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Professor Michael Posner, Co-Director
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New York University Stern School of Business
44 West Fourth Street
New York, NY 10012

Dear Professor Posner,

Last month, the Center for Business and Human Rights at the NYU Stern School of Business released a report on the garment industry in Bangladesh, its relationship to the supply chain practices of major apparel brands, and two high-profile initiatives underway to address the industry's worker safety crisis – the Accord on Fire and Building Safety in Bangladesh and the Alliance for Bangladesh Worker Safety. Yet, surprisingly, the report's authors focus their criticism of business practices in Bangladesh's apparel industry not primarily on Western brands, but instead on the local factory owners and buying agents who are these companies' suppliers, and, moreover, elide the critical differences in the commitments contained in the Accord and the Alliance. As faculty in the field of labor and human rights, we, the undersigned, offer our perspective on the analysis and prescriptions in this report.

Strangely, the report's authors assert that the main cause of labor rights violations in Bangladesh is local factories surreptitiously subcontracting the orders they receive from brands and they criticize the Accord and Alliance for not covering subcontract factories. The authors claim that subcontract factories are more dangerous than those producing directly for brands, in part because they fall outside the scope of inspection regimes operated by the government and buyers.

This claim, however, is utterly at odds with the facts. *All* of the major disasters that have occurred in the region's garment factories in recent years occurred at facilities that were known by major brands to have produced their goods and had been *repeatedly subjected to labor rights audits conducted for these same buyers*. This list of tragedies includes the fires at Tazreen Fashions (audited for Walmart and others), That's It Sportswear (audited for Gap, VF Corporation, Kohl's, etc.), Garib & Garib (audited for H&M), as well as the Ali Enterprises factory in Pakistan, site of the worst fire in the history of apparel production (audited for the German retailer, KiK). The list also includes the building collapse at Rana Plaza (whose factories were audited for Children's Place, Loblaw and others), the worst industrial disaster in the history of manufacturing.

As this chain of tragedy shows, the main problem claiming workers' lives in Bangladesh is not subcontract factories 'flying under the radar.' Virtually every apparel factory in Bangladesh

lacks fire doors and other rudimentary safety mechanisms. The problem is the systematic failure of both the Bangladesh's government and international brands to effectively police the nation's garment factories, across the board.

Moreover, the claim that the Accord does not cover subcontract factories is entirely incorrect, as a plain reading of the agreement establishing the Accord makes clear. That agreement's requirements apply to *any* factory that produces the goods of any signatory brand – regardless of the number of layers of subcontracting involved.

The authors' analysis of the two most visible safety initiatives currently underway, the Accord and the Alliance, is similarly lacking in rigor. Specifically, not only do the authors take an unjustifiably pessimistic view of the Accord's likely impact, but they downplay the significance of the vital differences between it and the Alliance. The result is a false equivalence, from the perspective of ethical business practice, between the very significant and *enforceable* commitments made by companies that have joined the Accord (including, as we discuss below, a first-ever commitment to provide needed financial assistance to third-party suppliers for safety improvements at their factories) and the much less significant, and effectively unenforceable, promises made by the firms that refused to join the Accord, and, instead, formed the Alliance.

As instances of the report's failure to acknowledge key differences between the Accord and the Alliance are too many to discuss here, we will only note some of the most glaring examples. First, the authors attribute little significance to the fact that the Accord, unlike the Alliance, includes worker representatives (unions) as counterparties to the signatory brands, equating this with the fact that the Alliance, unlike the Accord, includes factory owners in its governance structure. This overlooks the seemingly obvious point that having worker representatives as parties to a factory safety agreement will tend to *promote* its rigorous enforcement, while having the factory owners involved in the governance of such a regime will tend to have the opposite effect. Failing to acknowledge that the absence of worker representatives as signatories to the Alliance agreement means leaving brands – and their chosen appointees – responsible for enforcing the agreement against other brands is indicative of the report's flawed analysis.

Second, the authors appear to view the Accord and the Alliance as equivalent in their legal enforceability, despite the fact that the Alliance's founding companies explicitly justified their decision to create that initiative, rather than join the Accord, based on their wish to avoid risks of greater legal liability under the latter (and that the Alliance's own Managing Director has referred to the Alliance as a "gentlemen's agreement," in contrast to an enforceable contract). Even a cursory reading of the Alliance agreement reveals that these brands achieved their objective. Not only is enforcement of the requirements left exclusively to signatory companies and their appointees, but the maximum penalty that even *could* be applied to a company that fails to fulfill its obligations is to have to leave the program and forfeit modest membership fees it already agreed to pay – hardly a serious deterrent for a firm that has already decided to breach its commitments. By contrast, the Accord is enforceable, by its signatory unions, via the standard mechanism for resolving disputes under commercial contracts: binding neutral arbitration by an adjudicator empowered to issue whatever remedies are needed to address the breach.

Third, the authors deny there is any meaningful distinction between the Accord and the Alliance on the issue of financial support to factories for renovation costs. They attribute no significance to the fact the Alliance only features a *voluntary loan program* for supplier factories in which

signatory companies are not required to participate, while the Accord includes a clear *mandate for signatory companies to provide needed financial assistance to factories for the cost of repairs* (See Accord § 22: "[P]articipating brands and retailers will negotiate commercial terms with their suppliers which ensure that it is financially feasible for the factories to maintain safe workplaces and comply with upgrade and remediation requirements instituted by the Safety Inspector. Each signatory company may, at its option, use alternative means to ensure factories have the financial capacity to comply with remediation requirements, including but not limited to joint investments, providing loans, accessing donor or government support, through offering business incentives or through paying for renovations directly."). The authors could have made a reasonable argument that this obligation may in some cases take hard work to enforce – since brands have never previously accepted such a burden – but to deny that the obligation *exists* is to ignore the plain text of the agreement.

The authors' unwillingness to consider the assistance that the Accord brands are required to provide factories when needed to meet renovation costs – and the absence of a similar requirement under the Alliance – as a signal difference is striking, particularly given their stated concern that factory owners will forgo renovations for lack of funds. Yet if factories' lack of financial resources is a key obstacle, then why isn't financial assistance for factories that need it, which is an obligation under the Accord, a crucial advantage? And, conversely, why isn't the absence of *any* requirement to provide such assistance under the Alliance a critical flaw?

In conclusion, the report's analysis of the causes of the country's factory safety crisis and its evaluation of the initiatives underway in response is flawed and misleading. It obscures the central role of brand practices in creating the crisis, makes claims about relative safety levels at different categories of factories that are demonstrably false, and blurs the profound differences between the Alliance – another unilateral and, for all practical purposes, voluntary corporate scheme – and the Accord, a groundbreaking labor-management contract that legally obligates brands, for the first time, to take financial responsibility for ensuring improved working conditions in their overseas contract factories. By failing to acknowledge the stark differences in the nature of these two commitments, this report squanders an important opportunity to shed light on what is being done by some brands, and not being done by others, to avert the next Rana Plaza.

Sincerely yours,

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