



# Protecting Rights at the End of the Line:

## Stakeholder Engagement in Light Manufacturing



**UConn**

May 2018

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## Table of Contents

Foreword.....	1
Executive Summary.....	3
<b>PART ONE. Multistakeholder Initiatives (MSIs).....</b>	<b>5</b>
1.1 Evaluating MSIs .....	5
1.2 The Shifting Vocabulary of MSIs.....	6
1.3 Challenges Facing MSIs.....	6
1.4 Barriers and Country-level Challenges .....	7
<b>PART TWO. Trends.....</b>	<b>9</b>
2.1 Worker-based CSR.....	9
2.2 Cooperatives and Social Enterprise.....	10
<b>PART THREE. New Models and Approaches.....</b>	<b>11</b>
3.1 Examples .....	11
3.2 The Role of Stakeholders .....	12
<b>PART FOUR. Tools for Protecting Human Rights in the Supply Chain .....</b>	<b>16</b>
4.1 Training.....	16
4.2 Contracts .....	16
4.3 Technology.....	16
4.4 Data .....	16
<b>PART FIVE. Next Steps.....</b>	<b>18</b>
5.1 Areas for Additional Research.....	18
5.2 Convene Inclusive Meetings .....	18
5.3 Social Reporting.....	18
5.4 Data.....	18
5.5 Global Policy .....	19
5.6 Corporate Governance Reform .....	19
Appendix A.....	19
Appendix B.....	20
References .....	21



## Foreword

The Business and Human Rights Initiative at the University of Connecticut is a partnership of the Thomas J. Dodd Research Center, the School of Business, and the Human Rights Institute. It is dedicated to developing and supporting multidisciplinary and engaged research, education, and public outreach at the intersection of business and human rights.

The idea that people in communities affected by a company's production activities (i.e., its stakeholders) have the right to remedy if they are harmed by a company's activity—even if they don't personally work on a farm or a factory where goods are produced—is integral to the field of business and human rights. Together, businesses, governments and civil society are supposed to be jointly responsible for shaping the remedies available to people harmed in the course of business activity, wherever it takes place. Yet community members are not routinely engaged in identifying risks or potential ways that companies can add social value in the communities where they operate globally. This is particularly evident in light manufacturing, such as the garment and apparel industry.

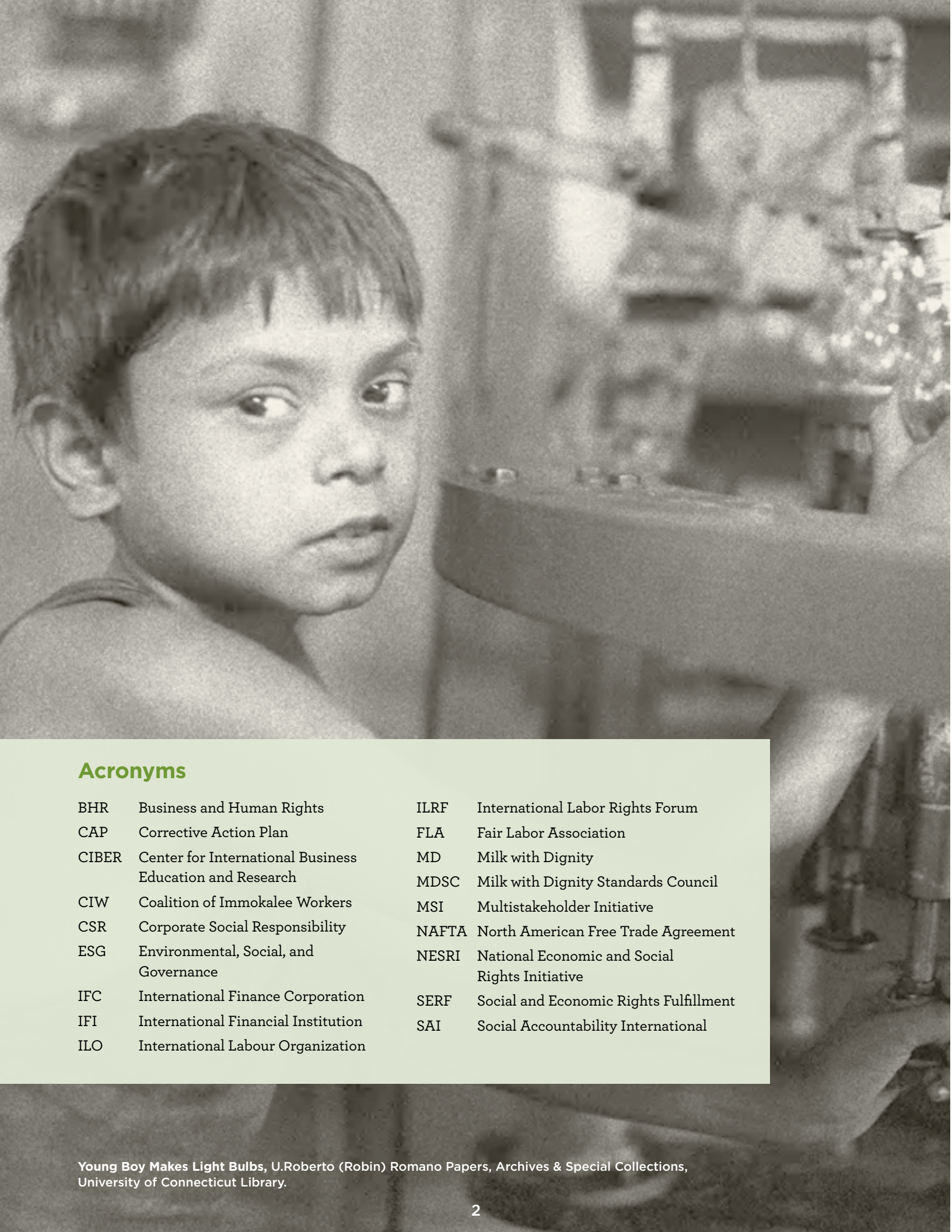
On October 5 and 6, 2017, the UConn Business and Human Rights Initiative hosted a conference entitled “Protecting Rights at the End of the Line: Stakeholder Engagement in Light Manufacturing,” with the objective of exploring the challenges of stakeholder engagement and potential areas of innovation. The invited speakers represented the business, public policy, social activist, trade union, and academic communities across the United States and countries throughout Latin America, Europe and Asia. The lively and thought-provoking discussions that they fostered drove and sustained the conference. The conference would not have been possible without the tireless efforts, unflagging enthusiasm, and faultless attention to detail of Erica MacDonald and Nana Amos. UConn undergraduate and graduate students from the College of Liberal Arts & Science, the School of Engineering, and the School of Business served as rapporteurs and assistants. We express our heartfelt thanks to them all. We are also grateful to UConn's Center for International Business Education and Research (CIBER) for support in the production and distribution of this White Paper.

The pages that follow outline and elaborate upon the conference discussions. Author Deborah Leipziger is a thought leader in her own right, and we are grateful for this contribution to ongoing debates about community engagement and access to remedies in business and human rights.

Shareen Hertel  
*Conference Chair*

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*Director, Business and Human Rights Initiative*

May 2018



## Acronyms

BHR	Business and Human Rights	ILRF	International Labor Rights Forum
CAP	Corrective Action Plan	FLA	Fair Labor Association
CIBER	Center for International Business Education and Research	MD	Milk with Dignity
CIW	Coalition of Immokalee Workers	MDSC	Milk with Dignity Standards Council
CSR	Corporate Social Responsibility	MSI	Multistakeholder Initiative
ESG	Environmental, Social, and Governance	NAFTA	North American Free Trade Agreement
IFC	International Finance Corporation	NESRI	National Economic and Social Rights Initiative
IFI	International Financial Institution	SERF	Social and Economic Rights Fulfillment
ILO	International Labour Organization	SAI	Social Accountability International

# EXECUTIVE SUMMARY



Every day in homes and workplaces around the world—from the largest cities to the most remote places—people are connected by our decisions to use products made by other people we will never see. Often, we give little thought to the challenge of protecting the rights of some of the most vulnerable workers and community members affected by business activities integral to global supply chains. Despite several decades of efforts to monitor and audit human rights in supply chains around the world, problems persist in workplaces and communities where light manufacturing takes place globally.

On October 5 and 6 2017, policy makers, business leaders, activists, trade union leaders, researchers, and academics convened at the University of Connecticut to grapple with the potential and limits of strategies for protecting human rights and promoting social and environmental sustainability in the light manufacturing sector. This White Paper distills the essence of their insights and highlights key trends, tools, and best practices that emerged from these discussions.

This White Paper examines the outcomes from the conference, focusing on the following questions:

- What are the lessons learned from the more than two decades of initiatives to promote business and human rights?
- How can businesses and human rights organizations collaborate more effectively to protect the rights of people affected by global business activity?

## **Part One of this White Paper provides an overview of existing multistakeholder initiatives (MSIs)**

and criteria for evaluating them. For more than two decades, conventional MSIs have created systems for auditing and monitoring supply chains and for engaging community members affected by business activity. Yet these widespread efforts have not yielded the systemic changes necessary to improve human rights in manufacturing settings and surrounding communities. This section explores a number of barriers that limit the effectiveness of conventional MSI approaches at both the macro and micro levels.

## **Part Two examines several trends, including the emergence of worker-driven social responsibility.**

Initiatives such as the Campaign for Fair Food and Milk with Dignity are examples of a new wave of worker-driven responsibility approaches, developed by workers themselves in order to increase respect for their rights and the rights of people affected by business activities in their communities.

**Part Three provides examples of new incentives and business models** that have the potential to create systemic change in the field of business and human rights (BHR). Throughout the conference, there was consensus that every link in the supply chain counts. This White Paper examines the links in the supply chain, extending the lens outward to encompass workers and the communities where they live. It also explores concrete ways to reinforce and strengthen human rights on multiple



levels through stakeholder engagement. In addition to workers and community members, some stakeholders—such as investors and retailers—need to be engaged more directly through BHR initiatives than they currently are. A more robust role for community members is also key. There is thus a need for new types of alliances between stakeholders and new mechanisms to foster trust between them.

**Part Four offers examples of tools for protecting human rights in the supply chain and beyond.**

These include mechanisms for building capacity through training along with new technologies such as geo-mapping and cell phone technology for use in monitoring, compliance and commu-

nity development.<sup>1</sup> Changes in contracting between brands and suppliers can also be a tool for addressing human rights. This section also includes useful sources of data and maps developed in relation to these innovations.

**Part Five addresses next steps, outlining areas for new research and emphasizes the need for inclusive meetings like this conference.**

This final section also explores policy options for financing human rights promotion, such as a global financial transaction tax, and options for democratizing the corporate form.



**RugMark-Inspected Factory**, U.Roberto (Robin) Romano Papers, Archives & Special Collections, University of Connecticut Library.

# PART ONE. MULTISTAKEHOLDER INITIATIVES (MSIs)



There are a wide range of existing approaches to workplace-based labor and environmental monitoring, compliance and certification, as well as multistakeholder engagement. Discussions during the first day of the conference focused on assessing the current landscape. The following are key outcomes of those discussions:

## Working definitions:

- *Stakeholders* include all the actors affected by a particular corporation's activity—from trade union representatives and investors to representatives from civil society and government.
- MSIs<sup>2</sup> are tools for collective action in which a wide range of stakeholders create a platform and corresponding mechanisms for addressing human rights and social and environmental sustainability, both in the workplace and in communities affected by business activity.

## Ideal features of MSIs:

- Collectively develop standards that clarify and seek to operationalize actor responsibilities in a particular issue or area;
- Involve the voluntary participation of all actors impacted by a particular firm's activities;
- Work to create vehicles for building mutual consensus and shared decision-making; and
- Seek to ensure that all stakeholder groups are represented.

## CHART 1: Examples of Existing MSIs

- ▶ Fair Labor Association
- ▶ Social Accountability 8000
- ▶ Ethical Trading Initiatives
- ▶ Worker Rights Consortium
- ▶ Business Principles for Countering Bribery
- ▶ Voluntary Principles on Security and Human Rights
- ▶ Extractive Industries Transparency Initiative

Source: Deborah Leipziger, *The Corporate Responsibility Code Book*, Greenleaf, 2016.

## 1.1. Evaluating MSIs

MSIs have a wide range of functions. Some campaign to increase worker, consumer and/or public awareness of business and human rights issues. Others focus on building the capacity of workers or community members. Still others engage in litigation.

## CHART 2: Activities of MSIs

- ▶ Capacity building such as training
- ▶ Creating standards or codes of conduct
- ▶ Monitoring
- ▶ Addressing complaints and appeals
- ▶ Campaigning and raising awareness
- ▶ Remediation
- ▶ Litigation

Source: Deborah Leipziger, 2016.

### Criteria for evaluating MSIs:

- *Do they provide information to otherwise unconnected stakeholders, such as affected workers and members of communities?*
- *Do they include workers and communities in the compliance evaluation processes?*
- *Do they ensure access to grievance mechanisms and a role in governance for both workers and community members?*
- *Do they provide analysis about the accountability and efficacy of members' efforts?*
- *Do they provide a forum for information exchange and collaboration among otherwise unconnected stakeholders?*

### Key Challenges

In many developing countries where light manufacturing and/or product sourcing takes place, there is an absence of government action to enforce basic labor and environmental laws, or to provide public security. MSIs thus often function to fill governance gaps for local people in such settings. Governments that participate in MSIs tend to be those of industrialized countries where many corporations are headquartered—rather than the governments of developing countries where manufacturing and sourcing actually take place.

For example, the *Voluntary Principles on Security and Human Rights*<sup>3</sup> seek to address the needs of people impacted by business activity in the extractive sector. While the governments of Colombia and Ghana are members of the Voluntary Principles, many of the states where mining takes place in the developing world do not participate in this MSI.

## 1.2. The Shifting Vocabulary of MSIs

New governance frameworks are thus emerging for MSIs, along with new terminology:

- **Co-governance:** When workers play a key role in the implementation and monitoring of agreements. To do so, workers need day-to-day access to reports and to the mediation process.
- **Co-enforcement:** When both firms and trade unions share the responsibility for enforcing agreements.
- **Auditing for social transformation:** When audit data is shared with workers so that they can function as catalysts for system-level change.

## 1.3. Challenges Facing MSIs

There is considerable room for MSIs to improve. Knowledge gaps persist about what good practice “looks like” on the ground. According to a 2017 report from MSI Integrity, only 40 percent of MSIs have adequate grievance mechanisms and only 14 percent of those include workers in their governance (Collins et alia 2017).

As described by a conference participant based on research in the Philippines, Cameroon, and Nigeria, several themes emerge:

1. **Local context is important** for MSIs to understand. Lack of information about MSIs is one of the critical barriers workers face. Sixty four percent of workers at MSI-certified factories were unaware of the MSI's existence or how they were protected. The legal context also plays an important role in the success of an MSI. The Philippines, like many countries, has weak worker protections, infrequent enforcement, a clogged judicial system which can take decades to resolve conflict, and ineffective legislation. In addition, temporary contracts and unjustified dismissal are common





**Trucks Halted At Roadblock As Truckers Declare Strike**, U.Roberto (Robin) Romano Papers, Archives & Special Collections, University of Connecticut Library.

practices. Given these factors, emphasis needs to be placed on confidentiality, where interviews with workers are conducted off-site to minimize possible retaliation.

2. **A rights-based approach** for MSIs engaging with workers in the factory context is key, particularly around issues of wages, harassment, dismissal, and management-labor commitments. With the threat of factory closings looming (particularly pronounced in the Philippine context, even within MSI-certified factories), factories tend to follow the lowest common denominator, such as standards weaker than the International Labor Organization (ILO) and the default to national law. This is too low. Standards will drift downward and unaddressed grievances will add up in these situations. Attempts to unionize are often shut down by firings in MSI-certified factories. Many MSIs are compliant with national standards, but not ILO standards. Therefore it is important that MSIs ground values, standards, and policies in international labor rights standards.

### 3. **Levels of worker interest in MSIs are high.**

Across the board, workers consistently showed interest in more training and engagement with MSIs. This was observed in the Philippines and in other contexts. Researchers found examples of organic MSI engagement. Observers visiting a non-MSI certified electronics factory found that workers had independently researched buyers and reached out to buyers about worker concerns within factory.

## 1.4. **Barriers & Country-level Challenges**

### **Towards Sustainable Compliance**

Promoting human rights in the workplace and in communities affected by manufacturing activity requires *sustainable compliance*; it focuses on addressing the root causes of social and environmental problems through *changes in the business model itself*. Sustainable compliance thus involves making complaint functions as accessible as possible for workers and having a clear timetable for the resolution of complaints.

A leading practitioner involved in the conference argued that “the tent of MSIs needs to be enlarged to address noncompliance; it must involve employers, government, and international financial institutions (IFIs) in addressing the root causes of problems and searching for structural remedy. We need to assess the full scope of problems.”

Barriers to sustainable compliance are still prevalent at multiple levels. At the macro level, there is need for concerted action by states. A representative of a human rights organization involved in the conference mentioned that the initial intent of the *UN Guiding Principles on Business and Human Rights* was to fill governance gaps with a view toward greater regulation in that space. But this has not happened. “We need governments in the US and Europe to set a regulatory framework in corporations’ home countries. We also need host countries to step up and fill governance gaps. MSIs are attempting to fill the regulation gap, but the burden of regulation should be placed on governments. Consumer-based demands on how products are made can catalyze change, but challenges persist in markets where local people don’t demand better labor conditions.”

### **Infrastructure**

Governance gaps in industrialized “home” countries (where many companies are headquartered) and in developing “host” countries (where sourcing and production take place) place human rights and environmental sustainability at risk.

The lack of infrastructure stems from governance gaps that exist in many host countries. For example, in many developing countries where manufacturing takes place, the electrical grids are over-stretched, creating fire safety problems. Governments and global development and finance institutions need to collaborate to upgrade these

grids. These issues extend beyond what brands can do alone. *The Bangladesh Fire Safety Accord*<sup>6</sup> involves electrical, fire safety, and structural reforms across 217 brands; but brands alone are not enough, there is a need to engage skilled engineers as well.

One leading practitioner noted: “as supply chains shift from Asia to Africa, we’re collectively poised either to repeat history or to do something different. The next three million people born will be born in Africa; how do we fill governance gaps, even around basic things like access to water and sanitation?” There was consensus at the conference that the tent of MSIs has to be enlarged to involve employers, governments, international financial institutions, and community members themselves in addressing the root causes of problems and searching for structural remedy. MSIs need to assess the full scope of problems.

### **Purchasing Practices**

Several academics and representatives of civil society involved in the conference argued that purchasing practices by brands lead to abuses of workers’ rights. They claimed that it is the brands and retail marketplace norms that dictate purchasing practices, often instituting tight production deadlines with financial penalties for missing them. These norms lead to abuses of working hours, work place accidents, and subcontracting to factories outside the scope of auditors or trade unions.

A representative of a product licensing organization pointed to the need for purchasing practices that promote trust and position suppliers for success in sustainable compliance. The Better Buying initiative<sup>7</sup> was one program discussed which seeks to improve purchasing practices (see below).

## PART TWO. TRENDS



The second day of the conference focused on emerging trends that offer alternatives to conventional MSIs, including:

- Worker-driven Social Responsibility; and
- Cooperatives and other forms of social enterprise.

While not yet widespread in the light manufacturing sector, these types of approaches are nevertheless applicable. Such models offer an alternative to conventional corporate social responsibility (CSR) approaches to protecting rights, negotiating benefits, and managing the relationship between firms, workers, and communities.

In initiatives such as the Campaign for Fair Food and Milk with Dignity, workers themselves are centrally involved in developing codes of conduct and in providing peer-to-peer training on workers' rights and labor standards. Both initiatives have resulted in significant advances in access to a living wage, improved labor conditions, and attendant benefits for communities where they have emerged in the United States.

### 2.1. Worker-driven Social Responsibility (WSR)<sup>8</sup>

**Worker-driven Social Responsibility includes:**

"[S]ystems for enforcing the social and environmental sustainability of global supply chains in which workers themselves are the driving force behind creation, monitoring and enforcement of rigorous, legally-binding standards."

(Source: <https://wsr-network.org/what-is-wsr>, Retrieved March 12, 2018.)

#### **Key characteristics:**

1. Workers are the primary negotiators (i.e., there are no brokers in between).
2. Enforcement is focused (i.e., there are no standards without enforcement).
3. Responsibility is placed at the top of the supply chain.
4. Workers themselves define what change should look like. (For example, the Coalition of Immokalee Workers in Florida's tomato sector pushed to eliminate the practice of "cupping" of tomato buckets, which led to a ten percent increase in wages following years of wage theft from cupping. This structural change in wages has been institutionalized through the Campaign for Fair Food.)
5. Worker-to-worker communication increases confidence. (For example, in the Coalition of Immokalee Workers, peer-to-peer education on labor standards has led to the development of a robust complaint mechanism.)
6. Complaint resolution mechanisms are robust. The revelations of problems demonstrate that mechanisms are working.
7. Market consequences and sanctions are in place.
8. Human beings are viewed as part of the solution, not the problem.

As a representative of a workers' rights organization that has been active in forging worker-driven social responsibility mechanisms noted: "When you transform the workplace, you transform the community. Democratizing power is humanizing."





**Jhaldak and Jit Studying**, U.Roberto (Robin) Romano Papers, Archives & Special Collections, University of Connecticut Library.

Examples of worker-driven social responsibility include the Fair Food Program<sup>4</sup> and Milk with Dignity.<sup>5</sup> These are explored briefly below and in further detail in Appendix A and Appendix B.

### The Fair Food Program

Created by the Coalition of Immokalee Workers (CIW), the Fair Food Program has been a very effective model of worker-driven social responsibility that ensures humane wages and safe working conditions in the US market for fruits and vegetables (see Appendix A).

(Source: <http://www.fairfoodprogram.org>, Retrieved February 13, 2018.)

### Milk with Dignity

The Milk with Dignity program is based on worker co-governance and co-enforcement of labor standards in the Vermont dairy sector (see Appendix B).

(Source: *Migrant Justice*, <https://migrantjustice.net/milk-with-dignity>, Retrieved February 13, 2018.)

## 2.2. Cooperatives and Social Enterprises

Another nascent trend involves working with cooperatives to promote sustainable compliance in the supply chain. Participants in the conference referenced a number of examples, including:

- *Fashion company Kate Spade*: sources scarves, bracelets, and bags from a Masoro cooperative in Rwanda; offers financial literacy and personal health training; and provides fair wages and benefits—thus promoting the economic empowerment of women (<https://www.katespade.com/collections/on-purpose/learn-more>).
- *Clothing company EILEEN FISHER*: sources artisanal scarves from cooperatives composed of women with HIV through Indego Africa to promote income-generating opportunities for women (<https://indegoafrica.org/blog/indego-africa-x-eileen-fisher>).
- *Brazilian cosmetics company Natura*: sources fruits and nuts from cooperatives in the Amazon rain forest; provides training in some techniques for manufacturing and processing of raw materials; and pays a living wage—thus sustaining livelihoods and creating incentives to prevent deforestation (<https://bthechange.com/natura-building-a-new-economy-in-the-amazon-f5279b79801a>).

## PART THREE. NEW MODELS AND APPROACHES



“We need new concepts, vocabulary, data, and immediate steps,” one academic involved in the conference commented, reflecting a widely held view. Participants highlighted several strategic partnerships, which they viewed as creating incentives for transparency and accountability in supply chain management. They emphasized capacity-building and training along with concrete reward systems and incentives for a wide range of stakeholder engagement.

### 3.1. Examples

- **Better Buying** is a system for rating purchasing practices of brands and retailers. Suppliers rate brands and retailers in seven categories of purchasing practices such as planning and forecasting, design, and development. The system has two key attributes: first, supplier anonymity; a minimum of five rating sources are aggregated in order to create a score. The names of suppliers are never disclosed. Second, results are made public after two rating cycles, which allows the opportunity for brand improvement and encourages a “race to the top” mentality between brands rather than a shame-and-blame approach. Top-down approaches to accountability are limited since suppliers will not jeopardize their commercial relationships. Further, most auditing systems do not rate brands. Better Buying offers a vehicle for reversing accountability so all parties are aware of their compliance challenges.<sup>9</sup>
- **Direct Notification Hotlines** use cellphone technology to increase the accessibility of workplace grievance reporting.<sup>10</sup> Since 2010, cellphone penetration in developing countries has increased significantly; today, the average factory worker either owns or has access to a mobile phone. The Amander Kotha Hotline was created as a safety measure following the Rana Plaza collapse in Bangladesh. It operates 24 hours per day for seven days a week and is accessible to 1.3 million workers in 933 factories in Bangladesh. Workers use the hotline to report safety, harassment, wage, and overtime concerns. Every worker who attends training by participating companies plugs the number into his or her phone. If a reported issue is not resolved within five days, the brand or retailer is notified. Workers often use the Hotline (like 911) to report neighborhood fires. Hotline workers connect callers to local emergency services and follow up.<sup>11</sup>
- **The Social Fingerprint** program created by Social Accountability International (SAI) takes the concept of compliance and applies it to management systems by developing tools for self-assessment, external consultation, improvement plans, targets for improvement, and accountability measures. Grounded in the concept that “No one is perfect,” the program rates participants on the maturity of performance and traces change over time (on a 1 - 5 scale); it can be adapted for use in factory or farming production and by licensing sectors or brands.<sup>12</sup>
- **TenSquared** is an SAI training program, in partnership with the Rapid Result Institute, which involves workers directly in developing plans for improving social, environmental, and production practices. Peer elections are the vehicle for creating teams of workers and managers, each of whom develops his or her own 100-day set of challenges and work plans.

The challenges identified collectively are meant to be bold. (If participants rate their goals as a “5” on a 1 to 10 confidence scale for completion, participants must redo the task to make it harder.) First implemented in Brazil, Ten Squared has extended to Turkey and China, across 15 industries. Factories use their own workforce (rather than hiring external consultants) to find solutions and emphasize worker training and capacity-building, which can cascade into communities. Replacing auditing with actual remediation means that tools remain long after evaluators leave. This approach shifts the power imbalance in supply chains by pushing for public transparency and the co-creation of solutions.<sup>13</sup>

- **Open Hiring** is a model pioneered by Greyston Bakery which involves hiring marginalized people, such as refugees, people formerly incarcerated, or veterans and helping them to become part of the economy. The Open Hiring model provides a holistic system of support, including access to training, child care, and housing to allow people to make the transition into the formal economy (Leipziger 2013).

### 3.2. The Role of Stakeholders

Participants in the conference agreed that people in a variety of settings along the supply chain play a role in promoting human rights and ensuring social and environmental sustainability in light manufacturing.

Key stakeholder engagement includes the following entities:

#### Trade Unions and Worker Organizations

Trade unions and worker organizations have a pivotal role to play in negotiating the terms of implementation of both workers’ rights and labor standards and in securing a participatory environment for negotiations. Participants in the conference agreed that co-governance between companies and trade unions (or worker organizations) ensures that once agreements are established, workers have a key role in implementation and monitoring efforts. Representatives

from trade unions emphasized that workers also need access to reports and mediation processes to ensure transparency.

An advisor to an international trade union federation detailed efforts by trade unions to use capital markets as a vehicle for influencing corporate decision making on social and environmental sustainability—particularly when there are serious human rights violations present in the workplace and other channels have been exhausted. Engagement with institutional investors ranges from one-on-one meetings to crafting shareholder resolutions (i.e., attending general meetings, raising questions, and sending letters to investors).

Environmental, Social and Governance (ESG) indicators can be used to influence ethical investment policy and offer a vehicle for advocacy in this arena. ESG criteria cover issues relevant to investors that are not strictly financial. Human rights fall under the “social” category within this rubric. But the criteria for determining the environmental and governance aspects of ESG are much better specified than the social. Indeed, the comparably underspecified nature of social indicators means labor rights fare poorly in ESG advocacy (Baumann-Pauly and Nolan 2016; O’Connor and Labowitz 2017).

According to research from the University of Glasgow, freedom of association and collective bargaining are currently the least well-addressed themes in labor rights (Kollman and Favotto 2017). Participants at the conference agreed that making the business case for human rights remains challenging – particularly setting a baseline, since unionization is argued by some to drive up overall costs.

Recommendations made by participants included:

- ***Broadening the investment dialogue beyond financial concerns*** in order to include social concerns (i.e., inequality, unsafe work) and making the case for labor rights to businesses in a societal sense;
- ***Raising the awareness of investors around labor rights*** and framing freedom of association as an enabling right that helps workers realize other rights;



- **Framing collective bargaining** as a peaceful problem-solving measure, not just “another cost”;
- **Learning from past efforts that transformed climate change** into an investment issue and adapting advocacy strategies for labor rights accordingly;
- **Innovating to develop universal investment criteria** (e.g., on inequality; precarious work; and the wide violations of social rights); and
- Exploring the **Committee on Workers’ Capital Guidelines** on worker human rights and labor standards.

### Retailers

Participants agreed that engaging retailers is critical to enhancing human rights in global supply chains, particularly in consumer-facing industries such as light manufacturing.

An apparel producer who has been sourcing internationally for three decades and has been actively engaged in human rights compliance activities noted that the product he can produce today is sold more cheaply than ever at retail. While workers, governments, and owners are engaged in BHR efforts, the retailing community is not at the table.

Participants more generally noted the lack of incentives for retail companies to engage in BHR; continued downward pressure on prices leads to the subcontracting of forced labor. Second and third-tier suppliers experience the most intense pressure which in turn erodes transparency overall—yet they are often left out of multi-stakeholder negotiations and broader business and human rights training and engagement, participants noted.

This cycle will continue until retailers become integral to increasing visibility in value chains. Another corporate representative pointed to the lack of consumer pressure as a key factor affecting the lack of a firm commitment from retailers to support BHR.

Ultimately, the diversity of players in light manufacturing can be a strength, not a weakness, in creating the conditions for safeguarding business

and human rights. As a licensing company representative argued: “in the pursuit of systemic change a higher amount of engagement is needed to drive all actors (not just the large famous multinational brands) to be cognizant of their roles and responsibilities for respecting human rights in their respective spheres of influence.”

### Consumers

There was recognition among participants that many (though not all) consumers are unwilling to pay higher prices for products made in workplaces where human rights are respected. In part, this unwillingness stems from the lack of credible social labeling systems and/or from the relative lack of availability of a specific type of product. In part, changing consumer behavior also depends on changing the “moral framework” of consumers and brands – through peer pressure and/or shaming, one participant argued. Yet when workers fear retaliation and when governments fear capital flight, they will not be comfortable being the first voice. “Outside voices and international voices need to apply pressure.” A representative from a human rights organization argued that there is a need for consumer education in both home and host-country markets.

### Investors

A corporate representative who took part in the conference expressed the need for mainstream institutional investors to address BHR. Currently, investors do not reward the best human rights practices, although they could become an important driver for change. Investors could promote “capital stewardship” by filing shareholder resolutions (vis-à-vis publicly-held companies) or by engaging with the CEOs of companies they invest in. One of the limitations of this approach is that most investor frameworks only look at policies, not actual performance. As noted above, corporate reporting on ESG practices is flawed; the least well-defined aspect is the social data (in comparison to strong environmental standards reporting). To carry out effective due diligence in relation to industry-wide standards would require data validation by third parties.

## Universities

Through their procurement and sourcing, universities (i.e., faculty, students and staff including licensing agents) can play a role in promoting BHR. Pressure from students and faculty has led to greater awareness and momentum on college campuses to promote BHR, especially in relation to the licensed production of collegiate apparel.

A representative involved in collegiate apparel licensing laid out steps for ensuring corporate accountability, as follows:

- Step 1: Identify the origin of products.
- Step 2: Identify governance gaps and avoid offloading the responsibility for human rights onto other players in the chain; take the challenges on directly. Companies educated about their supply chains and their role in them are then more open to transparency. They seek information and dig deeper to identify links in the decision-making chain. This yields higher efficiency as well.

In addition to collegiate apparel, major challenges persist in the “promotional products” sector. There are 2,500 small and medium-sized licensees for ephemera; they are very dispersed which makes tracking business-to-business interactions challenging. A quarter of promotional product companies have some visibility and 15 percent have high visibility; others have no visibility.<sup>14</sup> The promotional product sector is dominated by business-to-business deals, as opposed to business-to-consumer interaction.

## International Financial Institutions (IFIs)

Participants agreed that international financial institutions (such as the World Bank Group, the regional development banks, and the International Monetary Fund) have a role to play in structuring their financial commitments so as to enhance BHR—particularly through changes to the criteria for financing of infrastructure and other sector-wide approaches. For example, the International Finance Corporation (IFC) already requires performance standards within its loan

agreements, which could be adjusted to allow for the integration of higher labor standards. Current policy debates in this arena focus on reconciling proposed IFI policy reforms with national law.

## Governments

Public regulation is not typically the default mechanism used internationally in the BHR arena, despite the existence of hundreds of ILO conventions on labor rights and scores of UN and regional human rights treaties. The emergence in the early 2000s of the *UN Guiding Principles on Business and Human Rights* offered a new tool for holding key actors accountable for rights protection, but weak state capacity and limited political will to enforce labor and environmental rights persist in many countries where manufacturing takes place.

Trade policy set at the national level is a key tool available to governments for promoting a business and human rights agenda. Examples include the United States *Dodd Frank Act Section 1502* and the *US Omnibus Customs Reform Bill* barring the importation of items produced with forced or indentured labor. A former government representative involved in the conference emphasized the need for government and businesses to work together to enforce local labor laws (and to hold other countries accountable for doing so) along with the need to promote smart regulations and monitoring practices. Participants agreed that “genuine commitment” from states is critical to safeguarding rights, “even if they are struggling.” By creating a “bigger tent” for BHR, governments become “part of the platform”—though specifying “a comprehensive plan and a price tag for financing this comprehensive type of improvement” is challenging across country contexts.

Regulatory frameworks are emerging around the world to address business and human rights, driven by national-level social movements and legislative action. The United Kingdom has passed landmark anti-slavery legislation; Australia is intending to do so; France has passed a “Duty of Vigilance” law covering due diligence; while the Netherlands is focusing on child labor-related

regulatory reforms; Ecuador has introduced a resolution into the UN Human Rights Council regarding a treaty on BHR.

This regulatory cascade begs the need for smarter regulation based on the careful assessment of what has worked (or not) in this area – with particular attention to potentially negative unintended consequences. One business representative offered the example of a textile supplier that had been focused on addressing documented environmental risks from wastewater disposal and was pulled off-task to develop traceability reporting on potential conflict minerals in its supply chain (e.g., tin, tantalum, tungsten, and gold) in conformance with provisions of the *Dodd Frank Act*. Tradeoffs between human rights compliance efforts can weaken firm-level ability or willingness to address social and environmental risks comprehensively.

Another industry participant in the conference signaled the risk of regulatory fragmentation due to multiple requirements for reporting. While disclosure is important, fragmented reporting can take time and effort away from concrete efforts to address real problems, creating a lopsided emphasis on communications over concrete steps to promote BHR.

Participants agreed that a central challenge remains: how to develop binding mechanisms for enforcing trade rules on labor and environmental rights. Governments – of both developing and industrialized countries – risk directly or indirectly contributing to a regulatory race to the bottom in the wake of competitive pressures. Stakeholder groups thus have a unique opportunity to influence trade and procurement policy formation directly. Many have already done so by focusing on human trafficking; others are focusing on regional trade negotiations (such as re-opening and strengthening key provisions of the North American Free Trade Agreement (NAFTA)).

### **Community Members**

The people affected by light manufacturing extend well beyond employees to include family members as well as others who live and work in communities where factories are sited worldwide. Participants who work with grassroots organi-

zations in the global South and with members of economically and racially marginalized communities in the United States were quick to note that existing MSIs often exclude community members—particularly women—from meaningful engagement.

The challenge is to engage women and others often on the fringes of MSIs in the design and implementation of more inclusive forms of organizing labor and economic rights compliance and development strategies in the light manufacturing sector. An example of such an approach has been pioneered by a joint academic-practitioner-community-based team at the University of the Philippines Law Center, where collaborators have developed a *Human Rights Impact Assessment* applicable to mining programs in the south of the Philippines. Here, indigenous peoples have been displaced routinely without full, prior, and informed consent. The impact assessment tool thus focuses on equipping community members with information on human rights due diligence assessment as well as remediation processes and impact assessment criteria.<sup>15</sup>

Globally, women are becoming more organized in the informal economy, rather than through formal trade unions (which have been historically male-dominated in many countries). The emerging models for organizing people in the informal sector can be adapted by the NGO community for use with people in the manufacturing sector, participants argued—particularly given the emphasis on sustainability, gender inclusion, and participatory governance.

### **Additional Missing Stakeholders**

Several layers of the supply chain have not been fully integrated in protecting human rights, including second and third tier suppliers. Governments from the global South are also missing stakeholders in MSIs. One trade union leader noted that cost pressure has been pushed down through the supply chain, but that accountability needs to be moved further up the chain.



## PART FOUR. TOOLS FOR PROTECTING HUMAN RIGHTS IN THE SUPPLY CHAIN

Participants highlighted the following tools as central to improve human rights in workplaces and communities affected by global manufacturing.

### 4.1. Training

Training is needed at multiple levels: to build the capacity of workers; to train suppliers on human rights; and to increase the capacity and commitment of companies and brands to create systems for addressing complaints.

Educating companies in the collegiate apparel sector to become more engaged in promoting BHR is a first step – particularly around issues related to freedom of association. Building the capacity of small entrepreneurs in the collegiate product sector is challenging, a supplier who took part in the conference noted. While the product offerings of small businesses are growing, firms this size often lack guidance in BHR and are unlikely to travel to visit their supply chain on a regular basis.

### 4.2. Contracts

Contracts are central to stipulating the business and human rights responsibilities of supply chain partners. Participants noted that new software is available to streamline the process of designing contracts and crafting social auditing protocols. Participants also referred to new types of software for managing contracts and social auditing. Participants also stressed the importance of

long-term contracts, which create safeguards for suppliers who invest in human rights compliance: a longer-term contract helps ensure that brands will not simply shift suppliers, leaving the supplier with the sunk cost of investment in human rights initiatives.

### 4.3. Technology

Activists and companies alike are using technology to enhance the protection and promotion of human rights in the supply chain. Geo-mapping technology can be used to track the occurrence of child labor and other human rights abuses; some 80,000 children have been rescued from forced child labor in India,<sup>16</sup> in part due to the ability to create databases of children at risk. Likewise, companies are using technology to map supply chains and to avoid selecting suppliers in locations known to be sites of egregious human rights abuses. Access to cell phones is changing the nature of worker participation in promoting BHR. Workers can file complaints through hotlines they access on their cell phones.

### 4.4. Data

Country-specific data enables stakeholders to gauge the capacity of governments to address human rights issues, and to assess the contexts in which companies opt to do business. Because much of this type of data is proprietary, access to free and publicly available data is particularly useful to stakeholders.

Two important sources of such data are the SERF Index and the Fragile States Index.

### **The SERF Index**

The SERF Index is the only index of socio-economic well-being calculated relative to what a state could feasibly achieve given its resources and relative to the performance of other states at comparable per capita income levels.

Covering the performance of over 100 countries from 2005 to 2015, this index's methodology integrates indicators including:

- Right to food
- Right to education
- Right to adequate housing
- Right to health
- Right to decent work/social security<sup>17</sup>

### **The Fragile States Index**

Developed by the nongovernmental research organization Fund for Peace, the Fragile States Index assesses country-level political risk and divides countries into four categories: sustainable, stable, warning, and alert. Used by policymakers, academics, and civil society groups (particularly in conflict-prone areas), this index can be used to assess changes in political stability over time and as a vehicle for early warning of conflict, showing which states are improving or becoming more fragile.<sup>18</sup>

## PART FIVE. NEXT STEPS



### 5.1. Areas for Additional Research

Although there is a substantial and growing body of academic research on business and human rights, participants in the conference identified several gaps – particularly in relation to published work on standards-setting, benchmark identification, and stakeholder engagement processes.

Participants highlighted the quality of scholarly and policy analyses of challenges in Bangladesh's textile industry, which illustrate why long-term strategic partnerships are necessary, given the forced tradeoff between productivity and human rights endemic to “fast fashion.” Re-negotiating the terms of timeliness and creating purchasing practices which enhance trust are central to crafting alternative business models.

### 5.2. Convene Inclusive Meetings

The legitimacy and effectiveness of stakeholder dialogue hinge on its inclusivity, yet it remains a process that often involves only segments of those affected by or engaged in business activity (e.g., civil society or government or unions or business—but not all of these actors together, nor fully representative segments of each). Participants in the meeting from developing countries, in particular, signaled the need to convene meetings which focus on South-South cooperation.

### 5.3. Social Reporting

Reporting is a powerful tool to promote human rights in the workplace but the lack of comprehensive metrics for social reporting remains a challenge, as discussed in academic studies (e.g., O'Connor and Labowitz 2017) and among participants at the conference. Industry-specific social indicators should reflect industry standards, capturing uniform expectations both in terms of ongoing operations and in relation to due diligence. Robust, diversified sources of data are central to creating better indicators. For example, data on corporate disclosure should describe remediation efforts—not simply the number of audits conducted.

Trade union leaders participating in the conference emphasized that workers have a right to know which supply chain they are part of. Companies and brands need to disclose working conditions in specific factories.

### 5.4. Data

A lack of comprehensive and comparable data on issues such as living wage and freedom of association is a significant challenge for multistakeholder initiatives such as the Fair Labor Association (FLA). In particular, missing data undercuts efforts to draft and implement collective standards that create the basis for comparison across countries and industries and could be used by other stakeholders. The FLA has thus engaged governments as it has sought to fill data gaps, including: Cambodia on minimum wage data, Bangladesh on retaliation against workers exercising freedom of association, and Mexico on anti-union aspects of constitutional reforms.



## 5.5. Global Policy

Systemic economic challenges shadow the process of stakeholder engagement and limit its ultimate effectiveness. Conference participants agreed that creative policies—such as a global financial transaction tax<sup>19</sup>—are not only feasible but necessary in order to address widening inequality. The adoption of such a tax is contingent on mobilizing public awareness about human rights abuses in global supply chains (such as child labor) along with popular pressure and the political will to address them.

## 5.6. Corporate Governance Reform

“Democratizing the corporate form” was one of the boldest proposals emerging from the conference. Having workers represented on corporate boards was a measure that participants agreed could help transform the context for stakeholder consultation. Another was the emergence of B Corporations—i.e., corporations whose social missions are certified by B Labs to ensure they meet a wide range of ESG criteria. Many examples of innovation referenced in this White Paper and discussed at the conference have been developed by B Corporations, including Ben & Jerry’s, EILEEN FISHER, Natura, and Greyston Bakery.

### Appendix A

#### Case Study: The Fair Food Program

Created by the Coalition of Immokalee Workers (CIW), the Fair Food Program has been a very effective model of worker-driven social responsibility.

The Fair Food Program is a partnership of farmers, farmworkers, and retail food chains which ensures humane wages and safe working conditions in the market for fruits and vegetables. Since its inception in 2011, the program has added \$15 million to the payroll of Florida tomato farms by charging a premium for tomatoes of between one and four cents per pound.<sup>1</sup> Over a dozen companies have joined the initiative, including Aramark, McDonalds, Trader Joe’s, Walmart, Subway, Chipotle, and Whole Foods, among others. The Fair Food Standards Council provides a 24-hour hotline for receiving complaints. It also provides effective third-party monitoring.

The success of the Fair Food Program is built on its focus on promoting systemic change within agricultural supply chains. In the 1990s, CIW embarked on a popular education campaign to empower workers in the tomato sector, using models from Latin America and the Caribbean.<sup>2</sup> In 2001, the Campaign for Fair Food began to promote consumer awareness about the conditions in the farms in Immokalee, Florida, including conditions of modern-day slavery, sexual harassment, and other human rights violations.

#### Growers agree to the following conditions:

- A wage increase supported by the Fair Food Program Premium, or “penny per pound,” that Participating Buyers pay for their tomatoes;
- Compliance with the human rights-based Fair Food Code of Conduct, including zero tolerance for forced labor, child labor, violence and sexual assault;
- Worker-to-worker education sessions conducted by CIW on the farms and on company time to ensure that workers understand their new rights and responsibilities;

- A worker-triggered complaint resolution mechanism leading to investigation, corrective action plans, and, if necessary, suspension of a farm’s Participating Grower status, and thereby its ability to sell to Participating Buyers;
- Health and Safety Committees on every farm to give workers a structured voice in shaping a safer, more humane work environment;
- Concrete changes in harvesting operations to improve workers’ wages and working conditions, including an end to the age-old practice of forced overfilling of harvesting buckets (a practice which effectively denied workers’ pay for up to 10 percent of the tomatoes harvested), the provision of shade in the fields, and the use of time clocks to record and count all compensable hours accurately; and
- Ongoing comprehensive audits of Participating Growers’ operations by the Fair Food Standards Council to ensure compliance with each element of the Fair Food Program.

In June, 2015, the Fair Food Program expanded beyond Florida to Georgia, North Carolina, South Carolina, Virginia, Maryland, and New Jersey.<sup>3</sup> The initiative will expand to other crops besides tomatoes, to include bell peppers and strawberries.

Source: <http://www.fairfoodprogram.org>

<sup>1</sup>Coalition of Immokalee Workers, <http://ciw-online.org/fair-foodprogram>, Retrieved February 14, 2018.

<sup>2</sup>Asbed, G. and Hitov S. (2017). “Preventing Forced Labor in Corporate Supply Chains: The Fair Food Program and Worker-Driven Social Responsibility,” *Wake Forest Law Review* 52, 2: 497-532. [http://ciw-online.org/wp-content/uploads/HitovAsbedArticle\\_AuthorCopy.pdf](http://ciw-online.org/wp-content/uploads/HitovAsbedArticle_AuthorCopy.pdf), Retrieved February 13, 2018.

<sup>3</sup>Fair Food Program, Annual Report 2015. <http://fairfoodstandards.org/15SOTP-Web.pdf>, Retrieved February 13, 2018. p. 2.

## Appendix B

### Case Study: Milk with Dignity

The Milk with Dignity program represents an important new milestone in human rights compliance by business: co-governance and co-enforcement with workers. The initiative brings together farmworkers, farmers, buyers, and consumers to promote workers' rights in the dairy industry in Vermont. Leading companies provide a premium for milk to farmers in exchange for compliance with the Milk with Dignity (MD) Code of Conduct. What sets this initiative apart from traditional CSR efforts is that workers in the dairy industry developed the MD Code of Conduct.

The Milk with Dignity Standards Council (MDSC) provides a key role in the initiative, educating workers about their rights and responsibilities and providing a support line to resolve complaints and address corrective action plans (CAPs). Third-party monitoring is also a key part of the work of the MDSC.

In 2014, Migrant Justice, a Vermont-based non-profit organization established Milk with Dignity. The mission of Migrant Justice is to build the voice, capacity and power of the farm-worker community.

In 2017, Ben & Jerry's signed a legally-binding agreement with Milk with Dignity. Under this agreement, Ben & Jerry's agrees to:

- work with dairy farmers who pay at least the minimum wage of \$10 per hour;
- ensure that its suppliers provide access to housing which includes access to electricity, water, and is free of pest infestation; and
- ensure that suppliers provide adequate time for rest.

Ben & Jerry's has pledged to source 100 percent of its milk through the MD program.<sup>1</sup>

According to a representative of an organization which promotes human rights, "Holding companies to account via contract is key to competitiveness because it raises the purchasing price overall."

For more information:

- <https://migrantjustice.net/milk-with-dignity>
- <https://www.nesri.org>
- <https://www.benjerry.com/about-us/media-center/dairy-program-update>

<sup>1</sup><https://www.benjerry.com/about-us/media-center/dairy-program-update>, Retrieved February 14, 2018.

## White Paper Endnotes

<sup>1</sup>US Department of Labor, International Labor Bureau (2017), "Sweat & Toil: Child Labor, Forced Labor, and Human Trafficking Around the World," Mobile app; <https://www.dol.gov/dol/apps/ilab.htm>, Retrieved February 13, 2018.

<sup>2</sup>Collins, Evans, Hung and Katzenstein (2017).

<sup>3</sup><http://www.voluntaryprinciples.org/>, Retrieved February 13, 2018.

<sup>4</sup>Asbed and Hitov 2017; Asbed and Sellers 2013. See also Appendix A – Case Study: The Fair Food Program.

<sup>5</sup>Fair Food Standards Council. Fair Food Program Report, 2011-2013.pdf. Sarasota, FL: FFSC. <https://www.nesri.org/programs/campaign-for-fair-food-ciw>, Retrieved February 13, 2018. See also Appendix B – Case Study: Milk with Dignity.

<sup>6</sup>Accord on Fire & Building Safety in Bangladesh: <http://bangladeshaccord.org/>, Retrieved February 13, 2018.

<sup>7</sup>Better Buying, <http://www.betterbuying.org/>, Retrieved February 13, 2018.

<sup>8</sup><https://wsr-network.org/type/tools-for-practitioners/>, Retrieved 13, 2018.

<sup>9</sup>Better Buying, <http://www.betterbuying.org/>, Retrieved February 13, 2018.

<sup>10</sup>Clear Voice Hotline, <http://www.clearvoicehotline.net/amader-kotha.html>, Retrieved February 13, 2018.

<sup>11</sup>Clear Voice Hotline, <http://www.clearvoicehotline.net/amader-kotha.html>, Retrieved February 14, 2018.

<sup>12</sup>Social Fingerprint, <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1054>, Retrieved February 13, 2018.

<sup>13</sup>TenSquared, Social Accountability International, <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1798>, Retrieved March 25, 2018.

<sup>14</sup>Based on information provided by IMG College Licensing and disclosed to the Worker Rights Consortium and the Fair Labor Association.

<sup>15</sup>For details on this approach, see Veneracion and Tripodi (2017).

<sup>16</sup>"Kailash Satyarthi: Student Engineer who saved 80,000 children from slavery," *The Guardian*, <https://www.theguardian.com/global-development/2014/oct/10/kailash-satyarthi-nobel-peace-prize-childrens-rights>, Retrieved February 14, 2018.

<sup>17</sup>The SERF Index, <https://serfindex.uconn.edu/about-us/>, Retrieved February 14, 2018.

<sup>18</sup>Fragile States Index, <http://fundforpeace.org/fsi/>, Retrieved February 14, 2018.

<sup>19</sup>Morris and Morris, *The Same Heart*, Galen Films, Retrieved February 12, 2018 [http://galenfilms.com/?page\\_id=68](http://galenfilms.com/?page_id=68).

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