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## CO-GOVERNANCE IN GLOBAL SUPPLY CHAINS

### A Roadmap for Sustainable Labor-Management Relations

February 2017

#### I. Introduction

Co-Governance is a model for protecting both the rights of workers (as defined by local law and ILO conventions) and the interests of participating businesses in locations lacking the governance and legal institutions required for such protections to be effective.

Almost all global companies require that their operations, and those of their suppliers, comply with applicable laws and ILO norms. Most governments also seek compliance with these norms as a matter of principle and public policy. Co-Governance provides the means to achieve these standards more quickly and effectively than other methods short of major government reforms and capacity building (which is rarely possible in the short to medium term).

Co-Governance should be seen as complementing and reinforcing government reforms and capacity building for the rule of law and good governance.

It does so through written agreements between business and labor participants. Such agreements set ground rules for labor-management relations and place governing authority for administering these rules in the hands of a body with balanced representation of management and worker representatives, sometimes called an Oversight Committee or “OC.” Balanced representation is intended to protect the integrity of applicable legal norms, and the interests of both workers and businesses.

Such agreements also generally include the following elements:

- Capacity building programs to produce positive outcomes for workers and participating businesses;



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- Procedures for effective worker – management communications and mediation when needed; the goal is to have workers and managers resolve issues on their own without intervention;
- Dispute resolution and adjudication mechanisms, generally with some form of enforceability.
- Additional programs are often needed to ensure the rights and opportunities for women in the workplace, including protections from violence against women.

It is important to note that these Co-Governance frameworks are not collective bargaining agreements. However, those Co-Governance agreements that encompass all applicable legal norms, include the right to freedom of association.

The role of worker representatives (including labor unions and/or NGOs) in Co-Governance is essential to ensuring a balanced and credible approach to enforcing legal norms governing labor - management relations.<sup>1</sup>

Co-Governance is distinct from corporate codes of conduct relying primarily on factory inspections by monitors and auditors, whether engaged directly by firms or by virtue of multi-stakeholder initiatives.<sup>2</sup> Co-Governance is also distinct from worker – management dialogue programs that lack a governance structure or a requirement to comply with legal norms (of the kind described here).

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<sup>1</sup> As noted earlier, Co-Governance agreements are not collective bargaining agreements. Collective bargaining is governed by domestic laws of the country in question. Freedom of Association enables workers to choose to join labor unions or not without fear or intimidation.

<sup>2</sup> Many of these codes/monitoring programs are important and valuable efforts that have protected workers' rights in specific instances. Experience under the codes/monitoring system has also provided a wealth of information and lessons learned for further advances. Critics have argued that codes/monitoring programs have exhausted their potential to achieve substantial improvements labor norm compliance and labor relations in general.



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This paper reviews several examples of Co-Governance frameworks that have taken shape in recent years. While these examples largely involve the global apparel and footwear industries, their design and related experience appear applicable to many other industries as well.

- Fruit of the Loom-CGT Co-Governance Framework (established in Honduras in 2009)
- Fruit of the Loom-Sitrasacosi- International Union Educational League Framework (established in El Salvador in 2016)
- Accord on Fire and Building Safety in Bangladesh
- Freedom of Association Protocol of Indonesia (FOA Protocol)
- IndustriALL Global Union Action, Collaboration, Transformation (ACT) Initiative
- H&M, IndustriALL, IF Metall Global Framework Agreement
- Global Unions and Global Firms' International Framework Agreements (IFAs)

Each of these has its own particular structure and attributes. We hope that comparing and contrasting their similarities and differences provide valuable lessons for the next stage of development and expansion of the Co-Governance model. In each instance, we will examine the parties, governance mechanisms, and key content of their agreement. Further discussion in end notes, along with short selections from external commentaries by stakeholders, journalists and scholars, will round out the review.



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## II. Examples of Co-Governance:

### Fruit of the Loom-CGT Co-Governance Framework

#### **About:**

Fruit of the Loom and the Honduran CGT labor federation in 2009 reached agreement on a balanced system based upon Honduran and applicable ILO norms (including but not limited to freedom of association) to create the foundation for good labor relations.

Fruit of the Loom and CGT reached their agreement, known as the Washington Agreement, through negotiations held in Washington, DC between Fruit of the Loom and the CGT, with participation of advisors from GlobalWorks Foundation and the U.S. garment workers union (those advisors are participants in this roundtable).

Fruit of the Loom is among the largest private sector employers in Honduras. An earlier dispute over a plant closure led to negotiations for the Washington Agreement. As a result of the agreement, not only did Fruit of the Loom resolve that particular dispute, the company on its own initiative broke new ground by negotiating a Co-Governance framework for labor relations for all its facilities in Honduras, not just the single factory where the dispute took place.

Under the Washington Agreement, the parties agreed to Co-Governance, including the following:

- Ground rules protecting the rights of workers and the interests of the company;
- An Oversight Committee (OC) comprised of four members and two alternates split evenly between company and union appointees, and an independent ombudsperson;
- A dispute resolution process focused upon resolving disputes locally through good-faith and constructive communications, and a spirit of compromise, and including the option to appeal to the OC;



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- Violations of the Washington Agreement may ultimately be appealed to legally binding arbitration (in the eight years since adoption of the Washington Agreement, no such arbitration has been invoked);
- Support services such as training by GlobalWorks Foundation for workers and management (covering all labor rights under Honduran law and ILO norms, business principles and competitiveness, and constructive problem solving).

Since 2009, thousands of workers have formed unions at Fruit of the Loom facilities in Honduras. Workers at other facilities have not chosen to form unions.

The company and union have successfully entered into and implemented collective bargaining agreements at all unionized facilities. Fruit of the Loom's leadership has confirmed that the unionized facilities remain highly competitive.

This experience reflects extraordinary success in implementing freedom of association in compliance with local law and ILO norms, which has otherwise been a very difficult challenge in global supply chains.

## **Fruit of the Loom – Sitrasacosi - International Union Educational League Co-Governance Framework**

In 2016, Fruit of the Loom, the Sitrasacosi union and the International Union Educational League (IUEL) agreed to a Co-Governance framework in El Salvador. In that country, as in many other developing countries, labor – management and other societal conflicts have undermined good industrial relations and the rule of law.

When workers at the company's Joya de Cerén factory began forming a union in 2015, FOTL, Sitrasacosi and the IUEL entered into negotiations on a Co-Governance agreement, joined by GlobalWorks Foundation.

In November 2016, the four parties reached an agreement with hallmark features of co-governance:

- Commitment to mutual respect in labor-management relations



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- Commitment to compliance with ILO norms and El Salvador law
- Commitment to high labor standards and competitive success of the business
- Creation of a four-person Oversight Committee (OC), with two members chosen by the company, one chosen by the union and one chosen by the IUDEL, but specifying that OC members should be independent of the party that chose them and should act solely in the best interest of the labor-management relationship and the Co-Governance agreement
- A dispute resolution mechanism emphasizing factory-level and country-level solutions, but backed up by OC review, conciliation, and mediation, with arbitration as a last resort if other avenues are exhausted
- A plant-level training and capacity-building program ILO norms and El Salvador law, business concepts such as profitability, productivity and global competitiveness; and constructive communication and problem-solving.

Pursuant to the agreement's timetable, the first train the trainers capacity building program (covering all labor rights under El Salvadoran law and ILO norms, business principles and competitiveness, and constructive problem solving) took place in January 2017 at FOTL's training facility in the Joya de Cerén factory.

GlobalWorks' methodology for this training was first developed by GlobalWorks for use in the Honduran framework, with support from the US Department of State and Fruit of the Loom.

GlobalWorks Foundation, in coordination with the Oversight Committee, led the training for local plant managers and supervisors and for local union leaders in both separate and combined sessions.

As with the GlobalWorks training and capacity building programs in Honduras, both management and workers gave the program very favorable evaluations, and plans are underway for additional training programs.



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**See Endnote for Commentary<sup>i</sup>**

## **The Accord on Fire and Building Safety in Bangladesh**

### **About:**

The Accord was created in 2013 in the wake of the disastrous Rana Plaza building collapse that killed more than 1100 workers and maimed more than 2000 others. It is an independent, legally binding agreement of five years' duration between brands that source in Bangladesh and global and local trade unions. In addition, four NGOs (two American, one Canadian, and one European) are “witnesses” to the Accord and participate in its activities.

More than 200 companies are signatories to the Accord. Most are European-based firms (Europe is the largest export market for ready-made garments from Bangladesh); nineteen companies are based in the U.S.

The Accord is designed to audit factories for hazards in three safety areas: electrical, fire, and building integrity. It establishes Corrective Action Plans (CAPs) unique to each factory, and monitors the implementation of the CAPs. The Accord currently covers over 1600 factories employing some 2 million workers.

A parallel move by 29, mostly U.S.-based brands, the Alliance for Bangladesh Worker Safety, has also undertaken to an ambitious program to improve fire and building safety in garment factories. As with the Accord, the record of Alliance action reflects both progress and continuing challenges. A sharp debate has arisen between critics and defenders about the effectiveness of each organization – somewhat ironically, since the two groups have forged extensive cooperation on the ground.

### **Key Features of the Bangladesh Accord Co-Governance Model:**

- Comprehensive factory inspection program by independent experts with trade union participation;
- Comprehensive fire & safety training program with trade union participation;





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- Labor-management health & safety committees to be established in every factory;
- Worker's right to refuse unsafe work without retaliation;
- Unsafe buildings to be repaired & wage payment for workers temporarily unemployed during repairs;
- Binding arbitration in case of disputes.

The Accord is governed by a Steering Committee (SC) with three representatives of company signatories and three from trade unions, each with three alternates. An ILO representative serves as an independent neutral chair. The SC is responsible for the selection, contracting, compensation and review of the performance of a Safety Inspector and a Training Coordinator.

Labor is involved in inspections and remediation in that the SC oversees the process and receives reports on inspections and remediation progress. The dispute resolution mechanism also requires disputes to be brought before the SC. Lastly, trainings are conducted at each factory with input from trade unions and specialized local experts.

**See Endnote for Commentary. <sup>ii</sup>**

## **The Freedom of Association Protocol of Indonesia (FOA Protocol)**

### **About:**

The Indonesia FOA Protocol was signed in June 2011 by Indonesian trade unions, employers, and global sportswear brands, including Adidas, Nike, Puma, Pentland, New Balance, and Asics. Indonesian trade union participants are KASBI, SPN, Garteks, GSBI, SBSI, and SPTSK KSPSI. The Protocol currently applies to some 300,000 workers.

The FOA Protocol establishes guidelines by which Brands can ensure decent pay, better working conditions, and freedom of association at their supplier factories. It is the first such labor-management agreement in Asian-based supply chain factories. The FOA Protocol applies to brands





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and their suppliers, but adds: “Suppliers have an obligation to disseminate the contents of this protocol and encourage its implementation amongst sub-contractors.”

## **Key Features of the Indonesia FOA Protocol:**

- The Protocol focuses on detailed process to ensure application of freedom of association norms, with particular attention to:
  - releasing union representatives from their normal workplace duties with no loss of rights or benefits to attend to union matters, under reasonable limits;
  - providing a furnished office space and reasonable use of worksite meeting rooms;
  - permitting reasonable use of company Internet access, telephones, fax machines and other communications instruments;
  - providing union bulletin boards inside the workplace for notices to union members;
  - allowing union leaders and union members to hold meetings inside the workplace during working hours, under reasonable limits;
  - allowing the union to conduct membership training programs inside the workplace during working hours, under reasonable limits;
  - allowing the union to receive visitors from international union bodies at the workplace.
- The FOA Protocol requires achievement of collective bargaining agreements within six months after workers have formed a trade union.
- To resolve disputes arising under the Protocol, it establishes Supervision and Dispute Settlement Committees at both the company and national levels, with equal representation from unions



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and management – local unions at the factory level, national unions at the national level.

- The Protocol does not contain a legally binding arbitration or other dispute resolution mechanism. It does provide that “redress may be sought in accordance with legislation, Codes of Conduct, and other international regulations” and that unresolved disputes “should be referred to a court of law.”

**See Endnotes for Commentary.<sup>iii</sup>**

## **The IndustriALL Global Union Action, Collaboration, Transformation (ACT) Initiative**

### **About:**

ACT (Action, Collaboration, Transformation) is a Memorandum of Understanding between the IndustriALL global union and eighteen signatory companies – brands, manufacturers, and retailers – intended to transform the way that garments are sourced and produced to achieve wages negotiated between labor unions and businesses for textile and garment workers.

Implementation of ACT is still in its early stages. Eventually, ACT is intended to work in key garment and textile sourcing countries to establish national and industry-wide collective bargaining agreements which are linked to reform of purchasing practices to enable living wages to be negotiated.

Cambodia is the country in which ACT is being implemented as a pilot project.<sup>3</sup>

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<sup>3</sup> Developments in Cambodia, the first country in which ACT is being implemented, reflect the early challenges faced by this innovative initiative. A December 2015 IndustriALL conference in Cambodia saw assertions by unions, local manufacturers, and Cambodian government officials that brands had not agreed to increase prices paid to manufacturers to support higher wages.



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The ACT Foundation is the entity through which ACT operates, seated in The Netherlands. The Foundation has just announced a job opening for a Director to manage and drive the initiative.

Among the eighteen companies signatory to the ACT MOU with ACT are Inditex, H&M, C&A, Tesco, Kmart, Coles and Primark.

## **Key Features of the ACT Initiative:**

- Commitment to national industry-wide collective bargaining;
- Use of ILO expertise for training;
- Brand purchasing practices that support long-term partnerships with manufacturers in support of ACT's objectives;
- Providing information to IndustriALL on strategic supplier factories for effective implementation in target countries;
- Brands working work with suppliers and IndustriALL working with affiliated unions to bring them together to negotiate a living wage;
- “Proactively promoting” freedom of association and providing training to managers and workers on freedom of association and collective bargaining;
- Appointing coordinators at global and local levels to advance effective implementation;
- Jointly approaching national governments to support higher minimum wages;

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On April 3, 2016, the Cambodian government adopted a new trade union law seen by most observers as violating ILO conventions on freedom of association. Cambodian unions, IndustriALL, and ACT company signatories protested the government's move, to no avail.



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- Driving a new culture of trust and participation between all relevant actors at sectoral and international levels.

**See Endnotes for Commentary<sup>iv</sup>**



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## III. Examples of Other Labor – Management Frameworks:

### The H&M / IndustriALL / IF Metall Global Framework Agreement

#### **About:**

The H&M / IndustriALL / IF Metall Global Framework Agreement (HMII Agreement) was signed in November 2015 between H&M and two trade union groups: the IndustriALL global union and the Swedish union federation IF Metall. H&M is the world's second-largest fashion retailer with nearly 4,000 stores and more than 130,000 direct employees around the globe. IndustriALL is the global union federation for the manufacturing sector, including apparel production. IF Metall is its Swedish affiliate.

The HMII Agreement applies to 1.6 million workers in nearly 2,000 factories around the world who produce for H&M, including direct-supply contractors and their subcontractors. The agreement announces an explicit objective of “increasing trade union capacity to ensure implementation within a framework of well-functioning industrial relations.”

#### **Key Features of the HMII Agreement:**

The HMII Agreement establishes that:

- The parties will jointly promote signing of collective agreements both at factory, company and industrial level between relevant social partners;
- The H&M agreement establishes a two-tiered implementation and monitoring system: the National Monitoring Committee (NMC) at the country level, and the Joint Industrial Relations Development Committee (JIRDC) at the international level. Each committee is comprised of equal representation of management and trade unions.
- The parties will provide training for both management and union representatives on employers' responsibilities, workers' rights and obligations, industrial relations, collective bargaining agreements and peaceful conflict resolution;



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- Workers' representatives will not be discriminated against and shall have access to carry out their representative functions in the workplace.

In addition, since the HMII Agreement reaches the supply chain in contracting and subcontracting arrangements. It states that “H&M will actively use all its possible leverage to ensure that its direct suppliers and their subcontractors producing merchandise/ready-made goods sold throughout H&M group’s retail operations respect human and trade union rights in the workplace.”

The purpose of the NMC is to create, monitor, and evaluate national strategies for implementing the agreement at the local level through collaboration with trade unions and worker representatives, and, if deemed necessary, to assist with dispute resolution. The first NMCs are being created in Cambodia, Bangladesh, Myanmar and Turkey, aiming to bring the agreement to life on the factory floor and to promote a well-functioning dialogue between employers and employees to solve conflicts peacefully, and primarily at the factory level where they arise.

The JIRDC will plan and oversee the practical implementation of the HMII Agreement at the global level and explore opportunities for joint initiatives in support of the agreement. A special provision addresses industrial relations disputes on freedom of association, the right to organize, and collective bargaining. While the HMII agreement stresses the importance of dispute resolution at the local level between management and trade unions, it empowers the JIRDC to issue a “final decision” to resolve an industrial relations dispute.

If the JIRDC cannot come to a decision (presumably because of a tie vote between management and union representatives), “the parties may by mutual agreement appoint an independent mediator to help the parties agree on the best way to facilitate a resolution.” There is no legally binding arbitration or dispute resolution.<sup>4</sup>

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<sup>4</sup> Some observers have asked: Can the parties to the HMII Agreement provide training even in the four countries selected for initial implementation? As in the case of other initiatives, are the national unions in those countries strong enough, united enough, and sufficiently engaged in the process to achieve positive results? Will the lack of a mechanism for



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On September 29, 2016 the parties renewed and made permanent their HMII global framework agreement. In renewing it, H&M said:

The collaboration within the Global Framework Agreement has led to several positive results. National monitoring committees – consisting of representatives from IndustriALL’s affiliated trade unions and H&M – have been set up and trained in Bangladesh, Cambodia, Indonesia, Myanmar and Turkey. The committees support employers’ and workers’ organisations to negotiate and to solve conflicts peacefully and in good faith at the factory level. Their work contributes to functioning labour markets in the countries where H&M source its products.

Several cases have been solved thanks to the collaboration within the Global Framework Agreement – for example a conflict at a textile factory in Myanmar earlier this year which started mainly due to misunderstandings and a lack of communication between management and employees. The conflict resulted in strikes and at a later stage also a dismissal of employees. However, after negotiations initiated and organized by IndustriALL and H&M, all employees were rehired and a union was started allowing the factory to take steps towards sound industrial relations and a reduced risk of future misunderstandings and conflicts.

**See Endnotes for Commentary.<sup>v</sup>**

## **International Framework Agreements between Global Unions and Multinational Firms**

### **About:**

The HMII Agreement discussed above is a recent version of a phenomenon that first appeared more than two decades ago: international framework agreements (IFAs – sometimes global framework agreements or GFAs) negotiated between global union federations and multinational firms. As their name implies, IFAs are meant to create a framework for

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binding dispute resolution weaken the ability of the GFA to resolve difficult disputes?





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mutual problem-solving on workers' rights and labor standards in the parent firm's global operations. Top company international human resources managers and trade union officials oversee IFAs' implementation.

Global businesses and unions have negotiated 116 IFAs. More than 90 percent of them involve corporations based in Western Europe. Only four are with U.S.-based firms: between the IUF (food and hospitality) global union and Chiquita Bananas, between IndustriALL and Ford Motor Co., and between UNI and Kelly Services and (separately) ManpowerGroup.

## **Key Features of the IFA Model:**

Each IFA is unique, reflecting the culture and prior relationship of the companies and unions involved. About half of them limit their applicability to directly owned subsidiaries of the parent multinational firm, while the rest extend their terms to subcontractors. But practically all of them share certain basic features:

- Recognition of ILO core labor standards on freedom of association and collective bargaining, non-discrimination, and abolition of child labor and forced labor;
- Inclusion of workplace health and safety as another principle on par with ILO core standards;
- Commitment to an ongoing dialogue between top company management and global union leaders (usually, at minimum, an annual meeting to review implementation and ad hoc meetings to address disputes that arise locally);
- Dispute resolution based mainly on the good will of the parties; only two IFAs, one between the BWI (Building and Woodworkers global union) and the Swedish firm Skanska and one between IndustriALL and the Norwegian oil services firm Aker, provide for binding arbitration in case of disputes.

**See Endnotes For Commentary.<sup>vi</sup>**



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## ENDNOTES

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### <sup>i</sup> **Honduras Labor Framework Stakeholder Views:**

(From WRC, August 2011):

The WRC congratulates the SitrajerzeesND union; its parent federation, the CGT; and Russell/Fruit of the Loom on establishing a working partnership that sets a new standard for labor-management relations in Honduras' apparel industry. Through its actions since November of 2009, Russell has done more, by far, to promote genuine respect for workers' associational rights in Honduras than any apparel brand has previously done.

From USAS, October 2012):

Fruit of the Loom, the parent company of Russell Athletic, and the SITRAJERZEES union are making unparalleled strides towards protecting the rights of workers who sew university apparel... Jerzees Nuevo Día is one of the world's only garment factories that enjoys stable orders from a multinational apparel brand and fully complies with universities' labor codes of conduct.

### **Journalism Selection:**

(From Steven Greenhouse, *New York Times*, November 17, 2009):

Mike Powers, a Cornell official who is on the board of the Worker Rights Consortium... applauded Russell's agreement... "This is a landmark event in the history of workers' rights and the codes of conduct that we expect our licensees to follow," Mr. Powers said. "My hat is off to Russell." John Shivel, a spokesman for Russell and Fruit of the Loom, said, "We are very pleased with the agreement...and look forward to its implementation."...

In a statement Russell released jointly with the apparel workers' union in Honduras, the company said the agreement was "intended to foster workers' rights in Honduras and establish a harmonious" relationship. "This agreement represents a significant achievement



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in the history of the apparel sector in Honduras and Central America,” the joint statement said....

Union leaders in Honduras hailed the agreement, which would put hundreds of laid-off employees back to work in a country whose economy has been hit by a political crisis over who will lead it.

## **Academic Commentary:**

(From S. Vallas et. al., “Workers’ Rights as Human Rights? Solidarity Campaigns and the Anti-Sweatshop Movement,” in C. Lee et. al., eds., *Democratizing Inequalities: Dilemmas of the New Public Participation*, NYU Press 2015):

Globalization has a potentially empowering effect...with greater priority on mechanisms that enable workers to defend themselves...Key to workers’ movements has been the effort to build organizational arrangements that equip workers to enforce their rights directly and on their own behalf, typically at the level of the workplace, firm, or industry....

In selecting cases for analysis, we have looked for those that have generated substantial documentation, whether in the form of published ethnographies, journalistic or judicial accounts, of coverage on websites of advocacy groups....

A positive case study involves Russell Athletic, whose parent company is Fruit of the Loom....[The FOTL/CGT agreement] consistently emphasized “enabling” rights at work...The key goal was that of improving workers’ conditions through union recognition and collective bargaining.

Human rights and workers’ rights frames managed to combine in fruitful ways, redressing the severe imbalance of power that Central American apparel workers have had to confront. The result adds much more to workers’ empowerment...



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## ii **Bangladesh Accord Stakeholder Views:**

### UNI Global Union:

The Accord on Fire and Building Safety in Bangladesh is a comprehensive and independent agreement designed to make all garment factories in Bangladesh safe workplaces. The agreement was designed by Bangladeshi and international unions together with other labor groups, making it unique in being supported by all key labor rights stakeholders, and signed by over 150 international brands and retailers, who agree upon a 5 year commitment to invest in safer factories.

The Accord is transparent as well as practical, the program includes independent inspections by trained fire safety experts, public reporting, mandatory repairs and renovations financed by brands, a central role for workers and unions in both oversight and implementation, supplier contracts with sufficient financing and adequate pricing, and a binding contract to make these commitments enforceable.

### International Labor Rights Forum, (December 2015):

The Accord is a power-sharing agreement between apparel companies and unions; its premise is that companies and worker organizations should engage as equals in solving safety problems.... Worker leaders in factories covered by the Accord program describe a new level of access to factory inspections and inspection results, unparalleled in industry social auditing, where audit reports are typically proprietary to the industry, workers excluded from inspections, and unions sidelined from remediation programs. They talk about the open collaboration between the Accord and signatory union federations, and describe several cases where the Accord and its signatory brands have defended workers against retaliation when they voiced safety concerns or partook in Accord investigations....



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BMO Global Asset Management, January 2017:

The Accord's main focus is on health and safety and does not include any wider provision for freedom of association. However, it did set up worker safety committees in factories and established grievance and dispute procedures for employees. The achievements of the work conducted so far on the Accord highlights the important effect of brands working collaboratively, and we see the Accord as a potential stepping stone for brands that source from Bangladesh to work collaboratively on worker empowerment.

## **Journalism Selection:**

(From Amy Yee, *Washington Post*, April 23, 2015):

Two years after the world's worst garment factory disaster, Bangladesh's garment industry is immersed in an urgent, massive effort to bring factories up to international safety standards. In the aftermath of the Rana Plaza disaster, more than 200 clothing brands pledged to make their source factories compliant with international safety standards.

About 1,250 factories have been inspected under the Accord on Fire and Building Safety in Bangladesh, which represents more than 190, mostly European, brands, including H&M, Tesco, Primark, Benetton and Inditex, owner of Zara....

The large scale and rapid schedule of the task in Bangladesh are "unprecedented," said Tuomo Poutiainen, program manager of the International Labor Organization in Dhaka. "You don't see anywhere else in the world doing this as quickly," he said. Meanwhile, efforts are underway to make safety sustainable by training government inspectors, passing additional labor laws and organizing garment workers....

After Rana Plaza, the government recruited 218 labor inspectors to join the 68 it had at the time. An additional 45 inspectors are being recruited.



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“Three years is an optimistic timeline to go from nothing to a trained inspectorate that has teeth,” said Brad Loewen, chief safety inspector of the Accord...Garment workers are a critical part of ensuring workplace safety in the future, said the ILO’s Poutiainen. Worker hotlines have been set up, and more workers are joining fledgling unions....“The door is opening for a labor voice that hasn’t existed,” Poutiainen said.

## **Academic Commentary:**

(From Prof. Paul van der Heijden and Ruben van Zliet, Leiden Law School, “Enforcement of Fundamental Labor Rights,” Hague Institute for Global Justice (2014):

The second major development in the field of CSR is the arbitration clause in the Accord. It provides that disputes between the parties—such as a global textile brand and a Bangladeshi union—are first decided by the Steering Committee, but also that these decisions may be appealed in a binding arbitration process. Following unilateral or industry codes of conduct (first generation) and global framework agreements (second generation), it could be argued that contractual CSR commitments are a third generation in the evolution of how companies engage with their stakeholders in expressing social and environmental commitments....

(From Prof. Gregory Day, Spears School of Business, Oklahoma State University, November 3, 2015):

The problem with adjudicating human rights claims is that few courts have been able, or willing, to remedy violations. Most abuses occur in countries where legal systems are too weak to prosecute offenders....

But could arbitration be the answer? Consider the Bangladesh Accord, which was recently signed by over 200 apparel companies—including H&M, Abercrombie & Fitch, and Adidas—after a series of sweatshop fires in Bangladesh. Signatories agree to take numerous proactive and remedial measures intended to prevent future factory tragedies.



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The novelty of the Accord is found in its dispute resolution provision, requiring signatories to settle disputes by binding international arbitration....Although the Bangladesh Accord pertains only to a small subset of potential human rights abuses, the agreement suggests that private dispute resolution could offer a superior forum to hear types of human rights abuses.... Indeed, the potential use of binding arbitration to enforce corporate responsibility is certainly an interesting development considering arbitration's reputation as an obstacle that frustrates less sophisticated and resourceful parties.

## **Discussion:**

By February 2017, 75 percent of identified safety issues were remediated, and in more than 300 factories the remediation rate was above 90 percent. Moreover, the Accord has shown itself to have “teeth”: some 60 supplier factories have been removed from the program for failure to remediate, meaning signatory companies must terminate business with those violators.

Notwithstanding such progress, the Accord has been forthright about ongoing challenges. According to its February 2017 progress report, more than 90 percent of factories covered by the program are behind schedule in remediation efforts.

The Accord (and the Alliance for that matter) is also challenged by recent repressive moves by employers and the government of Bangladesh. In December, authorities arrested and imprisoned more than two dozen union leaders on criminal charges for alleged violations of Bangladesh law.

Besides those imprisoned unionists, more than 1,000 others are named on blacklists subjecting them to criminal charges, too. Many Accord and Alliance brands have criticized the arrests, but as of this writing, the union leaders remain in jail. A *New York Times* February 21 editorial noted:

The crackdown is clearly intended to intimidate workers and keep Bangladesh a low-wage country, thus protecting an industry that accounts for some 80 percent of export earnings. But it also could make Bangladesh less attractive to Western retailers that, once





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again, find the reputation of their brands compromised... [T]he lot of Bangladesh's garment workers will not improve until Western retailers stop exerting pressure on suppliers to drive costs even lower.

The 2017 arrests only underscore continuing suppression of freedom of association among Bangladesh garment workers. After initial optimism following freedom of association gains in the wake of Rana Plaza labor union activities have declined sharply because of these violations of ILO norms.

## The Challenge Ahead:

Accord signatories are already deeply engaged in discussions about renewing the Agreement in 2018. But in addition to continuing to address building and fire safety problems, they are also discussing questions about how to address systemic freedom of association and human rights violations in Bangladesh.

### iii **Indonesia FOA Protocol Stakeholder View:**

(From Oxfam Australia, "Protocol shows promising signs for worker in Indonesia," February 24, 2012):

On a number of factory floors the protocol is already having a positive impact.

Parto, a union leader from KASBI, told Oxfam that the protocol has resulted in increased recognition of unions. 'Not all the commitments in the Protocol have been fulfilled; but at least we are seeing workplace unions being acknowledged by factory management.'

Elly Rosita Silaban, president of Garteks union, recalled bringing copies of the protocol to a recent meeting with management in a factory producing Converse sneakers.

According to Ms Elly, after reading the Protocol the factory management agreed to implement several of its requirements. This



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included allowing a number of union officials to be released from their production line duties to concentrate on organizing activities. 'Workers have also been given permission to participate in educational opportunities organized by the union,' said Ms Elly.

But while there has been some good progress in a number of factories, union leaders stress that not all has been smooth sailing. In many workplaces there is still a long way to go.

To address problems in the implementation of the protocol, unions, factories and brands are now developing a dispute resolution mechanism, which they hope to finalize in the coming months.

## **Academic Commentary:**

(From K.A. Siegmann et. al., "Putting Workers' Agency at the Centre in the Indonesian Sportswear Industry," Global Labor University, May 2014):

Freedom of association (FoA) and collective bargaining (CB) are often referred to as 'enabling rights', implying that, when these rights are respected, workers can use them to ensure that other labor standards are upheld...We consider the Indonesian FoA Protocol a far-going structural commitment to strengthening labor. Its study might therefore contain lessons for forms of non-governmental labor regulation that are less far-going in favor of labor....

The end of the Suharto regime removed earlier restrictions on trade union establishment, leading to a steep rise in the number of trade unions. Yet, these political and legal changes did not end the violence, intimidation and the imprisonment of outspoken workers or union officials....Workers' struggles often escalate before even an attempt at finding a resolution can be mounted in the context of existing voluntary initiatives (VIs). The FoA Protocol addresses this situation by paving the way to a more effective guarantee of collective labor rights at the firm level....

The protocol stands out for three reasons: firstly, it led to a process of negotiations around a protocol that provides companies with a set of guidelines on how to uphold and respect trade union rights;



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secondly, it involved both direct employers and ‘indirect’ employers, i.e. the brands that have a powerful role these production networks; and, thirdly, the process was driven by Indonesian union federations instead of being imposed upon them as are most VIs.

Overall, we conclude that while the spatial dispersion of production has weakened state mechanisms for the guarantee of labor rights, new pressure points for labor have also emerged, e.g. brands’ reputation or just-in-time production....We conclude that if VIs are to create conditions under which decent work can be strengthened, the involvement and strength of local labor organizations is required and producers’ and/or buyers’ dependence on workers’ cooperation may act as a catalyst.

(From International Institute of Social Studies, Erasmus University Rotterdam, Forum Report, “Worker-driven Innovation in the Globalized Economy: Learning from Encounters,” January 9, 2017):

The Protocol was catalyzed by the collaboration of diverse Indonesian trade unions and supported by labour rights organizations in Europe and Australia. Working with the unions towards the FoA Protocol allowed manufacturers to overcome a situation in which violent labour struggles choked production. Furthermore, the Protocol ‘rescued’ sportswear brands from threats to their reputation as producers that ‘play fair’ with regard to collective labour rights.

## **Discussion:**

Experience under the Indonesia FOA Protocol has shown important progress and continuing challenges. A 53-page December 2016 report by three Australian university researchers indicates that worker involvement in the design, dissemination, implementation and governance of the Protocol has led to “high levels of stakeholder ownership” and to “the active use of the Protocol as a bargaining tool within individual workplaces.”<sup>iii</sup> The researchers note that the involvement of Indonesia-based unions and suppliers in Protocol negotiations has also resulted in provisions more tailored to the Indonesian context.



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Here is how the Australian scholars' report further describes experience under the Protocol:

[I]t has shifted the balance of power between unions and employers in the factories we researched in several important ways. In several of the factories we researched trade union leaders reported that their ability to claim the rights negotiated through the Protocol had given them more confidence to challenge discrimination against them as union leaders. For example, in one such factory, union leaders who had been subjected to violent intimidation (including in one case being subjected to electric shocks) reported that the Protocol's processes had helped bring that violent intimidation to an end and that they are now able to organise freely and negotiate with factory management.

Many of the workers interviewed for this report also reported that the Protocol has enhanced their ability to achieve positive changes on the factory floor by establishing specific standards, broad support networks and a new forum to raise grievances directly with factory management and brand representatives about workplace violations via union representatives... Unions in a number of factories reported using the Protocol's processes to help them stand firm against efforts by their employer to gain government exemptions from annual increases in the local legal minimum wage... This has brought important benefits to many thousands of workers, since in recent years there have been significant annual legal minimum wage increases in many of the relevant provinces.

Notwithstanding these advances, researchers underscore continuing challenges for the Indonesia FOA Protocol and its participants. Implementation has been mixed. Many factory managers view the Protocol as non-binding and resist its full implementation. In many factories, workplace committees have not been functioning. Some suppliers have developed strategies for avoiding the Protocol or even relocated production to other countries.

Researchers also noted problems with unions having good internal communication, accountability to their members and a systematic approach to bringing the Protocol to life in the workplace. Achieving the Protocol's goals has varied among unions, and sometimes within unions,



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depending on the extent to which regional union officials were aware of the Protocol and were sharing information and progress reports between factory-level union leaders and the National Committee of the Protocol.

In a sobering assessment, the December 2016 report cautions:

The Protocol is relatively fragile and at the time of writing its future is uncertain. There is significant frustration among the unions involved that the global brands are refusing to negotiate further protocols on living wages and job security, insisting instead that further work needs to be done on implementing what has been agreed in relation to freedom of association. For their part the brands involved are keen that the unions and their international allies should focus instead on persuading other global companies to join the Protocol initiative. Tension between the two sides over this issue is significant and has presented a challenge to further progressing implementation of the Protocol agreement.

At the same, the report concludes on a hopeful note:

Despite this fragility and uncertainty, and despite its inconsistency in implementation, in the context of other non-judicial mechanisms operating in labour-intensive global supply chains the Protocol's achievements have been quite remarkable... Although many of these other mechanisms include trade union rights among the rights they seek to protect, in relation to those other cases we found numerous examples of trade union rights violations and scant evidence of the other mechanisms being able to either reduce those ongoing violations or provide redress. In contrast, most worker representatives we interviewed regarding the Protocol ascribed various tangible benefits to the introduction of the Protocol in their workplaces. Through its focus on worker empowerment and more robust factory-level industrial relations, the Protocol offers an important and unique model for strengthening labour conditions and factory-level grievance resolution in the manufacturing sector.

In their December 2016 report, the Australian researchers offer more than 30 detailed recommendations to Protocol participants, international footwear and apparel brands, suppliers, international trade unions and NGOs, Indonesian trade unions, and the Indonesian government. While



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they are tailored to the Protocol and the Indonesian context, these recommendations are a rich source of ideas for anyone involved in co-governance initiatives anywhere.

iv **ACT Project Stakeholder Views:**

IndustriALL articulates the ACT project as follows:

For the first time, the ACT process has established the commitment of IndustriALL and major clothing brands to working together to create a system that addresses the structural barriers to living wages. The outcome will be to increase garment workers' wages in a way that is scalable, sustainable and enforceable.

Through industry bargaining, wages can be negotiated at a level that enables workers to properly support themselves and their families while addressing the specific nature of the industry, working hours, productivity and other issues that have bearing on wages. To ensure that the agreed rate is actually paid, the resulting agreements need to be registered and legally enforceable under national laws. Factories also have to have the means to pay the agreed rate and this is achieved through reforming purchasing practices. All three elements must be present to create a system that will actually deliver on living wages. This is an ambitious aim, which will require significant political will, particularly in those countries that supply cheap labor to global supply chains.

There is no reason why similar models cannot be developed that institutionalize relationships between buyers, factories and workers to address other labor rights problems that are entrenched in the very way that supply chains are managed. There is now an opportunity to remodel the industrial relations architecture to address the realities of employment relationships and working conditions in today's global supply chains, towards genuine supply chain industrial relations.

Ethical Trading Initiative (ETI) adds this (November 14, 2015):



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Recently we have seen the ACT Group (Action, Collaboration, Transformation) – a group of 15 brands (many of whom are ETI members) – and the global union IndustriALL sign a Memorandum of Understanding on Living Wages. These are potentially transformative interventions if we can harness the power of collaboration.

## <sup>v</sup> **HMI Update:**

On September 29, 2016 the parties renewed and made permanent their HMI global framework agreement. In renewing it, H&M said:

The collaboration within the Global Framework Agreement has led to several positive results. National monitoring committees – consisting of representatives from IndustriALL’s affiliated trade unions and H&M – have been set up and trained in Bangladesh, Cambodia, Indonesia, Myanmar and Turkey. The committees support employers’ and workers’ organisations to negotiate and to solve conflicts peacefully and in good faith at the factory level. Their work contributes to functioning labour markets in the countries where H&M source its products.

Several cases have been solved thanks to the collaboration within the Global Framework Agreement – for example a conflict at a textile factory in Myanmar earlier this year which started mainly due to misunderstandings and a lack of communication between management and employees. The conflict resulted in strikes and at a later stage also a dismissal of employees. However, after negotiations initiated and organized by IndustriALL and H&M, all employees were rehired and a union was started allowing the factory to take steps towards sound industrial relations and a reduced risk of future misunderstandings and conflicts.

## <sup>vi</sup> **International Framework Agreements Stakeholder Views:**

(From Dick Blin, International Chemical Workers Federation, June 2011):





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IFAs commit a company to respecting global labor standards and to respect other cited benchmarks of ethical human, environmental and other conduct in all its world-wide operations. The basic premise behind IFAs is that the best standards adopted by a company in any one workplace ought to be standardized everywhere it has workplaces....”

An effective IFA is one that delivers benefits to both parties: recognition, respect, and continual dialogue for trade unions, tangible workplace improvements for staff, and authentic social credibility for companies. An IFA must be seen as a tool, not an end in itself. It is not an alternative to local collective agreements, but it can be the backdrop for a trusting, consensual, constructive labor-management relationship that improves the lives of workers.

(From Jeremy Brecher, Tim Costello, and Brendan Smith, “International Labor Solidarity: The New Frontier,” *New Labor Forum*, Spring 2006):

Such agreements are no panacea. So far, they cover only those workers directly employed by the companies, not the growing number of workers employed by suppliers....Framework agreements are made between big international bureaucracies on both sides of the labor-management divide. The communication that they foster is more likely to be among high union officials and top company officials than among workers, shop stewards, and local union leaders in different countries. This can limit both the effectiveness of the agreements and their capacity to build a movement. Implementation and monitoring of framework agreements can be difficult where no union exists in a workplace.

But, in part because of the limited staff and resources of the federations that sign them, some of the framework agreements have led to the development of global networks of participating unions to directly monitor them. These networks, and the general flow of information which often results from these agreements, help workers identify common interests and problems.

Some U.S. trade unionists dismiss framework agreements because they usually have not led to new members—the primary focus of U.S. trade union strategy. In contrast, many trade union officials



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and activists we talked with in Europe who have experience with framework agreements see them as a first step in global union coordination at the firm or industry level.

## **Journalism Selection:**

(From David Moberg, *In These Times*, February 7, 2007):

“The key on global work is to figure out ways to do global grassroots action, not meetings,” says Larry Cohen, president of the Communications Workers of America. “For a hundred years, too much has been about sending leaders to meet and dine together, which is great for building relationships, but we’re looking for global events, ways for people to act together....”

One strategy for changing the political climate for labor involves negotiation of International Framework Agreements between Global Union Federations and transnational employers guaranteeing basic labor rights. The IUF bargained the first of these agreements in 1988 with Danone, the French food giant....

They might be first steps towards global collective bargaining. But the deals mainly ratified rights workers had in Europe and were unenforceable in the United States or the global South. “Now we’re talking about much tougher agreements,” Oswald says, that would guarantee unions access to workers and recognition by the most expeditious means possible.

“Is the labor movement actually becoming more international, either with regard to employers in organizing and bargaining or in relation to governments in setting policy at both the national and international levels?” asks one high-level union official with extensive global experience. “That’s a tough call to say there’s been real progress.” Yet today more labor leaders and workers around the world at least recognize the need for global unionism, and are looking for ways to give the old idea of worldwide worker solidarity a viable form for a new era.

## **Academic Commentary:**



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(From C.F. Rosado, "Organizing with International Framework Agreements," 4 *U.C. Irvine Law Rev.* 725, 2014):

The reason why IFAs have been embraced primarily by European employers seems to be simple: some particularly strong national unions and works councils in Europe with relatively collaborative relations with their employers have requested that their employers sign IFAs... IFAs are part of a "continuous bargaining process" between employers and employee representatives who have had long-established relationships. An IFA is one of many agreements made in the course of the parties' relationship. Moreover, employers only sign IFAs with parties they trust. That party normally is the national union or works council in the home country of the signatory firm...

Moreover, most of the employers that have signed IFAs also are those who have works councils and European Works Councils (EWCs), or EU-wide employee representation bodies. EU law mandates EWCs for employers ("undertakings") with at least 1000 employees in one member state and 150 in another. Given that many companies with EWCs also have operations beyond Europe, some of them have felt compelled to expand their EWCs globally and to create so-called world or global works councils, particularly to deal with complicated and many times conflict-ridden global company restructurings. Global works councils help a firm to communicate with its workers around the world during a restructuring to better guarantee that the restructuring is done equitably. In some instances, employee representatives request explicit global governance norms for industrial relations at the firm, leading to IFAs. Global works councils have played an important role in promoting at least some IFAs.

Because there is significant overlap between unions and works councils, meaning that union members often are many times also works council members, and because in many instances national works councils (and the national union officers who sit on them) have significant influence over the European and global works councils, national unions and works councils end up playing an important role in promoting IFAs. Thus, national unions and works councils matter greatly for so-called "global" agreements.

From Peter Evans, "National Labor Movements and Transnational Connections: Global Labor's Evolving Architecture Under Neoliberalism,"



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UC Berkeley Institute for Research on Labor and Employment, September 2014):

Alliances with other unions and participation in worldwide works councils have been complemented by the use of International Framework Agreements (IFAs) designed to bind operations around the world to standards accepted by the parent company in its home base. Like worldwide works councils, IFAs are a characteristically European device.

The Brazilian Metalworkers' use of the Daimler IFA signed in 2002 exemplifies the potential usefulness of IFAs. Because the Daimler IFA applies to suppliers as well as the subsidiary itself, the Metalworkers at Mercedes in Brazil were able to turn it into an instrument for strengthening union power in less well-organized supplier plants by targeting IFA violations at suppliers and getting the Mercedes management to intervene on the side of enforcement....

Along with the GUF's new size and scope has come increased interest in forcing companies to sign International Framework Agreements (IFAs or GFAs), like the Volkswagen and Daimler IFA's discussed in the Brazilian case....G4S shows how combining IFAs and global campaigns depends on building a corresponding organizational architecture that can combine the on-the-ground efforts of a diverse set of national unions with the worldwide negotiating scope of a Global Union. It underlines that global strategies are as important in the now globalized service sector as in manufacturing. And, it provides valuable insights into the way in which national terrains shape and can be shaped by global campaigns.

## **Discussion:**

Binding obligations supported by a mutually-agreed arbitration system is one of the hallmarks of a comprehensive Co-Governance agreement. As noted, however, only two of the 116 IFAs contain binding arbitration clauses, one



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between the BWI global union and the Swedish multinational construction firm Skanska, and one between IndustriALL and the Norwegian oil services firm Aker. Moreover, the content of each clause is relatively skeletal.

The BIW-Skanska arbitration clause says:

If agreement regarding interpretations and applications of this agreement cannot be reached in the application group [consisting of top company and union officials], the issue will be referred to an arbitration board comprising two members and an independent chairman. Skanska AB and the BWI will each appoint one member, and the chairman will be appointed through mutual agreement. Arbitration board rulings are binding for both parties.

In effect, the independent chairman will serve as a single arbitrator siding with one or the other of the Skanska and BWI appointees, unless they achieve consensus.

The IndustriALL-Aker arbitration clause reads as follows:

In the event of a complaint or an infringement of the agreement the following procedure will normally apply:

- a) Firstly, the complaint should be raised with the local site management.
- b) If the complaint is not resolved with the local site management, it should be referred to the appropriate national union who will raise the issue with the company's regional president.
- c) If still unresolved, it will be referred to Aker's Chief Shop Steward who will take the issue to Aker's Chairman and CEO.
- d) Ultimately, if still unresolved, the complaint will be referred to a monitoring group, consisting of an equal number of (company) management and union (including IndustriALL) representatives (3+3). In case of deadlock, arbitration will be handled by the ILO or a neutral party agreed upon by (company) management and the union side.

This summary treatment in the IndustriALL-Aker IFA leaves open many key aspects of a thoroughly negotiated arbitration clause. These include how an arbitrator is chosen, timelines, hearing procedures, what legal standards will



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apply (ILO conventions? Norwegian labor law? labor law of the country where relevant events occurred?), the competency and remedial powers of the arbitrator, arbitration costs, and so on.

In their framework agreement, the IndustriALL global union and Inditex agreed on a non-binding review procedure using the ILO. The relevant clause from their 2014 IFA says:

Questions concerning the interpretation of the Agreement shall be resolved through consultation between Inditex and IndustriALL global union. Every effort will be made to find common agreement but where this is not possible Inditex and IndustriALL Global Union will, in appropriate circumstances, seek the expert advice of the ILO.

In sum, many IFAs contain key elements of the Co-Governance model. They invoke ILO labor standards and national labor law. They reflect engagement at top company and global union levels. They create oversight of labor relations at local and national levels. They call for training and capacity-building programs on freedom of association and labor-management relations. They provide for dispute resolution, but here they deviate in part from the full Co-Governance model in stopping short of binding measures (except in the Skanska and Aker cases) and relying on voluntary consultations. Experience under IFAs furnishes important lessons for advocates and participants in Co-Governance models.