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**Consumer Activism as a Human Rights Enforcement Mechanism in the Global Garment Industry**

On April 24th 2013 Rana Plaza, a seven-story building housing five garment manufacturing factories outside of Dhaka, Bangladesh, collapsed and 1,129 workers were killed. The Rana Plaza collapse marks the most deadly disaster that the garment industry has ever seen. It comes on the heels of the most deadly factory fire ever recorded, killing more than 300 workers at the Ali Enterprises factory in Karachi, Pakistan in September 2012 and another deadly fire in Bangladesh at the Tazreen Factory in November of the same year. Disasters pepper an industry where legal obligations to uphold a certain level of safety and freedom of association are weaker than they should be, and also effectively unenforceable through layers of subcontracting and plain corruption. In the two years following the Rana Plaza Collapse, new attention has been turned to consumer responsibility as a means of securing worker rights in the global garment industry. This paper analyzes the effects and implications of consumer activism as a mechanism of enforcing human rights globally, focusing on student-led campaigns in the US.

As a human rights issue, employee deaths in the garment industry presents several complicated questions. The first revolves around holding non-state corporate actors to account in a rights context, so the discussion in this paper will begin by considering what framework exists international laws and guidelines to conceive of the corporation’s role and obligations regarding human rights. It will then consider case studies including the Rana Plaza collapse that demonstrate the complete lack of enforcement or accountability of corporations on their rights
obligations, aided and abetted by, industry-backed initiatives for responsibility. The discussion will then turn to potential solutions to the problem with an eye for rights enforced through market mechanisms, focusing on the efforts of the Worker Rights Consortium and United Students Against Sweatshops as examples. The ultimate proposition of the paper is that while student campaigns at least aim to bring the law into the discussion, they still operate within the market, using business as well as rights arguments to further their case. This leaves power in the hands of those who can influence the decisions of corporations in the market. For this reason, consumer movements need to continue to focus on bringing compliance with the law into consumer demands, and especially stress those laws regarding freedom of association that allow workers to build their own leverage.

**What happened in Bangladesh?**

Workers at Rana Plaza were coerced into coming to work in unsafe conditions by threat of withheld pay.\(^2\) Likewise, the subsistence wages paid on average to Bangladeshi garment workers without a sufficient social safety net directly leads to the kind of desperate circumstances where workers will work unacceptably long hours in unfit conditions. The minimum wage in the Bangladesh garment industry is 3,000 Taka per month, or about US$38.\(^3\) The kind of desperation that breeds leaves workers in a position to accept abuse over the risk of missing any pay. Even so, wage theft runs rampant in the industry, in Bangladesh and elsewhere, where workers find themselves with no effective legal recourse or resources to demand fair pay. Lastly, a history of union busting and violent threats to organizers in the garment industry, particularly in Bangladesh, directly violates workers’ right to form unions, barring them from bargaining collectively to protect their own interests in the workplace. According to the
principles of the UDHR, it is the state’s duty to ensure that these rights are upheld. Domestic courts are meant to be the primary locus of recourse for human rights issues in a given country. But how can private, international, actors be held to account when the state is essentially beholden to the businesses that create these rights violations? In the case of Bangladesh, the garment industry accounts for 17% of GDP and 77% of all exports.4

The United Nations has taken steps to address the role of businesses in human rights abuses and enforcement by endorsing the Guiding Principles on Business and Human Rights in 2011. The Guiding Principles include a section on the role of states and businesses, taking the important step of establishing respect for workers’ human rights as part of companies’ due diligence, rather than a voluntary element of their business practices. On the part of states, the Guiding Principles hold that “States are not per se responsible for human rights abuse by private actors,” but are most fundamentally, they are responsible for upholding their own laws in relation to private actors.5 The most relevant element of the Guiding Principles, however, is that they hold corporations independently responsible for monitoring potential and actual human rights abuses in their business, and remediating such situations where they occur. Additionally, a 2011 revision expanded the scope of a corporation’s responsibility to include “supply chains and business relationships.” This is important in addressing the layers of deniability that allow corporations to turn a blind eye to faulty or nonexistent safety regulations held by subcontractors. The first step that the Guiding Principles recommends in cases where violations are discovered is always ensuring compliance with existing laws. The Guiding Principles also suggests a non-state multi-stakeholder monitoring and remediation system for corporations in some cases.6 All that said, this document only contains guidelines. They are not legally binding, so while they are helpful for setting a standard and creating a framework for evaluating corporate actions in terms
of rights, they also do not hold corporations to any specific action.

Corporate Self-Monitoring and the Denial of Responsibility:

The reality of non-enforcement of labor laws and building standards, deniability through subcontracting, and non-rigorous remediation that takes place in spite of the international laws and guidelines discussed above manifest in several salient case studies. In reviewing these cases note the particular role played by corporate financial concerns not only in terms of the poor conditions created, but in the mechanisms created to make a show of addressing the issue through corporate-backed monitoring programs and public corporate social responsibility campaigns. That will be significant when the discussion refers back to these cases to consider the role of consumer activism in improving human rights in the garment industry.

The first case does not involve industrial disaster but wage theft, a practice all too common in the garment industry. As detailed in a report by the Worker Rights Consortium, beginning Sept. 3, 2010, a garment factory in Indonesia called PT Kizone refused to pay legally required severance to workers in violation of national law. PT Kizone produced for companies such as Nike, Adidas, and Dallas Cowboys merchandising. The factory was run by a subcontracted supplier called Green Textile. In January 2011, the owner of PT Kizone fled the country, resulting in the closure of the factory in April and leaving no money to pay severance. This left 2,686 workers unemployed and without the severance pay they had earned—a total of US$3.4 million, approximately a year of base salary for each worker. On prompting form the WRC, Nike and the Dallas Cowboys both directly paid a share of the owed wages as well as prompting Green Textile to contribute $1 million. Those contributions amounted to half of the total owed to workers. Adidas, however, initially refused to acknowledge responsibility and pay
in turn, citing the subsequently disproven fact that they had stopped using the factory before the violations occurred, as well as the dictum that they were under no obligation to pay severance owed by a subcontractor. Early apparent agreements with the workers’ union on the plant level to accept only 30% of the wages seemed unusual. The WRC determined that the plant-level union’s agreement not to seek further compensation was opposed by the district-level leadership representing the workers, who continued to ask for full compensation. Over the course of the discussion, Adidas continued to hide behind its subcontractors, and participated in nominal compensatory programs for workers, none of which took responsibility for paying legally owed severance pay. The Fair Labor Association, an industry-backed social responsibility initiative on whose board Adidas sits, deemed Adidas’ compensatory efforts satisfactory. This acted as a direct hindrance to the workers’ legal claim.

The problem of hiding behind subcontractors appears again, one could say more drastically, in the case of the fire at an Ali Enterprises factory in Karachi on September 11th, 2012. This case, too, deals with the problem of corporate-backed social responsibility mechanisms serving only to keep rights violations in hidden territory still controlled by private actors. These manage to give factories a seal of approval, but do not necessarily protect the workers inside. As explained in a recent AFL-CIO report on social auditing and corporate responsibility, Social Accountability International (SAI) is a private, industry-backed Corporate Social Responsibility initiative. Ali Enterprises hired SAI to audit its factories in Pakistan. SAI, in turn, approved the Italian company RINA to certify factories. RINA subcontracted the inspection to a local company, RI&CA, and never actually went to Pakistan to approve workplace conditions. Neither SAI, nor RINA ever visited the factory, which, as it happened, was not even registered with the government. However, Ali Enterprises came out of the audit
with full SAI certification, supposedly having met their standards. With this certification, Ali Enterprises was able to access contract with several international brands as a socially responsible workplace. Just three weeks after receiving this approval a fire broke out in the factory, killing 300 people and injuring many more. Locked doors and windows prevented workers from escaping, and many were killed or badly injured jumping from upper story windows trying to escape or at least preserve their bodies from the flames. SAI has denied responsibility for the incident.8

Now, back to Rana Plaza. It has been reported that cracks appeared in the walls of the factory the day before the collapse. When workers expressed their concerns about coming to work the next day, they were told by managers to return, that the building was fine, and that a month’s pay would be withheld for missing a day’s work because of these worries.9 It has also been reported that the top three floors of the building were constructed illegally.10 Much like in the other two cases discussed, the human rights violations at Rana Plaza should have been accounted for and prevented by national laws that were not enforced. An interview for PBS following the collapse, Scott Nova, Executive Director of the Worker Rights Consortium spoke on that point shortly after the Rana Plaza collapse:

“Bangladesh itself has reasonable standards on the books. They have reasonable labor laws on the books. They have a national building code. The problem is the national building codes in Bangladesh, the labor laws are works of fiction. They're completely ignored by the factories who are serving the relentless drive of Western brands and retailers for ever lower prices for apparel. Bangladesh is the rock-bottom cheapest place in the world to make clothing, wages of 18 cents an hour, ruthless oppression of any attempt by workers to organize a union, and complete disregard for the safety of workers. And brands and retailers in the U.S. and Europe have rewarded Bangladesh for those practices by pouring business into the country, making it the second largest apparel producer on the globe, but at a tremendous cost to workers, as we saw this week.”11

Mr. Nova was interviewed along side Avedis Seferian is the president and CEO of Worldwide
Responsible Accredited Production (WRAP) an organization created by the American Apparel and Footwear Association, along with buyers and brands around the world. WRAP represents another iteration of the kind of industry-backed social responsibility initiatives responsible for the faulty reporting in the Ali Enterprises case and the allowance of substitutes for what the law mandates in the Adidas case. In this interview Mr. Seferian stressed the importance of training to make sure that best practices regarding safety are being followed. He cited providing training mechanisms as a major role of WRAP, along with audits. He does not accuse corporations of flying in the face of the law. As demonstrated in the segment quoted above, Mr. Nova pushed back on the point, arguing that no amount of training can fix a fundamentally flawed system where all incentives tell companies and managers to abandon that training. As he explains, “what the factories have been taught by the decisions of brand and retailers is that what matters to brands and retailers is price and delivery speed, not the rights of workers” The problem in the case of Rana Plaza, he says, was not a lack of training but that the building was fundamentally unsafe. Building codes were not enforced and workers were compelled to come to work. In these cases, Mr. Nova places the onus on corporations to create incentives within the factory that either protect or endanger the people who work there, declaring “the reality is, it's the brands and retailers who have the most power in the system. If they want to ensure their factories are safe, they have the power to ensure their factories are safe. They haven't chosen to exercise that power”.

Corporations are the source of funding in these situations, and according to Scott Nova’s framework, have proven themselves more powerful than states in determining the conditions of production. Actions have been taken, or at least threatened, on the state level. For instance, in January 2013, the United States trade representative notified Bangladesh that Washington might
withdraw, suspend or limit the country’s trading privileges in response the Tazreen factory fire that killed 112 in late 2012. This statement resulted in large part to a complaint filed by the AFL-CIO. On June 27, 2013, President Barack Obama suspended Bangladesh’s designation as a beneficiary country under the Generalized System of Preferences (GSP), on account of Bangladesh’s inability to take steps to adopt internationally recognized workers’ rights. However, much of the response to the tragedy in the US and Europe has not been directed against the Bangladeshi government, but has come in the form of consumer activism against the brands that used the Rana Plaza factory or factories with similar conditions. This trend implicitly acknowledges the state as somewhat impotent in enforcing labor laws, or at least subservient to the interests of the brands that power some states’ economies.

Rights on the Market

If corporations are the actors who most clearly have the ability to unilaterally change the way that things are produced and stop the human rights abuses that take place in their industry, it follows that consumers, as the main patrons of corporations, should have the power to effect the human rights situation in the garment industry. Indeed they do, and consumer activism campaigns have been successful in remediating abuses situations in several cases. However, consumer activism also has the effect of putting rights on the market. This makes compliance with human rights standards a marketable good and therefore subject to whatever the consumer can be satisfied with, rather than necessarily tying corporate responsibility to legally binding agreements or international standards that give workers power in their own right. Taking advantage of the power structure in the case of consumer activism can have positive effects, but it distinctly operates within the same power structure that creates human rights abuses in the name of profit. That said, independent consumer campaigns can work to alter that balance of
power by tying satisfaction directly to adherence to the law, especially with regard to freedom of association. At this point, we will continue to focus on the case studies presented to examine different ways in which rights manifest in the market, and what the effects are in each case.

It is worth noting, to start, that consumers do care to some extent about the conditions in which their clothing is made. This seems like common sense, considering the almost automatic revulsion that most people have to the term “sweatshop.” However, in addition to that visceral reaction, the feeling can actually be backed up numerically. A 2012 MIT study on consumer preferences for clothing based on ethics in manufacturing showed a measurable willingness among a certain set of consumers to pay more for a clothing item that advertised ethical production. This study specifically found that a label indicating fair labor practices increased the sales of a higher-priced women’s item by 14%, though the effect was far less with lower priced items, where shoppers might be more focused on the price to begin with. It also cites a much larger body of studies which show that most consumers, when asked in surveys, say they would prefer to buy products being made in workplaces with fair labor standards rather than alternatives. This indicates that while price is certainly a stronger factor in consumer decision-making, knowledge of fair (or by extension unfair) labor practices is not one to be ignored. However, the suggestion of fair labor practices on a label need not give any detail. Any label with some claim to ethics, no matter the source of information of standard used by the claim, can be just as emotionally effective on consumers making a quick decision while shopping as another.

Clothing companies know this, and they demonstrate it in Corporate Social Responsibility campaigns. Take, for instance, the Gap. On the brand’s website, though denoted in small letters at the bottom of the screen, there exists a fairly large section on corporate social
responsibility. The website boasts of several community programs intended to “give back” to communities the US, as well as a women’s advancement program overseas. In addition to these initiatives, the Gap has a section of its own human rights reports, through which they claim to independently monitor rights practices along their supply chains, notably by hiring auditors.\(^\text{15}\) All of this allows Gap to claim social responsibility, at least enough to put it on a label and reap the benefits. However, the clear dissonance between Gap’s claims to social responsibility and its willingness to bind itself to legally binding protections for workers emerge in the wake of Rana Plaza.

The company cannot be clearly linked to production in that factory, but is a production giant in Bangladesh, making its actions relevant to the safety standards of the entire industry, which has put the band under fire to reform.\(^\text{16}\) While 43 other brands including clothing giants like H&M have given in to pressure from human rights groups to sign onto the Accord on Fire and Building Safety in Bangladesh, a set of new, legally binding, factory fire and building safety agreements, the Gap has not. In fact Gap stresses the legally binding nature of the agreement as its reason for not signing on. Instead, Gap and Wal-Mart are championing an independent fire safety plan, which will not be legally binding. Both companies have cited the legally binding nature of the agreement, as well as costs, as reasons for not signing on to the Accord.\(^\text{17}\) The case of Gap clearly shows a company simultaneously attempting to avoid any legal obligation to systematically improve and maintain fire safety along its supply chain while also attempting to save face in the wake of disaster by taking “independent” measures on the matter. In a letter calling supporters to action against the Gap in a campaign known as “Gap Death Traps,” United Students Against Sweatshops (USAS) directly calls out Gap and Wal-Mart’s partnership an attempt to “use public relations to undermine the Accord.”\(^\text{18}\) In more detail, what this statement
from USAS means is that giving in to consumers’ wish for an appearance of ethics does not necessarily require companies to undertake any rigorous processes, or bind themselves to the law. By choosing an “independent” path to fire safety rather than one that is legally binding, the Gap undermines the strength of those laws. Additionally, it allows itself to continue to base its rights practices on consumer perception rather than a legal system that endows workers themselves with leverage.

Such practices also came up in the case of Adidas refusing to pay the severance owed to PT Kizone workers. In the face of a massive student campaign against the company, using public shame and harnessing leverage through university contracts, Adidas released several statements about its efforts to remediate the situation through job training for the workers and a food stamps program. None of their solutions involved directly paying the legally owed severance. The workers themselves rejected the food stamps programs. A translated statement from the organizing workers includes:

“We reject the offer of shopping vouchers from Adidas, and will never stop struggling to demand the US$1.8 million in severance from Adidas...Don’t be tempted/seduced by the food vouchers. That is not what we have hoped for and demanded from Adidas. It is not an appropriate compensation for our years of effort and sweat. We have made them rich,” 19

The sentiment in this statement fights against the kind of corporate social responsibility that puts power right back into corporate hands. If Adidas can satisfy its social duty by handing out food vouchers rather than paying legally mandated severance pay, then the company is beholden to its image, but not beholden to the law. Likewise in the case of Gap, if the company can satisfy demands by committing to monitor itself rather than by binding itself to the law, it brings the rights enforcement system into a sector that inherently has an eye for profit.
**Successful Consumer Activism**

However, as mentioned earlier, the rights-as-goods paradigm can be also a powerful tool for the human rights and labor rights movement. To stay with the Adidas case just a little bit longer, it happens that the PT Kizone workers eventually got paid. Adidas’ agreement to pay the workers their legally owed severance came after a large-scale campaign by USAS, which seeks especially to promote fair labor practices with companies that produce collegiate apparel like Adidas. While the contents of the agreement remain confidential, the PT Kizone workers’ press release stated that “the former workers will receive a substantial sum from Adidas.” This decision marked the first time that Adidas has compensated its subcontracted workers, contrary to its usual policy of denying liability. The so-called “Badidas” campaign involved two coast-to-coast worker tours, infiltrating a Selena Gomez Adidas fashion show, and escalating on-campus actions across the country. In the end the campaign provoked the largest-ever collegiate boycott of a top-three sportswear company, with 17 total universities and colleges ending their contracts with Adidas.²⁰

The USAS model is to use the economic leverage of universities to magnify the effect of consumer campaigns. The direct financial impact of a group of protestors on any given brand may be negligible. USAS therefore seeks to use students’ considerably greater power to influence their universities to use their respective licensing contracts to exert pressure on manufacturers regarding respect for labor rights. This method proved effective with Adidas, when two years after the PT Kizone factory close, the workers were finally paid the severance they were owed under Indonesian law. The USAS protests were able to secure the payment that was legally required even after the FLA had deemed Adidas’ nominal actions sufficient, thereby using consumer activism in a way that directly relates to the law.
The “Badidas” campaign was also a success in terms of continuing to set a precedent in the garment industry that consumers in the US and Europe will not always let labor violations slide. It is also possible to theorize that any sustained organizing like the kind that took place among the PT Kizone workers surround the Adidas case will serve to strengthen that particular union, and therefore those workers’ ability to defend their rights in the future. These speak to the ability of some consumer campaigns to change in industry in a systematic, if incremental way. The Adidas campaign follows the precedent that USAS activists set with Nike in 2010 when the brand was forced to pay two million dollars in legally owed severance pay to 1,800 former Honduran garment workers. In the case of Russell Athletics in 2008, similar massive protests by USAS and other students around the US directly led Russell to reopen a factory that was proven to have been closed in response to workers’ attempts to unionize. In this case USAS’s action also came up against the recommendations of the FLA, which insisted that the factory closure had been due to financial pressures and not in retaliation to union activity. In these cases, the kind of independent, non-industry-backed, consumer campaigns run by USAS can be seen as legitimately improving the garment industry in a systematic way by setting precedents that compliance with labor law is expected by consumers. And equally significant, the Russell case shows that they can even directly lead to more power for workers themselves by defending unions.

**What does this Mean for Worker Rights?**

These cases of successful consumer campaigns in the garment industry represent instances where the status of ethics as a good was used to accomplish results that were rights-based. However, we must still consider where the power really lies in these situations. Consumer activism run through independent watchdog organizations like the WRC strive to co-opt human
rights with a legal foundation into consumer consciousness. This approach is more rigorous than industry-backed corporate responsibility initiatives, which allow the substitution of food stamps for legal compensation, leaving the “justice” of that situation up to the ethical opinions of the company, perhaps spurred by its customers, rather than to the objective terms of the law. Campaigns like those led by USAS in recent years at least attempt to frame the debate in legal as well as ethical terms, clearly possessing an agenda that comes from a rights perspective. Furthermore, initiatives like the Designated Suppliers Program, currently being promoted by the WRC, lays out new requirements to which Universities should hold its licensees. These include the significant provision of a long-term production agreement, meaning that the licensee must commit to maintaining production in factories that meet the Program’s requirements over several years and maintain production at a level for the factory to remain financially viable. This has the effect of allowing time for stronger labor organizing to become entrenched while also preventing the flight of corporations from places where rights are enforced. In this way, consumers in the market force the rights model into the company’s business model.

But in a market system, those with more wealth have more power. So considering the situation described, even rights-based monitoring and reform attempts in the garment industry reflect an existing power structure that allows people in richer parts of the world to confer rights upon those in poorer parts of the world. Is that so wrong? After all, as Scott Nova of the WRC stressed in his interview, places like Bangladesh have labor laws and building codes on the books. The problem is that the state does not or cannot enforce them in the face of corporate pressure to drive down production costs. Legal regulation does not seem to consistently provide enough leverage in and of itself to compete with financial leverage. So maybe the only viable way to change the situation is to change the financial leverage situation such that rights become a
part of it. If that is the case, then more emphasis needs to be placed on the role of freedom of
association and unions in the garment industry, as the AFL-CIO’s report on corporate social
responsibility and outsourcing stresses. Maybe what can be learned from the repeated disasters
and instances of corruption and wage theft in the garment industry is that the law needs the
weight of finances behind it to really go into effect—that rights cannot ever really be conferred
on an inherent basis and must be demanded and continually enforced through leverage
mechanisms.

In that case, efforts to improve the industry should at least focus on the workers’ ability
to enter the leverage game and demand those rights on their own terms. Unions are the closest
we can come to achieving that. But this brings us back to the starting point of this argument,
which is that existing laws providing for freedom of association are simply not enforced, and
labor leaders in Bangladesh have been subject to threat and even brutal murder. In that case, it
may still be up to consumers to demand fair practices, at least for now. To be especially pedantic
for just a moment, let’s go back to Plato’s Republic. A segment from it is quoted at the beginning
of the aforementioned AFL-CIO report, reading: “We must...decide whether our object in setting
up the Guardian class is to make it as happy as we can, or whether happiness is a thing we should
look for in the community as whole.” For better or worse, consumer activism campaigns set up a
“guardian class.” This essentially means that ethics decisions in the industry will be made based
on the perceived will of the guardian class. This means that they also stop with the will or
waning interest of the guardian class. So while it stands, the goals and campaigns of the guardian
class should center around ultimately giving up that standing. That means campaigning for better
enforcement of freedom of association laws, opening the door to unions that will help workers
protect themselves.
References:


5. United Nations Guiding Principles on Business and Human Rights, p. 3


Also referenced: "Bangladesh: Tragedy Shows Urgency of Worker Protections | Human