

**VOLUNTARY CORPORATE SOCIAL RESPONSIBILITY  
INITIATIVES VERSUS CONTRACTS THROUGH THE  
CONTEXT OF THE BANGLADESH ACCORD, THE FAIR  
FOOD PROGRAM (FFP), AND THE WORKER RIGHTS  
CONSORTIUM (WRC)**

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ABSTRACT

*This article examines three enforcement models with respect to global supply chains against voluntary corporate social responsibility initiatives. The three models identified, the Bangladesh Accord, the Fair Food Program, and the Worker Rights Consortium, are examples of successful contracts that generate better human rights outcomes because they all share a legally binding element. Unlike voluntary corporate social responsibility initiatives that have been unable to effectively fulfill their goals due to lack of transparency and enforcement, contracts promote transparency and accountability, putting teeth behind substantive commitments. The conclusion drawn is that although each model poses challenges to the various actors throughout the supply chain, the potential for enforcement generates better human rights outcomes than models with a lack of enforcement.*

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## INTRODUCTION

The emergence of global trade has posed challenges to how labor issues are regulated.<sup>1</sup> In an effort to remain competitive, actors in the supply chain, including producers and buyers, engage in cost-cutting measures that often lead to unethical working conditions for vulnerable workers.<sup>2</sup> Growing internationalization of production has made it harder for national institutions to regulate cross-border movements of labor, capital, goods, and services.<sup>3</sup> This lack of oversight, especially prevalent in countries with weak legal systems, has led to the under-regulation of corporations' human rights performance, and sparked initiatives to create forms of regulation at the international stage.<sup>4</sup>

The debate around how to design initiatives that foster the implementation of human rights standards is ongoing and poses questions regarding the best forms of corporate governing structure and mechanisms of compliance.<sup>5</sup> Two competing responses to the regulatory gap are voluntary, referred to as soft law, and contractual, referred to as hard law.<sup>6</sup> Both models have values and limitations. Voluntary initiatives offer flexibility and a bottom-up approach that promotes experiment and learning.<sup>7</sup> However, the flexibility that is central to voluntary initiatives allows companies to cover up their activities and evade accountability.<sup>8</sup> Contracts, on the other hand, facilitate the enforcement of human rights standards

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<sup>1</sup> Patrick Feuerstein & Gary Herrigel, *The Limits of Global Labor Governance and an Emerging Perspective*, 18 ECON. SOCIO.: EUR. ELEC. NEWSL., no. 2, 2017, at 6.

<sup>2</sup> Dana Raigrodski, *Creative Capitalism and Human Trafficking*, 8 WM. & MARY BUS. L. REV. 71, 83 (2016).

<sup>3</sup> Paul Marginson, *Governing Work and Employment Relations in an Internationalized Economy: The Institutional Challenge*, 69 Indus. & Lab. Rel. Rev. 1033, 1035 (2016).

<sup>4</sup> Comm. on Legal Affs., Rep. with Recommendations to the Comm'n on Corporate Due Diligence and Corporate Accountability, EUR. PARL. DOC. A9-0018/2021 (Feb. 11, 2021) 9.

<sup>5</sup> Christian Voegtlin & Nicola M. Pless, *Global Governance: CSR and the Role of the UN Global Compact*, 122 J. BUS. ETHICS 179, 180 (2014).

<sup>6</sup> Compare Voegtlin & Pless, *supra* note 5 (finding that soft law regulations are the optimal alternative to hard law regulations), and Jonathan C. Lipson, *Promising Justice*, WIS. L. REV. 1110 (2019) (arguing that voluntary initiatives have undermined global human rights efforts).

<sup>7</sup> See Roya Ghafele & Angus Mercer, 'Not Starting in Sixth Gear': *An Assessment of the U.N. Global Compact's Use of Soft Law as a Global Governance Structure for Corporate Social Responsibility*, 17 U.C. DAVIS J. INT'L L. & POL'Y 41, 57 (2011).

<sup>8</sup> See Voegtlin & Pless, *supra* note 5, at 180.

through transparency and liability<sup>9</sup> but serve a limited purpose as long as companies are hesitant to agree to set contractual terms and expose themselves to potential liability.<sup>10</sup> An alternative mechanism for regulation includes a hybrid between hard law and soft law, also known as “KSR.”<sup>11</sup> KSR is the most effective approach because it blends the flexible aspect of voluntary initiatives and the enforcement aspect of contracts to create enforceable agreements that companies are willing to be a part of.<sup>12</sup>

Part I of this paper describes voluntary initiatives and discusses the promises and limitations of voluntary initiatives in regulation CSR. Part II provides a background of contracts and reviews three case studies as examples of successful contracts that serve as regulatory tools for improving corporate conduct: The Bangladesh Accord, Fair Food Program (FFP), and Worker Rights Consortium (WRC). These contracts vary in their terms and implementation, but they all share a legally binding element that ensures a more promising outcome in the fulfillment of human rights in ways that voluntary initiatives struggle to accomplish. However, the goal of contracts as an effective mechanism to address human rights abuses in the supply chain is limited because companies fear unlimited legal liability. Part III offers a recommendation that blends the strengths of both voluntary and contractual models as a way to regulate corporate social responsibility (CSR) in the future. Specifically, this paper proposes KSR, a hybrid between hard law and soft law that encompasses the necessary enforcement component of contracts and the flexible bottom-up fashion of voluntary initiatives.

## I. THE PROMISE AND LIMITATIONS OF VOLUNTARY INITIATIVES FOR REGULATING CSR

### A. *The Promises of Voluntary CSR Initiatives*

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<sup>9</sup> See Philip Schleifer et al., *Transparency in Transnational Sustainability Governance: A Multivariate Analysis of Regulatory Standard-Setting Programs* 26 (Robert Schuman Centre for Advanced Studies, Working Paper No. RSCAS 2017/16, 2017).

<sup>10</sup> Benjamin Hensler & Jeremy Blasi, MAKING GLOBAL CORPORATIONS’ LABOR RIGHTS COMMITMENTS ENFORCEABLE: THE BANGLADESH BREAKTHROUGH (June 18, 2013).

<sup>11</sup> See Lipson, *supra* note 6, at 1117 (“KSR” is a term coined by Jonathan Lipson to describe how contract can be used to achieve social responsibility).

<sup>12</sup> See generally Lipson, *supra* note 6.

Created in 2000, the United Nations Global Compact (UNGC) addresses the social responsibilities of multinational corporations (MNCs) and stands as the largest voluntary self-regulatory global governance initiative.<sup>13</sup> To engage businesses in corporate social responsibility (CSR) initiatives, the UNGC requires corporate participants to “embrace, support and enact” ten principles regarding the protection of human rights and elimination of forced labor.<sup>14</sup> The UNGC is a significant milestone in global CSR because it developed a consensus on CSR standards.<sup>15</sup> Its vague framework and soft law norms are in place to promote multi-stakeholder dialogue that addresses the needs of employees.<sup>16</sup> Rather than alienate and push away companies by imposing strict rules, the UNGC provides them with the autonomy and flexibility to carry out its principles according to what works best in their industry.<sup>17</sup> Providing autonomy to corporations allows certain industry norms to appear “bottom-up” and become accepted and legitimized within the industry’s culture.<sup>18</sup> The goal is that once this happens, the initiative can then move to legalization without alienating it.<sup>19</sup>

Multistakeholder initiatives (MSIs) are another approach to improving corporate social policy and performance.<sup>20</sup> Specifically, these voluntary partnerships between governments, civil society, and the private sector encompass various strategies.<sup>21</sup> For example, some initiatives attempt to extend the scope of CSR from corporations to suppliers and subcontractors.<sup>22</sup> Other initiatives emphasize process over performance where rather than being externally monitored, companies receive a forum to learn how to implement codes and monitor themselves.<sup>23</sup> MSIs have enjoyed significant influence in the business and human

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<sup>13</sup> *Id.* at 181.

<sup>14</sup> The Ten Principals of the UN Global Compact (last visited Sept. 18, 2022), <http://www.unglobalcompact.org/what-is-gc/mission/principles>.; *see* Ghafele & Mercer, *supra* note 7, at 41.

<sup>15</sup> *See* Voegtlin & Pless, *supra* note 5, at 181-182.

<sup>16</sup> Ghafele & Mercer, *supra* note 7, at 49, 53.

<sup>17</sup> Ghafele & Mercer, *supra* note 7, at 49.

<sup>18</sup> *Id.* at 57 (explaining that voluntary initiatives will prompt multi-stakeholder dialogue and awareness of industry practice, and result in cultural norms).

<sup>19</sup> *Id.* at 59.

<sup>20</sup> *See The Multi-Stakeholder Initiative*, MSI-DATABASE, <https://msi-database.org> (last visited Mar. 2, 2022).

<sup>21</sup> *Id.*; *see generally* MSI INTEGRITY, NOT-FIT-FOR-PURPOSE (July 2020), <https://www.msi-integrity.org/not-fit-for-purpose/>.

<sup>22</sup> Peter Utting, *Regulating Business Via Multistakeholder Initiatives*, in VOLUNTARY APPROACHES TO CORPORATE RESPONSIBILITY 61, 83 (P. Utting, ed.).

<sup>23</sup> *Id.* at 74.

rights sphere.<sup>24</sup> They are referred to in most of the National Action Plans (NAPs) that countries have published as part of their efforts to apply the United Nations Guiding Principles (UNGPs) and are endorsed in international governance.<sup>25</sup> MSIs can be powerful forums for stakeholders to identify good practice, achieve reform, and learn and experiment.<sup>26</sup> Building relationships with corporations, fostering knowledge exchange, and influencing policy reform, represent functions that MSIs serve well.<sup>27</sup> However, as the next section discusses, MSIs, along with other voluntary initiatives, have failed to fully protect rights of workers and hold corporations accountable.<sup>28</sup>

### *B. The Limitations of Voluntary CSR Initiatives*

The UNGC, MSIs, and CSR codes of conduct are all voluntary initiatives that have been unable to fulfill their goal effectively.<sup>29</sup> All three of these voluntary initiatives share the same fatal flaws: they lack transparency and accountability.<sup>30</sup> Without these two important elements, human rights abuses remain a prevalent issue within the global supply chain.<sup>31</sup>

Although the UNGC has made strides in CSR, its significant dependence on corporations to bring a clear change in CSR-sustainability activities is impeding the realization of its mission.<sup>32</sup> The publicly available information on UNGC's performance demonstrates that the UNGC has failed to prompt its signatory companies to enhance their CSR efforts.<sup>33</sup> This fatal weakness is due to the

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<sup>24</sup> MSI INTEGRITY, *supra* note 21, at 30.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See John Ruggie (Rep. of the Special Representative of the Sec'y-Gen. on the Issue of Hum. Rts. and Transnat'l Corp. and Other Bus. Enter.), *Business and Human Rights: Further Steps Toward the Operationalization of the "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/14/27 (April 9, 2010); see Anna Beckers, *Legalization Under the Premises of Globalization: Why and Where to Enforce Corporate Social Responsibility Codes*, 24 *Ind. J. Glob. Leg. Stud.* 15, 15 (2017); see Feuerstein & Herrigel, *supra* note 1, at 7.

<sup>30</sup> See S. Prakash Sethi & Donald H. Schepers, *United Nations Global Compact: The Promise-Performance Gap*, 122 *J. BUS. ETHICS* 193, 206-207 (2014); see Jeffrey Vogt et al., *Farce Majeure: How Global Apparel Brands are Using the COVID-19 Pandemic to Stiff Suppliers and Abandon Workers 2* (Worker Rights Consortium, 2020); see MSI INTEGRITY, *supra* note 21, at 9.

<sup>31</sup> See Schleifer et al., *supra* note 9.

<sup>32</sup> See Sethi & Schepers, *supra* note 30, at 193.

<sup>33</sup> *Id.*

ineffectiveness of its transparency and accountability policy, referred to as the communication on progress (COP) reporting mechanism, that mandates the annual posting of a COP as a significant demonstration of a participant's commitment to UNGC's principles.<sup>34</sup> In practice, companies can separate their CSR performance from their annual COPs because they are in control of reporting information.<sup>35</sup> Furthermore, UNGC's low entry barriers due to its inability to legally enforce its principles prompt socially irresponsible companies to join the UNGC to paint over their poor CSR performance and profit from both the moral legitimacy of the UN and the cheap labor in countries with weak legal systems and enforcement.<sup>36</sup> As a result of the initiatives' emphasis on company autonomy instead of accountability, public trust in the UNGC has diminished.<sup>37</sup> Thus, the UNGC remains ineffective as long as it cannot monitor the implementation of the ten principles and provide consequences for non-compliance through legally enforceable obligations.<sup>38</sup>

Following the UNGC, the UN introduced multiple international due diligence instruments. For example, the UN Human Rights Council's 2008 "Protect, Respect and Remedy" policy framework was introduced to manage business and human rights challenge.<sup>39</sup> Three years later, the UN Human Rights Council's 2011 adopted the Guiding Principles on Business and Human Rights (UNGPs).<sup>40</sup> This initiative introduced the universal standard for "due diligence" so companies can act on their responsibility to respect human rights.<sup>41</sup> Despite these instruments serving as authoritative lists of internationally recognized rights, their standards are voluntary and consequently, they had a limited impact.<sup>42</sup> Working conditions and employment conditions for many workers globally still fall below international standards, as seen in the nearly 3 million deaths due to work-related illnesses annually and 374 million work-related injuries annually.<sup>43</sup> The elasticity embedded

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<sup>34</sup> *Id.* at 206-207.

<sup>35</sup> Voegtlin & Pless, *supra* note 5, at 180.

<sup>36</sup> *Id.*

<sup>37</sup> Sethi & Schepers, *supra* note 30, at 193.

<sup>38</sup> Voegtlin & Pless, *supra* note 5, at 180.

<sup>39</sup> Ruggie, *supra* note 29.

<sup>40</sup> EUR. PARL. DOC. A9-0018/2021, *supra* note 4.

<sup>41</sup> *Id.*

<sup>42</sup> Feuerstein & Herrigel, *supra* note 1, at 6.

<sup>43</sup> *Id.*

in these instruments meant to attract companies simultaneously creates a challenge for both the public and companies to evaluate performance against commitments.<sup>44</sup>

CSR codes of conduct are unilateral corporate commitments to take on a global regulatory role.<sup>45</sup> They draw on the same ineffective international due diligence instruments and have been unable to fulfill their goal effectively.<sup>46</sup> Private self-regulation is dependent on private parties as the authors and administrators of the standards.<sup>47</sup> This dependence naturally results in a risk that a company's CSR practices become subordinate to economic motives due to the financial pressures.<sup>48</sup> Consequently, companies engage in risky contracting with unauthorized suppliers to cut costs.<sup>49</sup> Their purchasing approaches incentive suppliers to take part in abusive labor practices and ultimately undercut the companies' efforts to promote safe working conditions across their supply chains.<sup>50</sup> This production system emphasizes the exploitation that occurs where there is a lack of legal accountability because companies are compelled to push down the economic risk to the bottom of the supply chain and bring up most of the economic benefits to the top.<sup>51</sup>

MSIs suffer many of the same limitations seen in corporate self-regulation.<sup>52</sup> While MSIs have been influential, they do not reliably detect abuses, hold corporations accountable for harm, and provide remedies.<sup>53</sup> Two features have limited the capacities of MSIs to adequately protect human rights. First, like voluntary approaches, MSIs experience the free rider problem.<sup>54</sup> Even companies that do not participate in any initiatives may benefit from the strengthened image of a private enterprise sector led by corporations asserting to be socially

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<sup>44</sup> John Ruggie, *Implementation of General Assembly Resolution 60/251 of 15 March, 2006 entitled "Human Rights Council"*, U.N. Doc. A/HRC/4/35 (Feb. 19, 2007).

<sup>45</sup> See Ruggie, *supra* note 29; see Beckers, *supra* note 29; see Feuerstein & Herrigel, *supra* note 1, at 7.

<sup>46</sup> *Id.*

<sup>47</sup> Beckers, *supra* note 29, at 27-28.

<sup>48</sup> Beckers, *supra* note 29, at 27-28.

<sup>49</sup> Aruna Kashyap, *Paying for a Bus Ticket and Expecting to Fly*, HUM. RTS. WATCH (Apr. 23, 2019), <https://www.hrw.org/report/2019/04/23/paying-bus-ticket-and-expecting-fly/how-apparel-brand-purchasing-practices-drive#>.

<sup>50</sup> *Id.*

<sup>51</sup> Vogt, *supra* note 30.

<sup>52</sup> Utting, *supra* note 22, at 22.

<sup>53</sup> MSI INTEGRITY, *supra* note 21.

<sup>54</sup> Utting, *supra* note 22, at 12.



responsible.<sup>55</sup> Second, MSIs have not restricted corporate power or confronted the power imbalances that lead to abuse.<sup>56</sup> Since the mechanisms that detect abuses have been structurally weak,<sup>57</sup> there is no guarantee firm's behavior will improve.<sup>58</sup> Instead, the weak standards create a misperception that corporations are addressing human rights abuses, and allow corporations to profit from bad behavior.<sup>59</sup> However, the absolute demands of human rights override the benefits that companies receive in participation of human rights abuses,<sup>60</sup> and as long as responsive instruments to the regulatory gap are voluntary, they will perpetuate labor violations.<sup>61</sup>

## II. THE POWER OF CONTRACT AS AN ALTERNATIVE MECHANISM FOR REGULATING CSR

### A. *What Contracts Do Well*

Unlike the noncommittal voluntary CSR initiatives, contracts serve as effective tools to hold companies accountable for their place in perpetuating human rights abuses.<sup>62</sup> In response to labor violations, private actors use novel contract designs to effectuate CSR codes,<sup>63</sup> in which “one of the parties promises to act (or refrain from acting) in a certain way that benefits third parties or society as a whole.”<sup>64</sup> As legally enforceable promises, contracts influence parties' actions and in turn, meet a range of human needs and interests.<sup>65</sup> Specifically, contracts are beneficial tools to advance the fulfillment of human rights within global supply chains because they extend production liability from a products' technical conformity to human rights.<sup>66</sup> Although contracts that are one-sided and oppressive can promote a harmful power

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<sup>55</sup> Utting, *supra* note 22, at 22.

<sup>56</sup> MSI INTEGRITY, *supra* note 21, at 220.

<sup>57</sup> *Id.*

<sup>58</sup> Utting, *supra* note 22, at 23.

<sup>59</sup> MSI INTEGRITY, *supra* note 21, at 9.

<sup>60</sup> Tom Campbell, *A Human Rights Approach to Developing Voluntary Codes of Conduct for Multinational Corporations*, 16 BUS. ETHICS Q. 255, 257 (Jun. 2014).

<sup>61</sup> Beckers, *supra* note 29, at 15.

<sup>62</sup> See Aditi Bagchi, *Production Liability*, 87 FORDHAM L. REV. 2501, 2533 (2019).

<sup>63</sup> Beckers, *supra* note 29, at 15.

<sup>64</sup> See Lipson, *supra* note 6, at 1117.

<sup>65</sup> Robin Kar, *Contract as Empowerment*, 83 U. CHI. L. REV. 759, 761 (2016).

<sup>66</sup> Sarah Dadush, *Contracting for Human Rights*, 68 AM. U. L. REV. 1519, 1526 (2019).

dynamic and worsen human rights risks, optimal contractual practices contain legal obligations that can positively impact human rights.<sup>67</sup> Key benefits of legal obligations in the field of CSR include transparency through mandatory disclosure of a company's standards and increased accountability to governmental monitoring systems.<sup>68</sup> Therefore, adding human rights principles into contracts creates a new *lex mercatoria*, or private commercial law, of human rights, generating a global reach and enforceability that can positively impact workplace conditions.<sup>69</sup>

Contracts are a step in larger efforts to change and communicate norms reflecting a wide range of social concerns.<sup>70</sup> Contracts attain their social responsibility goals by outlining in detailed language the normative regime to which the parties agree.<sup>71</sup> The terms' expressive effects create mechanisms for educating the parties on how to bring about the agreed-upon normative change.<sup>72</sup> Appropriate processes can address holdup risk earlier, as with sufficient and frequent monitoring, communication, cooperation, and collaboration.<sup>73</sup> These processes enable a party to see why an unwanted event occurred and avoid a misunderstanding about the other parties' actions, including whether it was behaving opportunistically.<sup>74</sup> The relationship will be more productive if the parties worry less about opportunism, and learn to trust each other through monitoring and collaboration.<sup>75</sup> Thus, the educative mechanisms in contracts show a commitment

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<sup>67</sup> A.B.A., *Model Contract Clauses Version 2.0 and the Responsible Buyer Code*, (May 10, 2022) [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/contractual-clauses-project/model-contract-executive-summary.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/model-contract-executive-summary.pdf).

<sup>68</sup> See Jan Eijsbouts, *Corp. Codes as Private Co-Regulatory Instruments in Corp. Governance and Responsibility and Their Enforcement*, 24 INDIANA J. GLOB. LEG. STUD. 181, 196-197 (2017); see Barbara J. Fick, *Corporate Social Responsibility for Enforcement of Labor Rights: Are There More Effective Alternatives?*, GLOB. BUS. L.REV., 2014, at 24.

<sup>69</sup> John F. Sherman, *Human Rts. Due Diligence and Corp. Governance* 17 (Corp. Resp. Initiative, Harv. Kennedy Sch., Working Paper No. 79, 2021), [https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/CRI\\_WP\\_79\\_Final.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/CRI_WP_79_Final.pdf); John Ruggie & John F. Sherman, Editorial, *Adding Hum. Rts. Punch to the New Lex Mercatoria*, J. INT'L DISP. SETTLEMENT, 455, 456 (Oct. 13, 2015 (editorial)).

<sup>70</sup> Lipson, *supra* note 6, at 1155.

<sup>71</sup> *Id.* at 1151.

<sup>72</sup> *Id.*

<sup>73</sup> David V. Snyder, *Contracting for Process*, WASHINGTON COLLEGE OF LAW, Aug. 28, 2021, at 21.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

to collaborative improvement and teach parties how to behave toward one another.<sup>76</sup>

## *B. Case Studies*

### *1. The Bangladesh Accord*

Bangladesh has reaped the economic benefits of the growth of the garment industry for many years due to the countries' ability to meet the demands of the global fast-fashion timeline.<sup>77</sup> However, carrying the burden of this demand are the workers who are exploited in a way that normally amounts to forced labor.<sup>78</sup> It wasn't until the occurrence of the worst tragedy in the history of the garment industry that the world woke up to the plight of Bangladesh's garment workers.<sup>79</sup> On April 24, 2013, an engineer warned workers outside the Rana Plaza garment manufacturing facility that the building was unsafe, but his warning did not deter managers from demanding workers continue their tasks.<sup>80</sup> Shortly after, Rana Plaza collapsed due to its structural issues.<sup>81</sup> The neglectful decision of the managers who prioritized profit over human rights cost over 1,000 workers their lives and brought into focus the grave implications of when CSR concerns are overlooked.<sup>82</sup>

As a response to the Rana Plaza incident, over 200 apparel companies, two global unions, and four Bangladeshi union federations, signed a five-year agreement to "enable a working environment in which no worker needs to fear fires, building collapses, or other accidents that could be prevented with reasonable health and safety measures."<sup>83</sup> The Accord for Fire and Building Safety in

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<sup>76</sup> Lipson, *supra* note 6, at 1155.

<sup>77</sup> *World Trade Statistical Review 2020*, WORLD TRADE ORGANIZATION (2020), [https://www.wto.org/english/res\\_e/statis\\_e/wts2020\\_e/wts2020chapter04\\_e.pdf](https://www.wto.org/english/res_e/statis_e/wts2020_e/wts2020chapter04_e.pdf); *see* Raigrodski, *supra* note 2, at 85.

<sup>78</sup> Raigrodski, *supra* note 2, at 85.

<sup>79</sup> *The Rana Plaza Accident and Its Aftermath*, INT'L LAB. ORG., [https://www.ilo.org/global/topics/geip/WCMS\\_614394/lang--en/index.htm](https://www.ilo.org/global/topics/geip/WCMS_614394/lang--en/index.htm) (last visited Dec. 14, 2021).

<sup>80</sup> Rich Appelbaum & Nelson Lichtenstein, *An Accident in History*, 23 NEW LAB. F. 59, 61 (2014).

<sup>81</sup> *Id.*

<sup>82</sup> Patsy Perry, et al., *Corporate Social Responsibility in Garment Sourcing Networks: Factory Management Perspectives on Ethical Trade in Sri Lanka*, 130 J. OF BUS. ETHICS 737 (2015).

<sup>83</sup> ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH, <https://bangladeshaccord.org/> (last visited Dec. 14, 2021); *About*, ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH, <https://bangladeshaccord.org/about> (last visited Dec. 14, 2021).

Bangladesh (the Bangladesh Accord) set out the framework for a comprehensive program of independent and transparent fire safety inspections, health and safety training, worker empowerment, supplier remediation of health and safety risks, and consequences for suppliers that refuse to comply.<sup>84</sup> The legal heft of the Bangladesh Accord is in its binding dispute resolution clause, where a party may initiate arbitration proceedings against a signatory in breach of the Bangladesh Accord.<sup>85</sup> This agreement was a major breakthrough because it entails legally enforceable commitments on behalf of the signatories, rather than mere statements of intent.<sup>86</sup>

While the 2013 Bangladesh Accord was a response to the crisis created by the tragedy at Rana Plaza, the motivation behind the three-year 2018 Accord on Fire and Building Safety in Bangladesh (the 2018 Bangladesh Accord) was to ensure and advance the progress that had been made.<sup>87</sup> The 2018 Bangladesh Accord maintained key aspects of the 2013 Bangladesh Accord, but built on the 2013 Bangladesh Accord by including new elements such as a training and complaints mechanism, severance payments for workers who lose their jobs due to factories being closed for safety issues, a possibility to expand the scope of the agreement to cover categories of factories not originally covered, and a clarified dispute resolution process.<sup>88</sup>

Calls for renewal of the Bangladesh Accord were successfully made to build on the success of the previous two Bangladesh Accords and to ensure the health and safety of workers during the COVID-19 pandemic.<sup>89</sup> The 2021 International Accord for Health and Safety in the Textile and Garment Industry (the Bangladesh

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<sup>84</sup> CLEAN CLOTHES CAMPAIGN, THE HISTORY BEHIND THE 2013 BANGLADESH AND FIRE SAFETY ACCORD (July 8, 2013); see Jaakko Salminen, *The Accord on Fire and Building Safety in Bangladesh: A New Paradigm for Limiting Buyers' Liability in Global Supply Chains?*, 66 AM. U. J. COMPL. L. AM. J. COMP. L. 411, 417 (2018).

<sup>85</sup> Benjamin A. Evans, *Accord on Fire and Building Safety in Bangladesh: An International Response to Bangladesh Labor Conditions*, 40 N.C. J. OF INT'L LAW 597, 607-08 (2015); see Salminen, *supra* note 84, at 424-25.

<sup>86</sup> Hensler & Blasi, *supra* note 10.

<sup>87</sup> *The 2018 Bangladesh Accord: Brands and Unions Renew Commitment to Safe Jobs*, INDUSTRIALL GLOBAL UNION, <https://www.industrial-union.org/sites/default/files/uploads/documents/2017/BANGLADESH/bangaccordbackground.pdf> (last visited Dec. 16, 2021).

<sup>88</sup> *Id.*

<sup>89</sup> *With Work Remaining and Covid19 Still Raging, Investors Caution Against Allowing the Bangladesh Accord for Fire and Building Safety to Expire*, INTERFAITH CENTER ON CORPORATE RESPONSIBILITY, <https://www.iccr.org/work-remaining-and-covid19-still-raging-investors-caution-against-allowing-bangladesh-accord-fire> (last visited Dec. 16, 2021).

Accord II) went into effect on September 1, 2021 and was extended for two years.<sup>90</sup> The Bangladesh Accord II maintains the key elements of the groundbreaking model established by the 2013 Bangladesh Accord,<sup>91</sup> but as its title suggests, it is committed to including countries so they can also benefit from its successful contractual model.<sup>92</sup>

Corporations often only improve working conditions at their suppliers' location once they are subjected to negative publicity or an investigation.<sup>93</sup> The Bangladesh Accord promotes transparency through its extensive inspections that are followed by publicly publishing quarterly inspection reports of all factories.<sup>94</sup> The publishing of these reports provides the scope to monitor whether safety improvements are carried out with sufficient urgency according to the corrective action plans (CAP).<sup>95</sup> The Bangladesh Accord's transparent reporting process also facilitates the sharing of important information regarding workplace conditions that normally go undetected by all except workers themselves.<sup>96</sup> This aspect of the Bangladesh Accord is important to workers because it strengthened their capacity to improve their working conditions.<sup>97</sup> Without the Bangladesh Accord's mandated intervention, many workers fired after complaining about risks and dangers would not have been rehired.<sup>98</sup> The prevalence of this retaliation suggests that non-Accord covered factories have a higher percentage of reprisal due to factory management and companies not being held accountable.<sup>99</sup> The level of transparency that the

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<sup>90</sup> *New, Expanded Worker Safety Pact Will Build on Bangladesh Accord's Success*, UNI GLOBAL UNION, <https://uniglobalunion.org/news/new-expanded-worker-safety-pact-will-build-bangladesh-accords-success> (last visited Dec. 16, 2021).

<sup>91</sup> *Bangladesh Accord*, WORKER RIGHTS CONSORTIUM, <https://www.workersrights.org/our-work/bangladesh-accord/> (last visited Dec. 16, 2021).

<sup>92</sup> *New, Expanded Worker Safety Pact Will Build on Bangladesh Accord's Success*, *supra* note 90.

<sup>93</sup> Bagchi, *supra* note 62, at 2530; Raigrodski, *supra* note 2, at 111.

<sup>94</sup> Richard Croucher et al., *Legal Sanction, International Organisations and the Bangladesh Accord*, 48 INDUS. LAW J. 549, 557 (2019); *see generally Quarterly Aggregate Report, ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH*, 13 (2021), [https://bangladesh.wpengine.com/wp-content/uploads/2021/06/Accord\\_Quarterly\\_Aggregate\\_Report\\_May2021.pdf](https://bangladesh.wpengine.com/wp-content/uploads/2021/06/Accord_Quarterly_Aggregate_Report_May2021.pdf) (showing the remediation progress at signatory factories, including the high growth of remediation of safety issues from 52% in 2016 to 93% in 2021).

<sup>95</sup> *Id.* at 558.

<sup>96</sup> INT'L LAB. RTS. F., *CALLING FOR REMEDY 6* (May 2019), <https://laborrights.org/sites/default/files/publications/Calling%20for%20Remedy%205-14.pdf>.

<sup>97</sup> *Id.* at 9.

<sup>98</sup> *Id.* at 6.

<sup>99</sup> *Id.* at 4-5.

Bangladesh Accord has is sufficient to make the accountability action cycle spin because it threatens corporations' reputational interests and provides the data needed for remediation.<sup>100</sup>

While transparency sets the path for remediation, any effort to combat labor violations must address the sourcing and pricing dynamics between suppliers and buyers, and ensure that buyers take greater responsibility for the terms and conditions of work at suppliers' factories.<sup>101</sup> The Bangladesh Accord regulates the buying practices of apparel brands by requiring brand signatories to have "commercial terms with their suppliers which ensure that it is financially feasible for the factories to maintain safe workplaces and comply with upgrade and remediation requirements."<sup>102</sup> This requirement means that brands may finance suppliers' needs by adjusting the prices they pay for products, a dangerous practice in a low switching cost industry such as the garment industry.<sup>103</sup> Since buyers can more easily swap suppliers in and out, the adjustment of contracts can create a scenario of contracts of adhesion where buyers can use their economic clout or suppliers' distress to coerce them into accepting a subpar deal.<sup>104</sup> In turn, the pressure incentivizes suppliers to hide their poor subcontracting practices in order to keep contracts with foreign buyers.<sup>105</sup> The Bangladesh Accord addresses this structural dynamic through its enforcement mechanism.<sup>106</sup>

The inclusion of contractually enforceable obligations on brands in the Bangladesh Accord puts teeth behind strong substantive commitments to finally address the worker safety crisis in Bangladesh.<sup>107</sup> Global Union Federations (GUFs) are able to initiate charges against brands that fail to fulfill their commitments.<sup>108</sup> This provision led to two arbitrations being brought before the

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<sup>100</sup> See Schleifer et al., *supra* note 9.

<sup>101</sup> Mark Anner et al., *Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labor Violations in International Subcontracting Networks*, 35 COMP. LAB. POL'Y J. 1, 14 (2013).

<sup>102</sup> *Int'l Accord for Health and Safety in the Textile and Garment Indus.* (2021), <https://bangladesh.wpengine.com/wp-content/uploads/2021/08/1-September-International-Accord-on-Health-and-Safety-in-the-Textile-and-Garment-Industry-public-version.pdf>.

<sup>103</sup> See Dadush, *supra* note 66, at 1541; see Anner, *supra* note 101, at 28.

<sup>104</sup> Salminen, *supra* note 84, at 442; see Dadush, *supra* note 66, at 1541.

<sup>105</sup> *Id.*

<sup>106</sup> See Schleifer et al., *supra* note 9, at 26.

<sup>107</sup> Hensler & Blasi, *supra* note 10.

<sup>108</sup> Joseph Wilde-Ramsing, *Amidst the Trend Towards Mandatory Due Diligence, the Bangladesh Accord Model Should Not Be Abandoned*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, (Apr.

Permanent Court of Arbitration (PCA) by union parties against fashion brands.<sup>109</sup> These arbitrations were among the first of their kind in dealing with issues relating to workplace safety.<sup>110</sup> Both cases brought to the PCA highlight that the enforcement mechanism in the Bangladesh Accord works because they resulted in multimillion dollar settlements to improve factory conditions.<sup>111</sup> As a part of the first settlement agreement, the GUFs claimed that they will ensure that the brand's factories will be remediated and that enough funds are made available for that purpose.<sup>112</sup> The second settlement agreement concluded by the brand agreeing to pay \$2 million towards remediation of more than 150 factories and to contribute \$300,000 to a fund that supports global unions' work in improving the conditions of workers in supply chains.<sup>113</sup> The arbitration propelled several of the brand's contracted factories towards better progress, with one going from a remediation rate of about 50% in October 2016 to over 90% in one year.<sup>114</sup>

The Bangladesh Accord has fundamentally changed the traditional sense of production liability by extending legal responsibility from merely the product itself to the human rights involved in making that product.<sup>115</sup> It takes into account the additional effects of enforcing safety standards by seeing brands at the top of the supply chain as responsible for the conditions below and imposes contractual obligations to actors that normally would not be their direct contractual partners in a supply chain.<sup>116</sup> For example, the case *Doe v. Wal-Mart* supports the idea that under third-party beneficiary theories, enforceable rights are granted to supplier employees as well.<sup>117</sup> Given the terms of the Bangladesh Accord, it seems

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16, 2021) <https://www.business-humanrights.org/de/blog/the-bangladesh-accord-a-blueprint-for-the-expansion-of-mandatory-due-diligence/>.

<sup>109</sup> HUGO SIBLESZ, INTERNATIONAL ORGANIZATIONS AND THE PROMOTION OF EFFECTIVE DISPUTE RESOLUTION 86 (2019); In the Matter of Arbitrations Commenced Pursuant to the Accord on Fire and Building Safety in Bangladesh, P.C.A. No. 2016-36 (Perm. Ct. Arb. 2017), <https://pcacases.com/web/sendAttach/2234>; In The Matter of Arbitrations Commenced Pursuant to the Accord on Fire and Building Safety in Bangladesh, P.C.A. No. 2016-37 (Perm. Ct. Arb. 2018), <https://pcacases.com/web/sendAttach/2439>.

<sup>110</sup> *Id.*

<sup>111</sup> Wilde-Ramsing, *supra* note 108.

<sup>112</sup> *Settlement Reached With Global Fashion Brand in Bangladesh Accord Arbitration*, INDUSTRIALL (Dec. 14, 2017) <https://www.industriall-union.org/settlement-reached-with-global-fashion-brand-in-bangladesh-accord-arbitration>; see also Croucher, *supra* note 94, at 564.

<sup>113</sup> Croucher, *supra* note 94, at 564.

<sup>114</sup> *Id.*

<sup>115</sup> See generally Dadush, *supra* note 66, at 1526.

<sup>116</sup> Salminen, *supra* note 84, at 424-25; Anner, *supra* note 101, at 2.

<sup>117</sup> Salminen, *supra* note 84, at 444.

reasonable that employees working at supplier factories or their representatives could sue buyers for damages arising out of a failure to sufficiently incentivize suppliers to comply.<sup>118</sup> Thus, if one takes the view that there would otherwise be no liability without contracts, then the Bangladesh Accord's potential for liability is better than no contract at all.<sup>119</sup>

Multiple U.S. companies are hesitant to join the Bangladesh Accord because they claim that under the U.S. litigation system, they could face substantial, unlimited legal liability.<sup>120</sup> However, since the Bangladesh Accord is a contract, the risks taken on by signatory companies are the same as those that they voluntarily expose themselves to in the regular course of business.<sup>121</sup> Plaintiff lawsuits against U.S. corporations do not often arise from claims stating that firms have violated a contract, but instead involve statutory and tort claims regarding negligence or deliberate harm.<sup>122</sup> Moreover, domestic legal developments, such as the case *Kiobel v. Royal Dutch Petroleum Co.*, have made it difficult for human rights activists to sue U.S. corporations under the Alien Tort Statute for human rights violations overseas.<sup>123</sup> Rather than impose unlimited legal liability, the Bangladesh Accord establishes an effective mechanism for the governance of working conditions at supplier facilities and provides a channel for companies to control the risk of liability.<sup>124</sup>

In addition to the fear of unlimited liability, corporations have demonstrated reservation over the financial commitment of both monitoring and compliance.<sup>125</sup> However, after years of profiting from Bangladeshi suppliers, global retailers should take on minor losses to create safe work environments.<sup>126</sup> Costs should be assigned to corporations for various reasons.<sup>127</sup> First, they are more willing to undertake compliance due to their reputational interests.<sup>128</sup> Second, they have long corporate lives and substantial assets, which will enable effective legal

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<sup>118</sup> Salminen, *supra* note 84, at 444.

<sup>119</sup> Salminen, *supra* note 84, at 450.

<sup>120</sup> Hensler & Blasi, *supra* note 10.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Evans, *supra* note 85, at 619.

<sup>124</sup> Salminen, *supra* note 84, at 439.

<sup>125</sup> Sarah Butler, *Bangladesh Clothing Factory Safety Deal in Danger, Warn Unions*, THE GUARDIAN (Apr. 22, 2021), <https://www.theguardian.com/world/2021/apr/22/bangladesh-clothing-factory-safety-deal-in-danger-warn-unions>.

<sup>126</sup> Evans, *supra* note 85, at 621.

<sup>127</sup> Bagchi, *supra* note 62, at 2529-30.

<sup>128</sup> *Id.* at 2530.



judgments.<sup>129</sup> Third, they consistently interact with the legal system.<sup>130</sup> Lastly, they are in a position to pass increased costs to consumers to ensure the adequate working conditions.<sup>131</sup>

Tort law standard of responsibility — foreseeability and control — provide a way to determine corporations' duty of care to retailers.<sup>132</sup> According to this principle, corporations are responsible for the working conditions of their supplier factories if the consequences of their supplier contracts are foreseeable and could be evaded by different contractual terms.<sup>133</sup> Corporations can predict that certain payment terms and production timelines exacerbate employment conditions because they are aware that they control the terms that impact these conditions.<sup>134</sup> Although corporations do not commit wrongs directly against the workers, they enable suppliers' harmful practices, ultimately rendering them complicit in wrongdoing.<sup>135</sup> Corporations hold moral responsibility because they have control over working conditions in their suppliers' factories and are on notice that those conditions are the outcomes of the contractual terms they negotiate with their suppliers.<sup>136</sup> Both contractual models and voluntary initiatives recognize the moral and financial responsibility that corporations hold.<sup>137</sup> Still, it's the enforcement mechanism found in contractual models such as the Bangladesh Accord, that give life to these responsibilities.

## 2. *The Fair Food Program (FFP)*

Similar to the garment industry, agriculture is one of the most perilous industries within the United States.<sup>138</sup> The agriculture industry has high rate of occupational health and safety violations, including heavy machinery accidents and excessive heat chemical exposure.<sup>139</sup> Although fruit and vegetable production has

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<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 2529.

<sup>132</sup> *Id.* at 2504, 2519.

<sup>133</sup> *Id.* at 2519.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 2521.

<sup>136</sup> *See id.* at 2516, 2521.

<sup>137</sup> *See generally* EUR. PARL. DOC. A9-0018/2021, *supra* note 4; *see generally Int'l Accord for Health and Safety in the Textile and Garment Indus.*, *supra* note 102.

<sup>138</sup> Greg Asbed & Sean Sellers, *The Fair Food Program: Comprehensive, Verifiable and Sustainable Change for Farmworkers*, 16 UNIV. OF PA. J. OF L. AND SOC. CHANGE 39, 42 (2013).

<sup>139</sup> *Id.*

increased, farmworkers are described by the U.S. Department of Labor as “among the most economically disadvantaged working groups in the United States,” noting they are subjected to low wages and significant periods of unemployment.<sup>140</sup> Farm supervisors and crew leaders are not held accountable.<sup>141</sup> Instead, workers who speak out about working conditions or abuses fear reprisal and termination.<sup>142</sup> Many farmworkers are poor and vulnerable because they are immigrants and encounter extreme labor abuses that amount to modern-day slavery.<sup>143</sup>

To address how farmworkers can improve their lives, a multiethnic group of migrant farmworkers formed an organization in the early 1990s called the Coalition of Immokalee Workers (CIW).<sup>144</sup> The CIW organized strikes and labor stoppages to compel Florida growers to raise tomato harvesting piece rates, end crew leader violence, and expose modern-day slavery operations.<sup>145</sup> However, it found itself in direct opposition with farmers who were apprehensive to join its members at the bargaining table.<sup>146</sup> The CIW then took an economic perspective and analyzed the market forces that diminish farmworkers’ livelihoods.<sup>147</sup>

The CIW concluded that responsibility for farmworker poverty and labor violations lay not just with the farm growers but also with major food retailers.<sup>148</sup> These retailers, including McDonald’s, Sodexo, and Walmart, were using their purchasing power to demand cheap prices from their Florida tomato suppliers.<sup>149</sup> They created downward pressure on prices which translated into low wages and exploitative working conditions for farmworkers.<sup>150</sup> In response, the CIW launched the Campaign for Fair Food in 2001 to instead yield positive outcomes from the same mechanisms of market power.<sup>151</sup> It launched its campaign with a boycott of the fast food giant, Taco Bell, and the slogan “*Taco Bell makes farmworkers*

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<sup>140</sup> *Id.* at 41.

<sup>141</sup> *Id.* at 42.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 41-42.

<sup>144</sup> *Id.* at 43.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> Greg Asbed & Steve Hitov, *Preventing Forced Labor in Corporate Supply Chains: The Fair Food Program and Worker-Driven Social Responsibility*, 52 WAKE FOREST L. REV. 497, 506 (2017).

<sup>149</sup> *See id.*; *see also* Asbed & Sellers, *supra* note 138, at 43-44.

<sup>150</sup> *See id.*; *see* Asbed & Sellers, *supra* note 138, at 43-44.

<sup>151</sup> Asbed & Sellers, *supra* note 138, at 44.

*poor.*<sup>152</sup> After schools across the country threatened to boot Taco Bell from their campus, Taco Bell signed the first Fair Food agreement.<sup>153</sup> This agreement encompassed two requirements on their behalf.<sup>154</sup> First, the Fair Food agreement provided that Taco Bell must commit to paying a price premium for tomatoes (the “penny per pound”).<sup>155</sup> The new price affected transferred down the supply chain from the retail level to workers’ paychecks to help raise farmworkers’ wages.<sup>156</sup> Second, Taco Bell must only buy Florida tomatoes from suppliers who adhere to the human rights-based code of conduct called the Fair Food Code of Conduct (the Code).<sup>157</sup>

Multibillion dollar food corporations followed Taco Bell’s lead and signed Fair Food agreements with the CIW.<sup>158</sup> The Florida Tomato Growers Exchange, representing 90% of the state’s \$650 million tomato industry, followed suit and signed a landmark deal in 2010 to adopt the improvements farmworkers had demanded.<sup>159</sup> This deal resulted in the establishment of the Fair Food Program (FFP) in 2010.<sup>160</sup> Through an array of grassroots activities, the CIW built a powerful framework.<sup>161</sup> Specifically, the CIW leveraged fourteen participating buyers to hold farmers responsible for the labor conditions in their tomato supply chains.<sup>162</sup>

The FFP is a unique agreement between farmers, farmworkers, and retail food corporations that ensures workers of participating farms are paid fairly and have safe working conditions.<sup>163</sup> The FFP integrates four social responsibility tools into one comprehensive program to ensure that labor conditions in the fields are

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<sup>152</sup> Asbed & Hitov, *supra* note 148, at 507.

<sup>153</sup> *Id.* at 507-08.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 507.

<sup>156</sup> *Id.*; *Frequently Asked Questions*, FAIR FOOD STANDARDS COUNCIL, <https://www.fairfoodstandards.org/resources/frequently-asked-questions/> (last visited Jan. 20, 2022); KARIN ASTRID SIEGMANN ET AL., CIVIC INNOVATION IN VALUE CHAINS: TOWARDS WORKERS AS AGENTS IN NON- GOVERNMENTAL LABOUR REGULATION, 119 (Kees Biekart et al. eds., 1st ed. 2016).

<sup>157</sup> Asbed & Hitov, *supra* note 148, at 507.

<sup>158</sup> *Our History*, ALL. FOR FAIR FOOD, <http://www.allianceforfairfood.org/our-history> (last visited Jan. 20, 2022).

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> Asbed & Sellers, *supra* note 138, at 44; *Participating Buyers*, FAIR FOOD STANDARDS COUNCIL <https://www.fairfoodstandards.org/resources/participating-buyers/> (last visited Jan. 20, 2022).

<sup>162</sup> *Id.*

<sup>163</sup> FAIR FOOD PROGRAM, <https://fairfoodprogram.org/> (last visited Jan. 20, 2022).

transparent and that buyers and farmers follow the Fair Food Code of Conduct.<sup>164</sup> The first tool is the CIW's worker-to-worker education program.<sup>165</sup> Under this program, the CIW informs workers of their rights in order to empower workers to identify abusive farm growers and dangerous practices.<sup>166</sup> Second, the FFP has a 24-hour complaint line where workers who encounter potential Code infringements have access to an effective resolution process.<sup>167</sup> Since workers may not be aware of all potential issues, the FFP features an auditing mechanism that monitors its execution.<sup>168</sup> It comprises auditors from the Fair Food Standards Council (FFSC) who have access to wage and hour records at the farm office level and also access to the fields to oversee harvesting operations.<sup>169</sup> Lastly and most significantly, the Fair Food agreements are legally enforceable contracts that establish retail food companies' terms of participation in the FFP.<sup>170</sup> These agreements guarantee their promises lead to verifiable improvements.<sup>171</sup> The Fair Food Premium and Market Enforcement of the Fair Food Code of Conduct are two key components of the agreement.<sup>172</sup> Once a retailer joins the FFP, it must purchase from compliant farms.<sup>173</sup> If a breach of the Fair Food Code of Conduct occurs on the farm, the participating grower is responsible for resolving the issue.<sup>174</sup> If it fails to do so, it will be suspended from the FFP, and participating brands will no longer be able to purchase from that farm, resulting in a significant loss of the farm's market share.<sup>175</sup>

The FFP has succeeded where many other CSR initiatives have failed because it is an enforcement-focused approach to social accountability and has the pressure that enforcement needs to work.<sup>176</sup> For both growers and retailers who fail to adhere to the Code, the FFP's teeth appear in its market consequences.<sup>177</sup> Participating

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<sup>164</sup> Asbed & Sellers, *supra* note 138, at 43-46.

<sup>165</sup> *Id.* at 46.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *See id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *See* Asbed & Hitov, *supra* note 148, at 511-12.

<sup>173</sup> Kerstin Lindgren, JUSTICE IN THE FIELDS, 1, 17 (2016), <https://fairworldproject.org/wp-content/uploads/2016/10/Justice-In-The-Fields-Report.pdf>.

<sup>174</sup> Sara Blackwell, THE HUMAN RIGHTS OPPORTUNITY: 15 REAL-LIFE CASES OF HOW BUSINESS IS CONTRIBUTING TO THE SUSTAINABLE DEVELOPMENT GOALS BY PUTTING PEOPLE FIRST 1, 60 (2018); Siegmann, *supra* note 156, at 114.

<sup>175</sup> *Id.*

<sup>176</sup> *See* Asbed & Sellers, *supra* note 138, at 46.

<sup>177</sup> *Id.*; Siegmann, *supra* note 156, at 121.

growers lose sales from participating retailers if they do not resolve labor abuses and retailers that refuse to participate in the FFP face reputational damage and lost sales.<sup>178</sup> These market consequences that are established in binding legal agreements between brands and the CIW are made possible through the programs' transparency mechanisms and binding legal contracts.<sup>179</sup> They also help eliminate the abuse suffered by many farmworkers.<sup>180</sup>

The FFP's success heavily relies upon buyer's participation.<sup>181</sup> The "penny per pound" premium paid by buyers is a minor change at the top with a significant impact on the bottom.<sup>182</sup> However, buyers are apprehensive about joining the FFP to avoid bearing additional costs.<sup>183</sup> This financial hesitance is compounded by agricultural workers' lack of coverage by existing U.S. labor regulations and the anti-labor bias of both legislation and the judicial system.<sup>184</sup> The FFP uses consumer demand to influence food brands' behavior through mobilizing groups of critical consumers to target market leaders.<sup>185</sup> By revealing labor violations in a retailer's supply chain, consumers are in a position to attack its reputational capital, and therefore, sales.<sup>186</sup> Since public reputation is difficult to restore once lost, even a small but committed group of customers can often have a significant impact on a company's decision-making.<sup>187</sup> Participating retailers of the FFP find a nominal cost and a big payoff for consumers with greater transparency in how their food is produced.<sup>188</sup> Consumers are increasingly aware of the conditions under which their products are produced, and expect corporations to do their part to address pressing social problems.<sup>189</sup> Participating retailers benefit because their participation brings

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<sup>178</sup> Blackwell, *supra* note 174.

<sup>179</sup> Coalition of Immokalee Workers, *The Fair Food Program (FFP) Case – United States* (Nov. 18, 2015) <https://www.ohchr.org/Documents/Issues/Business/ForumSession4/FairFoodProgramCaseUnitedStates.pdf>.

<sup>180</sup> *Id.*; Fair Food Standards Council, FAIR FOOD PROGRAM 2015 ANNUAL REPORT 62, (2015) <https://www.fairfoodstandards.org/2015-annual-report.pdf> (last visited Jan. 20, 2022).

<sup>181</sup> Siegmann, *supra* note 156, at 120, 123.

<sup>182</sup> Siegmann, *supra* note 156, at 120.

<sup>183</sup> See Coalition of Immokalee Workers, *supra* note 179; Fair Food Standards Council, *supra* note 180, at 60.

<sup>184</sup> *Id.*

<sup>185</sup> Asbed & Hitov, *supra* note 148, at 509; Siegmann, *supra* note 156, at 122.

<sup>186</sup> See Asbed & Hitov, *supra* note 148, at 527; Siegmann, *supra* note 156, at 122.

<sup>187</sup> Asbed & Hitov, *supra* note 148, at 513.

<sup>188</sup> See *Results*, FAIR FOOD PROGRAM, <https://fairfoodprogram.org/results/> (last visited Jan. 20, 2022).

<sup>189</sup> Fair Food Standards Council, *supra* note 180, at 61.

transparency and eliminates supply chain risks.<sup>190</sup> Through the legally binding agreements, the FFP effectively engages buyers in respecting human rights in their supply chains.<sup>191</sup>

The FFP not only impacts the buyers that are part of the program, but it impacts suppliers as well.<sup>192</sup> Similar to suppliers in the garment industry, suppliers in the agricultural industry are often in a weaker bargaining position than buyers.<sup>193</sup> The high degree of consolidation in the food industry means that multi-billion dollar brands can use their volume purchasing power to demand low prices. This power has resulted in downward pressure on farmworker wages and working conditions.<sup>194</sup> Thus, growers who are not part of the FFP receive assurance that they will continue to have sales from non-participating buyers.<sup>195</sup> Furthermore, the implementation of the North American Free Trade Agreement (NAFTA) in 1994 exacerbated the demands growers faced.<sup>196</sup> NAFTA led to a decline in Florida tomato production due to the competition with lower cost producers in Mexico.<sup>197</sup> The producers in Mexico achieved a lower cost of production by facilitating abusive working conditions.<sup>198</sup> Therefore, growers that bear the costs of necessary investments to comply with the Fair Food Code of Conduct at a competitive disadvantage.<sup>199</sup>

To counter the disadvantages that growers face, the FFP provides a significant market incentive for growers to follow fair labor practices.<sup>200</sup> Specifically, the FFP achieves its success because it leverages the purchasing power of participating retailers to generate genuine and compelling incentives for growers to comply.<sup>201</sup> The FFP includes assurance that giant retailers such as McDonald's, Chipotle, and Burger King, will purchase growers' tomatoes.<sup>202</sup> The agreement that requires giant retailers to only purchase Florida tomatoes from suppliers who are compliant with

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<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at 62.

<sup>192</sup> See Asbed & Sellers, *supra* note 138, at 46-47.

<sup>193</sup> Dadush, *supra* note 66, at 1523.

<sup>194</sup> Fair Food Standards Council, *supra* note 180, at 5.

<sup>195</sup> *Id.* at 54.

<sup>196</sup> *Id.*

<sup>197</sup> See *id.*

<sup>198</sup> See *id.*

<sup>199</sup> *Id.*

<sup>200</sup> See Fair Food Standards Council, *supra* note 180, at 47; see also Lindgren, *supra* note 173.

<sup>201</sup> Lindgren, *supra* note 173, at 17; Fair Food Standards Council, *supra* note 180, at 54; see also Asbed & Hitov, *supra* note 148, at 525-26.

<sup>202</sup> *Id.*

the Fair Food Code of Conduct raises the switching costs.<sup>203</sup> Therefore, the buyer is invested in the supplier, and the supplier has more leverage to negotiate better deals with the buyer.<sup>204</sup> Furthermore, the financial onus is not solely on the grower.<sup>205</sup> The “penny per pound” premium is paid by participating buyers and is designed to help reverse the downward pressure on farmworker wages exerted by food industry leaders as a consequence of high-volume purchasing practices.<sup>206</sup> The benefits for growers who are part of the FFP are plenty. These growers become preferred employers, experience lower turnover and increased productivity, and achieve verification of ethical labor practices, giving them a competitive advantage with buyers and consumers.<sup>207</sup> The Fair Food agreements provide a meaningful economic incentive to suppliers who value the human rights of their workforce because their interest in sustaining their relationship with the participating buyers is more significant than any incentive to continue the exploitation of workers.<sup>208</sup>

While the FFP’s market-based economic incentives have helped transform the Florida tomato industry into “the best working environment in American agriculture,”<sup>209</sup> the FFP’s architects never assumed that economic incentives alone would be sufficient to eliminate forced labor from the industry.<sup>210</sup> Therefore, the program incorporates a variety of supervision measures that have significantly increased farm transparency and set a new bar for accountability in the realm of social responsibility.<sup>211</sup> FFSC investigators have substantially more access to workers than ever before and workers now know how to exercise their rights.<sup>212</sup> In 2016, the first labor violation in the history of the FFP occurred on a participating farm.<sup>213</sup> After the FFSC received complaints on its 24-hour hotline, it launched an investigation and submitted the charges to law enforcement.<sup>214</sup> Regardless of whether the grower was proven legally liable, they were automatically suspended from the FFP due to the program’s zero-tolerance policy for any type of forced

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<sup>203</sup> Dadush, *supra* note 66, at 1536.

<sup>204</sup> *Id.*

<sup>205</sup> Fair Food Standards Council, *supra* note 180, at 50.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* at 67.

<sup>208</sup> *Id.* at 62.

<sup>209</sup> Asbed & Hitov, *supra* note 148, at 509.

<sup>210</sup> *Id.* at 529-531.

<sup>211</sup> Asbed & Hitov, *supra* note 148, at 530; Asbed & Sellers, *supra* note 138, at 47.

<sup>212</sup> Asbed & Hitov, *supra* note 148, at 531; Asbed & Sellers, *supra* note 138, at 46.

<sup>213</sup> Asbed & Hitov, *supra* note 148, at 528.

<sup>214</sup> *Id.* at 529.

labor.<sup>215</sup> The transparency mechanism coupled with the market enforcement mechanism of the FFP has prompted tomato growers to virtually eliminated horrendous human rights abuses.<sup>216</sup>

### 3. *The Worker Rights Consortium (WRC)*

University-licensed sportswear is a \$4 billion-a-year industry that includes many of the world's most well-known brands.<sup>217</sup> Since 2000, most major universities in the U.S. and Canada have incorporated supply chain codes of conduct in their trademark licensing contracts with major athletic apparel firms such as Adidas and Nike.<sup>218</sup> However, while the existing code of conduct system produced some improvements in certain areas in particular factories, it did not provide long-term benefits.<sup>219</sup> This shortcoming occurred in part because buyers' ability to bounce from factory to factory created heavy price pressure on suppliers.<sup>220</sup> The need to enforce requirements on brands that end supplier pricing pressure spurred the creation of the Worker Rights Consortium (WRC).<sup>221</sup>

The WRC was established in 2000 as an independent labor rights monitoring group that aids colleges in enforcing their labor rules of conduct and defends the rights of workers who produce clothes and other commodities with university names.<sup>222</sup> College affiliates are required either to adopt the WRC model code, which provides basic protection for workers in areas of discrimination, harassment, and pay, or to adopt a strong code similar to the WRC model code.<sup>223</sup> Upon adoption, universities must work to incorporate this code into applicable licensee contracts.<sup>224</sup> Affiliates must also ask licensees to provide the WRC with a quarterly

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<sup>215</sup> *Id.*

<sup>216</sup> Lindgren, *supra* note 173, at 31.

<sup>217</sup> Anner, *supra* note 102, at 31.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> WORKER RIGHTS CONSORTIUM, <http://www.workersrights.org> (last visited Jan. 24, 2022).

<sup>222</sup> 'About, WORKER RIGHTS CONSORTIUM <https://www.workersrights.org/about/> (last visited Jan. 24, 2022); see generally *Georgetown Advances Workers' Rights Through New Agreement with Nike and Worker Rights Consortium*, GEORGETOWN UNIV., <https://www.georgetown.edu/news/georgetown-advances-workers-rights-through-new-agreement-with-nike-and-worker-rights-consortium/> (last visited Jan. 24, 2022).

<sup>223</sup> *Frequently Asked Questions*, WORKER RIGHTS CONSORTIUM, <https://www.workersrights.org/affiliates/frequently-asked-questions/> (last visited Jan. 20, 2022).

<sup>224</sup> *Id.*



list of all factories involved in the production of their logo goods.<sup>225</sup> Further, they must pay annual fees of 1% of their previous year's gross licensing revenues, with a minimum fee of \$1,500 and a maximum fee of \$50,000, to cover the WRC's operating costs.<sup>226</sup> In a global economy where meaningful state enforcement of labor standards is scarce and voluntary CSR programs have historically failed to safeguard workers, the WRC enforces contractual agreements, the best tool to achieve concrete advantages for employees.<sup>227</sup>

The WRC's mission is to chronicle and combat sweatshop conditions and expose global brands' behaviors that perpetuate labor rights abuses.<sup>228</sup> Since workers are the best source of information regarding the workplace, they are the focus of the WRC's investigation process.<sup>229</sup> To that end, the WRC conducts interviews with workers at factories producing for major retailers without the knowledge or involvement of factory management, allowing workers to talk freely and without fear of retaliation.<sup>230</sup> The WRC then publishes reports of the factory investigations on its website.<sup>231</sup>

Comprehensive monitoring gives the licensing agreement teeth and puts accountability into affiliates' relationships with licensees.<sup>232</sup> WRC's affiliates receive accurate, detailed, fast, and unbiased assessments of working conditions in collegiate apparel factories and whether they comply with university codes of conduct.<sup>233</sup> If a licensee fails to self-correct a code violation within a reasonable time, the university has two options: terminate the relationship with the licensee or require that the licensee terminate its relationship with its contractor or subcontractor.<sup>234</sup> While terminating the contract sends a strong message to suppliers that they must comply with the code of conduct, it can also negatively

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<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *About*, *supra* note 222.

<sup>228</sup> *Id.*

<sup>229</sup> *Our Work*, WORKER RIGHTS CONSORTIUM, <https://www.workersrights.org/our-work/> (last visited Jan. 24, 2022).

<sup>230</sup> *Id.*

<sup>231</sup> *Frequently Asked Questions*, *supra* note 223.

<sup>232</sup> *Worker Rights Consortium (WRC) for the Enforcement of University Licensing Codes of Conduct*, UNIV. OF MINNESOTA HUMAN RIGHTS LIBRARY, <http://hrlibrary.umn.edu/business/wrcuniv.html> (last visited Jan. 24, 2022).

<sup>233</sup> *Frequently Asked Questions*, *supra* note 223.

<sup>234</sup> *Model Code*, WORKER RIGHTS CONSORTIUM, <https://www.workersrights.org/affiliates/model-code/> (last visited Jan. 24, 2022).

impact the workers because they may lose their jobs.<sup>235</sup> For that reason, the WRC requires that a university remedy the violation first by directly working with the supplier.<sup>236</sup>

The WRC also publicly pressures universities to hold retailers accountable for their role in human rights violations.<sup>237</sup> One of the most effective methods to change human rights abuses is through public awareness, and universities have only become ideal consumers when pressured and assisted by student activists.<sup>238</sup> Once a university is part of the WRC, the WRC uses its purchasing power to enforce the agreements between them and the brands.<sup>239</sup> While universities only account for a small portion of the apparel market, they nonetheless account for \$2.5 billion of it.<sup>240</sup> The brands' fear of losing a substantial student market makes them responsible for ensuring that their direct operations and those of any subcontractors comply with various workplace safety and health regulations.<sup>241</sup>

Universities are ideal consumers because they hold power as the top actor of the supply chain.<sup>242</sup> First, they can pay a premium for fairly made clothing.<sup>243</sup> Second, they have the market power to pressure brands to correct abuses when they are identified.<sup>244</sup> Third, universities' participation in the WRC provides a strong statement that they are committed to ensuring that their licensing processes do not lead to labor violations in the factories that make their logo.<sup>245</sup> By leveraging

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<sup>235</sup> Debra Cohen Maryanov, *Sweatshop Liability: Corporate Codes of Conduct and the Governance of Labor Standards in the International Supply Chain*, 14 LEWIS & CLARK L. REV. 397, 412 (2010).

<sup>236</sup> *Model Code*, *supra* note 234.

<sup>237</sup> *Id.*; *About*, *supra* note 222.

<sup>238</sup> Alex Gourevitch, *No Justice, No Contract*, THE AMERICAN PROSPECT (Dec. 19, 2001), <https://prospect.org/article/justice-contract/>.

<sup>239</sup> *Worker Rights Consortium, Corp. Accountability for Hum. Rts. Abuses*, <https://corporateaccountability.fidh.org/the-guide/voluntary-commitments-using-csr-initiatives-as-a-tool/overview-of-csr-initiatives/labour-rights-initiatives-in-the-supply-chain/worker-rights-consortium-wrc/> (last visited Jan. 24, 2022); *see Anner, supra* note 102, at 31.

<sup>240</sup> Gourevitch, *supra* note 238.

<sup>241</sup> M. Wooley, *Pitt and the Worker Rights Consortium: An Argument for Affiliation* 4, 34 (Feb. 2013), [http://d-scholarship.pitt.edu/20565/1/%23NoSweat\\_WRC\\_Policy\\_Paper\\_v.\\_2.pdf](http://d-scholarship.pitt.edu/20565/1/%23NoSweat_WRC_Policy_Paper_v._2.pdf) (last visited Oct. 2, 2022).

<sup>242</sup> Gourevitch, *supra* note 238.

<sup>243</sup> Gourevitch, *supra* note 238.

<sup>244</sup> *Id.*

<sup>245</sup> *Frequently Asked Questions, supra*, note 223.

universities' market pressure to enforce contractual agreements with suppliers, the WRC is curing offensive norms that cannot be relieved by voluntary initiatives.<sup>246</sup>

### III. THE WAY FORWARD: BLENDING VOLUNTARY AND CONTRACTUAL APPROACHES

The Bangladesh Accord, FFP, and WRC demonstrate that contractually enforceable obligations put force behind strong substantive commitments to effectuate human rights standards.<sup>247</sup> Importantly, contracts prevent companies from overstating their performance and remaining complicit in human rights violations.<sup>248</sup> Therefore, the legal obligations included in the Bangladesh Accord, FFP, and WRC promote transparency through mandatory disclosure of a company's standards because there is more access to the data needed to spin the accountability action cycle.<sup>249</sup> Furthermore, contracts address the root cause of supply chain labor violations by placing responsibility at the top of the supply chain to either exert market pressure on the next actor in the supply chain, pay a premium to ensure better working conditions, or directly remedy the problem.<sup>250</sup> Contracts bring benefits like transparency, remediation, and enforcement.<sup>251</sup> Nevertheless, they present challenges that make it difficult to fully advance human rights in global supply chains.

Specifically, the weakness of contractual initiatives lies in their number of participants.<sup>252</sup> Many companies are hesitant to join the Bangladesh Accord because they fear they could face substantial legal liability and reputational damage if they fail to comply.<sup>253</sup> In addition to companies' fear of unlimited liability, signatories of the Bangladesh Accord and FFP demonstrated reservation over the financial commitment because they worry they will lose a competitive edge in

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<sup>246</sup> See Gourevitch, *supra* note 238.

<sup>247</sup> See Hensler & Blasi, *supra* note 10; MAKING GLOBAL CORPORATIONS' LABOR RIGHTS COMMITMENTS ENFORCEABLE: THE BANGLADESH BREAKTHROUGH (June 18, 2013); see Siegmann, *supra* note 156, at 123; see Gourevitch, *supra* note 238.

<sup>248</sup> See Fick, *supra* note 68, at 24.

<sup>249</sup> See Schleifer et al., *supra* note 10.

<sup>250</sup> See Asbed & Sellers, *supra* note 138, at 46-47; see *Model Code*, *supra* note 234.

<sup>251</sup> See Eijsbouts, *supra* note 68, at 196-197; see Fick, *supra* note 68, at 24.

<sup>252</sup> See *generally* Salminen, *supra* note 84, at 416.

<sup>253</sup> Evans, *supra* note 85, at 621; see also Hensler & Blasi, *supra* note 10.

comparison to companies that can simply pay for cheap labor.<sup>254</sup> While the terms of a contract are mandatory, agreeing to be a part of the contract in the first place is voluntary, and hard law can deter companies from taking the first step.<sup>255</sup>

Rather than push away companies by imposing strict rules, voluntary initiatives provide companies with the flexibility and autonomy to carry out their principles according to what works best in their industry.<sup>256</sup> In turn, industry norms can appear in a bottom-up manner and become accepted and legitimized within the industry's culture.<sup>257</sup> Voluntary initiatives can also be powerful forums for stakeholders to identify good practice, learn and experiment, and achieve reform.<sup>258</sup> However, shortcomings are found in the lack of legally enforceable terms.<sup>259</sup> Therefore, voluntary initiatives are merely aspirational smokescreens.<sup>260</sup>

A comparison of voluntary initiatives to contractual initiatives illustrates that soft law may generate cynical indifference, but hard law may generate resistance.<sup>261</sup> Since some liability is better than no liability at all, the solution is found in blending voluntary and contractual approaches to attain social responsibility, otherwise named "KSR."<sup>262</sup> Substantive KSR terms constitute express promises to perform in a way that has positive social or environmental implications.<sup>263</sup> Procedural KSR terms are the contracts' elements that strive to enforce the substantive terms, such as protocols for a potential breach of contract.<sup>264</sup> KSR terms do not often resort to conventional remedies.<sup>265</sup> Instead, companies can develop ways to address the remedies that include working with the supplier and implementing a corrective action plan.<sup>266</sup> A criticism of KSR is that these remedies do not impose meaningful legal obligations on companies or suppliers.<sup>267</sup> However, the specificity and

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<sup>254</sup> Butler, *supra* note 125; Coalition of Immokalee Workers, *The Fair Food Program (FFP) Case – United States* (Nov. 18, 2015), <https://www.ohchr.org/Documents/Issues/Business/ForumSession4/FairFoodProgramCaseUnitedStates.pdf>; Fair Food Standards Council, *supra* note 180.

<sup>255</sup> See Evans, *supra* note 85, at 621-622; see Hensler & Blasi, *supra* note 10.

<sup>256</sup> Ghafele & Mercer, *supra* note 7, at 49.

<sup>257</sup> *Id.* at 57.

<sup>258</sup> MSI INTEGRITY, *supra* note 21, at 80.

<sup>259</sup> Lipson, *supra* note 7, at 1155.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.* at 1117.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.* at 1117, 1120-1121.

<sup>265</sup> *Id.* at 1132.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

possible recourse produced by mixing enforceable and unenforceable terms can have “instrumental and expressive power” that brings significant attention to the parties’ underlying norms.<sup>268</sup> Also, the under-enforceability of KSR terms gives parties flexibility to experiment and adapt in a way that is necessary for KSR terms to advance toward their normative agenda.<sup>269</sup> Therefore, the terms can serve as educative tools, where parties learn how to behave toward one another.<sup>270</sup>

Unlike the Bangladesh Accord and FFP, the WRC offers universities the choice to either create a human rights code similar to the WRC model code or to use the WRC model code.<sup>271</sup> Although the capacity of universities to create a code provides them with a sense of autonomy, they are still bound to the specific enforcement terms of the WRC model code.<sup>272</sup> As discussed previously, hard law can prevent companies from becoming signatories in the first place and hinder the transmission of norms.<sup>273</sup> Instead, it would be effective for universities and companies to create their own human rights policy first to achieve educative and governance goals.<sup>274</sup> Following the creation of the policy, organizations, such as the WRC, can operationalize it through contract.<sup>275</sup>

KSR promises justice because “it is an incremental step in larger efforts to change norms reflecting a wide range of social concerns.”<sup>276</sup> The terms that parties agree on convey norms in a way that is specific to their needs and interests, while also enforcing the promises made.<sup>277</sup> A hybrid between hard law and soft law is a promising approach to advancing human rights because it creates an all-encompassing model that retains the best aspects from the competing regimes: The necessary enforcement component of contractual models and the flexibility and bottom-up fashion of voluntary initiatives.<sup>278</sup>

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<sup>268</sup> *Id.* at 1115, 1132.

<sup>269</sup> *Id.*

<sup>270</sup> *Id.* at 1154-1155.

<sup>271</sup> *Frequently Asked Questions*, *supra* note 223.

<sup>272</sup> *See Frequently Asked Questions*, *supra* note 223.

<sup>273</sup> *See* Evans, *supra* note 85, at 621-622; *See* Hensler & Blasi, *supra* note 10.

<sup>274</sup> *See generally* Lipson, *supra* note 7, at 1154 (observing that KSR terms can express norms in a manner that is specific to the interests of the parties and allow those norms to become internalized).

<sup>275</sup> *See generally* Lipson, *supra* note 7, at 1117 (discussing the interplay between substantive KSR terms and procedural KSR terms).

<sup>276</sup> *Id.* at 1155.

<sup>277</sup> *See id.* at 1154.

<sup>278</sup> *See generally* Lipson, *supra* note 7.

## CONCLUSION

The Bangladesh Accord, FFP, and WRC show that contracts offer crucial elements, like transparency and enforcement, that voluntary initiatives lack. Without contracts, CSR practices would become subordinate to economic motives due to the economic pressures, and companies would create and perpetuate human rights violations. On the other hand, a hard law approach can deter companies from participating in contractual initiatives in the first place. Instead, voluntary initiatives offer a bottom-up approach that attracts companies to participate, but their advancement of human rights is limited. Thus, an effective alternative to regulate CSR is to blend the strengths of both models into an approach that promises flexibility, accountability, and propels the advancement of human rights.