive.

The implementation of the SCTP training programme has undoubtedly been hampered by the resistance of factory management to both the content and the form of training, as well as by factories' inexperience in organising All Employee Meetings and a reluctance to include trade unions in the programme. The programme has also been disrupted by attempts to use the Committees as proxies for raising non-safety issues and disputes; unsurprising in the absence of any other formal or functioning industrial relations mechanisms within the factories. In those factories where Committee members have been appointed by a WPC, the situation is worse; the worker representatives are de facto appointed directly by management, which means – even with a robust training programme – it is difficult to ensure the a genuinely independent Safety Committee. Despite these difficulties, it is clear that the programme is having an impact, as demonstrated by a noticeable increase in the use of the complaints mechanism from workers who have participated in the All Employee Meetings.

Once Committee members have completed their training, the Accord provides ongoing support and monitoring to ensure that Committee operates properly within the factory. It is already proving to be the case that, without this support the Committee can become dysfunctional within a fairly short period of time. Provision of this ongoing level of support and vigilance has been conspicuously absent from previous corporate attempts to establish any kind of functioning workers committees and one of the reasons for their persistent failure.

As a result of the initial delays to the programme, in large part caused the failure of the government to publish the implementation rules in a timely manner, the lack of either unions or WPCs in Accord listed factories and the resistance of factory management, it is now clear that the Accord will not be able to complete its training programme in all factories by May 2018. If the Accord is not extended it is unlikely that factories will have either the impetus or the ability to implement the training themselves. There is also a risk that many of those Safety Committees that have been established and trained, if deprived of the required support while still in their infancy, may struggle to develop into the worker driven enforcement bodies they are designed to be.

Complaints mechanism

Article 18 of the Accord mandated the establishment of a complaint mechanism, which is meant to provide an easily accessible means through which workers and trade unions could raise safety concerns and complaints.

Complaints can be submitted anonymously, although in some cases this may prove practically difficult. In any case, retaliation against a workers for using the mechanism is a breach of the Accord itself and can ultimately lead to the termination of a factory under Article 21.

A complaint can only be accepted under the mechanism if it a) relates to an Accord-listed factory and b) falls into the scope of the Accord. Under the current agreement a complaint will be in scope if it relates to a specific safety concern at the factory or if it relates to reprisals against a worker or group of workers who have raised a safety concern either directly with a factory or via the Safety Committee or a union federation.

Efforts have been made in recent months to better publicise the mechanism and to promote its accessibility, both through the Safety Committee Training Programme and a recently launched outreach programme. As a result the Accord reports a notable increase in the rate of complaints received.

The mechanism has proved to be extremely effective in efficiently resolving complaints received so far, including in cases where workers face retaliation resulting from attempts to collectively engage management on safety issues. Using the leverage provided by the binding nature of the Accord, the mechanism has secured remedies that are rare in the Bangladesh context; for example the reinstatement of union leaders illegally fired for notifying the Accord about a factory's failure to implement essential safety improvements.

The protection provided by the Accord does not currently apply in cases of retaliation that are not directly related to safety. This distinction however is artificial in Bangladesh, where retaliation against workers engaged in collective action is rampant, whether in the case of a union seeking to represent its members and bargain with management or, most commonly, in the case of workers trying to organize a union. Whether or not such retaliation relates to safety issues specifically, its effect is to create a severe chilling effect in a factory, making it extremely difficult for workers to engage in collective action of any kind. Thus, whether or not workers raised safety issues in the past, the result of such retaliation is to ensure that they will not be able to do so in the future.

Extending the scope of the complaints mechanism to include violations of freedom of association would enable the Accord to more effectively support workers to raise safety concerns and refuse unsafe work, by enforcing the rights of those workers to pursue collective action.

It would also greatly assist signatory brands to meet their commitments, included in almost all their codes of conduct, to support freedom of association in their Bangladesh supply chain. With the notable exception of the three signatory brands that have separate Global Framework Agreements with IndustriALL, the majority of Accord signatories lack the capacity, expertise or leverage to effectively deal with freedom of association violations when they arise. As a result

these conflicts are more likely to escalate into public disputes and to cause extended disruption of factory operations. It is perhaps unsurprising therefore that a number of signatories – most notably during the recent labour crackdown – have requested the Accord’s assistance in resolving labour disputes the fall outside the scope of the agreement, where, under its current terms, the Accord cannot render assistance.

Enforcement

The responsibility for ensuring the Accord’s implementation rests squarely with the brands.¹⁰ One of the key strengths of the Accord, and one of the elements that distinguishes it from the Alliance for Bangladesh Worker Safety,¹¹ is that a number of enforcement and accountability mechanisms were built into the agreement. This includes transparency and reporting requirements, an accessible complaints mechanism and an explicit dispute resolution mechanism, which is legally binding on the signatories.

These mechanisms aimed to address one of the fundamental weaknesses of previous (and ongoing) safety initiatives, namely the lack of enforcement mechanisms necessary to ensure that promises for change are translated into concrete action. As the implementation of the Accord has progressed, internal systems for identifying those suppliers in breach of their obligations have also been developed.

For the first two years of the Accord, the enforcement mechanisms were under-utilised, reflecting the intent of the labour signatories to allow sufficient time for the Accord to become established and for the obstacles presented by lack of capacity and technical expertise within Bangladesh to be addressed. However, by 2015 it became clear that, although most of these obstacles had been overcome, progress on remediation remained too slow. From that point on, a number of different strategies were employed to enforce the agreement and ensure that Accord commitments were being taken seriously by both brands and suppliers, including utilization of the dispute resolution clauses and the publishing of brand-specific progress reports using information made public by the Accord. These efforts have generated significant impetus for brands and retailers to improve their compliance with Accord requirements and increase pressure on their suppliers to complete safety remediation, with a resulting acceleration in the rate of progress. These efforts have not, however, fully solved the problems of brand non-compliance and remediation delays. For this reason, enforcement efforts continue, including active cases of binding arbitration against brands that the labour signatories believe have shirked their Accord obligations.

¹⁰ Articles 12 and 21 make clear that the responsibility for ensuring that factories carry out remediation on schedule rests with the brands. Thus, if a particular factory has failed to produce a CAP or to meet a CAP deadline, this represents a failure by the buyer to comply with its obligations under these Articles.

¹¹ Around the same time that the Accord was formed, a group of North American companies that had refused to join the Accord founded the Alliance for Bangladesh Worker Safety. The Alliance lacks oversight by independent, democratic unions and does not include transparency on progress made on each individual required renovation. The Alliance covers less than half the number of factories as the Accord. Of the 676 factories in Bangladesh that supply the 29 Alliance member companies approximately 75% (504 factories) also appear on the Accord list (see <http://www.bangladeshworkersafety.org/files/Alliance%20Factory%20Profile%20March%202017.pdf>). This overlap underscores the need for combined efforts, which is why we recommend that when the Alliance dissolves in 2018, its member companies should join the Accord.

Recommended changes for “Accord II”

After four years of supporting the mission of the Accord as witness signatories, carefully examining the strengths and weaknesses of the Accord programme thus far, and consulting closely with our Bangladeshi union and NGO partners as well as Accord staff, we have developed a number of recommendations for enhancing the terms of the Accord, via the negotiation of a renewal of the agreement for 2018-2023. Such a renewal is essential to ensure that the gains achieved by the Accord are sustained and that the additional factories that come into the supply chains of Accord brands and retailers are properly inspected, with all hazards corrected and with full public reporting. Our recommendations are as follows:

- **In the case of factory closure and relocation, provide compensation according to the country’s termination law** (Bangladesh Labour Law, Section 26) to workers who lose their jobs, or cannot move to the relocated factory because it is too far away from their homes. Currently, there is no guarantee that workers who lose their jobs due to factory closure or relocation, necessitated by safety issues, will be paid the severance and other terminal compensation they are legally due.
- **Expand the existing complaint and remediation mechanism on employer retaliation to include all violations of associational rights, as defined in ILO conventions 87 and 98 and in Bangladeshi law**, thereby ensuring that fear of reprisals for organizing does not hinder the ability of workers to speak out on safety.
- **Make Article 22 stronger, clearer and more transparent, so as to deprive brands of the wiggle room they have used to evade financial obligations.** The goal must be to ensure that factories actually get the financial help they need, and in a timely manner. This requires clearer and more concrete language defining signatory company obligations, a staff-driven enforcement mechanism, and transparency on financing, so the Accord secretariat is aware of the exact financial arrangements made between a brand and each of its suppliers and so the public received at least general information on the overall performance of individual brands in this area.
- **Expand the coverage of the agreement to include factories that are part of the apparel supply chain but are not covered by the existing Accord.** Textile factories; spinning mills; leather tanneries; factories making sheets, towels and other household textiles; and apparel washing facilities are in most cases outside the scope of the existing Accord, which specifically covers factories engaged in garment assembly. We estimate that this involves at least several hundred factory buildings, most of them multi-story, and most very likely burdened by the same safety deficiencies as the typical pre-Accord assembly facility. Applying the existing Accord inspection and remediation regime to these buildings is an opportunity to protect hundreds of thousands more at-risk workers.
- **Expand the Accord building safety standard** to cover key issues, not currently covered, that are frequent sources of workplace accidents leading to injury or death. This includes boilers, generators, gas lines and freight elevators.
- **Require public disclosure of brand-supplier relationships.** Incomplete factory disclosure is a significant weakness of the Accord, which publishes information on all covered factories but does not publicly report which brands use which factories. This undermines the enforceability and public credibility of the agreement. With an increasing

number of major brands and retailers now voluntarily disclosing their entire global supply chains to the public, there is no justification for not closing this transparency gap in the renewed Accord.

- **Enhance the dispute resolution and arbitration processes**, to ensure that cases of non-compliance can be adjudicated far more rapidly and to add a specific schedule of punitive fines to be automatically applied against brands that are determined to have violated their Accord obligations.
- **Eliminate the separation of factories into multiple tiers**, as under the current Accord, with fewer requirements for lower tier factories. The exception would be the potential use of tiers as part of an enhanced remediation financing system that ensures the availability of financial support for all factories that need assistance.