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INTERDISCIPLINARY PERSPECTIVES ON GLOBAL LABOR GOVERNANCE: ORGANIZING, LEGAL MOBILIZATION AND DECOLONIZATION

Chaumtoli Huq*

INTRODUCTION

Labor movements around the world have explored various forms of global labor governance1 mechanisms2 to hold multinational/transnational

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1. Governance is an “amorphouse term” “that encompasses complex global processes “involving multiple actors that interact at different levels of interest.” See Roberto Domínguez & Rafael Velasquez Flores, Global Governance, OXFORD RSCH. ENCYC., INT’L STUD. (July 30, 2018); see also Claus Offe, Governance: An “Empty Signifier”? , 16 CONSTITUTIONS 550, 553 (2009) (“Governance . . . may apply to all kinds of political or social units, such as corporations . . . municipalities, interest organizations, individuals, states, subsections or the entirety of the international system. Governance especially takes place where [due to the absence of a state-analogous “world government”] state-organized hierarchies are insufficient, namely in the sphere of global governance.”). It is “the exercise of power in the absence of overarching political authority” by a diverse group of actors and institutions that make decisions and “enforce compliance with norms and rules at the supranational level.” JAMIE K. MCCALLUM, GLOBAL UNIONS, LOCAL POWER: THE NEW SPIRIT OF TRANSNATIONAL LABOR ORGANIZING 28 (Cornell Press 2013).

2. Global governance has been used in the context of analyzing varied voluntary initiatives and agreements like the Global Framework Agreement (“GFA”) based on the International Labor Organization (“ILO”) standards and U.N. Global Compact which have come to be referred to as global labor governance. See Anke Hassel, The Evolution of a Global Labour Governance, 21 GOVERNANCE: INT’L J. POL’Y, ADMIN. & INST. 231, 232 (2008). Here, I use global labor governance also as a series of efforts by unions, worker organizations and Non-Governmental Organizations (“NGO”) to employ diverse strategies to regulate multinational and transnational companies to abide by labor law and norms.
companies ("MNCs" or "TNCs") accountable for ensuring workers' rights throughout their supply chains. Global Framework Agreements ("GFA"), one such global labor governance mechanism, are agreements between global unions and MNCs covering international labor rights. This article will examine the wide-ranging H&M Global Framework Agreement ("H&M GFA") to develop some insights into global labor governance and on the type of agreements and socio-political contexts that are likely to yield meaningful material changes in the lives of workers. The H&M GFA is worthy of close study because it ostensibly protects workers' interests at factories where its garments are produced, operating in countries such as Bangladesh, Cambodia, India, Myanmar, and Turkey. The agreement requires H&M to work with its direct suppliers and subcontractors to "respect human and trade union rights in the workplace." Further, it promotes "signing of collective agreements." It also establishes a non-binding, three-tiered structure for implementation and resolution of labor disputes. In analyzing the H&M GFA and GFAs generally, this article will contextualize these agreements within the diffuse, complex, variegated web of international human rights law to assess their potential for ensuring fundamental labor rights. This article focuses on the H&M GFA because H&M presents itself as "an ethical company" committed to social justice and pledges to be a leader in the fashion industry on labor, environment, and sustainability issues.

3. Multinational companies and transnational companies are similar for the most part, except in that MNCs tend to be more centralized in their management structure.

4. McCallum, supra note 3, at 3, 11 (describing how since the 1970s unions have used a wide range of strategies to subject companies to workers' oversight and that governance struggles constitute the heart of labor transnationalism).

5. In assessing success, this paper relies on Kuruvilla's definition in the context of labor transnationalism: where one partner "must obtain some material benefits such as a higher wage and better working conditions or strategic gains such as collective bargaining rights." See Santanu Sarkar & Sarosh Kuruvilla, Constructing Transnational Solidarity: The Role of Campaign Governance, 58 BRITISH J. INDUS. REL. 1, 28 (Mar. 2020).


7. Id. at 3.

8. Id.


Specifically, as it relates to labor rights, H&M states it is dedicated to constructive dialogue with trade unions and other labor organizations representing employees. As one of the top two largest fashion retailers in terms of revenue, H&M has the potential to lead the way in labor protections for its global workforce. If labor rights can be actualized through the H&M GFA, its impact on the 1.6 million workers in H&M’s global supply chain could be transformative, and it could help set labor standards for other workers in the apparel industry. Moreover, H&M employs a workforce that is predominantly comprised of women workers, which can provide insights on how and whether global labor governance is attuned to gender when addressing labor rights.

Historically, international law scholars have not sufficiently engaged with social movements and theories on social movements to expound on legal developments and successes. This article aims to disrupt this trend by evaluating the H&M GFA and GFAs generally using three social movement-oriented theories: organizing theory, legal mobilization theory, and decolonization theory. It employs these theories to assess the implementation of the H&M GFA in three Asian production countries: Bangladesh, Cambodia, and India. These critical social movement perspectives are crucial to assessing institutional forms of global labor governance like GFAs, both as they relate to international law and their impact on workers’ lives.


14. Hassel, supra note 2, at 246 (describing how private regulatory pressures on leading firms in an industry to improve their labor practices can have an impact on their industry as a whole due to inter firm competition).


16. Stephanie Barrientos & Barbara Evers, Gendered Production Networks: Push and Pull on Corporate Responsibility, in NEW FRONTIERS OF FEMINIST POL. ECON. 44 (Shirin M. Rai & Georgina Waylen eds., 2014) (considering the gendered aspects of the globalization of garment production, absence of a gendered power analysis in global production and how NGOs and trade unions have used corporate social responsibility (“CSR”) to promote the rights of women workers).


18. See id. at 405.
article also pays particular attention to the H&M GFA’s impact on gender through an analysis that scholars M. Jacqui Alexander and Chandra Talpade Mohanty call a “transnational feminist praxis.” Transnational feminism is an intersectional analysis that is attuned to race, gender, and the logics of globalization. It is praxis-oriented to understand the historical, social, and cultural processes that occur both locally and transnationally to shape gendered social relations. This analysis is particularly important in the apparel industry where the vast majority of garment workers are women from the Global South, as these women are often segregated into lower paying jobs within the industry. Thus, any global labor governance solutions within international law that seek to improve workers’ rights must account for the racialized and gendered nature of this workforce. Such an analysis should not be separated from an assessment of how the GFAs impact workers and their international labor rights. Instead, research on the effectiveness of GFAs should answer how gender categories are challenged or reinforced by these agreements. Feminist praxis surfaces the gendered and racial components in any discussion of workers, troubling the notion that any global governance mechanism is gender- or race-neutral.

Applying organizing, legal mobilization, and decolonization theories to the H&M GFA reveals some general insights on GFAs and global labor


20. See Alexander & Mohanty, supra note 19, at 23.

21. Id. at xix.


25. See Barrientos & Evers, supra note 16, at 58 (detailing the success of women NGO’s campaigns using corporate responsibility depends on whether women’s wages and working conditions improve).

26. ETHEL C. BROOKS, UNRAVELING THE GARMENT INDUSTRY: TRANSNATIONAL ORGANIZING AND WOMEN’S WORK, 82, 112 (U. Minn. Press 2007) (discusses how, in focusing on a particular type of global worker and workplace abuses in a transnational labor rights campaign to resist corporate domination, labor activists have managed to leave aside other structures of domination).
governance and their potential to actualize labor rights for garment workers in the supply chain. While they are distinct theories emerging from varied yet interrelated social movements, they orient the evaluation of the GFA from the vantage of workers it seeks to protect. These theories also foreground an examination of international labor and human rights law outside of the formal spaces of law and situates the GFAs in social movements seeking to advance global labor rights.27

Organizing theory, originating primarily from the U.S. labor movement, emphasizes building worker power in contrast to strengthening formal institutions.28 Organizing theory reveals the often top-down nature of how global unions negotiate GFAs in ways that reduce national unions29 to bureaucratic administrators of the agreements rather than recognizing them as local catalysts to organizing that could support the fundamental right of freedom of association.30 A top-down approach obscures the multi-layered spaces for the potential organizing and empowerment of workers, especially for women workers who experience gender-based harassment and have no mechanisms for redress.31 This article’s analysis of the H&M GFA will show that GFAs that do not arise from grassroots worker mobilization, but instead are implemented from grass-top32 NGOs and global unions, have not resulted in lasting measurable concrete gains for workers or strengthened the capacity

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27. See Rajagopal, supra note 17, at 428 (arguing for expanding analysis in international law to include social movements’ literature and the type of micro-level anthropological type analysis they provide).

28. See Simon R. De Turberville, Does the “Organizing Model Represent a Credible Union Renewal Strategy?”, 18 WORK, EMP. & SOC’Y 775, 776 (2004) (analyzing the organizing model where members use innovative techniques to empower themselves within their employment and broader social relationships).

29. Here I use national unions or national trade unions to distinguish them from global unions or global union federations (GUFs). National unions are from one country and may work in different trades and occupational categories to increase labor rights and power in their country. GUFs are international federations of national trade unions.

30. The top-down nature of GFAs is not a given, as shown from the corporate governance campaign by Service Employees International Union (“SEIU”) in G4S that began in the United States and was globalized through solidarity efforts with national unions in India and South Africa. See Mccallum, supra note 1, chs. 4 & 5.

31. See generally Peter Dicken, Philip Kelly, Kris Olds & Henry Yeung, Chains and Networks, Territories and Scales: Towards a Relational Framework for Analyzing the Global Economy 1 GLOB. NETWORKS 89 (2002) (discussing a networked approach to analyzing the global economy which considers social structures and processes that constitute, evolve, transform, and reproduce power relations, and identifies agents of resistance and opposition that could orient the economy toward justice).

32. With the proliferation of non-profit/non-governmental organizations advocating for varied causes, the phrase “grasstos” is used to describe elite driven efforts on behalf of marginalized communities or the executive leadership of nonprofits to distinguish from grassroots where impacted individuals and communities take action. See INST. FOR CORP. CULTURAL AFF’N, THE A TO Z OF CORPORATE SOCIAL RESPONSIBILITY 342 (Wayne Visser, Dirk Matten, Manfred Pohl & Nick Tolhurst eds., 2010) (providing a general definition of NGOs, noting grasstops as leaders of NGOs).
for sustainable worker power. In a workforce that is predominantly composed of women workers, a gender-neutral dispute resolution mechanism fails to protect women from sexual and other forms of workplace abuse and harassment and falls short of addressing gendered demands such as maternity leave protection.

Legal mobilization theory emerges from sociology literature on social movements’ interactions with law to describe any process by which an individual or collective actor invokes legal norms, institutions, or discourse to influence policy and create rights. Applied to GFAs, legal mobilization theory reveals that the formalist, non-confrontational, and top-down law-based strategies of governance agreements, often created and implemented with little regard for the social context and realities in which the agreements are to operate, repeatedly render them ineffective. Such agreements make it easier for MNCs to superficially respond to labor movements’ demands without providing any real accountability or evaluation of social outcomes. Agreements that rely on the goodwill of MNCs without any binding rules that force them to redress labor rights violations have not brought about substantial improvement in labor conditions. As such, these agreements risk falling into the common pitfall of voluntary business and human rights initiatives of not holding corporate actors responsible for upholding human rights. Instead, they give a false impression of the creation of new legal rights within the international law realm, while the relationship between workers, direct employers, and MNCs has not been substantially altered to shift power dynamics, and spaces for worker power have not increased.

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33. McCallum, supra note 1, at 146 (stating not all GFAs are the same, and the ones that are most useful are those that emerge from “struggle and conceived as one part of a comprehensive industrial strategy” not a standalone policy document).

34. See e.g., Juanita Elias & Hayley Stevenson, Women Workers in the Global Economy: A Feminist Critique of the Core Labour Standards, in 4 ETHICS, L. & SOC’Y 331–40 (Jennifer Gunning, Soren Holm & Ian Kenway eds., 2017) (“Taking the Kenyan flower industry as a case study, Hale and Opondo show that numerous codes of conduct govern the production of flowers in Kenya. These codes have generated some limited improvements in the working conditions of the largely female labour force; however, on the whole, these codes have failed to penetrate patriarchal and neoliberal structures which render women workers vulnerable to sexual harassment and discrimination, and dangerous and unhygienic conditions.”).

35. For a general theory on legal mobilization for social movements, see Michael McCann, Legal Mobilization and Political Struggle, in RIGHTS AT WORK: PAY EQUITY AND THE POLITICS OF LEGAL MOBILIZATION 9 (Michael McCann ed., 1994).


37. Patrick Feuerstein & Gary Herrigel, The Limits of Global Labor Governance and an Emerging Perspective, 18 ECON. SOCIO.: EUR. ELEC. NEWSLETTER 6 (2017); see also McCallum, supra note 1, at 36 (voluntary codes of conduct “have limited impact on labor conditions”).
Decolonization theory exemplifies the problems of universalizing a labor governance model that is rooted in European labor movement struggles and is not conscious of the anti-colonial histories of labor movements in the Global South. Further, it demonstrates the perils of uncritically transplanting these frameworks to formerly colonized countries where labor laws and policies are holdovers from the colonial state and where neoliberal economic policies require workers to meet the business interests of the global economy. Arising from these historical and contemporary social contexts, national laws and policies are often hostile to unionization. Finally, the decolonial lens spotlights how the universalization of a European labor governance framework rooted in collaboration and social dialogue, rather than in conflict or confrontation (for example, the right to strike), ignores the power asymmetries faced by workers in the supply chain under global capitalism. Further, a social dialogue approach fails to create legally

38. Decolonization connotes multiple meanings: as a historical process, where Europeans left by force or voluntarily in response to anti-colonial movements in Asia, Africa, Latin America, and also as a theoretical framework examining European colonialism and its continuing impact. See James Le Sueur, An Introduction, in The Decolonization Reader 2 (James Le Sueur ed., 2003).

39. See Jens Steffek & Leonie Holthaus, The Social-Democratic Roots of Global Governance: Welfare Internationalism from the 19th Century to the United Nations, 24 EUR. J. INT’L REL. 117 (2018) (discussing the rise of labor governance models stemming from U.S. and the U.K. with figures such as Albert Thomas, once the Director of the ILO in the early 20th century and other ILO officials who were involved in labor organizing in European nationals and “believed that European labour standards defined what the inhabitants of the colonies ought to aspire to.”).


41. See Valerian DeSousa, Colonialism and Industrial Relations in India, in Colonialism, Nationalism and the Institutionalization of Industrial Relations 65 (Sarosh Kuruvilla & Bryan Mundell eds., 1999).

42. See Todd E. Vachon, Michael Wallace, & Allen Hyde, Union Decline in a Neoliberal Age: Globalization, Financialization, European Integration, and Union Density in 18 Affluent Democracies, 2 SOCIUS July 19, 2016, at 13–14 (finding that “European integration has been part of a larger neoliberal project designed to undercut workers’ power and unleash the forces of the free market.”).


45. See Cesar A. Rodriguez-Garavito, Global Governance and Labor Rights: Codes of Conduct and Anti-Sweatshop Struggles in Global Apparel Factories in Mexico and Guatemala, 33 POL. & SOC’y 203, 211 (2005) (discussing how the voices of Global North and South –
enforceable rights that workers can use to improve labor standards at their workplace and exercise their freedom of association, while also serving to mute labor militancy and organizing. Universalizing a labor governance agreement formulated outside of the countries in which they are meant to operate in, without any understanding of the local social, economic and historical context, will limit the potential of such agreements to actualize labor rights in production countries. Rather, these types of agreements can replicate political and economic hierarchies formed through colonialism and imperialism.

To develop insights into global labor governance, this article focuses on the implementation of the H&M GFA in Bangladesh, India, and Cambodia, including a discussion of the Accord on Building and Fire Safety, an international safety agreement negotiated between global fashion brands including H&M, unions, and non-governmental organizations in Bangladesh. As such, it contributes to the scholarship by examining the actual impact of GFAs on local contexts. Modest, episodic successes shown here suggest that GFAs can be strengthened to actualize their goals of building worker power and improving freedom of association rights. This

NGOs, unions – within governance systems need new rules of decision-making to overcome the dominance of Northern actors to enable the development of labor groups in the South).

46. See Samira Manzur, Drusilla K. Brown, Jette S. Knudsen, & Elizabeth Remick, After Rana Plaza: From Building Safety to Social Dialogue (May 3, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2961808 (in an interview with a representative of the Accord about social dialogue tactics that were implemented by international, often European entities, the representative said: “Social dialogue projects are meaningless. Money is going to people with no experience with labor and industrial relations and that have no experience with Bangladesh. The international development projects are benefiting from the tragedies, and that’s just not right. The money could be put to better use.”); see also Peter Evans, Is it Labor’s Turn to Globalize? Twenty-first Century Opportunities and Strategic Responses, INST. FOR RSCH. ON LAB. & EMP. 352, 359 (2010) (“In the Global South, the necessity of changing global power relations in order to secure workers’ rights locally is more harshly apparent, as local workers are undercut by policies demanded by global rule-makers, Northern governments and ‘the markets.’”).


49. See Christina Niforou, International Framework Agreements and Industrial Relations Governance: Global Rhetoric versus Local Realities, 50 BRITISH J. INDUS. REL. 352, 352 (2012) (dividing scholarship on GFAs to two strands: one that examines the potential impact on labor standards and second that examines their actual impact).

article demonstrates that GFAs can also be an effective global labor governance mechanism within the international law realm to enforce international labor law and international human rights law generally. However, GFAs, as currently implemented and as illustrated by the H&M GFA, are not realizing their potential in these areas. Section I is a brief review of the literature on GFAs, placing them in the broader context of international human and labor rights law. Section II examines the H&M GFA specifically and its implementation in Cambodia, India, and Bangladesh. This section relies on publicly available information and case studies\textsuperscript{51} on the H&M GFA’s effectiveness in Asia, experts\textsuperscript{52} interviewed for this article, and analogous studies on private forms of regulation of MNCs in the region.\textsuperscript{53}

Section III applies three social movement-oriented theoretical perspectives from the literature to GFAs to assess whether the H&M GFA has yielded measurable benefits to workers in these three countries and how it can be improved to do so. As such, this article employs a hybrid empirical-theoretical approach to derive insights on global labor governance. From this focused study of the H&M GFA in Asia, the article concludes with some reflections on the potential of GFAs in general to improve labor rights under international law.

\textsuperscript{51} See Andrea D. Ellinger & Rochell McWhorter, \textit{Qualitative Case Study Research as Empirical Inquiry}, 7 INT'L J. ADULT VOCATIONAL EDUC. & TECH., July–Sept. 2016, at 1 (describing case studies as a powerful form of empirical inquiry that investigates a contemporary phenomenon in depth in a real-world context that provides key insights to the issues studied. There are different sources for case studies including documents, interviews).

\textsuperscript{52} Zoom Interview with Athit Kong, President, Coalition of Cambodian Apparel Workers’ Democratic Union (CCAWDU) (July 22, 2021); Zoom Interview with Victor Garrido Sotomayor, Member, Confederacio Sindical de Comisiones Obreras/Trade Union Confederation of Workers’ Commissions and International Coordinator, Inditex GFA for IndustriALL (July 21, 2020); Zoom Interview with Gautam Mody, General Secretary, New Trade Union Initiative (NTUI) of India (July 31, 2021); Zoom Interview with Apoorva Kaiwar, Regional Secretary, South Asia, IndustriALL (Aug. 6, 2021); Mats Svensson, Industrifacket Metall (August 11, 2021); Interview with Nazma Akter, Executive Director of Awaj Foundation and President of Sommilito Garments Sramik Federation of Bangladesh (Aug. 27, 2021) These semi-structured interviews took place on zoom and were recorded. The author thanks each of the interviewees for taking their time for these interviews. Any errors in attribution or failure to accurately represent their views is entirely that of this author.

I. GLOBAL LABOR GOVERNANCE: GLOBAL FRAMEWORK AGREEMENTS

Historically, labor rights have been advanced through national legislation, but globalization has challenged the effectiveness of this approach. This has been described as a regulatory gap. With production traversing national boundaries, new forms of global labor governance mechanisms have emerged to address labor rights. These governance strategies seek to exert discipline and control over MNCs to mitigate the impacts of capitalism such as widening income inequality (particularly along race and gender lines), unsafe working conditions, and environmental degradation. Four main approaches to global labor governance involving distinct actors have been identified in the literature: (1) engaging public international organizations like the International Labor Organization (“ILO”), the Organization for Economic Co-operation and Development (“OECD”), and the United Nations (“UN”) which establish international legal frameworks for labor law; (2) global unions seeking to regulate TNCs through international/global framework agreements (“IFAs” or “GFAs”); (3) MNCs entering into private and voluntary forms of regulation through private regulations which include setting standards benchmarked to the conventions of the ILO.

54. See Feuerstein & Herrigel, supra note 37, at 6; see also McCALLUM, supra note 1, at 12 (stating that governance struggles emerged as a structural response to mitigate global capitalism).
56. See e.g., Isabelle Schömann, Andre Sobczak, Eckard Voss & Peter Wilke, International Framework Agreement: New Paths To Workers Participation In Multinationals’ Governance, 14 TRANSFER: EUR. REV. LAB. & RES. 111–26 (2008); see also McCALLUM, supra note 1, at 3; Hassel, supra note 2, at 231; Wills, supra note 50, at 675 (discussing ways unions have and can intervene in the global economy to secure workers’ rights); Helena du Preez & Paul Smit, The Role of International Framework Agreements in Transnational Labor Regulation, 41 S. AFR. J. LAB. REL. 64 (2017); KURUVILLA, supra note 53, at 3.
57. See McCALLUM, supra note 1, at 11.
58. IFAs are defined as “bilaterally negotiated agreements” by multinational corporations and global unions. See Michael G. Sherrard & Gerlind Wisskirchen, Next Up for North American Employers and Unions? International and Corporate Social Responsibility, 29 ABA J. LAB. & EMP. L. 245, 247 (2014). In earlier literature, agreements between global unions and companies were referred to as International Framework Agreements (“IFAs”). More recently, they are referred to as GFAs.
60. Sarkar & Kuruvilla, supra note 5, at 32 (summarizing various examples of private regulations which include setting standards benchmarked to the conventions of the ILO,
corporate social responsibility ("CSR") programs; and (4) states and corporate actors forming multi-stakeholder initiatives. The result of these polycentric global labor governance approaches is a diffuse and a decentralized public-private regulatory system that operates within the international law realm. Each of these governance approaches involves multiple actors responsible for upholding international human rights and labor law, including public international bodies such as the ILO, voluntary and norm-setting initiatives by the UN, internal voluntary corporate regulation such as codes of conduct through corporate CSRs, and global framework agreements between global unions and MNCs. There are limits to the effectiveness of these governance mechanisms and their ability to improve labor standards over time. However, of these strategies, labor advocates have found GFAs negotiated between global unions and MNCs to be the most promising to address labor rights in supply chains, as they avoid the jurisdictional limits of state regulations, the voluntary nature of CSR, and the limits of collective bargaining agreements between direct employers and unions.

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62. See generally S.J. Rombouts, The International Diffusion of Fundamental Labor Standards: Contemporary Content, Scope, Supervision and Proliferation of Core Workers’ Rights Under Public Private Binding, and Voluntary Regulatory Regimes, 50 COLUM. HUM. RTS. L. REV. 78, 83 (2019) (mapping in detail how the ILO standards were integrated into the international human rights law, evolved into “hybrid governance forms combining public and private actors” and became further embedded into international human rights law).
63. Hassel, supra note 2, at 244 (describing the evolution of global labor governance as evolving from ILO standard setting toward a normative orientation with public and private actors creating a decentralized private regulatory system); see Rombouts, supra note 62, at 132–73 (overviewing labor standards in public and private international law sources).
64. See Feuerstein & Herrigel, supra note 37, at 6, 8; see also Bae, supra note 60, at 98 (explaining that no evidence to conclude that private regulation is working well overall); Hadwiger, supra note 50, at 1; see also Dimitris Stevis & Michael Fichter, International Framework Agreements in the United States: Escaping, Projecting, or Globalizing Social Dialogues? 33 COMP. LAB. L. & POL’Y J. 667 (2012) (describing GFAs as “contested terrains” with some positive, some negative).
65. See Stevis & Fichter, supra note 64, at 669 (describing positive outcomes as limited or episodic meaning the results are ad hoc reactions to particular disputes); Fichter & McCallum, supra note 44, at S71 (finding no systemic pattern of successful implementation of GFAs); see Bae, supra note 60, at 98.
66. See du Preez & Smit, supra note 56.
67. Blasi & Bair, supra note 59, at 5; see also Feuerstein & Herrigel, supra note 37, at 8 (stating that GFAs seeks to impose binding global labor standards on MNCs).
Before discussing the H&M GFA’s impact on Asian producing countries in section II, this section seeks to contextualize GFAs within international human rights law and discuss their significance as the preferred model among labor advocates for achieving global labor rights. First, the section notes how GFAs directly relate to international labor and human law by incorporating fundamental labor rights into the agreements, how they emerged in a response to voluntary initiatives to hold MNCs legally accountable to human rights, and their potential to operationalize international labor standards at the local level. Second, given GFAs’ potential to advance global labor rights notwithstanding gaps and constraints, this section reorients and refocuses GFAs on workers and organizing in production countries, highlights the need for empirical research on their actual impact in the Global South, and attempts to radically shift GFAs toward their emancipatory potential.68

A. GFAs’ Relationship to International Labor Law and International Human Rights Law

GFAs are a form of private regulation of MNCs based on agreements between Global Union Federations (“GUFs”)69 and MNCs. However, GFAs do not operate within a legal vacuum. GFAs emerged from two developments within international law: the convergence of international labor and human rights law and the efforts within international human rights law to hold MNCs accountable to human rights.

The ILO is the main public international body that sets labor standards through binding and non-binding conventions applicable to states.70 Fundamental labor rights are included as part of the international bill of rights reflected in the Universal Declaration of Human Rights (“UDHR”),71 the International Covenant on Civil and Political Rights (“ICCPR”),72 and the International Covenant on Economic, Social, and Cultural Rights


71. G.A. Res. 217 (III)A, art. 23, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR] (“Everyone has the right to form and to join trade unions for the protection of his interests.”).

72. International Covenant on Civil and Political Rights, art. 22, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (“Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”).
In 1998, through the ILO Declaration on Fundamental Principles and Rights at Work ("ILO Declaration"), labor rights were aligned with universally recognized human rights to derive four areas of fundamental labor rights: Freedom of Association (Conventions 87 and 98); Non-Discrimination (Conventions 100 and 111); Prohibition on Forced Labor (Conventions 138 and 182); and Prohibition on Child Labor (Conventions 138 and 182). ILO member states are required to respect these principles even if they have not ratified the specific conventions. Relevant to the focus of this article, freedom of association is now firmly established as a central right within international human rights law. It is viewed as a right that can enable the protection of other fundamental labor rights against forced labor, child labor, and discrimination.

With globalization and the increased power of MNCs in the lives of workers, the ILO Declaration and human rights law proved inadequate to protect labor rights because they applied to nation-states, not MNCs.
response to this gap, a growing field of law and academic study referred to as Business and Human Rights emerged seeking to hold MNCs accountable to human rights law. Results of this growing field included the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the UN Global Compact, and the UN Guiding Principles of Business and Human Rights (“UNGPs”). However, these initiatives to hold MNCs responsible for human rights violations are primarily voluntary. Though there are efforts, mainly led by nations in the Global South, to have a binding treaty to hold MNCs accountable to international human rights and labor laws, such efforts have not succeeded and have been vigorously opposed by MNCs.

83. Consumer campaigns were instrumental to propel MNCs to adopt voluntary standards to regulate their business activities. MNCs also wanted to protect their brand and avoid liability. Hassel, supra note 2, at 239.

84. See generally JOHN GERARD RUGGIE, JUST BUSINESS MULTINATIONAL CORPORATIONS AND HUMAN RIGHTS (2013).

85. Guidelines for Multinational Enterprises, ORG. ECON. COOP. DEV. (“OECD”) (2011), https://www.oecd.org/corporate/mne/ (recommendations by participating governments urging MNCs to respect the human rights of those affected by its business activities including the protection of the environment in addition to labor rights); see Hassel, supra note 2, at 241.


87. The Global Compact sets forth ten principles that businesses agree to follow in partnership with U.N. efforts to promote human rights, labor standards, environment and corruption. U.N. Global Compact, UNITED NATIONS, https://www.unglobalcompact.org/ (last visited Nov. 7, 2021); see also Evaristus Oshinebo, The UN Global Compact and Accountability of Transnational Corporations: Separating Myths from Realities, 19 FLA. J. INT’L L. 1, 12–20 (2007) (outlining the background, goals and structure of the Compact). The purpose of the Global Compact was to integrate private actors into the human rights field that had been the domain of state governments and public international bodies such as the ILO and U.N. See Hassel, supra note 2, at 241.


89. Rombouts, supra note 62, at 147–48; Menashe, supra note 55, at 7.

90. For background on the history and background on obtaining a binding treaty, see Binding Treaty, BUS. & HUM. RTS. RES. CTR., https://www.business-humanrights.org/en/big-issues/binding-treaty/.

however, promising national legislation by countries to regulate their own MNCs.92

Within this complex web of normative and voluntary regulations, GFAs represent private agreements between MNCs and GUFs seeking to enforce labor standards. GFAs are benchmarked by ILO Conventions93 and their related jurisprudence.94 They reflect a “paradigm shift” within the mostly voluntary efforts to enforce labor rights.95 The vast majority of GFAs incorporate ILO Conventions96 on labor, to varying levels of detail, as well as the UDHR,97 UN Global Compact,98 and UNGP.99 Typically, they incorporate ILO core labor rights, including the freedom of association and the right to collective bargaining, but differ in language from a statement of principle supporting those rights to a stronger language of commitment that the suppliers will respect those rights.100 However, they differ from union


93. ILO, supra note 74.

94. Renee-Claude Drouin, supra note 36, at 593 (noting GFAs derive content from ILO instruments which is a core building block to the agreements).

95. Fichter & McCallum, supra note 44, at S69.


100. IndustriALL, the GUF involved in the H&M GFA, has identified content that a GFA must have, including an explicit reference to ILO Conventions and jurisprudence rights in the 1998 ILO Declaration on Fundamental Principles Rights at Work. These conventions should take precedence over national laws if unfavorable. The GFAs must recognize international labor and human rights standards such as UNHR, OECD Guidelines for Multinational Enterprises, ILO Declaration Concerning Multinational Enterprises and Social Policy, Guiding Principles, and U.N. Global Compact. Further, they must cover the company’s operations globally, commit that suppliers and subcontractors adopt these standards, guarantee to treat unions positively, and to refrain from anti-union activities. Also, union representatives should have access to the workplace, and contain an effective mechanism for implementation. See Guidelines for Global Framework Agreements (GFAs), supra note 99, at 2; see also Niforou, supra note 49, at 353; see also Lone Riisgaard, International Framework Agreements: A New Model for Securing Workers Rights, 44 INDUS. REL 707, 709 (2005).
negotiated collective bargaining agreements at the national level in that they rely on policy principles and do not create new legally enforceable rights.\footnote{Niforou, \textit{supra} note 49, at 353; \textit{see also} McCallum, \textit{supra} note 1, at 37 (detailing how GFAs do not give new rights but provide a mechanism to uphold labor standards where national legal systems cannot); \textit{see also} Zoom Interview with Gautam Mody, \textit{supra} note 52 (describing GFAs as a framework for collective bargaining).}

GFAs operate alongside other initiatives to hold MNCs responsible for upholding labor and human rights including the UNGP and OECD Guidelines, but with a distinct labor focus.\footnote{See Rashmi Venkatesan, \textit{The UN Framework on Business and Human Rights: A Workers’ Rights Critique}, 157, J. BUS. ETHICS 635, 635 (explaining that although the Guiding Principles bring clarity and uniformity to business human rights standards, the voluntary aspect of the principles limit the ability to bring about substantive change for workers).} GFAs focus on the labor practices within MNC business practices, while mechanisms like the UNGP address the broader human rights obligations of businesses.\footnote{Hadwiger, \textit{supra} note 50, at 29–30.} International human rights laws and GFAs play a mutually reinforcing and interrelated role.\footnote{\textit{Id.} (discussing the role UNGP can play in strengthening GFA); Menashe, \textit{supra} note 56, at 4 (describing how private actors can shape public norms).} GUFs can negotiate stronger GFAs by reasoning that business and human rights guidance serve as a minimal floor to business’ obligations. Although the GFAs reference the ILO Conventions and human rights law, which is an important reaffirmation that MNCs should abide by those rights,\footnote{See Zoom Interview with Gautam Mody, \textit{supra} note 52 (explaining significance of MNCs acknowledging ILO standards and the right to trade unions).} they do not give GFAs enforcement authority under those human rights instruments (instruments which are themselves soft law). The ILO could play a greater role in encouraging GFAs by facilitating the negotiation of GFAs under its own social dialogue and supervisory process and providing neutral arbitration and technical services.\footnote{Reëne-Claude Drouin, \textit{The Role of the ILO in promoting the development of international framework agreements, in CROSS-BORDER SOCIAL DIALOGUE AND AGREEMENTS: AN EMERGING GLOBAL INDUSTRIAL RELATIONS FRAMEWORK} 237 (Konstantinos Papadakis, ed., 2008); \textit{see also} Papadakis, \textit{supra} note 59, at 14 (ILO or other public institutions may provide an effective monitoring of agreements and remedies for breach); Hadwiger, \textit{supra} note 50, at 47–51 (recommending revising ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and for the Declaration’s greater role in supporting GFAs).} As GFAs evolve in content\footnote{Hadwiger, \textit{supra} note 50, at 43 (reviewing GFA from 2007 to 2015 and describing a qualitative evolution of GFA, a second generation of GFA requiring more implementation, and dispute resolution that facilitate unionization).} and move toward implementation mechanisms that bind MNCs to labor standards, they have the potential to create a legally enforceable obligation on a MNC to uphold international labor rights in their supply chain.\footnote{\textit{See Torsten Müller, Hans-Wolfgang Platzer & Stefan Rüb, Friedrich-Ebert-Stiftung, \textit{International Framework Agreement — Opportunities and Limitations of a New Tool of Global Trade Union Policy} (2008) (while GFAs are now soft law tools, over time, they could create transnational structures); Menashe, \textit{supra} note 55, at 8–9 (describing how GFAs may move to a second generation with more enforceable obligations).}
result, MNCs can be subject to international human rights law. Like any enforceable private agreement, GFAs could be enforced in national courts. They can also be enforced via binding arbitration. Of course, MNCs are not obligated to enter into GFAs, but consumers and other stakeholders can pressure MNCs in a particular sector to sign GFAs.

GFAs have the potential to operationalize international labor standards that have until now been elusive, particularly in the decentralized and fragmented production common to the garment industry. GFAs have contributed to modest successes in terms of increased trade unions and higher union membership. GFAs have historically been lumped together in the literature with other non-binding voluntary CSR initiatives because they often do not go far enough to hold MNCs legally accountable to international human rights law. Their effectiveness varies widely by content, negotiation, implementation, and ability to modify, adapt, and change in response to

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at 3 (on private labor regulations notes that “private norms can with time institutionalize into public hard law”); Blitt, supra note 81, at 41 (using the example of UDHR to argue aspirational non-binding principles or soft law can become part hard law in the form of treaty and customary international law over time); see generally ALEXANDRIA HARRINGTON, INTERNATIONAL LAW AND GOVERNANCE: TREATY REGIMES AND SUSTAINABLE DEVELOPMENT GOALS IMPLEMENTATION (Routledge 2021) (surveying economic, social, environmental treaty regimes through the lens of the sustainable development goals, argues that soft law instruments can be entrenched and operationalized into national and international law).

109. See Mendes, supra note 81, at 188.


113. Blitt, supra note 81, at 60 (urging companies to take the “higher ground” and comply with applicable human rights to eliminate exposure to human rights liability, eliminate uncertainty by making human rights compliance contingent on host country, avoids conflicts from a patchwork of policies, and the increase of public goodwill); see also Hassel, supra note 2, at 232, 235 (noting that companies within a sector can pressure or motivate each other to set common labor standards); but see ROBINSON, supra note 50, at 177 (cautioning that a major company in a sector adopting a labor agreement does not prevent worker violations by other companies).

114. See, e.g., BROOKS, supra note 26, at xviii.
diverse social contexts. However, how GFAs interact with international human rights law, now and in the future, will be key to ensuring that fundamental labor rights and human rights are enforced. GFAs are a growing part of the labor movement’s strategy, as discussed below, but also have broader potential within international human rights law. Because they incorporate by reference broader human rights instruments, GFAs can be vehicles to make environmental and other human rights enforceable on MNCs in conjunction with a related public international body. They offer one of the most promising legal strategies for social movements to address growing inequalities under globalization where international law has previously been inadequate.

As a form of global labor governance, GFAs have additional implications for international law. As a governance mechanism implementing ILO standards and international human rights at the national and sub-national supplier level, GFAs evidence nascent formation of a “global administrative space.” Scholars Nico Krisch and Benedict Kingsbury have described the “global administrative space” as a trend within international law where a “strict dichotomy between domestic and international” is blurred, the interplay of officials and institutions operate at varied levels, and administrative law functions grow to hold global governance accountable. This emergent global space has been rightly discussed with concern as having an “imperial character,” with developments potentially undermining democracy. While GFAs do not yet play this global administrative function, the expansion of arbitration or binding dispute resolution mechanisms as part of their implementation made operable at the local level and tiered to the global level may create this functionality. In fact, GUFs

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115. Stevis & Fichter, supra note 64, at 670–71 (identifying four factors to explain why the impact of IFAs has been varied from no impact to episodic).
116. Cf. Harrington, supra note 108 (looking at the soft law of SDGs to argue that if entrenched and operationalized through various environmental, social and economic treaties, they can be effective, and shape international law).
117. See Graf-Peter Calliess & Moritz Rennert, Between Law and Social Norms: The Evolution of Global Governance, 22 Ratio Juris 260, 261 (2009) (“[L]egal theory has largely failed to grasp the intricate relationship between law and social norms in the context of global governance regimes that might even necessitate a reconsideration of the concept of law itself.”).
118. Nico Krisch & Benedict Kingsbury, Introduction: Global Governance and Global Administrative Law in the International Legal Order, 17 Eur. J. Int’l L. 10 (speaking about global governance generally, not GFAs, as questioning orthodoxies of international law including that new rules of global regulations are not derived from sources of international law).
119. Id.
120. Id. at 1.
122. Hadwiger, supra note 50, at VII (describing the evolution of the content of GFAs as increasingly complex and technocratic); see also Drouin, supra note 36, at 631 (discussing
do seek to use GFAs as a means to create a global industrial relations system, given that national trade unions and industrial relations policies are inadequate to ensure workers’ rights in the global supply chain. Concerns about the imperial nature of an advancing global space further highlight why a decolonization approach to GFAs is critical if they are to be advanced as a global legal strategy for labor movements. Given GFAs’ potential to operate in a liminal space between international law and domestic regulation, as international agreements implemented at the national level by national unions, they have the potential to advance an emancipatory vision of global labor rights.

B. Significance, Constraints, and Gaps of GFAs

Global agreements by GUFs have emerged as a preferred global labor movement strategy. According to Isabelle Schömann of the European Trade Union Confederation: “IFAs represent a new means by which unions at all levels are able to raise awareness and promote union rights and additional core labour standards and to make them applicable within the scope of multinationals’ activities, thus ‘adapting’ domestic (legally) binding rights outside their national scope of application.” These agreements are an important alternative to “normative approaches deployed by international organizations” and “voluntaristic forms of labor regulations originating from corporate behavior.” They are described as an essential “part of the toolbox of global industrial relations and cross-border social dialogue.” Because this governance mechanism involves global trade unions, it should processes within ILO to enhance the effectiveness of the GFA including providing dispute resolution services and technical assistance to trade unions).

123. Papadakis, supra note 59, at 2–3 (noting that framework agreements are the closest to industrial relations given they are negotiated between employers and worker representatives. They offer unions the opportunity to coordinate across borders that could lead to improved working conditions across supply chains).

124. Krisch & Kingsbury, supra note 118 (discussing global governance generally as not fitting easily within the “classical, inter-state, consent-based models of international law”).

125. Ludger Pries & Veronika Dehnen, International Framework Agreements: A Thread in the Web of Transnational Labor Regulation, EUR. J. INDUS. REL., 2014, at 1, 3 (discussing various types of IFAs from an industrial relations perspective whereby unions can implement labor standards. Global union federations are included as a partner to business approaches, which view orderly labor-management relations as effective management processes and how that impacts their effectiveness); see ASHOK KUMAR, MONOPSONY CAPITALISM: POWER AND PRODUCTION IN THE TWILIGHT OF THE SWEATSHOP AGE (Cambridge Univ. Press, 2020).

126. Schömann et al., supra note 56, at 111, 122. See also McCALLUM, supra note 1, at 12, 38 (GFAs are described as part of a larger industrial relations strategy to expand the bargaining power of national unions).

127. Feuerstein & Herrigel, supra note 37, at 8.

128. Blasi & Blair, supra note 59, at 14; see also du Preez & Smit, supra note 56, at 96 (describing IFAs as a “vital and innovative tool” transnational labor).
presumably be most attuned to the needs of workers in the supply chain.\textsuperscript{129} Notwithstanding the substantive critiques of GFAs as presently formulated, researchers and experts have found them to play a positive role in global labor governance.\textsuperscript{130} Still, some constraints and gaps should be noted for GFAs to realize their emancipatory potential.

Despite literature discussing the benefits of GFAs generally,\textsuperscript{131} in contrast to other labor governance mechanisms such as codes of conduct,\textsuperscript{132} there is sparse empirical research that includes the perspectives of workers and national unions on GFAs’ actual effectiveness and potential improvements.\textsuperscript{133} Though scholars and labor activists have discussed the need to amplify the voices of workers in the supply chain, the opinions of workers and national unions on GFAs remain unstudied.\textsuperscript{134} Part of the

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\item \textsuperscript{129} Rombouts, \textit{supra} note 62, at 78 (describing a GFA as a transnational collective bargaining agreement).
\item \textsuperscript{130} Hassel, \textit{supra} note 2, at 243 (describing the GFAs as the most comprehensive form of governance establishing labor standards).
\item \textsuperscript{131} \textit{See} KUMAR, \textit{supra} note 125, at 78 (explaining that GFAs do provide a platform for negotiation); Marc Antonin Hennebert, Peter Fairbrother & Christian Leveseque, \textit{Mobilization of International Framework Agreements: A Source of Power for Social Actors?} \textit{33 COMP. LAB. L. \\& POL."Y J.} 691, 693 (2012) (describing the trends of IFAs from extending scope to subcontractors, including monitoring provisions, inclusion of complaint procedures and broadening subjects of the agreements to include more issue related to industrial relations); Rosado C. Marzan, \textit{Organizing with International Framework Agreements: An Exploratory Study}, \textit{4 U.C. IRVINE L._REV.} 725, 728 (2014).
\item \textsuperscript{132} Schömann et al., \textit{supra} note 36, at 112 (comparing codes and framework agreements).
\item \textsuperscript{133} Niforou, \textit{supra} note 4950, at 352 (dividing scholarship on IFA to those discussing its potential impact on regulating labor standards, its relation to other union strategies, and internationalizing industrial relations, but only a few studying its actual impact).
\item \textsuperscript{134} Hadwiger reviewed the text of 54 GFAs signed from 2009 to 2015 and evaluated 29 case-studies for a ILO Report. He noted that the review focused on good practices but did not assess the success of implementation. Hadwiger, \textit{supra} note 50, at 34. More research is needed on the local implementation of GFAs at suppliers and subcontractors with an emphasis on enabling trade unions and organizing. Hadwiger, \textit{supra} note 50, at 46; \textit{see also} Rodriguez-Garavito, \textit{supra} note 45, at 203, 204 (commenting on the lack of empirical research on the operation of the codes of conduct related to labor rights despite the proliferation of these codes of conduct and growing interest in governance issues among corporate, labor and NGOs); Riisgaard, \textit{supra} note 100, at 712 (detailing a case study of Chiquita framework covering banana workers, and noting that empirical research in this area of global framework agreements is limited). This article seeks to fill this specific research gap, with the caveat that much of the information needed for a comprehensive review are internal documents of both H&M and GUF.
\item \textit{See} E-mail from Mats Svensson, Industrifacket Metall, to Author (Aug. 16, 2021) (on file with author) (in response to requests by this author on any written evaluation of H&M, Svensson writes: “When it come[s] sic to evaluation and evolving of the content and implementation of the GFA there is nothing written” and that what is discussed internally among IndustriALL family cannot be shared); \textit{see also} Zoom Interview with Apoorva Kairwar, \textit{supra} note 5252. This author recognizes the need for GUfs to maintain select internal organizing strategy documents private, however, as GFAs increase in influence in this international law space, transparency will be key. This is a place where ILO can play a role in terms of monitoring and reviewing GFAs.
challenge of conducting studies on GFAs is that they are private agreements between global unions and MNCs, so an evaluation would involve reviewing internal corporate and union documents and procedures. Nonetheless, whether GFAs actually enable workers to organize and build worker power or produce related benefits is essential to evaluating this field of global labor governance. Such a review is essential for GFAs’ future direction and implementation.

Limited empirical studies suggest mixed results and modest successes in the ability of GFAs to facilitate dialogue among workers and garment factory owners, as well as to create some improvements in workplace conditions. Labor scholar Michael Fichter, who has been part of an interdisciplinary and international team of researchers assessing GFAs, noted: While “GFAs have laid the foundation for institutionalizing global labour relations by establishing an arena and formulating the ‘rules of the game’” their implementation remains highly problematic. He attributes the challenges to implementation to shortcomings in the negotiation process. Successes are found where workers are already unified and organized at the national level, where involvement of local actors in the institutionalization of the agreement results in a sense of collective ownership, or where there exists a regional collaboration among unions. This author is unaware of any gender specific study of GFAs, as done here, in industries where women workers predominate. Uncritically advancing GFAs as a means to address global labor rights for a predominantly female workforce has also given the

135. See Zoom Interview with Apoorva Kairwar, supra note 52 (while internal assessments of GFA that IndustriALL are involved in take place, unions are not research organizations; public studies require resources and involve internal documents). There is also tremendous inertia among global unions in disseminating, implementing, and monitoring agreements. See Niforou, supra note 49, at 367.
137. Feuerstein & Herrigel, supra note 37, at 8; Fichter & McCallum, supra note 38, at S71.
138. Fichter & McCallum, supra note 38, at S81.
139. Id. at S80.
140. Wills, supra note 50, at 697 (discussing Acco-IUF Trade Union Rights Agreement (TURA) and its use in an organizing campaign in New York. The author found that TURA’s effectiveness depends on the existence of an active local trade union organization, there it was Local 6 of the Hotel Employees and Restaurant Employees (“HERE”) union); See Robinson, supra note 50, at 171 (Central American trade union Coordinadora Latinoamericana de Sindicatos Bananeros (COLSIBA) coordinated other national unions which contributed to the success of an agreement with Chiquita); see also Blasi & Bair, supra note 59, at 6 (describing how agreements successful where buyer source exclusively, prefer suppliers that are unionized or proven to comply with labor standards).
142. Riisgaard, supra note 100, at 722 (discussing how the IFA grew up out of regional coordination among banana workers in Latin and Central America; a new union that was organizing before the IFA was signed used the agreement to buttress its organizing).
illusion of progress for women workers in an industry where gender-based violence and discrimination remains pervasive.\textsuperscript{143}

While there is a fair amount of scholarship on GFAs,\textsuperscript{144} few orient the inquiry from the vantage of workers in production countries in the Global South. This is probably because GFAs have mostly been negotiated by European unions.\textsuperscript{145} According to Fichter and Mccallum: “[I]n the hands of the GUFs and their strongest affiliates at European TNC headquarters, GFAs have largely been a ‘top–down’ instrument, the usefulness of which has seldom moved beyond the institutionalized oasis in which it has been negotiated and signed.”\textsuperscript{146} Although the proliferation of GFAs constitutes a global labor movement, the movement remains U.S.- and European-centric.\textsuperscript{147} GFAs can alter this reality but only if their goals are to change the relationship between the parties and seek to reconstruct new rules between labor and management that benefit workers and build their power.\textsuperscript{148} This article seeks to shift the inquiry around GFAs away from its Eurocentric focus by analyzing information and case studies on the implementation of the H&M GFA in three Asian production countries, with an explicit focus on its impacts on women workers. Reorienting scholarly focus to the local and regional implementation of one GFA and its actual impact can provide insights as to GFAs’ overall effectiveness as a governance strategy to expand global labor and human rights for workers most marginalized in our global economy.\textsuperscript{149}

Three interdisciplinary social movement perspectives applied to the H&M GFA in Cambodia provide insights into the local and regional implementation of one GFA and its actual impact.
GFA, combined with case studies of their actual impact discussed in section II, will illuminate some shortcomings of GFAs and ways to increase their potency as a strategic tool for the global labor movement. In doing so, this article will contribute a new decolonial perspective to the broader discussion on global labor governance within international labor and human rights law and move GFAs toward their emancipatory potential.

II. THE H&M GLOBAL FRAMEWORK AGREEMENT: IMPLEMENTATION AND IMPACT IN THREE ASIAN PRODUCTION COUNTRIES

An analysis of the H&M GFA will provide insights into GFAs, global labor governance, the ability of labor governance to address gender, and GFAs’ potential to actualize international labor and human rights for several reasons. The H&M GFA reflects an agreement by a GUF and a multinational company, H&M. H&M is one of the largest fashion retailers in the world, selling three billion articles of clothing and generating $33 billion U.S. dollars in sales in 2016. As a company, it promotes a worker-friendly corporate policy with 153,000 employees. The H&M GFA agreement affects 1.6 million workers worldwide in its supply chain. It describes H&M’s corporate role as leading change in the fashion industry, which it defines to mean engaging with policy makers on wages, labor law, and climate change. The agreement covers workers employed in 1,603 factories. In Bangladesh alone, the agreement covers 275 factories that employ half a million workers. It is one of the few GFAs dealing with fashion retailers and the global garment industry. Because the majority of workers in garment factories are women, studying this GFA provides some

150. The GFA has been described as a “living and breathing document, which evolves over time and needs to be adjusted in accordance with the context.” See ILO IFA Report, supra note 15, at 39.
152. ILO IFA Report, supra note 15, at 37.
153. See Menashe, supra note 55, at 29.
154. IndustriALL Global Union, supra note 99.
157. H&M does not have its own production facilities. See ILO IFA Report, supra note 15, at 37. See also Paton & Maheshwari, supra note 151.
insight into whether GFAs effectively account for the gendered nature of a particular industry. This section will outline the agreement and review available research on its effectiveness (specifically in Asian production countries such as Cambodia, India, and Bangladesh). It will also examine the H&M GFA’s impact on gender. In doing so, this section draws from interviews of experts knowledgeable about GFAs, especially in Bangladesh, Cambodia, and India. In the absence of available studies specifically on the H&M GFA, it draws comparisons to other studies on private regulation in the region. Ultimately, this section contributes substantially to the sparse literature on GFAs’ actual impact in production countries and on women workers. Further, as discussed in section III, this article shifts the attention of scholarship and advocacy to workers in the Global South who are most vulnerable in the global supply chain.

A. Overview of the H&M GFA Agreement

Sweden-based H&M was among the first multinational brands to sign a GFA to protect workers’ interests at locations where its garments are produced. H&M’s GFA dates back to 2004, when the brand caved to public pressure to improve working conditions at supplier facilities in Bangladesh, Cambodia, Pakistan, and Sri Lanka, among other locations. In 2015, H&M signed a framework agreement with IndustriALL Global Union and Swedish trade union Inudstrifacket Metall (“IF Metall”). This was the second such agreement — after Inditex’s — in either the garment or textile sector to cover the entire supply chain. IndustriALL signed the GFA without the involvement of affiliated national unions or meaningful

SUPPLY CHAINS, https://www.ilo.org/wcmsp5/groups/public/—-ed_protect/—-protrav/—-travail/documents/projectdocumentation/wcms_681644.pdf (reporting that women constitute more than half of the garment worker force in Asia and disproportionately represented in low waged jobs in the industry).

160. For a list of existing GFAs IndustriALL has with MNCs, see Global Framework Agreements, INDUSTRIALL http://www.industriall-union.org/global-framework-agreements (last visited Nov. 21, 2021).

161. See Sherrard & Wisskirchen, supra note 96, at 254.

162. A supplier is defined as an organization that contributes components or services to bring a product to the market. A supplier may have multiple sites (or factories) where the service is provided. A buyer in this context is an intermediary between global brands and suppliers. For a glossary of terms used in the global supply chain, see Fair Labor Association’s Supply Chain Mapping and Traceability Glossary (Nov. 2018), https://www.fairlabor.org/sites/default/files/supply_chain_mapping_glossary_nov2018.pdf.

163. Id. at 257.

consultation of national unions in the sector. The terms of the GFA apply to all production units that produce goods for H&M, which means it covers workers in unions affiliated and unaffiliated with IndustriALL, as well as workers where no unions exist in the workplace. H&M recognizes IndustriALL as the “legitimate partner for discussions regarding human and trade union rights in the workplace.” It may also interact with IndustriALL’s affiliates and use its “good offices” to improve labor rights among its suppliers. Non-affiliated national unions may participate in the GFA by agreement with IndustriALL. This creates a hierarchical system of governance, with IndustriALL as the primary partner and national unions in production countries as subsidiaries. Swedish union (IF Metall) is a signatory of the GFA as the Swedish national union and affiliate of IndustriALL because H&M is a Swedish company.

H&M’s agreement is noteworthy in that it forcefully commits to “actively use all of its possible leverage to ensure that its direct suppliers and their subcontractors . . . respect human and trade union rights in the workplace.” The agreement explicitly states that H&M will work to foster trade union rights at its suppliers by "promot[ing] signing of collective agreements." This language suggests a general commitment to ensuring freedom of association rights and neutrality for trade unions. Where the national laws regarding trade unions are restrictive, the employer encourages

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165. An email of the draft may have been sent to the then affiliates. See audio tape: Zoom Interview with Apoorva Kaiwar, supra note 52; Zoom Interview with Mats Svensson, supra note 52. But see Zoom Interview with Athit Kong, supra note 52 (not consulted at the formation of the GFA, but only when the NMC in Cambodia was formed); Zoom Interview with Nazma Akter, supra note 52 (stating she was aware of the H&M GFA when she joined GFA Working Group in 2017). IndustriALL has consulted its affiliates on other GFAs, such as Inditex, which suggests that this arrangement may have been something specific to H&M. See also Zoom Interview with Gautam Mody, supra note 52; Zoom Interview with Nazma Akter, supra note 52. Some affiliates did respond with two clear demands: access to factories and a legally binding dispute process, which were not included in the final agreement. They were not identified. Nonetheless, what is clear is that the involvement of affiliate unions at the outset and in the negotiation of the GFA was minimal, unclear or even where provisions were strongly recommended, those were not adopted. Svenson notes: “process could have been more inclusive.” This is significant for shortcomings in the implementation process. Zoom Interview with Mats Svensson, supra note 52.

166. See H&M GFA, supra note 164.

167. Id.

168. Id.

169. Id.

170. IF Metall “represented no H&M production workers at all” yet is now responsible for enforcing the GFA “on behalf of more than one million production workers around the world.” KUMAR, supra note 125, at 75 n. 17.

171. H&M GFA, supra note 164, at 1; see Zoom Interview with Gautam Mody, supra note 52 (discussing this provision as a crucial strength of the GFA in spite of weaknesses, because it is a corporate acknowledgment of trade unions’ freedom of association, and commitment to ILO standards).

172. H&M GFA, supra note 164.
and does not “hinder the development of mechanisms for independent and free association and bargaining.”173 If enforced, this provision seems to overcome legal and socio-political contexts in producing countries that are hostile to unionization.174 However, the right to trade unions does not explicitly recognize a right to strike.175 Moreover, the agreement does not allow workers to enforce their trade union rights with local suppliers through the agreement because labor disputes are funneled through a non-binding dispute process which defers to local law.176 So, while the GFA encourages trade union rights, it does not require suppliers to comply with those rights, leaving workers in production countries with lax labor enforcement and contexts hostile to unionization.

Other noteworthy provisions include the GFA’s broad definition of an employee to include any individual who performs work directly for a supplier or their subcontractor.177 While H&M commits to provide a list of suppliers and subcontractors to IndustriALL as per the agreement, it does not provide union access to supplier factories, and therefore deviates from a key criteria for GFAs set forth in IndustriALL’s own guidelines.178 Affiliate unions recommended two crucial amendments to the GFA: access to factories and binding dispute procedures. Neither criterion was part of the final agreement. Although a legally binding GFA was strongly demanded by some affiliate unions, H&M refused.179 IF Metall, in negotiating the GFA, did not insist on

173. Id. at 2.
174. National laws are hostile to unionization for varied reasons including states’ courtship of foreign investment, which opens up their markets for entry of global capital or hostility to unions by employers. Here, I am not suggesting any inherent hostility to unions but rather that socio-economic conditions and laws construct that anti-union animus. See Zia Rahman & Tom Langford, Why Labor Unions Have Failed Bangladesh Garment Workers, in LABOR IN THE GLOBAL SOUTH: CHALLENGES AND ALTERNATIVE FOR WORKERS 99 (Michelle Williams & Sarah Geneva Mosoetsa eds., 2012); see also Sherrard & Wisskirchen, supra note 96, 255 (indicating that IFAs are often more onerous than U.S. national laws); Stevis & Fichter, supra note 64, at 682 (noting that IFAs have limited impact in U.S. right-to-work states that are hostile to unions or sectors that have an anti-union history).
175. Menashe, supra note 55, at 26 (explaining that the absence of a right to strike and an elaborate dispute mechanism suggests a priority to avoid strikes, and that financial interests were more important than correcting power imbalance between actors).
176. Industrial disputes and related issues are best resolved through “negotiation, and when needed with support of appropriate national trade union or dispute procedure provided for in industry agreement and/or local law.” H&M GFA, supra note 164, at 6.
177. H&M GFA, supra note 164; see also Zoom Interview with Gautam Mody, supra note 52.
178. See INDUSTRIALL, GLOBAL UNION’S CHECKLIST FOR AFFILIATED ORGANIZATIONS FOR IMPLEMENTATION AND MONITORING OF GLOBAL FRAMEWORK AGREEMENTS (GFA) http://admin.industriall-union.org/sites/default/files/uploads/documents/2018/industriall_gfa_c_checklist_for_affiliates_en.pdf (last visited Nov. 21, 2021); see also Zoom Interview with Victor Garrido, supra note 52 (referencing union’s ability to access factories as a bare minimum requirement for GFAs).
179. Zoom Interview with Mats Svensson, supra note 52.
its inclusion. It is worth noting here that an ILO report found that a co-governance structure where labor and management disputes are resolved under a robust dispute resolution system are key to a GFA’s success in actualizing labor rights. IF Metall concluded that the most important goal is an agreement to work together: Cooperation and social dialogue were prioritized over demands strongly articulated by some affiliates for a legally binding process.

H&M’s agreement establishes a non-binding, three-tiered structure for implementation and dispute resolution. Management and worker representatives are encouraged to cooperate and negotiate disputes, but the agreement does not provide details on implementation at the factory level. While there is a generalized commitment to increase awareness of trade unions, the agreement stops short of requiring unionization at factories used by H&M direct suppliers and subcontractors. The agreement defers to the managerial power of suppliers and national laws to address collective bargaining.

While H&M pledges to use its leverage as a buyer to ensure its suppliers respect trade union rights, there is nothing in the GFA that sets forth any consequences if they or their suppliers do not. As such, it does not alter the legal relationship between workers, brands, and suppliers at the national level in any way. It also does not explicitly state a key corollary to workers’ rights to organize and form trade unions, which is the right to strike or withhold labor when the terms of the agreement are not met. The inclusion of the right to strike would make trade union rights enforceable at the factory and national level if suppliers or brands did not comply with the terms of the GFA. The failure to include any means by which workers retain the right

180. When asked why these were not included, lead negotiator Mats Svensson responded, “How can we force them?” and that it was a “good enough” agreement, which he later admitted was naïve but honestly reflects the power of European global unions and the limits of a social dialogue, non-confrontational process as discussed in the decolonization section. See id. The omission of these provisions from the GFA severely hindered its impact. See id.
182. Id.
183. H&M GFA, supra note 164, at 1.
184. ILO IFA REPORT, supra note 15, at 38.
185. H&M GFA, supra note 164.
186. Giving deference and precedence to local laws, especially where labor law enforcement is difficult, undermines the effectiveness of global agreements. See Niforou, supra note 49, at 370 (analyzing global agreements by two Spanish MNCs in Latin America).
188. The right to strike is not explicitly referenced in ILO Conventions, but it has been accepted as part of the jurisprudence on freedom of association. See Rombouts, supra note 62, at 125.
189. The international division of labor and decentralized garment production make global capitalism vulnerable to disruption along its supply chain, and exercising power or the threat of it entails disruption. See McCALLUM, supra note 1, at 11. This is the structural power workers have.
to use economic power within the agreement, as is typical in a collective bargaining agreement, suggests that the agreement incorporates workers into a bureaucratic servicing agreement intended to maintain industrial peace. It does not allow workers to use their key economic power of withholding labor. These omissions are consistent with H&M’s and IndustriALL’s vision of industrial relations as primarily maintaining “stable and sustainable social relations in production.”

The H&M GFA prioritizes factory-level solutions to workplace disputes, such as negotiation or other dispute resolution mechanisms available locally. If the dispute cannot be resolved satisfactorily, representatives can escalate to the country’s National Monitoring Committee (“NMC”), composed of two members each from H&M and IndustriALL. Disputes can be escalated even further to the multinational Joint Industrial Relations Development Committee (“JIRDC”), which may provide support and guidance to the national-level NMC. H&M and IndustriALL determine in which countries the NMCs will be established. H&M and IndustriALL also designate the members of the NMC, which means they are labor representatives that are known or already affiliated with IndustriALL and include H&M representatives. NMCs are tasked with “monitor[ing] and evaluat[ing] national strategies” for implementation of the GFA and reporting their activities. They are also tasked with collaborating with trade unions and worker representatives and H&M’s direct suppliers and subcontractors, with particular attention to dispute resolution and collective bargaining agreements. The JIRDC is tasked with overseeing the implementation of the agreement at a global level. Like the NMCs, the final decision-making body, the JIRDC, is also comprised of members appointed by H&M and IndustriALL. If the disputes are not resolved at either the NMC or the JIRDC

190. Workers can use varied sources of power to effectuate change in the global supply, such as structural, institutional and coalitional. See Marissa Brookes, Varieties of Power in Transnational Labor Alliances: An Analysis of Workers’ Structural, Institutional and Coalitional Power in the Global Economy, 38 LAB. STUD. J. 181–92 (2013).

191. Where a regulatory or governance mechanism does not allow for countervailing voices or perspectives, it becomes a form of deregulation. Rodriguez-Garavito, supra note 45, at 227.

192. Menashe, supra note 55, at 27 (noting the absence of a right to strike as discouraging more pluralist forms of governance).


194. H&M GFA, supra note 164.

195. The criteria have been where H&M has a local office and its top suppliers, which is why MNCs were started in Cambodia and Bangladesh. See Zoom Interview with Apoorva Kairwi, supra note 52.

196. H&M GFA, supra note 164, at 5.
levels, H&M and IndustriALL may appoint a mediator to help resolve the dispute. Mediation, in contrast to arbitration or other binding dispute resolution processes, does not compel any party to accept the decision of the neutral decision maker.\textsuperscript{197} It is ultimately a voluntary dispute resolution process.

Evaluating the negotiated H&M GFA in comparison to the H&M corporate Sustainability Compact\textsuperscript{198} with the UN, which is self-reporting, legal scholar Mayaan Menashe found:

Hence, when H&M had the opportunity to decide unilaterally on a set of commitments without any influence from global union federations, the result did not deviate much from the agreement with the global union federations. This indicates that the negotiations with the global union federations did not manage to gain substantial changes from the already existing state of affairs within the company. Owing to the drawbacks observed in these two documents, more achievements at the bargaining table could have resulted in a better promotion of international labor rights.\textsuperscript{199}

In short, the union-negotiated agreement was not substantively different from H&M’s own corporate one. H&M’s GFA agreement has, however, resulted in some limited successes for protecting labor rights for individual workers as discussed in this section.\textsuperscript{200} Given GFAs’ promise and potential, and the investment in those agreements, those “episodic” successes\textsuperscript{201} are modest. Applying social movement theories to the GFA, as this article does in section III, reveals some ways to enhance and strengthen its impact.

B. H&M GFA’s Limited Effectiveness in Three Asian Production Countries\textsuperscript{202}

This sub-section summarizes available information on the implementation of the H&M Agreement in Asian production countries such as Cambodia, India, and Bangladesh to draw some insights on its actual


\textsuperscript{199} Menashe, \textit{supra} note 55, at 29.

\textsuperscript{200} \textit{See infra} Part B.

\textsuperscript{201} Stevis & Fichter, \textit{supra} note 64, at 669.

\textsuperscript{202} While this paper focuses on GFA impacting Asian production countries, H&M’s practice of supporting workers in its retail shops reflect a similar reluctance to support unions. \textit{See}, e.g., Stephon Johnson, \textit{H&M Workers Push for a New Contract, AMSTERDAM NEWS} (July 16, 2018), \url{http://amsterdamnews.com/news/2018/jul/16/hm-workers-push-new-contract/}, (showing an instance of H&M showing similar reluctance to support unions in its retail shops.).
effectiveness in promoting labor rights, and to theorize some ways to improve the agreement. This sub-section also draws on expert knowledge gained from interviews on the H&M GFA and GFAs generally, as well as available case studies.

The effectiveness and efficacy of the agreement remains under-researched: Only one major case study (published in June 2020), discussed below, of the implementation of H&M’s agreement exists. IndustriALL has not done any independent assessment of the GFA since its signing in 2015 except for a “video report” produced with H&M and other news-related announcements. The JIRDC meets annually and is responsible for overseeing the implementation of the agreement, and could conduct a comprehensive study but has not done so. In the video report, representatives from production countries provided oral reports to the JIRDC. None of the reports indicated any significant increase in unionization only an increase in awareness of the GFA. Although Myanmar and Turkey are not a focal point of this article, in these countries the NMC activities were similarly focused on raising awareness of the Agreement. This is consistent with the obligations outlined in the agreement which are only focused on notifying workers of the GFA, not on how it can be leveraged to expand labor rights. The training in Turkey simply notified workers of the GFA, and there was no training on how to use the agreement to mobilize for trade union rights. The sparse video report shows the need for a comprehensive study of the H&M GFA in all production countries. In other empirical studies of GFAs, the strategic use of the GFA by national unions as an impetus to facilitating labor bargaining was key to its effectiveness.

While some of the efforts and results discussed in the case studies below are promising, they reveal how GFAs fail to account for the microeconomic and political conditions of the national context, including laws on trade

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203. See Kaltenborn, Neset & Norpoth, supra note 149.
204. Zoom Interview with Apoorva Kaiwar, supra note 52 (video produced under auspices of GFA’s implementation mechanism for JIRDC).
205. See IndustriALL, Annual Report of the NMC (H&M GFA), YOUTUBE (Mar. 29, 2018), https://www.youtube.com/watch?v=5yWP0YmPaIU.
206. Zoom Interview with Victor Garrido, supra note 52.
207. ILO IFA Report, supra note 15, at 38.
208. See IndustriALL, supra note 204.
209. See ILO Report, supra note 15, at 28, 40 (reporting successful unions in Bangladesh and Cambodia); see also Zoom Interview with Athit Kong, supra note 52.
210. See IndustriALL, supra note 204.
211. Id.
212. Wills, supra note 50, at 695 (stating that without an active trade union organization, the international framework agreement made no difference in improving labor standards).
unions in countries where the GFAs are implemented.\textsuperscript{213} Even where national unions are involved, the socio-political context can lessen the impact of GFAs.\textsuperscript{214} Rather than being a collective agreement on the global level, the GFA is described amorphously as a “framework for cooperation” which creates an “environment conducive to finding solutions and solving conflicts.”\textsuperscript{215} Conflict resolution, rather than the expansion of rights, is the dominant goal of the GFA. Applying the criteria for an effective agreement listed by labor scholar Jeremy Blasi and sociologist Jennifer Bair, the GFA fails, as it is a non-binding agreement.\textsuperscript{216} Specifically, it does not produce market consequences for supplier non-compliance. It does not have a robust arbitration or binding dispute resolution process,\textsuperscript{217} whereby whether the terms of the GFA are being met is determined by a third party. It does not require H&M to take any steps beyond participation in the NMC and JIRDC to ensure that freedom of association rights are protected. At best, H&M remains neutral with respect to trade union organizing. The limits of the GFA are further elaborated in Section III on interdisciplinary perspectives.

1. Cambodia

The only empirical study done on the H&M GFA was conducted in Cambodia. The study examines the agreement’s effect on “industrial democracy” (“the exercise of power by workers or their representatives over decisions within their workplace”) in Cambodia.\textsuperscript{218} The pilot study is limited to a small sample size of seventeen interviews of workers and union representatives at factories where labor disputes occurred after the signing of the GFA.\textsuperscript{219} The study highlighted that trade unions have achieved some freedom of association rights for workers under H&M’s GFA where they have used it strategically.\textsuperscript{220} At the same time, the cases discussed show that almost all of the agreement’s positive outcomes depended on H&M’s willingness to enforce the agreement and advocate for workers.\textsuperscript{221} Furthermore, workers not represented by unions who were part of the NMC were not aware of the agreement and did not utilize it for dispute

\textsuperscript{213} Hadwiger, supra note 50, at 45 (“[I]nvolve[ment] of local actors throughout the GFA process need to be strengthened from its initiation, through negotiations to implementation”).

\textsuperscript{214} See id.; see also MCCALLUM, supra note 1, at 123 (discussing the challenges of the implementation of the GFA in India due to its unique industrial relations history, politicized unions and informalization of the workforce).

\textsuperscript{215} ILO IFA Report, supra note 15, at 43.

\textsuperscript{216} Blasi & Bair, supra note 59, at 6.

\textsuperscript{217} See Zoom Interview with Apoorva Kaiwar, supra note 52. (The GFA is “binding” on H&M in terms of their commitment to uphold labor rights but not in terms of litigating those rights articulated).

\textsuperscript{218} Kaltenborn, Niset & Norpoth, supra note 149, at 172.

\textsuperscript{219} See id. at 182.

\textsuperscript{220} Id. at 186.

\textsuperscript{221} See id. at 183–90 (discussion of main findings from study).
resolution. As shown by the study, not unlike codes of conduct, the GFA similarly falls into the trap of being effective only based on the willingness of the company to act. As such, while the H&M GFA contains language that appears to compel H&M to act to promote labor rights, in practice it remains a voluntary obligation. Trade union leader and member of Cambodian NMC, Athit Kong, aptly described the GFA as the “baby that came out of CSR [corporate social responsibility].” While it is better than CSR, the implementation of the GFA at the national and factory level remains a challenge.

As detailed in the study, as of August 2017, H&M’s GFA assisted in obtaining union recognition on at least three occasions in Cambodia. In each case, management attempted to block union recognition by claiming that workers had not filed the proper paperwork. Using the escalation procedures outlined above, the trade union notified H&M. After H&M’s intervention, management immediately accepted the paperwork, and unions were established. The study found that “the GFA provides Cambodian trade unions with a direct communication channel to H&M, allowing them to inform H&M about disputes occurring at supplier factories and to involve H&M in their resolution.”

This point is echoed below in the Indian context. One factory union leader reported that union membership increased from fifty-three to 355 members due to the H&M GFA. At times, H&M has shown a willingness to exercise its leverage over suppliers, as it is required to do per the GFA. In one case, a factory fired workers for organizing and the union appealed to H&M to intervene. At this particular location, H&M was a relatively inconsequential buyer. Initially, in response to the union’s appeals, H&M planned to cut its business relationship with the factory altogether, but union leaders persuaded H&M to maintain its business in order to uphold the brand’s influence at the factory; H&M complied.

While H&M’s GFA has achieved some freedom of association rights for workers, researchers noted some negative effects based on local context. Pro-government unions and independent unions are unlikely to cooperate

222. See id. at 189.
223. Zoom Interview with Athit Kong, supra note 52.
224. Id.
225. Kaltenborn, Neset & Norpoth, supra note 149, at 185–86.
226. See Kaltenborn, Neset & Norpoth, supra note 149, at 189.
227. Kaltenborn, Neset & Norpoth, supra note 149, at 185; See infra Part II(B)(2).
228. While this increase of members is commendable, Cambodian workers still face challenges to unionization. See, e.g., ITUC Calls on Cambodia to Stop Repressing Unions and Release Detained Union Leaders, INT’L TRADE UNION CONFEDERATION (Aug. 25, 2020), https://www.ituc-csi.org/cambodia-stop-repressing-unions (documenting the false arrest of Rong Chunn, president of the Cambodia Confederation of Unions).
230. Id. at 187.
231. Id. at 191.
easily, and union federations without seats on the NMC are unlikely to trust the NMC—or even know about it. Further, the “entrenchment of the Cambodian labor movement” hinders effective utilization of the GFA in Cambodia. As of August 2017, the date of the study, no IndustriALL affiliates without seats on the NMC had approached the committee for help in resolving a dispute. One union member stated that Cambodian trade unions “do not yet trust the NMC” because the NMC members act in their own interest, instead of the interest of the collective. Another representative from a separate federation said that no NMC member could be trusted to act independently. Yet another interviewed worker expressed a desire to officially disengage from H&M’s GFA due to general consensus within his union about the ineffectiveness of the GFA. And their skepticism is not unfounded: On at least one occasion, H&M refused to pay severance (despite a provision in the GFA to the contrary) merely because other buyers at a closed factory were also refusing to pay severance. As a result, many workers who are ostensibly protected by the GFA are unable or reluctant to engage with the NMC. It is a truism that when H&M acts in support of workers seeking to form a trade union or enforce rights, then the GFA can be effective. The weakness is that the agreement does not require or impose any consequences on H&M if it fails to act.

An interview of trade union leader and member of Cambodian NMC, Athit Kong by the author, confirms some of the challenges of the GFA detailed above in the study. He notes that the overall political context, with the biggest opposition party being expelled from parliament, has had a negative impact on freedom of association. As the democratic space shrinks, there is increased suppression of all members of civil society, including trade unionists. Of the GFA’s successes, he noted that eighteen workers who were dismissed were subsequently reinstated, and three unions formed. These successes were mainly due to the active effort of the national unions in obtaining favorable arbitration agreements at the national level through the national legal system. Similar to the Bangladesh example discussed

232. Id. at 184.
233. Id. at 182.
234. Id. at 183.
235. Id. at 184.
236. Id.
237. Id. at 191.
238. See supra note 162 for definition of buyer and other terms in the global supply chain.
239. Id. at 184.
240. Id.
241. Zoom Interview with Athit Kong, supra note 52.
242. Id.
243. The Arbitration Council is a national labor arbitration institution established under Cambodian law to resolve collective labor disputes between employers and workers or their unions. The Council is mandated to resolve both “rights disputes” – related to existing rights
below, the union used the GFA’s dispute resolution process to enforce an existing right under national law. When asked if unions could obtain these wins without a GFA in place, Kong said yes; however, the GFA did give the union a direct communication channel to H&M managers, which they used as part of their mobilization. The Cambodia case study shows that the effectiveness of the GFA depends on a strong national union. Given the enormous investment in GFAs, it is not yet clear whether the benefits are commensurate. The hope was that factories would form strong collective agreements, but that has not happened. Of the factories that are H&M suppliers in Cambodia, surprisingly, none have a Collective Bargaining Agreement (“CBA”) in place. Also, the GFA has had no noticeable impact on labor standards, such as wages or maternity leave protections. To Kong’s knowledge, the Cambodian NMC has not addressed any gender-related complaints even though ninety percent of the workers are women. To strengthen the GFA and NMC, Kong suggests that they focus on collective bargaining agreements and balancing the agreement between workers and suppliers. GFAs require a strong monitoring agreement. The NMC should work with NGOs and other progressive organizations to build coalitional power. Most importantly, according to Kong, worker consciousness is key where workers are aware of their rights and view themselves as part of the union such that they can advocate for change.

under the law, employment contracts or collective bargaining agreements, and ‘interests disputes’ – related to desired future benefits (mostly in the context of collective bargaining). The Council was established with the cooperation of unions, employers and government, and with assistance from the International Labour Organization. See About AC, ARBITRATION COUNCIL, https://www.arbitrationcouncil.org/about-ac/the-arbitration-council/ (last visited Nov. 6, 2021); see also Hugo van Noord, Hans S. Hwang, & Kate Bugeja. Cambodia’s Arbitration Council: Institution-building in a Developing Country (ILO Working Paper, Paper No. 994657983402676, 2011).

244. See infra Part B(3).

245. See also Zoom Interview with Gautam Mody, supra note 52 (explaining robust union power at the national level is essential for GFA); Zoom Interview with Apoorva Kaiwar, supra note 52 (acknowledging that the GFA is not a substitute for organizing).

246. Zoom Interview with Athit Kong, supra note 52.

247. Id.

248. Id.

249. Id.

250. Coalitional power is the ability of workers to expand the scope of their interest and concerns to nonlabor actors who are willing to influence employer’s actions or responses. See Brookes, supra note 190, at 192.

251. Zoom Interview with Athit Kong, supra note 52.
2. India

India’s multi-million-dollar garment industry employs at least eight million workers. While initially India did not have as high a percentage of women workers in the garment industry as other countries, with forty percent of the workforce now women, this is changing. In 2019, four years after the GFA was signed, and after incidents of workers’ rights violations were reported in an Indian factory, a NMC was formed. The India NMC is the first of the NMCs to have all female members. The members are representatives of local trade unions and H&M. There is no publicly available data on the NMC. This section relies on several sources: one case brought to the NMC in Karnataka, a case in Bangalore that was not brought to the NMC, studies on the impact of private regulations of multinational companies, and expert interviews.

H&M failed to act when garment workers in Karnataka, a state in south India, were laid off and not paid their wages. Sixty percent of clothing the


254. Id. at 5.


256. Id.


258. While the impact of the pandemic on the garment industry requires its own focus, it is worth noting that the GFA would not protect workers who were laid off from jobs due to COVID 19. In India, workers were laid off without any notice. In a labor-oriented agreement, as in many collective bargaining agreements, workers would be entitled to notice, and unions would be able to negotiate effects of the order cancellation.


factory produced was supplied to H&M.\(^{261}\) It was one of the four factories accredited by H&M in India, and the only factory with Karnataka Garment and Textile Workers Union (“GATWU”)\(^{262}\) as the majority union.\(^{263}\) After eight months of protest and organizing by GATWU and the New Trade Union Initiative (“NTUI”),\(^{264}\) the workers received their wages and got jobs back in other factories owned by the Indian supplier.\(^{265}\) IndustriALL and its affiliate unions, including H&M workers in Germany, provided solidaristic support to the Indian workers.\(^{266}\) However, the closed factory was not reopened.\(^{267}\) GATWU raised the issue with the NMC, but throughout the process, H&M maintained a neutral role despite being a signatory to the GFA.\(^{268}\) IndustriALL had to put pressure on H&M to act.\(^{269}\) Even then, H&M took no position on the factory closure.\(^{270}\) The dispute resolution mechanism therefore proved to be ineffective in enforcing labor standards and freedom of association rights. The eventual resolution of the campaign was not through the NMC process.\(^{271}\) The closure of the factory, the only one with a union, also revealed a freedom of association violation. While the workers were paid their wages and provided jobs, there was a loss of a unionized


\(^{262}\) Garment and Textile Workers Union (GATWU) is a grassroots union that organizes and fights for the rights of garment workers in Karnataka, India who are majority women and sole income earners in their households. For more information on GATWU, see Home, GARMENT AND TEXTILE WORKERS UNION, https://gatwu.wordpress.com/ (last visited Oct. 30, 2021).

\(^{263}\) Under the India Trade Union Act, 1926, more than one union can register as a trade union if they have seven or more members. Indian Trade Union Act, 1926 (Nov. 19, 2018); see also Sean Cooney, Petra Mahy & Richard Mitchell, *The Evolution of Labor Law in Three Asian Nations: An Introductory Comparative Study*, 36 COMPAR. LAB. L. & POL’Y J. 23, 29 (2014). Being a majority union means a majority of workers are members of GATWU.

\(^{264}\) Several independent trade unions convened to form the New Trade Union Initiative and constituted itself as a trade union federation. See About Us, NTUI (last visited Oct. 30, 2021), http://www.ntui.org.in/?page_id=119.


\(^{266}\) Zoom Interview with Gautam Mody, supra note 52 (recounting the support of IndustriALL and unionized German workers from ver.di, part of German Trade Union Federation).

\(^{267}\) Id.

\(^{268}\) Id. (commenting that H&M stood apart from the negotiation to reinstate workers). While they remained neutral in the formal MNC process, H&M representatives are said to exert outside pressure. See Zoom Interview with Gautam Mody, supra note 52.

\(^{269}\) Secretariat, supra note 261.

\(^{270}\) Id.

\(^{271}\) See Zoom Interview with Gautam Mody, supra note 52; Zoom Interview with Apoorva Kaiwar, supra note 52.
factory from where H&M sourced its clothing. The supplier did commit to recognize GATWU where their individual members worked at other locations owned by the Indian supplier company. That GATWU was no longer the majority union in a factory ostensibly weakened their institutional power to exact changes from the supplier. This case illustrates that the success of the GATWU and the NTUI was due to their own mobilization and IndustriALL as a global union using its own network of affiliates. It also revealed the ineffectiveness of the non-binding dispute process. If H&M were compelled to act or leverage their power over suppliers, creating market consequences, the benefits to workers could have been stronger.

A case (which occurred prior to the case described above in Karnataka), when the H&M GFA was in force but an Indian NMC was not yet constituted, also provides a helpful opportunity to assess the GFA. A 2018 report on a factory in Bangalore that produced garments for dozens of retailers, including H&M, found that the management “engaged in a campaign of vicious repression and retaliation against workers’ exercise of fundamental labor rights – which included physical beatings; death threats; gender, caste, and religion-based abuse; threats of mass termination; and the expulsion from the factory of 15 worker activists.” As of the date of the report on June 21, 2018, retailers, including H&M, had not required that management remedy the violations. Specifically, management did not commit to negotiate with the union, even though it was registered with the state, nor did it provide union representatives access to the factory to meet with employees on non-work time in non-work areas. When asked to respond to their failure to remedy the violations, H&M responded by stating they are facilitating dialogue with management. Their response was only prompted by the publicity on the working conditions.

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272. See Secretariat, supra note 261.

273. Id.

274. National unions must build their own power and not rely exclusively on the GFA. Zoom Interview with Gautam Mody, supra note 52.

275. Id.


277. WORKER RIGHTS CONSORTIUM, supra note 276, at 24.

278. Id. at 7.

279. Bain, supra note 276.

280. WORKER RIGHTS CONSORTIUM, supra note 276, at 23–24 (discussing how Consortium engaged with brands including H&M on the violations at the factory that produced their clothing).
In both examples, at Gokaldas Exports in Karnataka and Shahi Exports in Bangalore, H&M’s GFA has not been effective. However, some positive results can be attributed to the existence of a local mechanism for national unions to communicate with H&M local managers. Still, it took a robust national union or a global NGO mobilizing publicly to get some response. Even then, the GFA could not keep a factory open or compel a supplier to respect the freedom of association rights of workers. This context of unionization and union busting is where GFAs are mainly being tested in terms of their effectiveness. As a buyer, H&M could exercise greater leverage, but it does not (even though it pledges to do so in its GFA). When H&M does intervene, there have been some successes, as in Cambodia. This confirms that strengthening local mechanisms, including the NMCs, and making the dispute resolution process binding could yield better results for worker organizations.

Since the formation of NMCs, Indian unions such as NTUI have played an active role in improving the NMC process. These unions have identified some specific benefits of the GFA, yet more improvements to the implementation process are needed. For example, the GFA gives national unions a direct method to communicate with the global brand H&M. It provides a framework for collective bargaining to take place, where national unions can “call out” suppliers. Because the GFA includes direct suppliers and subcontractors, the agreement reflects H&M’s acknowledgment of its responsibility to all workers in the supply chain. It gives trade unions recognition in a global industry where unionization is difficult. These same benefits of the GFA have been echoed by trade unionists in Cambodia and Bangladesh and necessitate the existence of strong national unions.

Outside of the H&M GFA, three studies of private regulation in India have shown some analogous insights into the limits of GFAs in India. A case

281. Another difference that merits further study between these cases is the difference between a trade union and an NGO in advancing labor rights. In the Shahi Exports case, the organization in India was not a union.

282. See Zoom Interview with Apoorva Kaiwar, supra note 52; see also E-mails from Apoorva Kaiwar, Regional Secretary, South Asia, IndustriALL to Author (Aug. 18, 2021; Feb. 7, 2022) (on file with author). Kaiwar explains that unions in the garment sector in India organize an umbrella union (e.g. GATWU supra note 262) where workers from several factories are members. Unions work on building union density in each workplace. While there may be only one registered union, it is harder to count factory level unions because they are not required to register with the state. See Indian Trade Union Act, 1926 (Nov. 19, 2018) (India). This explains challenges in obtaining an accurate count of unions in India; however, Kaiwar reports union “membership is increasing.”

283. H&M GFA, supra note 164.

284. Zoom Interview with Gautam Mody, supra note 52.

285. Id.

286. Indian Trade Union Act, 1926 (Nov. 19, 2018).

287. Zoom Interview with Gautam Mody, supra note 52.

288. Id.
study of a Chinese retailer’s supply chain in India found that a strict policy on compliance has yielded improvements in labor standards. However, very few global buyers adopt a policy threatening to drop suppliers if they do not comply with labor standards or provide positive incentives for compliance. The H&M GFA does not adopt such a policy, leaving its exercise of buying power as leverage to improve labor conditions discretionary. A separate study of audits from factories in India showed “nonsignificant improvements over time, despite multiple audits.” If we were to give credence to the effectiveness of voluntary private regulation, then it would seem that repeated audits would improve labor standards; however, the study showed otherwise. This is probably because brands are not required to remedy violations. Finally, labor scholar Jamie McCallum’s study of a G4S/security guard unionization campaign in Bangalore and West Bengal India showed the unique challenges of GFAs in the Indian socio-political context. There, the Service Employees International Union (“SEIU”) and the UNI Global Union (“UNI”) began their campaigns by identifying partner national unions, which included the Indian National Trade Union Congress and other Indian trade unions, to form the Indian Security Workers Organizing Initiative (“ISWOI”). The genesis of their campaign involved Indian unions, made organizing an explicit goal, and viewed the GFA as a tool to achieve those organizing goals, not just as an end to itself. At the outset, SEIU identified some of the national challenges with partner Indian trade unions; although many issues remained due to entrenched, historical patterns of labor mobilization. Given that the H&M GFA began with no involvement of Indian national unions, it fared worse, and the reports of labor violations in the Bangalore case demonstrate that. However, there were positive steps once an NMC was formed, and more positive steps

289. Bae, supra note 60, at 108–09 (evidencing clear and definite improvement of a home products retailer based on strict compliance policies implemented by retailer); see also Blasi & Bair, supra note 59, at 6 (explaining that incentives for unionized factories or market consequences for suppliers who do not meet labor standards are factors that enhance a GFA).
290. Bae, supra note 60, at 110.
291. See H&M GFA, supra note 164.
292. Bae, supra note 60, at 99.
293. McCallum, supra note 2, at 123-27 (noting the Indian context posed more obstacles to transnational collaboration); see also Coony, Mahy, & Gahan, supra note 253, at 32–33 (while Indian labor law has colonial origins, the development of the law post-independence took a different path because the Indian state took a dominant and central role in labor law such that there was little legal support for collective bargaining and a regulatory style of bargaining did not develop); see also Zoom Interview with Apoorva Kaiwar, supra note 52
295. Id.
296. See id. at 139–42 (discussing differences in historical labor mobilization and receptivity to unionists from global unions in Bangalore and Kolkata).
297. NMC representatives provide input on the dispute resolution procedures of the GFA. IndustriALL Unions Negotiate Global Dispute Resolution Mechanism with H&M,
with the greater involvement of a more militant union with an explicit organizing focus that was able to strategically utilize the GFA.

3. Bangladesh and Lessons from the Accord

There is no known study of the implementation of the H&M GFA in Bangladesh, or even its relationship to the Bangladesh Accord on Fire and Building Safety in Bangladesh, another global labor governance agreement to which H&M is a signatory. This sub-section draws from the author’s own research and study on Bangladesh, including an analysis of the Accord on Fire and Building Safety in Bangladesh, interviews of experts knowledgeable about the implementation of the H&M GFA in Bangladesh, as well as publicly available information on Bangladesh NMCs.

The Bangladesh NMC had its first meeting on April 22, 2016. Despite the existence of H&M’s GFA since 2015 and a NMC in Bangladesh from 2016, garment factory owners/suppliers repeatedly felt emboldened to take actions that clearly violate workers’ fundamental rights. As of 2015, 79,000 workers produce garments for H&M in Bangladesh, and 2016 reports indicate that H&M fell short of its pledges to protect the safety of workers. Unrelated to H&M, mass labor protests occurred in December 2016 when workers demanded higher wages.

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298. The Accord is an agreement between brands, trade unions and NGOs where signatory global brands fund a factory inspection program specific to fire and building safety. See BANGL. ACCORD, supra note 48.


300. E.g., Zoom Interview with Nazma Akter, supra note 52; Zoom Interview with Apoorva Kaiwar, supra note 52.


workers, 800 of whom worked in H&M supplier factories. Under Bangladeshi law, termination benefits are provided to workers. National unions were able to obtain termination benefits for workers in 2016 by leveraging the H&M GFA. Nazma Akter, the President of Sommilito Garments Sramik Federation, one of the largest union federations in Bangladesh and founder of Awaj Foundation, said the NMC communicated with local H&M managers to address the dispute. They demanded that all the workers be reinstated and be paid any wages due. While only two workers were reinstated, the 800 workers who worked for H&M suppliers were only able to get termination benefits. Still, for Akter, this set a precedent and put garment employers on notice that they were not able to escape their obligations under Bangladesh law. The NMC process seemed to accelerate the resolution of those claims which often languish in Bangladesh labor courts.

From December 2018 to early 2019, thousands of garment workers protested the inadequate wage increases across Bangladesh. These protests were met with force by the Industrial Police and the mass dismissal of close to 12,000 workers. Brands including H&M had suppliers who dismissed workers despite the existence of the GFA. Four of H&M’s suppliers laid

306. Zoom Interview with Nazma Akter, supra note 52.
308. See ILO IFA Report, supra note 15, at 40 (discussing how the Bangladesh NMC settled employment disputes by 984 workers); see also Zoom Interview with Nazma Akter, supra note 52.
309. Zoom Interview with Nazma Akter, supra note 52.
310. Resolution of claims in Bangladesh court is extremely slow, see Md. Sanaul Islam Tipu, Labour Court: Over 17,000 Cases Pending in Seven Tribunals, DHAKA TRIB. (May 1, 2019), https://www.dhakatribune.com/bangladesh/court/2019/05/01/labour-court-over-17-000-cases-pending-in-seven-tribunals. For rules on Labor Courts, see Bangl. Lab. Act, 2006, ch. XIV.
313. See Bangladesh: Brands Respond to Mass Dismissals of Garment Workers Following Minimum Wage Protests, BUS. & HUM. RTS. RES. CTR. (Apr. 8, 2019), https://www.business-
off employees and two of the factories filed lawsuits against workers.\textsuperscript{314} It is not clear if there were unions at those supplier factories. Mass layoffs are a way suppliers can thwart unionization efforts. Again, national unions, including Akter’s, contacted H&M managers and negotiated a resolution of these mass layoffs with suppliers.\textsuperscript{315} The suppliers agreed not to follow up on the criminal cases and a settlement was reached. Similar to mass layoffs in 2016, not all workers were reinstated. Mainly, they were only able to negotiate termination benefits, which was an inadequate remedy in comparison to the severity of labor rights violations.\textsuperscript{316} In August 2019, H&M suppliers at one factory again laid off 700 workers.\textsuperscript{317} Unions said workers were fired due to union activities.\textsuperscript{318} H&M’s response was:

In this case, we are in dialogue with local partners through our National Monitoring Committee in Bangladesh which consists of H&M Group colleagues and trade union representatives that are affiliated with IndustriALL. We have confirmed that the maternity benefits as well as termination benefits have been paid. We are still investigating the specifics of this incident in dialogue with IndustriALL.\textsuperscript{319}

In each of these examples, H&M GFA’s success was limited. H&M’s response was passive, neutral, and lukewarm at best. Layoffs have continued and are worsened by COVID-19.\textsuperscript{320}


\textsuperscript{315} Zoom Interview with Nazma Akter, supra note 52.

\textsuperscript{316} See WRC 2019 Report, supra note 312, at 27–28.


\textsuperscript{318} Id.


\textsuperscript{320} See Elizabeth Paton, “Our Situation Is Apocalyptic”: Bangladesh Garment Workers Face Ruin, N.Y. TIMES (Mar. 31, 2020) (discussing how millions of workers, mostly women from rural areas, have not been paid owed wages or severance pay; Western buyers refuse to pay wages of laid off workers). After postponing or cancelling orders totaling $170 million U.S. dollars, H&M agreed to pay for orders completed or processed in time before the pandemic, see A Movement to Reform Fashion, PAY UP FASHION, https://payupfashion.com/project/hm/ (last accessed Nov. 6, 2021).
However, IndustriALL reports that from “2017 till June 2021, unions were organized and registered in about 18 manufacturers that supplied to H&M (and other brands, as there are no factories that supply exclusively to H&M).”\textsuperscript{321} In the same period, the newly registered unions signed four new collective bargaining agreements.\textsuperscript{322} Akter notes that her federation was able to organize unions in ten factories and obtain collective bargaining agreements in two H&M supplier factories.\textsuperscript{323} Akter likes the GFA as a communication tool with H&M to put brand pressure on suppliers.\textsuperscript{324} She said, “I am not saying GFAs are everything, but at least brands are listening,” speaking both about H&M’s GFA and Inditex.\textsuperscript{325} She also commented: “sometimes it works and other times it doesn’t, especially where H&M is not the main brand the supplier sources to.”\textsuperscript{326} She suggests that GFAs would be more effective if made legally binding on brands and suppliers.\textsuperscript{327} As a member of the NMC, she noted that there are new efforts to better evaluate the GFA, such as a collective bargaining evaluation tool to assess the strength of agreements and set standards in the industry. As it stands, for Akter, the GFA is helpful to raise awareness on freedom of association and unions.

Akter’s main emphasis and focus was on strengthening national unions and building women’s leadership within them. “I need to build our own capacity. We [referring to unions] need to make ourselves strong.”\textsuperscript{328} She highlights that in H&M supplier factories where a collective bargaining agreement was formed, the elected presidents of the unions are women.\textsuperscript{329} Akter states that “creating a culture where women workers at the factory level can negotiate with suppliers is good for both labor and women’s rights.”\textsuperscript{330}

\begin{footnotesize}
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  \item[321.] E-mail from Apoorva Kaiwar, Reg’l Sec’y, S. Asia, IndustriALL to Author (Aug. 17, 2021) (on file with author).
  \item[322.] Id. This data is being collected as part of the GFA Implementation Project. \textit{Id.} The number should be placed in the context of Bangladesh law which allows any trade union to register in each workplace, see Bangl. Lab. Act, 2006, § 177 (“Any trade union may, under the signature of its president and secretary, apply for registration of the trade union.”). Given this liberal registration of unions, the quality and independence of these unions is not known. As discussed in the organizing section, the evaluative criteria is whether these new unions are independent, and build worker power.
  \item[323.] Zoom Interview with Nazma Akter, \textit{supra} note 52.
  \item[324.] \textit{Id.}
  \item[325.] \textit{Id.} For information on the Inditex GFA, see \textit{Inditex, INDUSTRIALL} (July 11, 2014), \url{http://www.industriall-union.org/inditex}.
  \item[326.] Zoom Interview with Nazma Akter, \textit{supra} note 52. Most suppliers in Bangladesh source to multiple brands. See Kelsey Timmerman, \textit{Where Am I Wearing?} 46 (2012) (“There are over 3,000 factories in Bangladesh, and twice that many middlemen. The factories are privately owned and work with multiple brands.”).
  \item[327.] Zoom Interview with Nazma Akter, \textit{supra} note 52.
  \item[328.] Zoom Interview with Nazma Akter, \textit{supra} note 52; \textit{see also} Zoom Interview with Gautam Mody, \textit{supra} note 52 (also commenting on the need for national unions to take responsibility and not rely on GFAs or other international mechanisms).
  \item[329.] \textit{Id.}
  \item[330.] \textit{Id.}
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Akter’s comment on women workers underscores how supporting trade unions also enhances women’s empowerment as discussed below. Apparent from the interview with Akter is that a strong national union, committed to organizing from the factory level, and knowledgeable about the GFA, is essential to GFA’s effectiveness. Involving national unions with long histories in the local context of production countries improves GFAs. Akter’s federation, being on the NMC, and connected to affiliate unions in other production countries, can strategically use the GFA. However, similar to the distrust of non-affiliated unions in Cambodia or unions not on MNCs, it is not clear if those unions will use the GFA at all.

The details and context of the Bangladesh cases as well as the case discussed in Karnataka, India are important for understanding what might make a GFA effective. Here, success can be attributed to the following facts: Workers protested, H&M threatened to terminate supplier contracts if workers were not provided with termination benefits or reinstated, and strong national unions and national legislation that provided workers termination benefits existed. Without the involvement of a conscientious and militant workforce, national unions, national legislation, and H&M using its leverage as a buyer, it is unlikely that there would be success in the provision of termination benefits. Even with those factors, GFAs have not been successful at reinstating workers or combatting efforts by suppliers to quash unionization. Unionization under national law, given socio-economic factors, remains a challenge in Bangladesh. At most, the GFA acts as leverage in the global supply chain to enforce rights that workers are already entitled to under national law. It provides national unions a direct link to H&M. Results could also have been achieved by global unions acting in solidarity with national unions. Global labor solidarity campaigns utilizing direct action and other organizing strategies have been equally successful in addressing these factory level disputes. This is not to suggest a unitary

331. See Mark Anner, Monitoring Workers’ Rights: The Limits of Voluntary Social Compliance Initiative in Labor Repressive Regimes, 8 GLOB. POL’Y 56, 64 (2017) (noting that successful efforts to address workers’ rights have not been due to compliance programs or state action, but trade union and activist campaigns).


333. See, e.g., Riisgaard, supra note 100, at 730 (stating that the Chiquita framework gave Honduran organizers access to corporate leadership); see also Zoom Interview with Athit Kong, supra note 52; Zoom Interview with Gautam Mody, supra note 52.

334. In Pakistan, for example, before an NMC was formed, National Trade Union Federation (“NTUF”) sought the assistance of IndustriALL’s affiliate to seek benefits for the dismissed workers. They were successfully reinstated, just as in Bangladesh. It is unknown if this result led to the increased strength for the Pakistani union involved, in terms of members or greater freedom of association rights. Agreement with H&M Proves Instrumental in Resolving Conflicts, INDUSTRIALL (Jan 7, 2016), http://www.industriall-union.org/agreement-
strategy. Local level mechanisms that enlarge space for worker and trade union agency need to be strengthened for the GFA to be effective at the production level. In assessing the GFA, it is important to highlight what it adds to increase worker power and freedom of association rights and what is lost by channeling labor management into a bureaucratized global agreement which risks muting local labor militancy. This point is further elaborated in section III.

For some additional insight on the impact of the H&M GFA in Bangladesh, one may also look at the fate of the Bangladesh Accord, specifically the backlash it provoked. The Accord was formed to make factories safer for workers after the catastrophic Rana Plaza building collapse. It contains a binding arbitration provision. H&M was one of the early brand signatories to the Accord. Since the Accord’s formation in 2013, and its three-year extension in 2018 with some new provisions such as a provision on freedom of association, its functions were transferred to the RMG Sustainability Council (“RSC”), a regulatory body composed of unions, brands, and a trade association representing garment owners called the Bangladesh Garments Manufacturers and Exporters Association. (“BGMEA”). H&M’s representative serves on the Board of Directors of the RSC. The 2018 Transition Accord was renewed and renamed as the International Accord for Health and Safety in the Textile and Garment Industry (“2018 Accord”). However, H&M did not immediately sign the

with-hm-proves-instrumental-in-resolving-conflicts-0; see also ILO IFA Report, supra note 15, at 41.

335 See Trubek et al., supra note 43, at 1193 (central to transnationalism is that multiple actors can mobilize labor rights norms different areas).


recently renewed Accord\textsuperscript{343} because it prefers non-binding tripartite structures with trade unions, employers, and the government.\textsuperscript{344} Eventually, H&M signed the Accord.\textsuperscript{345} The original Accord was limited in its effectiveness in improving the working conditions of garment workers because it failed to build local organizing capacity, disregarded how the agreement would interact with local laws, and lacked any engagement with workers.\textsuperscript{346} Not surprisingly, the Accord become susceptible to reactionary critique by politically influential suppliers\textsuperscript{347} and the government of Bangladesh claimed that the Accord was impeding on its sovereignty, which led to a legal battle.\textsuperscript{348} The Accord also faced genuine critiques from worker groups not affiliated with international unions.\textsuperscript{349} The 2018 Accord seems to take some of these critiques in mind as it expands the scope of the agreement.\textsuperscript{350}


\textsuperscript{344} Debunked: 5 Excuses H&M is Using to Avoid Signing the Accord https://payupfashion.com/debunked-5-excuses-hm-is-using-to-avoid-signing-the-accord/ (Jun. 17, 2021) (PayUp Fashion, a campaign to advocate for garment workers with fashion brands, led by nonprofit organization Remake contacted H&M and reported their response).


\textsuperscript{346} Huq, supra note 299; See also Lam, supra note 340, at 590 (discussing how the Accord fails to address systemic problems in the garment industry).

\textsuperscript{347} Jim Yardley, \textit{Garment Trade Wields Power in Bangladesh}, N. Y. TIMES (July 24, 2013) (stating that “analysts say 31 members, or 10 percent of the country’s national legislators, directly own garment factories, while others have indirect financial interests in the industry.”).


\textsuperscript{350} It is beyond the scope of this paper to do a comparative analysis of the International Accord. It is worth noting that the original Accord began with over 200 signatories, and this new Accord has 77. For general information, see \textit{Home, INT’L ACCORD}, https://internationalaccord.org/home (last visited Nov. 22, 2021).
Similar critiques of the Accord apply to the H&M GFA. These hard lessons from the Accord could have informed the negotiations and text of the GFA, which at the very least could have included a binding dispute resolution process similar to what exists in the Accord. The retreat from the binding provisions in the H&M GFA, such as one that exists in the Accord, reveals the GFA’s limits and undermines its effectiveness. If H&M agreed to an arbitration provision in the Accord for building safety in 2013, it should have agreed to a binding dispute process for freedom of association and other labor rights for workers enumerated in the GFA. Union signatories commenting on the Accord noted it would have “been good” if it included freedom of association rights. The GFA offered that opportunity but it was not made legally enforceable.

Other lessons learned from the Accord, such as to include a wide cross section of national unions in the GFA, to involve national unions in the negotiation of the terms of GFA, and to proactively address the socio-political contexts where the GFA would operate may have strengthened the H&M GFA. Unions in Bangladesh are polarized and divided by affiliations to political parties. Only eight national unions were incorporated into the Accord, and the Accord only covered a small fraction of garment workers. This generated a distrust of the Accord similar to the distrust of the H&M GFA expressed by unaffiliated unions in Cambodia. In the negotiations of the 2018 extensions to the Accord, labor leader Babul Akter noted that “local unions were iced out of negotiations, which were between the Accord and the BGMEA and sanctioned by the government of Bangladesh.” This underscores the importance of engaging national unions in the negotiation of any global governance agreement. Finally, on concerns related to national sovereignty, some of the challenges raised by McCallum in discussing the corporate governance campaign and implementation of the framework agreement in West Bengal would also apply to Bangladesh, where some unions are skeptical of global unions due to a history of “imperialistic union activism.”

In short, the local lessons from the Accord in Bangladesh were crucial to a stronger H&M GFA. Just as collective agreements should build on past movement gains, international global governance agreements should do the same.

351. A demand for a legally binding dispute process was raised but refused by H&M. See Zoom Interview with Mats Svensson, supra note 52.
352. See Saurav Sarkar, Bangladesh Accord Gets a Lifeline While Workers Organize Wildcat Strikes, LAB. NOTES (Aug. 6, 2019).
353. Ashraf & Prentice, supra note 303, at 105 (describing how the division between politically connected national union federations and radical unions).
354. Kaltenborn et al., supra note 149.
355. Id.
356. McCALLUM, supra note 1, at 142.
One narrative that is used to justify GFAs’ limited effectiveness is the nation-state’s hostility to union organizing. This can be addressed by structuring the GFA to empower the capacity of worker-led organizations and national unions. The H&M GFA notes that where freedom of association and collective bargaining is restricted under national law, employers should encourage freedom of association. Private agreements can provide greater rights to workers than national laws can. However, this provision is not made enforceable on employers through the dispute resolution process or by any consequences for suppliers who do not abide by the agreement. As discussed below, these GFAs fail to empower national unions in the interests of maintaining industrial peace with H&M. If private global agreements like the Accord and H&M’s GFA are promoted as the best examples of global governance, expansive content, and robust enforcement mechanisms are needed. Moreover, as discussed in each of these country-specific studies, the involvement and support of politically independent national unions has been consistently found to increase GFA effectiveness. As such, GFAs must be implemented cognizant of the local context and laws of the production countries.

C. Gender and H&M’s GFA Agreement

Even though the vast majority of workers in the garment industry are women and the GFA uses anti-discrimination language, the GFA has not been successful in addressing the gendered concerns of workers. Not surprisingly, international law generally has been inadequate at addressing gender-based violence and other gender issues. Labor unions have also

358. See infra Part III(C)(3).
359. The landscape and laws of trade unions vary from country to country. I do not intend to cast all unions as the same. Here, I am only referring to strong militant unions that have an active presence organizing at the factory floor and are independent from state and employer; see also Zoom Interview with Apoorva Kaiwar, supra note 52.
360. See Hadwiger, supra note 50, at 45 (noting that GFAs work best when integrated into local labor relations).
361. ILO Report, supra note 23, at 8; Barrientos & Evers, supra note 16, at 8; Gender: Women Workers Mistreated, CLEAN CLOTHES CAMPAIGN, https://cleanclothes.org/issues/gender (last visited Nov. 23, 2021) (finding that eighty percent of garment workers are women).
362. See generally Diane Otto, The Exile of Inclusion: Reflections on Gender Issues in International Law Over the Last Decade, 10 MELB. J. INT’L L. 11 (2009) (discussing that while feminist ideas have spread through the UN system, it has been at the cost of emancipatory aspirations of feminism); Jennifer L. Ulrich, Confronting Gender Based Violence with International Instruments: Is a Solution to the Pandemic Within Reach, 7 IND. J. GLOB. L. STUD. 629 (2000); Margareth Etienne, Addressing Gender-Based Violence in an International Context, 18 HARY. WOMEN’S L.J. 139 (1995).
ignored the experiences of working-class women. The H&M GFA explicitly affirms a commitment to gender equality, states a prohibition against sexual harassment, and cites to the Maternity Protection Convention, but does not provide a gender-conscious dispute resolution procedure for labor disputes. It is not attuned to the gendered social relations at the factory and national level. This silence is surprising given the fact that women predominate this industry and are concentrated in the lower-wage jobs of the sector. Only one gender-specific case is known to have been brought through the GFA. Given the millions of women workers in the global garment supply chain, the GFA seems to have failed women workers.


363. Marion Crain, *Between Feminism and Unionism: Working Class Women, Sex Equality and Labor Speech*, 82 Geo. L.J. 1903, 1907–08 (1994) (explaining how the economic concerns of unions have focused more on white male workers, reflecting labor’s masculine culture and privileging its gender interests, over class interests of women workers; further, discussing how law reinforces silences of working class women by reinforcing “gendered nature of unionism and the classed character of feminism.”).


366. Crain, supra note 363, at 1965 (describing gender consciousness in the US union context as requiring organizers to focus on women workers, encouraging them to reevaluate their work, values attached to that work, such that women see themselves as economically self-sufficient, and are able participate in activism or organizing).


368. A violation of a maternity leave case was brought in Bangladesh. *See Zoom Interview with Nazma Akter, supra note 52 Paid maternity leave is available under Bangladesh law. *See Bangl. Labor Act, 2006, ch. IV. however, garment suppliers routinely violate this law. Editorial, *Maternity Leave and Pay*, DAILY STAR (Sept. 15, 2018), https://www.thedailystar.net/editorial/news/maternity-leave-and-pay-1633960 (reporting 28.7% of the workers get maternity leave for four months); Awaj FOUND. & FAIR LAB. ASS’N, *Maternity and Childcare in Bangladesh* (Sept. 2019), https://www.fairlabor.org/sites/default/files/genderresearchstudy_final.pdf (data suggest that workers do not know about law or factories are not abiding by it). One case was brought to the attention of affiliates in India, but they did not follow through. *See Zoom Interview with Apoorva Kaivat, supra note 52; No known cases have been brought in Cambodia. *See Zoom Interview with Abhik Konig, supra note 52.

(“GLJ-ILRF”) uncovered multiple cases of gender-based violence across H&M’s supply chains. The report concluded that current mechanisms put in place by H&M and other brands were not protecting garment workers from harassment. Additionally, garment workers in India also reported instances of sexual harassment. One worker described being stalked by her supervisor, who called after work hours asking for sexual favors in exchange for a lighter workload. In 2021, other garment workers in Southern India complained of sexual harassment at a factory supplying to H&M. Similarly, an Action Aid report found that eighty percent of all Bangladeshi garment workers faced sexual violence or harassment in the workplace. They also face other forms of gender-based discrimination such as being asked to resign if they are pregnant. An ILO report on Bangladesh found numerous gender-based challenges including risks of miscarriages for pregnant workers. Forty-two percent of factories in Bangladesh do not offer paid leave, sick leave, or maternity leave even though doing so is required by law. Women workers also face discrimination in seeking promotions. Because women workers are segregated in low-paid jobs within the industry, they are not able to realize gender equity in pay. The ILO report concludes that “despite rising economic growth underpinned by women workers’ contributions, the RMG sector has not yet evolved to advance gender equality or decent work for both women and men.”

Even though the H&M GFA was in place, and it contained enumerated rights against harassment, for maternity leave protection, and for equality in pay, it was unable to prevent these specific and pervasive types of gender-based harassment and discrimination. While theoretically workers can raise these

371. Id. at 4–5.
372. HUM. RTS. WATCH, supra note 367.
373. Id.
377. Aya Matsuura & Carly Teng, Understanding the Gender Composition and Experience of Ready-Made Garment (RMG) Workers In Bangladesh, ILO REP. 30 (2020) (detailing how garment industry relies on low paid female labor to compete and maximize profits; women are concentrated in low paid jobs in the RMG sector).
378. Id. at 37; See also Bangl. Labor Act, ch, IV (providing expressly for a maternity benefit of eight weeks following delivery).
379. Matsuura & Teng, supra note 377, at 17.
380. Id. at 35.
issues to the NMCs, in this author’s view, unless there is a confidential reporting process or gender-conscious complaint process, it is unlikely that workers who are sexually harassed or discriminated against would bring these issues forward. A gender-neutral implementation policy within the GFA has failed to create a mechanism for women workers to bring these issues forward.

Moreover, the failure to proactively support trade unions at the factory or national level also has an impact on women workers. Trade union space, despite its shortcomings, has allowed women to assert their agency as workers in the workplace and to address gender-based violence at home. Thus, building the capacity of trade unions and proactively addressing women’s leadership has led to positive outcomes for women workers and their ability to raise gender-specific concerns to employers. For example, elected women union leaders in factories in Bangladesh were able to negotiate collective bargaining agreements with “ground-breaking provisions such as free ultra-sound checkups for pregnant workers, relief from physically demanding work in late months of pregnancy and annual wage increases and number of paid holidays higher than the legally required amount.” A recent ILO report encouraged increasing worker participation in trade unions, especially for women. The writers found that “[t]o create decent workplaces for all, both women and men should be represented in trade unions and other organizational structures.” Further, when men dominate unions, “issues that matter for women tend to be overlooked or ignored.” This is certainly true for the H&M GFA, which was negotiated by male trade unionists. Without a mechanism within the H&M GFA for women to

381. Human Rights Watch reports that women are scared to file formal complaints of sexual harassment, and fear retaliation. See HUM. RTS. WATCH, supra note 367. In the US context, even among professional women, eighty percent of sexual assaults are unreported. See Cameron Kimble & Inimai M. Chettiar, Sexual Assault Remains Dramatically Underreported, BRENNAN CTR. FOR JUST. (Oct. 4, 2018), https://www.brennancenter.org/our-work/analysis-opinion/sexual-assault-remains-dramatically-underreported#:~:text=%28A%20history%20of%20low%20reporting%20rates%20in%20one,low.%29%20Rape%20and%20sexual%20assault%20are%20serious%20offenses.

382. Chaumtoli Huq, Women’s “Empowerment” in the Bangladesh Garment Industry through Labor Organizing, 20 WAGADU: AM. J. TRANSNAT’L WOMEN’S & GENDER STUD, Fall 2019, at 130, 154; see also Zoom Interview with Nazma Akter, supra note 52; Crain, supra note 363, at 1960 (despite’s labor unions shortcoming, discusses how the labor movement in the US has done more to improve the economic situation of women workers).


384. Matsuura & Teng, supra note 377, at 38.

385. Id.

386. Id.

387. While women are at the forefront of labor organizing at the grassroots level, labor leadership remains dominated by white men. See BROOKS, supra note 26, at 118.
address harassment and concerns such as parental leave, it is not surprising that these issues are not addressed.\textsuperscript{388}

The Lesotho Garment Industry Agreement, a collaboration with women’s rights organizations and unions, focuses on addressing gender-based harassment with one supplier that sourced Levi Strauss, Children’s Place, and Wrangler and Lee.\textsuperscript{389} It has more effectively addressed gender-based violence.\textsuperscript{390} For example, the agreement conditioned continued business with one supplier on its cooperation with a worker-led program to eliminate gender-based violence.\textsuperscript{391} Suppliers agreed to establish an independent organization responsible for investigating allegations of gender-based violence.\textsuperscript{392} If violations were found, the organization could direct specific remedies. The program also created an information and complaint line run by the women’s rights organizations in Lesotho to provide legal and other services to workers and organize related awareness activities.\textsuperscript{393} While still a relatively new program, the collaboration with women’s organizations, training on gender-based violence, and creating a specific channel by which these grievances can be raised increases the likelihood that women will come forward. With the vibrancy of social movements, including women’s movements, a labor unions’ alliance with women’s rights NGOs can be

\textsuperscript{388} See HUM. RTS. WATCH, supra note 367, at 14 (recommending that “women and union leaders [should be able] to give confidential feedback about any complaints systems at work, ease of access and use of such mechanisms, and anti-retaliation protection measures.”).


\textsuperscript{390} See Matt Fischer-Daly & Christopher Raymond, Freedom of Association and Collective Bargaining in Global Supply Chains, in PRIVATE REGULATION OF LABOR STANDARDS IN GLOBAL SUPPLY CHAINS 155 (Sarosh Kuruvilla ed., 2021) (discussing the Lesotho agreement as an example of a successful triangular governance model with unions, women’s rights NGOs and brands); see also Barrientos & Evers, supra note 16, at 53 (discussing that Uganda Workers Education Association project conducting training on sexual harassment and trade union rights reflects a good model of combining workers and women rights).

\textsuperscript{391} WORKER’S RTS. CONSORTIUM, Initial Fact Sheet, supra note 389.


\textsuperscript{393} Id.
beneficial to promoting global labor rights. GFAs that engage women’s rights organizations can lead to better agreements that integrate gender concerns into the agreements instead of viewing those issues as separate and outside of global labor governance.

Moreover, the fact that women workers have had to organize for separate protections against gender-based violence through ILO Convention 190 reveals the inadequacies of the H&M GFA for women workers in the supply chain. This is not to suggest a sole governance structure for addressing gendered concerns. Consensus is that successful global labor governance is one that is multi-level with several entry points for workers. The ILO Convention obligates states to act to address gender-based violence, but it does not apply to MNCs. However, it is also possible to have a complaint process within the GFA which empowers women workers themselves to bring gender-related complaints.

In the absence of a mechanism for women garment workers to raise gender-related issues or to generally improve their trade union rights through the GFA, women workers remain vulnerable to existing social and economic relations of the global garment industry. The predominance of women workers in the garment industry in Bangladesh and other production countries was not by accident, but through deliberate global economic policies to promote cheap labor. Race and gender subordination and exploitation were key to the development of the garment industry. Making gender and race identity formations visible through a transnational feminist praxis illuminates how exploitation of women workers occurs under capitalism.

394. Riisgaard, supra note 100, at 712; Etienne, supra note 362, at 161 (describing the importance of connecting with grassroots feminist organizations); Chimni, supra note 121, at 36 (urging left and trade unions to strike alliances with new social movements); Barrientos & Evers, supra note 16, at 50 (organizing by women workers with feminist advocacy and campaigns by trade unions has improved rights in global production).


396. See generally Christina Niforou, Labour Leverage in Global Value Chains: The Role of Interdependencies and Multi-level Dynamics, 130 J. BUS. ETHICS 301 (2015) (explaining that “the high complexity of GVCs and the absence of a global overarching authority have been balanced by the emergence of governance mechanisms of different forms and at different levels.”); see Brookes, supra note 190, at 186 (discussing how workers can act in a range of levels through interlocking and interdependent networks and by shifting their locus of engagement and working on different levels simultaneously).

397. ILO, supra note 395, art 4(2).

398. Niforou, supra note 49, at 3 (detailing how garment industry relies on low paid female labor to compete and maximize profits; women are concentrated in low paid jobs in the RMG sector); See also ILO Report, supra note 23, at 30 (describing the development of the garment industry as feminization of employment).

399. Chandra Talpade Mohanty, Women Workers and Capitalist Scripts: Ideologies of Domination, Common Interest, and Politics of Solidarity, in FEMINIST GENEALOGIES,
transnational feminist praxis helps explain how GFAs that fail to affirmatively address issues specific to women workers reinforce the capture of their labor for transnational companies. While progress is praised for workers through the GFA, in fact, the disciplining of this workforce along gender lines, through workplace abuse and other workplace violations, remains unchanged.

Advocacy on behalf of women workers is difficult because the H&M GFA is presented as favorable to all workers, including women. The social identities of women workers remain gender- and race-neutral. Part of this conception of women workers has to do with the fact that the leadership of national and global unions is still male-dominated. This gender-neutral conception of workers also serves the interests of companies like H&M, which aim to promote an image that protects women’s and labor rights while maintaining subordinated workplace conditions for women. Scholar Ethel Brooks, in detailing women’s work in the garment industries in New York, Bangladesh, and El Salvador, remarks that while transnational labor organizers may visibly involve women workers in their mobilization through testimonies and stories, ultimately, the movements do not provide a nuanced understanding of worker agency based on race, gender, and other social identities. She writes: “[t]ransnational labor organizers take up categories of gender, race, class and nation in ways that are monolithic, misogynist, and difficult to contest.” She argues further that transnational labor organizing has relied on the maintenance of these categories to succeed. Women are included in performative ways for image-making and marketing. Part of the challenge is advocating for universal labor rights while also advocating for specificity of rights as it relates to women workers and the local impact of those rights. Transnational feminist praxis would link transnational labor organizers to grassroots mobilization led by local feminists groups who determine the agenda. The success of GATWU in India, as both a women’s and labor organization, is an example of where IndustriALL’s support of their mobilization led to a settlement where their

COLONIAL LEGACIES, DEMOCRATIC FUTURES 3, 27 (Chandra Talpade Mohanty & M. Jacqui Alexander eds., 1997).

400. Id. at iv (discussing how globalization has brought a new visibility to new women’s issues).

401. BROOKS, supra note 26, at 165.

402. See also Mohanty, supra note 399, at 6 (discussing how traditional union methods of organizing around class interests as workers is based on patriarchal notions of who is a worker).

403. BROOKS, supra note 26, at 132.

404. Id. at 127.

405. Id. at 136.

406. Id. at 134.

407. See Etienne, supra note 362, at 161–62 (stating that “best way to reach disempowered women is at the grassroots level – in the trenches where women fight and endure the battles of sexist oppression” who are better equipped to provide a contextual analysis of their situation).
members were reinstated.\textsuperscript{408} Awaj Foundation’s intentional goals to build women’s leadership in trade unions in the garment industry is another example of local efforts to address gender.\textsuperscript{409} The Lesotho Agreement is an institutional example of the success of such a gender-conscious approach.\textsuperscript{410} Here, the H&M GFA came about through a top-down process without any scope for national unions or women’s rights groups to comment on the agreement. The GFA itself reflects the lack of attention to gendered concerns in its neutral implementation procedures. Even in India, where there is an all-women NMC, it functions in the symbolic, performative ways that Ethel Brooks discusses.\textsuperscript{411}

III. \textsc{Interdisciplinary Perspectives on the H&M GFA: Organizing, Legal Mobilization, and Decolonization Theory}

GFAs are informed by varied interrelated social movements and theoretical perspectives on social movements: labor movements, legal activism, and international law from below. Critical perspectives on those social movements and in those theoretical disciplines provide essential criteria to assess the effectiveness of GFAs and international law more broadly.\textsuperscript{412} Incorporating social movement perspectives into labor rights and international law, as this article seeks to do, has the potential to contribute to a new understanding of law.\textsuperscript{413} Each discipline provides a crucial lens to evaluate the GFA in context, and combined, they provide a fuller and necessary assessment of the effectiveness of GFAs. Further, these perspectives ground any evaluation of a GFA’s potential as a strategy to hold MNCs accountable to international labor and human rights law. For example, an organizing model assesses whether the GFA builds worker power through the formation of independent unions or expands worker organizations’ institutional power to compel suppliers and global brands to act to enforce

\textsuperscript{408} Union wins Reinstatement of 1257 Workers in India, \textsc{IndustriALL} (Feb. 8, 2021), http://www.industriall-union.org/union-wins-reinstatement-of-1257-workers-in-india.

\textsuperscript{409} See \textsc{Awaj Found.}, \textit{supra} note 383.


\textsuperscript{411} The resolution by GATWU was not through the MNC process. See \textsc{Zoom Interview} with Gautam Mody, \textit{supra} note 52.

\textsuperscript{412} See Rajagopal, \textit{supra} note 17, at 428, 430 (explaining how international lawyers have not sufficiently engaged with the vast social movement literature, and encouraging a fundamental rethinking of international law through social movements).

\textsuperscript{413} See \textit{id.} at 433.
labor and human rights. Legal mobilization theory examines if the agreement expands workers’ institutional power or provides leverage to workers to expand their power to negotiate with suppliers and brands.

Whereas organizing theory focuses on worker power, legal mobilization theory looks at whether the agreement facilitates the activation of that power. Decolonization theory, on the other hand, reevaluates governance as a labor strategy within international law given its colonial and imperial roots. It reveals the challenges of a GFA operating in formerly colonized countries that are now major production countries for the global garment industry. It also links any future effort to use GFAs to promote labor rights to a framework that seeks to disentangle international law’s colonial roots. Related to the organizing and legal mobilization theories, decolonization theory provides a framework for garment workers in the Global South to utilize to build power, to have greater agency and to self-determine the rules and laws that impact their lives. It allows workers in the Global South to construct international law, especially human rights and labor rights, in a way that is responsive to their needs rather than the interests of capitalist expansion. All three perspectives involve a power analysis, with different emphases; this power analysis is absent from traditional theories of international law and contributes to a rich understanding of it. While I address all three perspectives, this article pays particular attention to the theoretical framework of decolonization because it has not been fully addressed in the literature on global labor governance. Labor scholars have critiqued GFAs for not delivering on their promises to build worker power and have noted to some limited extent the formalist approach of GFAs as discussed in section I. GFAs have not been evaluated through a decolonial lens. This section is supported by the case studies and interviews in section II.

414. See e.g., De Turberville, supra note 28, at 777 (for overview of organizing model described where members use innovative techniques to empower themselves within their employment and broader social relationships).


417. ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW 2 (Cambridge Univ. Press 2004) (inquiring whether it is possible to “construct an international law that is responsive to the needs and aspirations of the people of the Third World?”).

418. See Rajagopal, supra note 17, at 423, 428 (referencing Foucault and noting how the focus on the micropolitics of power relations, how individuals and groups experience power relations offers a rich understanding of international law).
A. Organizing Model

In the labor movement context, the organizing model is a broad concept that refers to how organizations should prioritize and configure their work centered on building power for workers. Features of the organizing model include: involving members in problem solving and collective actions not limited to bargaining; a commitment to education; development of members’ skills; a decentralized organizational structure; and no distinction between internal and external organizing. This is in contrast to a business/service model, which is based on delivery of services to members and reinforces member reliance on the formal organization of unions. The purpose of labor law is to promote worker protection and worker agency through democratic participation. Under an organizing model, then, globalizing labor law through GFAs should build workers’ power and their agency. Worker agency is essential to achieving global labor standards that protect workers’ rights.

In analyzing H&M’s GFA, it is important to examine if in fact the agreement has increased worker power.

419. See Kumar, supra note 125, at 59 (describing how the organizing model shifts decision-making to the rank and file versus the service model shifts power to staff); see also Ann Cecillie Bergene, Creative Destructor / Destructive Creator: Agency Workers as Threatening Moles Undermining Unionism or Welcome Agents Of Change In Irish And Norwegian Unions? 38 Compar. Lab. & Pol’y J. 123, 134–36 (2016).

420. Mark Anner, Workers Power in Global Value Chain, in Transnational Trade Unionism, in TRANSNATIONAL TRADE UNIONISM 24, 24–41 (Peter Fairbrother, Marc-Antonin Hennenbert & Christian Levesque eds., 2013) (discussing different forms of power workers can use to leverage rights: structural, associational, normative and political. Structural power looks at workers’ location within the economy. Workers who are structurally vulnerable can use their associational power, the strength of their organizations, to achieve their goals. Normative power is exposing wrongs and using established norms to compel wrongdoers to change behavior. Political power involves the use of electoral and governmental space to make demands); see also Kaltenborn, Neset & Norpoth, supra note 149, at 177 (associational power stems from strengths of organizations; institutional power is whether employee can influence employer behavior by using formal and informal rules that structure their relationship; coalitional power involves extending the dispute to bring in other actors).

421. See De Turberville, supra note 28, at 777.

422. See Bergene, supra note 419, at 134 (describing unions’ role as transactional in that workers get something in exchange for dues); see also De Turberville, supra note 28, at 777 (listing the following features of a servicing model: Union leadership solves problem on basis of complaints; unions rely on formal grievance procedures, passive membership, specialists, and a top down organizational structure).


424. See Fischer-Daly & Raymond, supra note 390, at 155.

425. Workers derive their power from structures if they obtain an advantageous position in a socio-economic or legal system, or associational power which is derived from self-organization, unions, or other collective organization like worker centers. See McCallum, supra note 1, at 10.
and agency. The organizing model illuminates whether, as a global labor law instrument, it effectively promotes the rights of workers protected under international labor law.

Global agreements that protect rights versus those that enable rights are also helpful in evaluating GFAs’ relation to worker power. Enabling rights are essential to protecting and enforcing labor standards because they allow workers to decide the “content and the pace of their struggles.” Freedom of association and the existence of a collective bargaining agreement are examples of enabling rights. Research shows that coupling unionization and collective bargaining with private regulation (including in GFAs) leads to positive outcomes for workers, especially in terms of labor standards. The extent to which the H&M GFA increases unionization and collective agreements is therefore a good test for whether it builds worker power and agency. The inquiry is not simply quantitative (that is, the number of unions and agreements), but also whether the unions and agreements formed allow workers to exercise their agency and put forth their demands.

In evaluating the GFA under an organizing model, with these considerations in mind, several limits of the H&M agreement emerge. It has not served as a catalyst for the increase of national unions or collective agreements in production countries, especially where governments have passed laws to curtail freedom of association. The agreement relies on a non-binding complaint process to resolve disputes, making it more akin to a service contract rather than an organizing instrument that builds worker power. It fails to provide an effective mechanism for workers to compel H&M to act to redress violations of labor rights, which would make it a useful agreement to engage with. As discussed above, for women workers, it does

426. Agency is the ability to activate worker power. See generally Frances Fox Piven, The Nature of Disruptive Power, in CHALLENGING AUTHORITY: HOW ORDINARY PEOPLE CHANGE AMERICA 21 (2008) (describing the “wealth and force and the ideologies, rules, and coercive threats” employed by occupying institutional power against workers at the bottom of economic hierarchy; but also describing workers’ power to withdraw their cooperation with the system which Piven calls disruption.).

427. Rodríguez-Garavito, supra note 45, at 205 (discussing the difference between protective rights and enabling rights).

428. Id. at 211.

429. See Fisher-Daly & Raymond, supra note 390, at 176.

430. See id. at 178.

431. See, e.g., Cambodia: Events of 2020, HUM. RTS. WATCH, https://www.hrw.org/world-report/2021/country-chapters/cambodia (explaining that the Cambodian government adopted new laws in Cambodia that curtail freedom of association); Zoom Interview with Athit Kong, supra note 52.

432. H&M GFA, supra note 164, at 5.

433. An effective mechanism for operationalizing freedom of association and collective bargaining rights would involve ensuring that workers can elect their union representatives, those representatives can carry out their roles without hindrance from employers, workers must be protected from retaliation, and they must have some leverage from brands to sanction suppliers when they prohibit the exercise of rights.
not provide a meaningful process to address sexual harassment and other forms of gender-based violence. Relatedly, the GFA does not limit in any way H&M’s or the supply factories’ managerial power.

On the other hand, H&M’s GFA has contributed to some positive outcomes for workplace industrial democracy. This has been possible only when unions strategically used the GFA for this purpose. However, it is not clear if the GFA helped to increase the number of collective agreements. The increase of unions has been small—two or at most three in Cambodia, none in India, and eighteen of varying quality in Bangladesh. However, those gains have often been undermined due to termination of workers in unionized factories. Four collective agreements were formed, and if that is an indicator of exercise of worker power, at the minimum the GFA has had some success in Bangladesh. These results show GFAs as a promising strategy for building worker power. However, there are hindrances to its effectiveness, as discussed below.

The NMC in each of the production countries is composed of representatives from national affiliate unions designated by H&M and GUF and function more like a labor management committee than an entity that can be leveraged to change the conditions at the factory level. Further, each NMC is not independent from management influence. The NMC acts as a mediator resolving factory-level disputes. Any potential benefits of resolving disputes rely almost entirely on H&M’s willingness to proactively use its leverage as a buyer to influence outcomes. Even though the GFA states a policy goal to support freedom of association, workers are unable to use the GFA to require H&M to act, and it does not allow for the enforcement

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434. See supra Part II(C).
436. See Fischer-Daly & Raymond, supra note 390, at 154 (finding that compliance with Freedom of Association rights occurred when workers directly pressure companies).
437. See Zoom Interview with Athit Kong, supra note 52.
438. See E-mail from Apoorva Kaiwar, Regional Secretary, South Asia, IndustriALL to Author (Aug. 18, 2021) (on file with author).
439. See Fisher-Daly & Raymond, supra note 390, at 156 (finding that nonunion worker committees do not empower worker voices).
440. Id. at 171 (analyzing data from third party auditors in the apparel industry found that the most common freedom of association violation was that workers lack independent representation; management interfered in union elections, and workers were not informed of their union rights).
441. H&M GFA, supra note 164, at 5.
442. Fisher-Daly & Raymond, supra note 390, at 178 (explaining that brands do not hold suppliers accountable to comply with FOA and CB standards).
of these rights. The GFA provides a platform to resolve disputes but does not build or expand worker power at the national level. In this regard, the H&M GFA is premised on the protection of existing rights rather than enabling workers to enforce their rights or exert agency. Even with the GFA in place in India and Bangladesh, as discussed above, it required international NGOs to direct H&M’s attention to labor violations among its suppliers. Poor working conditions and distrust or lack of knowledge of the GFA’s dispute-resolution mechanisms persist at H&M supplier factories. It is not surprising, then, that the fundamental right of freedom of association remains the least complied with in private regulation of GFAs, despite empirical evidence that it improves labor conditions.

Trade union members and representatives have also expressed skepticism as to whether H&M’s GFA—and GFAs more broadly—do anything at all, or if they merely exist as a public relations stunt for the global brand. As one international trade union representative put it:

GFAs are so toothless, brands themselves approach IndustriALL to sign them, and brands write the initial draft. This was the case with the H&M GFA, which some North and South American unionists [came together] to prevent IndustriALL from signing, trying to use the resolution the IndustriALL Executive Committee had passed requiring GFAs to have ‘a binding dispute resolution mechanism,’ which the H&M GFA lacked; but to no avail, they signed it anyway.

Even the strongest GFA does little to hold companies legally accountable.

Further, an organizing lens demonstrates how labor organizations are unable to leverage their power within the GFA and serve as a counterbalance to require suppliers and H&M to act. The GFA ignores the power asymmetries between workers, national unions, global unions, and H&M. The GFA treats all actors as equals. These asymmetries are further pronounced when we consider gender, race, and other social identities. In the absence of this recognition of unequal power, the GFA relies on the

443. See Fisher-Daly & Raymond, supra note 390, at 171 (in reviewing freedom of association violations from auditors’ researchers noted a “chasm between policies supporting FOA and CB rights” and “exercise of these enabling rights.”).

444. See KUMAR, supra note 125, at 78.

445. See supra Part II(B)(2) & (3).

446. See Fischer-Daly & Raymond, supra note 390, at 148.

447. KUMAR, supra note 125, at 72 n.15.

448. Id. at 75 (citing McCallum, supra note 1).

449. Kong describes the relationship between national unions and brands in the GFA as unbalanced. See Zoom Interview with Athit Kong, supra note 52.
benevolence of H&M to protect labor rights. Workers are not provided any institutional lever in the GFA to negotiate with suppliers because H&M is not mandated to intervene. Disputes are resolved through voluntary mediation instead of arbitration, and there is no legal leverage to require a supplier to resolve a dispute if they refuse to do so. This suggests that the GFAs require provisions mandating brands, suppliers, and subcontractors to act, and to set consequences if they fail to do so. In the absence of the government protecting workers’ rights and the lack of any mechanism for workers to exert power within the GFA (as they would do in a collective agreement with suppliers), workers remain vulnerable to existing power dynamics of the market.

A final way to evaluate if a governance mechanism increases worker power is whether it challenges and places some restrictions on management power or whether it extends managerial power to the global supply chain. This evaluation also asks whether it manages labor-management conflict without sharing or ceding any power. A key part of industrial relations is being able to negotiate and place some limits on management power: e.g., over hiring and firing, or workplace conditions. This is achieved through the negotiation of a collective bargaining agreement. Without any limits on managerial power, companies can extend norms and laws that benefit their interests while disregarding local efforts. Here, the GFA globalizes and institutionalizes management power because it simply restates international norms, does not mandate trade unions at their supplier factory, does not require suppliers to act, and bases its enforcement on H&M’s willingness to intervene (that is, the GFAs do not have remedies if H&M fails to act). The GFA gives the appearance that it is concerned with freedom of association rights without any means to enforce those rights at the local level. In the Indian cases discussed above, H&M remained neutral and passive during a campaign where workers were dismissed. These NMCs are composed of both workers and H&M representatives, and so they do not function at all to allow workers to negotiate on equal footing with the supplier. At most, H&M encourages its suppliers to negotiate with workers but stops short of mandating it or imposing any consequences for their failure to abide by the GFA.

450. See Rodriguez-Garavitot, supra note 45, at 223 (while evaluating codes of conduct, discussing the need for a countervailing mechanism to close the gap between the discourse of rights and practice).

451. Institutional power is defined as the ability of workers to influence the behavior of an employer by invoking formal or informal rules that structure their relations. BROOKS, supra note 26, at 188.

452. See Blackett, supra note 423, at 422.; see also JOHN BRAITHWAITE, REGULATORY CAPITALISM: HOW IT WORKS, IDEAS FOR MAKING IT WORK BETTER (Edward Elgar Publ’g Ltd., 2008) (describing the globalization of corporation regulatory power as regulatory capitalism).

453. McCALLUM, supra note 1, at 36.


455. See supra Part II(B)(2).
Additionally, notwithstanding H&M’s GFA and its advertised commitment to cooperating with unions, H&M continues to face scandals over treatment of workers along its supply chain. In 2018, more than 540 workers described incidents of sometimes daily gender-based abuse and violence at a factory that supplies H&M garments. That same year, the Clean Clothes Campaign released a report that H&M was failing its GFA pledge to provide workers a living wage, forcing workers to work extended hours to survive. In sum, the organizing model emanating from the labor movement reveals deficiencies in the GFA in enabling the formation of national unions, providing workers legal leverage over H&M to act and remedy workers’ rights violations, and placing limits on its managerial power, all of which are essential to protecting workers in the global supply chain.

B. Legal Mobilization Theory

Legal mobilization theory describes any process by which an individual or collective actor invokes legal norms, institutions, or discourse to influence policy and create rights. Legal mobilization theory holds that there are varied legal and extra-legal sites for legal activists to seek reform. While this theory emerged primarily in the United States, it has also been applied at the international level (though such studies are sparse). The scholarship on legal mobilization is wide-ranging, from analyzing law and institutions in their more formal form as well as definitions of legal mobilization that comprise an “interpretative, process oriented” form of law. In the process-


460. For a general theory on legal mobilization for social movements, see Michael McCann, *Legal Mobilization and Political Struggle*, in *RIGHTS AT WORK: PAY EQUITY AND THE POLITICS OF LEGAL MOBILIZATION* 9, 11 (Michael McCann ed., 1994) (“the pluralistic character of law provides reform activists with some measure of choice regarding both the general institutional sites and the particular substantive legal resources that might be mobilized to fight policy battles and advance movement goals.”) (“[A] useful theory of legal mobilization should give considerable attention to the interaction and interdependence among these various tactical dimensions of movement activity.”).

461. See, e.g., Kahraman, *supra* note 415, at 1279–80, 1283–86 (discussing massive blacklisting of construction workers by MNCs, where data on workers were collected and used in hiring and firing decisions, and campaign by Blacklist Support Group to launch a human rights campaign).

462. McCann, *supra* note 460, at 5–9 (surveying the field of legal mobilization theory and noting formalistic trends, while advocating for an interpretive approach); see also Kahraman, *supra* note 461.
oriented view in legal mobilization theory, which this article adopts, law is conceptualized expansively and is not limited to discrete acts or policies but also includes one’s ability to construct meaning. In assessing any strategy using the legal mobilization approach, the following quote by scholar Michael McCann is instructive:

Legal mobilization tactics do not inherently empower or disempower citizens. Legal institutions and norms tend to be Janus-faced, at once securing the status quo of hierarchical power while sometimes providing limited opportunities for episodic challenges to and transformation in that reigning order. How law matters depends on the complex, often changing dynamics of the context in which the struggles occur.

Legal mobilization theory also examines how legal discourses intersect and interact with broader ideological formations in society. Further, “any assessment of specific legal mobilization practices by social movement must be undertaken with reference to the larger context of multiple legal and extralegal norms or discourses that structure social relations.” In this regard, legal mobilization theory should be analyzed, as this article does, in tandem with the organizing model discussed above as well as with the theory of decolonization.

Under legal mobilization theory, when law or legal action is used for mobilization, which is called “rights consciousness,” or to create opportunities from which movements can develop, it is deemed empowering. Here, the GFA as a private agreement is viewed as a “law” in the more expansive sense in that it communicates, at the bare minimum, a commitment to abide by its terms even if it does not have a process to enforce those terms. IndustriALL describes the content of the GFA as being binding on H&M because they agreed to abide by international labor rights, but the agreement is not legally enforceable in court. Regarding rights consciousness, the GFA does not create any new rights for workers. These

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supra note 415, at 1283 (employing an interpretative approach to law and social change, referencing legal mobilization theory, and applying to an international labor context).

463. McCann, supra note 460, at 7–9.
464. McCann, supra note 459, at 35.
465. McCann, supra note 460, at 11.
466. McCann, supra note 459, at 22–23.
467. Id. at 25.
468. GFAs have been referred to as “soft” law but MNCs fear of adverse publicity and damaged business reputation from public campaigns by global unions can harden this “soft law” See Goldman, supra note 110, at 606.
469. See Zoom Interview with Apoorva Kowar, supra note 52. (drawing a distinction that the content in the GFA is binding on the parties, but that it cannot be litigated in court; so GFA is viewed as having a legal character); see also Zoom Interview with Mats Svensson, supra note 52.
labor rights need not be substantive to be effective, as collective bargaining usually occurs locally, but can be procedural by creating mechanisms for bargaining to take place. Although it has had some limited success raising awareness of freedom of association and solving some individual disputes, the H&M GFA primarily reaffirms existing labor rights and provides a non-binding mediation process to resolve disputes. Depending on the strength of the NMC, for the most part, workers and unions have not been trained on how to leverage the agreement to mobilize for greater protection.\footnote{470} When national unions have done so, in Bangladesh, Cambodia, and India, they have been successful in using the rhetorical power of the agreement to mobilize workers and demand accountability from H&M.\footnote{471} As discussed in the organizing section,\footnote{472} the ways trade union rights are supported are more policy-oriented than operationalized at the factory level. Local mechanisms (including the NMCs) that are cognizant of the local realities and are linked to workers on the factory floor need to be strengthened.\footnote{473} Most of the work of the NMC is informing the workers about its existence and gathering some information on existing unions.\footnote{474} It is empowered to resolve disputes, but the resolution is non-binding, which undermines the authority of workers and unions to obtain a favorable result. As such, unions do not trust the process.\footnote{475} In this regard, applying the legal mobilization theory, the H&M GFA as a legal agreement is disempowering for workers.\footnote{476}

With respect to using law or legal structures to create opportunities for movements to develop, the H&M GFA has also been limited. When a GFA creates space that can be utilized by militant national unions, they have been

\footnote{470} In Bangladesh, the NMC seems to actively educate affiliate unions on the GFA. See Zoom Interview with Nazma Akter, supra note 52.

\footnote{471} See Zoom Interview with Gautam Mody, supra note 52. (discussing how the GFA gave unions the power to call out H&M on their obligations to protect labor rights).

\footnote{472} See supra Part III(A).

\footnote{473} Zoom Interview with Apoorva Kaiwar, supra note 52. (discussing the need to enhance local mechanisms).

\footnote{474} See INDUSTRIALL, supra note 168, ¶¶ 2, 6.

\footnote{475} See, e.g., Kumar supra note 125, at 72 n.15 (discussing trade union members’ skepticism of GFAs).

\footnote{476} H&M’s GFA was agreed to as being a “good enough” agreement. See Zoom Interview with Mats Svensson, supra note 52. This presumes having an agreement is more desirable than not having one. To whom is it “good enough” and based on which values is discussed below in the decolonization section. See discussion infra Part III(C). Here, it was not considered whether rejecting the GFA as written was a choice that also could have been made. Could affiliate unions and the public be mobilized for a stronger agreement? Here Piven’s theory of disruptive power as a type of power where a movement refuses to enter into social relations is helpful to understand how movement goals can be met. See Piven, supra note 426, at 21. Failing to do so made the agreement disempowering in this sense.
Without an active national union, however, GFAs have not made a difference in advancing workers’ freedom of associational rights. The top-down nature of the H&M GFA and its unclear legal relationship with national labor legislation limit its effectiveness. Workers cannot use the institutional power of the GFA to compel suppliers to accept unions or negotiate collective bargaining agreements. This leverage is useful in production countries where unionization is difficult due to laws and social realities. As discussed above, worker agency, particularly unions and workplaces with a CBA, improves labor standards. Even if the H&M GFA resolves a small number of disputes, on balance, it will not improve the overall labor standards in the garment industry unless it enables workers to build their agency and power. As shown from the Cambodian study, even after being aware of the H&M GFA, unions did not use the GFA as much as one would have expected. Instead of opening new avenues for advocacy, the GFA seeks to funnel worker grievances through a highly formalized, yet non-binding, dispute resolution process. This formalized process can limit workers’ ability to exercise power because it often reflects dominant views in society. Although new rules and procedures can be crafted to facilitate the exercise of worker power, the GFA here does not do that. Militant national unions have been successful in utilizing what sociologist and political scientist Frances Fox Piven calls a disruptive power, not based on compliance with rules but withdrawal from following them. It is thus not surprising that national unions have not used the formal NMC process and have not found the GFA empowering.

477. See, e.g., Wills, supra note 50, at 685 (discussing the success of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Association’s success with it Trade Union Rights Agreement).
478. See, e.g., id. at 695 (discussing failures to implement the Trade Union Rights Agreement in countries lacking strong, local union presence).
479. C.f. Hadwiger, supra note 50, at 45 (identifying shortcomings in GFAs and suggesting useful reforms and research to correct them).
480. See discussion supra Part III(A).
481. See discussion supra Part II(B)(1).
482. See McCallum, supra note 1, at 29 (noting how political opportunities presented by governance institutions are often “bureaucratic traps”).
483. Piven, supra note 426, at 27 (describing how rules can serve as constraints on certain groups in society).
484. Id. at 28 (explaining that rules can provide legitimacy and protection and enable workers to exercise “power from below”); see also McCallum, supra note 1, at 29 (describing how governance struggles have been most successful where workers are able to rewrite or alter rules or relations with employers).
485. See McCallum, supra note 1, at 11 (citing Piven, supra note 426) (describing how power is activated when actors break rules that structure a relation between the parties).
486. The case study discussed in India, GATWU/NTUI did not resolve the dispute through the MNC process but outside of it. In Bangladesh, some disputes were resolved within the NMC process, but some by directly contacting H&M local managers with whom national
A legal formalist approach in contrast to a legal mobilization theory gives the impression of the abundance of legally enforceable rights, when in fact, they do not exist. Legal formalism focuses more on the text of the GFA to reason that it provides rights to workers rather than whether it actually provides those rights. It gives the appearance that freedom of association rights are being protected because they are included in the text of the GFA, when in reality they are not. It has the impact of reinforcing hierarchical power and maintaining current power relationships between workers, suppliers, brands, and the national government. In contrast, in Bangladesh, industry changes to the minimum wage in 2013 and 2016 resulted from worker mobilization and demands on the state. In the Karnataka case in India, strong national unions led to the positive results. Rights creation from grassroots mobilization and engagement with the state, even if the state acts in the interests of global capital, yielded far more concrete changes than GFAs. Using legal mobilization theory reveals that simply having a legal agreement is not sufficient to empower workers, particularly where it does not create new rules or processes which workers can use to mobilize to enforce labor standards and their freedom of association rights.

C. Decolonization Theory

Law and legal strategies do not operate in a vacuum; rather, they interact with broader ideologies in society. Decolonization theory acknowledges international law’s, including labor and human rights law’s, relationship to

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487. See Huq, supra note 299, at 75.
488. See Secretariat, supra note 265.
489. Decolonization theory is a broad and wide-ranging field of thought and histories. Narrowly discussed, it is a political project where formerly colonized countries gained formal independence. Broadly, it refers to instances where former colonized persons challenge Western hegemony and power as well as resistance efforts by people in the Global South to disentangle themselves from the various forms of subordination maintaining the political and economic dominance of Global North. See Natsu Taylor Saito, Decolonization, Development and Denial, 6 FLA. A&M UNIV. L. REV. 1, 5 (2010) (noting that decolonization efforts sponsored by the most powerful countries have reduced the legacy of colonialism to poverty and only seek to mitigate it in a way that avoids any “fundamental change in global economic power.”). In international law, this dominance occurs through international financial institutions, international law and ideas of development. See generally SUNDHYA PARIVA, DECOLONIZING INTERNATIONAL LAW: DEVELOPMENT, GROWTH AND THE POLITICS OF UNIVERSALITY (Cambridge Univ. Press, 2011) (examining the promises and failures of international law to address global disparities); see also E. Tendayi Achiume, Migration as Decolonization, 71 STAN. L. REV. 1509 (2019) (examining the legacy of colonialism as it intersects with migration and international law). In this section, I only address parts of this framework as it relates to GFAs and labor rights but hope my future work continue to explore decolonizing labor law.
490. McCallum, supra note 1, at 35.
491. B.S. Chimni, Marxism and International Law, 34 ECO. & POL. Wkly 337, 342 (1999) (describing how human rights law can be mobilized to serve the interests of capitalism).
colonialism and imperialism.\textsuperscript{492} It demands a restructuring of international law.\textsuperscript{493} If colonialism and imperialism enabled the Global North to impose its economic interests on the Global South in extractive and inequitable ways, a decolonial lens seeks to construct laws and legal strategies in ways that enable people in the Global South to truly be politically and economically independent.\textsuperscript{494} In the context of labor law, decolonization theory\textsuperscript{495} also entails challenging labor law’s foundational narrative.\textsuperscript{496} One way to do this is to center “counter-hegemonic contestations of law and legal ordering,”\textsuperscript{497} such as making space for militant unions, raising questions around gender, and centering workers in the Global South.\textsuperscript{498} Given that these GFAs seek to universalize a global labor governance mechanism that has its origins and derives its values from European labor-management approaches to industrial relationships,\textsuperscript{499} including social dialogue, an important decolonial critique of the H&M GFA is necessary yet woefully absent from the literature. Just as scholars from the Global South have critiqued the universalization of human

\textsuperscript{492} Anghie, supra note 417, at 3 (stating that colonialism is central to international law); Chimni, supra 122, at 30 (explaining how international law is integral to colonialism); see also James Thuo Gathii, \textit{Imperialism, Colonialism and International Law}, 54 \textit{Buffalo L. Rev.} 1013, 1013–14 (2007) (defines imperialism as the expansion of industrial capitalism and colonialism as the territorial annexation and occupation of Europeans in non-European territories).

\textsuperscript{493} See Saito, supra note 489, at 37.

\textsuperscript{494} See id. at 42 (describing how the liberatory potential of decolonization is premised on re-envisioning the international legal order); see also Achiume, supra note 489, at 1522 (discussing decolonization not as simply nations gaining political independence, but because colonization created “inequitable global interconnections” decolonization strives to create equitable ones).


\textsuperscript{496} See Saito, supra note 489, at 6 (noting that foundational beliefs replicate the dynamics between colonizer and colonized or developing and developed, such as those present in labor law).


\textsuperscript{498} See Saito, supra note 489, at 44 (noting the importance of making space for all voices and perspectives, stepping back from the notion that the goal of international law is to “articulate and enforce a universal world view.”).

\textsuperscript{499} GFAs emerged as a result of European labor movement’s response to globalization and European labor-management model of social dialogue and development of trade union bureaucracy. This is described as the social partnership model. Formal union bureaucracy moved GFAs away from the subcontracted sites of production and activating grassroots actors. This created a more top-down global union structure. See Kumar, supra note 126 (discussing the effects of globalization and capitalism on GFAs, unions, and labor generally).
rights law, and the Eurocentric values that it contains, similarly, a critique of the implications of globalizing a European-model labor-management governance into production countries, many of which are formerly colonized, is essential. A decolonial inquiry asks whether the GFA alters the power relationships among the actors: brands, suppliers, global and national unions, and workers, given how colonialism and imperialism have shaped and continue to shape those relationships. What possibilities does a GFA provide to reconstitute those relationships in equitable ways? It requires that any legal or advocacy strategy center those most marginalized and empower them to collectively organize to achieve their social movement demands.

Further, the decolonial framework amplifies the importance of social movements, including “the bottom-up framing of rights [and] the importance of also thinking through how demands for redistribution have become the subject of capture.” Transnational labor law scholar Adelle Blackett and other scholars who define their work as international law “from below” emphasize the need to center movements in the Global South or marginalized workers in the Global North in order to create human rights discourses that move beyond formalist rights discourses. This means legal orderings must be informed by social movements from the bottom up, and we should be

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500. Makau Mutua, What is TWAIL?, 94 PROC. ANN. MEETING (AM. SOC’Y INT’L L.) 31, 31 (2000) (discussing how the universalization of international laws were essential to maintenance of European domination).

501. U.S. trade unionists commenting on U.S. labor-management relations are most optimistic with regard to GFAs, in part due to the organizing of sweatshop movements in the U.S., While there are genuine critiques of U.S. labor imperialism, the vast majority of GFAs are made by European companies. See, e.g., McCallum, supra note 1; see also Kumar, supra note 125 (distinguishes U.S. and European labor movement strategies).

502. Antony Anghie, Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law, 40 HARV. INT’L L.J. 1 (1999) (stating that the universalization of international law was a consequence of imperial expansion and conquest of non-European peoples); see also Saito, supra note 489, at 38 (stating that universalizing a worldview upholds ideology of colonialism).

503. Achiume, supra note 489, at 1522 (explaining that “decolonization may entail shifting power.”).

504. See Saito, supra note 489, at 47 (describing how the elimination of colonial relationships entail transformation of people on all sides).

505. Parsa & Selberg, supra note 498; see also Blackett, supra note 423, at 429.

506. BALAKRISHNAN RAJAGOPAL, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORLD RESISTANCE 271 (Cambridge Univ. Press 2009).

507. Scholars have also advanced an idea of “complex internationalism” to move away from a binary of movements from below or above, allowing social movements to use all possible means to meet their goals. See Chimni, supra note 121, at 32. This may involve alliances with those oppressed in the Global South and their counterparts in the North. Id. at 36. It could also entail forming transnational advocacy networks that can serve as a counter-balance to the dominance of MNCs. See Rodriguez-Garavito, supra note 45, at 203.
vigilant about efforts to co-opt demands for worker power. Here, this would mean the active engagement of independent national unions and worker organizations that are committed to ensuring fundamental labor rights for workers. A decolonization lens would then center the locus of struggle and decision-making on unions and worker organizations in production countries, and would be cognizant of local histories, social realities, and national laws that may impede their ability to build power. A global union or labor movement conscious of a decolonial lens would not, as happened here, negotiate an agreement in Sweden that has implications for garment workers across H&M’s global supply chain with minimal involvement of national unions.

Decolonization theory illuminates ways to strengthen GFAs as a tool for workers worldwide. It opens up possibilities for labor transnationalism and genuine grassroots international solidarity. It can help labor activists differentiate between legal tactics that reinforce hierarchical power with the global order and those that facilitate its transformation. Relatedly, it can open up the emancipatory potential of international human rights law. Using a decolonial lens, this section first addresses some of the imperial and colonial foundations of global governance within international law. Second, specific to global labor rights, it reveals how GFAs exhibit features of trade union imperialism that suppress labor militancy and transnational labor solidarity. Third, it concludes with some ways to reorient GFAs to becoming a more effective tool to build worker power and actualize global labor rights.

1. Imperial and Colonial Foundations of Global Governance

While global labor governance may appear to be a more recent neologism, the concept of governance has its roots in colonialism and imperialism. Antony Anghie, a postcolonial legal scholar, provides this

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508. Here, I am not suggesting focusing only on movements from the Global South, given that we have also seen vibrant mass based labor movements in the United States globalize but that the movements are led by those directly impacted by law and policies wherever they originate. See, e.g., The “Bessemer Effect” has Already Changed Amazon and World, UNI GLOB. UNION, (Apr. 9, 2021), https://uniglobalunion.org/news/bessemer-effect-has-already-changed-amazon-and-world (commenting on the impact of the union organizing in Amazon warehouse in Alabama). The inspiration or catalyst for a movement can originate in any, or multiple, places, but how that movement unfolds, the level of engagement and active participation of workers and ability to create spaces for collective formations to enable rights is key.

509. McCallum’s honest assessment of the challenges of the G4S corporate governance campaign in Kolkata, India is instructive when he writes: “Kolkata, as the erstwhile capital of the British Empire in India, was on the receiving end of the much imperialistic union activism from the United Kingdom. This has impacted the perception of international collaboration.” See Mccallum, supra note 1, at 12.

510. PAHUJA, supra note 489, at 45; see also Saito, supra note 489, at 41.

historical perspective: “Good governance, in short, provides the moral and intellectual foundation for the development of a set of doctrines, policies and principles, formulated and implemented by various international actors to manage, specifically, the Third World state and Third World peoples.” Governance and commerce worked interchangeably to legitimate colonization and imperialism, and international law became the language to express these forms of domination. Labor advocates should be attuned to the implications of this history of governance specifically as it relates to colonial labor policy. For example, on the history of Indian industrial relations laws, including the present Trade Union Act, governance approaches promoting worker committees and dispute resolution were used by the colonial state to suppress labor activism and anti-colonial protests. At the height of labor strikes at the turn of the century, the colonial state pushed for moderate unions and peaceful mechanisms to settle disputes to maintain stability.  

Current promotions of good governance and stability, particularly the emphasis on worker committees and weak dispute resolution systems, exemplify how GFAs are products of past legal efforts to facilitate commercial expansion and a civilizing mission in non-European states. As discussed in section I(A), GFAs are private agreements in the toolbox of labor governance strategies but are connected to international law through their incorporation of fundamental labor rights and business and human rights guidelines seeking to regulate MNCs. GFAs cannot, therefore, be viewed as separate from or immune to the colonial roots of international law. Colonialism and imperialism shape their content, scope, and implementation. Legitimizing on-going production in the supply chain with weak mechanisms to hold MNCs legally accountable to human or labor rights at the national level simply maintains the same imperial power relationship

512. Anghe, supra note 511, at 893–94; see also Chimni, supra note 121 (discussing how International Financial Institutions like the IMF use good governance rhetoric to prescribe conditions for the state to receive loans, which promotes deregulation of laws and opens up national markets to global capital interests).
513. ANGHE, supra note 416, at 248.
514. The British used Industrial Relations laws and their logic to impose order and political domination. DeSousa, supra note 41, at 66.
515. The goal of the Act was to register unions that would moderate their demands, and with whom employers and the state wanted to negotiate in order to develop the idea of responsible unionism in contrast to militant unions that were viewed as disruptive to the colonial order. See id. at 82.
516. Id. at 82 (explaining how worker committees as a forum for grievances was seen by employers as a way to undermine unions and mediation allowed them to contain dissent).
517. ANGHE, supra note 47, at 748.
518. Id. at 740.
519. Describing efforts to get H&M to begin negotiations to explore a GFA, Svensson stated that “credibility” was raised as a pitch and how H&M’s credibility would increase with trade unions. See Zoom Interview with Mats Svensson, supra note 52.
between global brands, unions, workers, and the state. While Bangladesh, Cambodia, and India are politically independent, the laws and institutions that emerged from colonial labor policy remain and are deployed in the current political and economic environment through both the GFA and international law.\textsuperscript{520}

The labor and human rights-oriented nature of the H&M GFA does not make it less (neo)colonial in its attempt to stabilize production and labor relations in Asia to maintain business interests in the Global North.\textsuperscript{521} Evidence shows that brands source from suppliers in countries with weak institutional support for workers.\textsuperscript{522} It is not only that brands are not held accountable due to weak national labor laws (which is true), but also that they seek those places with weak institutional support for workers so as not to be held legally accountable. So, a GFA that does not demand brands to be held legally accountable to human rights obligations simply maintains the business interests of the MNC and by extension the Global North. Further, industrial peace and harmony between labor and capital are prioritized\textsuperscript{523} while dissent and dissatisfaction are channeled to bureaucratic dispute resolutions systems, with any hint of disruption often criminalized.\textsuperscript{524} GFAs, implemented locally through NMCs, need to be cognizant of the colonial histories that shape the present labor laws, local realities, and context, and that structure the implementation process, including NMCs.\textsuperscript{525} When the content of the H&M GFA was negotiated, IndustriALL did not research or consider how the implementation process would interface with national laws and context.\textsuperscript{526}

GFAs with a weak implementation process also reinforce the idea that corporations can self-regulate their labor practices through voluntary private regulation and further normalize capitalist economic development. They support the political project of globalization, which is to “institutionalize market rule” by recasting and shifting otherwise governmental functions of setting labor standards as private governance.\textsuperscript{527} It is thus not surprising that these GFAs do very little to create binding and enforceable labor rights akin to a collective bargaining agreement on a global scale. In the context of

\begin{footnotes}
\footnote{520}{See DeSousa, supra note 41, at 92.}
\footnote{521}{See Chimni, supra note 121, at 11 (explaining how the proliferation of social institutions to promote human rights facilitates the interest of global capital; these institutions deflect radical movements into more formal channels).}
\footnote{522}{See Fischer-Daly & Raymond, supra note 390, at 156.}
\footnote{523}{DeSousa, supra note 41, at 68; Kuruvilla & Mundell, supra note 40, at 8 (stating that preservation of labor peace in the colonial and post-independence economies of the Global South was essential to economic development, with industrialization as its primary engine).}
\footnote{524}{See Ashraf & Prentice, supra note 303, at 104 (describing the militarized state response in Bangladesh when workers engaged in protests).}
\footnote{525}{See Hadwiger, supra note 50, at 44.}
\footnote{526}{See Zoom Interview with Mats Svensson, supra note 52.}
\footnote{527}{Philip McMichael, Development and Social Change: A Global Perspective (SAGE, 6th ed. 2017).}
\end{footnotes}
countries in the Global South, good governance discourse allows European states and institutions to bypass the state and institutions in a country under the guise of development and progress, or, in this case, for global labor rights. This is precisely what GFAs do, except with the acquiescence of global federation unions. That the H&M GFA was substantially no different than the H&M corporate statement plainly reveals how the participation of global union federations has not resulted in a change in the power of workers or the articulation of new rights. In fact, most of the rights listed in the agreements are simply restatements of international law with limited avenues for workers to exercise those rights or to hold brands legally accountable for human rights violations. The GFA globalizes formal notions of labor rights without meaningfully altering the relations between the relevant actors, thereby reproducing and maintaining neo-colonial hierarchies.

Advocates for GFAs give the impression that corporations are better equipped to enforce international labor laws as compared to public international bodies or states. This reflects a market-based approach to legal advocacy. This approach further reinforces capitalist economic development as inherently good for workers in the Global South and a continuation of the logic of imperialism which is to expand industrial capitalism. A study comparing a retailer in India that had been privately audited by the ILO’s Better Work Programme found that repeated private audits of factories showed no significant improvements in labor standards over time. However, factories under the ILO’s program showed some improvements from continual assessments. A possible explanation for this difference is that under the Better Work program, brands source from suppliers that improve on labor standards, which provides an incentive to

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528. Anghie, supra note 47, at 748; see also Saito, supra note 489, at 32 (explaining that development programs became the vehicle to replicate economic and political relationships of the colonial era).

529. In making this point, I am not suggesting the inverse that states or international public bodies are better sites for worker advocacy rather to acknowledge the normalization of market approaches in human rights advocacy. See Upendra Baxi, Voices of Suffering and the Future of Human Rights, 8 Transnat’l L & Contemp. Probs. 125 (1998), at 139 (noting emergent rights afforded to “foreign investor, global corporation, and international finance capital” as posing a challenge to human rights as articulated by Universal Declaration of Human Rights).


531. Better Work is a partnership between ILO and International Finance Corporation (IFC). Better Work, ILO, https://www.ilo.org/global/programmes-and-projects/WCMS_084616/lang--de/index.htm (last visited Nov. 23, 2021). In making this comparison, I am not suggesting a program that works with international financial institutions is any better. See Chimni, supra note 491, at 344 (discussing the privatization of public international law bodies like the U.N. and the ILO). The imprimatur of a program tied to a public international body like the ILO seems to generate increased corporate compliance.

532. See Bae, supra note 60, at 102 (looking at data from Cambodia, Nicaragua, Haiti, Vietnam, Indonesia and Jordan).

533. Id. at 104.
improve labor standards.\textsuperscript{534} The incentive to source from suppliers that improve labor standards provides workers some modicum of leverage over suppliers vis-à-vis a global buyer.\textsuperscript{535} The involvement of a public international body, such as the ILO, in monitoring compliance also seems to make a difference. As discussed in the legal mobilization section,\textsuperscript{536} here the legal structure of the ILO is leveraged to create opportunities for movements to incentivize suppliers to comply with labor standards. While those structural powers within the ILO framework can be improved and strengthened, and its partnership with international finance institutions should be viewed with caution,\textsuperscript{537} the Better Work program provides something tangible that workers can mobilize around using their associational power where otherwise they have no structural power in the global garment supply chain. Also, because the ILO engages in a tripartite process with workers, and member states, the program opens up a potential space for national unions to step in to push for concrete changes at the national level.\textsuperscript{538} A non-binding dispute process provides no such institutional leverage for national unions. Decolonization theory, which seeks to construct legal strategies that enable people in the Global South to be independent, reveals how even well-meaning legal strategies can be coopted for neo-colonial interests.

The GFA advocacy led primarily by global union federations in the Global North has adapted a market-based approach to activism as compared to the more confrontational approaches used earlier in the anti-sweatshop movement.\textsuperscript{539} This advocacy style makes it easier for corporations to respond

\textsuperscript{534} ILO, supra note 531.

\textsuperscript{535} See Blasi & Bair, supra note 59, at 6 (describing how incentivizing sourcing decisions enhance GFA effectiveness).

\textsuperscript{536} See supra Part III(B).

\textsuperscript{537} See Chimni, supra note 121, at 8 (describing how international financial institutions intrude on sovereign areas of economic life).

\textsuperscript{538} National courts have been receptive to interpret national legislation as incorporating international human rights law. See, e.g., Supreme Court of India, Mackinnon Mackenzie v. Audrey D’Costa, (1987) 2 SCC 469 (India) (interpreting national legislation in conjunction with ILO Convention No. 100 and European jurisprudential practice in the field, the Supreme Court of India found that Ms D’Costa had received much lower pay than her male colleagues performing work of equal value). See International Training Center’s Compendium of Court Decision, https://compendium.itcilo.org/en/decisions-by-subject.

\textsuperscript{539} See Muller, Platzer & Rüb, supra note 108 (detailing how GUFs primary objectives with IFAs are securing minimum standards at locations of TNCS, developing dialogue and negotiations, promoting international campaigns, utilizing international trade agreements). Compare this to the objectives of the anti-sweatshop movement, which prioritized international labor organizing. Rodriguez-Garavito, supra note 45, at 74 (“[M]ultifarious forms of direct action in different locales to exploit the vulnerabilities of global subcontracting - namely, the sensitivity of manufacturers, especially TNCs such as Nike, to negative publicity campaigns that can harm their most valuable asset: their carefully cultivated brand image; [t]o link up workers, pro-labor NGOs, and unions across borders, anti-sweatshop TANs pursue a wide array of schemes, from worker exchange and education programs to joint investigative and organizing teams, to solidarity campaigns in support of striking workers in sweatshops.”).
to activist demands without providing any mechanism to account for social outcomes.\footnote{540} It is worth noting that many grassroots trade unionists in the global garment industry and broader labor solidarity movement have voiced their critiques of non-binding GFAs, and this article does not mean to imply a monolithic strategy by organizers in the Global North.\footnote{541} Further, these activists note three bare minimum requirements for GFAs to be effective: knowledge of where all suppliers and subcontractors are located so they can be monitored on an ongoing basis, access for unions to enter those factories, and a clear mechanism to resolve disputes.\footnote{542} Using these prerequisites, of the 112 GFAs signed, only a handful are sufficiently effective.\footnote{543} While H&M’s GFA does have an implementation process, it is not binding and it does not meet the other criteria of access to their supplier factories. As discussed in section II(A), national unions from production countries expressly asked for these provisions, which H&M refused, and IndustriALL did not insist on them. Failure to insist on these minimum criteria reveals how corporate interests and the European model of labor-management relations based on social dialogue were prioritized over demands of workers in the production countries.\footnote{544}

On a pragmatic level, bypassing the state or any public regulatory body in enforcing labor legislation and pursuing purely private regulations has shown that global unions have not been able to serve as a counterweight to corporate interest. These GFAs are “perch[ed] high above local regulation” but do not engage with national laws, or the socio-political context of labor organizing.\footnote{545} They obscure and ignore the role of the state and the organizing that can happen vis-à-vis the state to obtain enforceable rights.\footnote{546} Pluralist approaches that include civil society grassroots groups have been more effective in pressuring for international labor rights.\footnote{547} Although states in the
Global South are limited by international financial institutions, they still retain political sovereignty and international human rights law is organized around the sovereignty of states. As such, states remain a viable space for social movements to engage and agitate within. Engagement with the state must be reconstituted to counter-balance the power of corporate interests that, as discussed above, the GFA has been unable to challenge. In the garment industry, complex supply chains with brands, suppliers, and subcontractors require governance mechanisms of different forms and levels. At the very least they need a “simultaneous bottom-up and top down” worker-empowered model that will be effective in Asian production countries like Bangladesh, India, and Cambodia to achieve meaningful rights for workers. At their essence, GFAs are not in line with efforts to decolonize labor. Under the harshest critique, GFAs may be described as neo-colonial in that the state possesses internal sovereignty, but its law and policy are directed from outside.

2. Countering hegemonic trade union imperialism

Decolonization, or centering counter-hegemonic ideas of law and legal ordering as it relates to GFAs and global labor rights, requires a candid discussion of “hegemonic trade union imperialism.” Top-down global unionism maintains the interests of labor and capital in the Global North. Other features include:

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See Chimni, supra note 121, at 7 (describing the global expansion of capitalism through the creation of international economic institutions such as World Bank, World Trade Organization and International Monetary Fund).

It should be noted that the working class has been most affected by the loss of sovereignty of the state through the formation of international financial institutions. See id. at 8–9.

See supra Part III(a).

Blackett, supra note 423, at 430.

Niforou, supra note 49, at 356; see also Zoom Interview with Nazma Akter, supra note 52

See Niforou, supra note 49, at 305; see also McCallum, supra note 1, at 16; Zoom Interview with Athit Kong, supra note 5252; Zoom Interview with Victor Garrido Sotomayor, supra note 52.

Kumar, supra note 125, at 235 (explaining how bottom-up strategic organizing is more likely to lead to sector-wide global collective bargaining).

Kwame Nkrumah, Neo-Colonialism: The Last Stage of Imperialism, at ix (Thomas Nelson & Sons, Ltd. 1965) (“The essence of neo-colonialism is that the State which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty. In reality its economic system and thus its political policy is directed from outside.”); see Angibie, supra note 416, at 235.

[S]etting up of new affiliated unions rather than working with established trade unions; an avoidance of militancy and mass actions while protest is channeled into legalistic channels; an air of superiority toward most of the unions organizing in the RMG industry.\(^\text{557}\)

In evaluating the H&M GFA, we see some of these features of hegemonic trade union imperialism.\(^\text{558}\) It is worth noting that hegemonic trade union imperialism can encompass reformist approaches.\(^\text{559}\) H&M selects who it would enter into a GFA with—IF Metall and IndustriALL—who in turn determine the national unions they would engage with, which excludes many national unions who support greater militancy.\(^\text{560}\) The GFA, with its priority of resolving industrial disputes peacefully through social dialogue, seeks to channel disputes into a legalistic governance framework.\(^\text{561}\) H&M’s GFA was negotiated away from the production countries with no active participation of affiliate unions. While the GFA applies to all workers in the supply chain, the negotiation was not open to all unions who may be organizing garment workers in the supply chain.\(^\text{562}\) Yet, IF Metall, which has no workers in production countries or in H&M, was the lead negotiator of the GFA.\(^\text{563}\)

Social dialogue approaches to labor management superimposed onto a diverse political terrain like Bangladesh, Cambodia, and India also render GFAs ineffective.\(^\text{564}\) Social dialogue is a conciliatory approach to capital,\(^\text{565}\)

\(^{557}\) Id. at 170.

\(^{558}\) It is worth commenting that this part of the article generated strong reactions from some interviewees and readers, perhaps, feeling that it linked individual international labor activists with colonialists and imperialism. See Rajagopal, supra note 17, at 409 (conflicts of capitalist development are often viewed as interpersonal conflict). Decolonization requires a shift of social consciousness among those formerly colonized and those who continue to benefit from colonialism. While this may be “discomfiting,” fear or denial will not change the relations between workers, employers, suppliers, brands, global and national unions. See Saito, supra note 489 at 47.

\(^{559}\) Rahman & Longford, supra note 556, at 184.

\(^{560}\) In the summer of 2014, then H&M sustainability manager and now CEO Helena Helmersson approached IndustriaALL to begin discussions for a GFA. See Zoom Interview with Mats Svensson, supra note 52.

\(^{561}\) See H&M GFA, supra note 164, at 6.

\(^{562}\) See discussion supra Part II(A).

\(^{563}\) See Zoom Interview with Mats Svensson, supra note 52 (involvement on garment issues through Clean Clothes Campaign, an NGO seeking to improve conditions in the garment industry but has no workers employed by H&M or workers in the supply chain).

\(^{564}\) Social dialogue and partnership model to labor-management relationship was rooted in European trade union bureaucracy. See Kumar, supra note 125, at 55. Such a practice was influenced by the model of social dialogue adopted by ILO.

\(^{565}\) Stevis & Fichter, supra note 64, at 671 (Social dialogue is a corporatist form of industrial relations.). Where workers below the economic hierarchy lack institutional, structural power, which is true for garment workers in the global supply chain, disruption becomes a power that can be deployed to have their demands heard and met. Disruption is often described
arising from the fact that European national unions or American unions do not have the capacity to mount a more direct organizing approach. This approach ignores that even in Europe and the United States, the labor movement’s strength is from collective action, not increased bureaucratization of its trade unions. In Bangladesh, there are divisions within unions that are conciliatory to global capital and those more critical of global governance mechanisms like the GFA; the top-down international strategies risk deepening those divisions. This results in narratives often heard from trade unionists in the Global North about the inability of garment workers’ unions in the Global South to unite, which reflects the feelings of superiority of trade unionists in the Global North based on their assumed stability. Labor disunity is not unique to the Global South—we also see it in the United States and Europe. This narrative of disunity and disorder delegitimizes militant unions in both the Global South and North. In fact, militant unions in the Global South have often been more open to engaging in non-violent confrontational strategies to address the harmful impacts of globalization given their links to anti-colonial struggles. This narrative allows global capital to co-opt more moderate unions within the labor movement under the social dialogue framework. This cooptation prevents working class unity and global solidarity. While in any country union unity is a challenge to forge, GFAs as drafted make it harder to build independent and global grassroots labor power.

In Bangladesh and other South Asian countries, labor movements have been involved in anti-colonial movements and have a history of labor militancy. For example, labor organizers in Bangladesh often employ non-violent confrontational strategies such as gherao, whereby workers surround the employer for failing to provide wages and did not allow them to leave as noisy and violent, but Piven defines it as withdrawing from social relations. See PIVEN, supra note 426, at 23.

566. Mccallum, supra note 1, at 22 (discussing how as unions found their respective nation-states accommodating to their wage and benefits demands, their interest in labor internationalism waned).

567. Kumar, supra note 125, at 56.

568. Ashraf & Prentice, supra note 303, at 106.

569. European labor-management relations have also been described as mature.

570. Anghe discusses this as the “civilizing mission” of governance. Anghe, supra note 416, at 249–50.

571. David C. Jacobs, Unionism and Democracy in the Disunited States, 2020 LAB. & EMP. RELS. ASS’N PERSPS. ON WORK 34, 38 (“All it takes to defeat a union drive [in the U.S.] is to exacerbate racial and ethnic divisions among the workers and undermine their hopes for change; an initial majority quickly erodes.”).

572. McCallum, supra note 1, at 9 (explaining how the international division of labor makes global capitalism vulnerable to disruption along its supply chain).


574. Rahman & Langford, supra note 174, at 87–106; Desousa, supra note 41, at 62.
until the wages were paid. These strategies emerged from workers having to confront the colonial state and continue in the current state that is hostile to union organizing due to its courtship of foreign investments. By colonial authorities and, later, government of Bangladesh, these approaches were suppressed under the narrative of vandalism and violence, when in fact they were often mass civil disobedience strategies in the context of weak institutional support. Although after independence many unions became affiliated with establishment political parties, as the state became more neoliberal in its economic policies, unions have had to take an independent and non-partisan approach. Given this history and context of unions in Bangladesh, India, and Cambodia, relying solely on social dialogue and non-confrontational approaches is bound to be ineffective.

3. Reorienting GFAs to empower workers

Given workers’ weak structural power in the global economy, GFAs need to increase their institutional power at the local level. This illusion of rights or new norms, without enforcement or opportunities for expansion, serve the interests of global brands for a stable, cheap, source supplier. As Anghie notes, the use of “good governance” to manage the Global South serves commercial expansion from the colonial era to the present. With consistent evidence that freedom of association and collective bargaining improves labor standards, and where national governments are hostile to unions, a GFA must create an implementation mechanism to enable workers to exercise those fundamental labor rights down to the factory level. Further, given that data shows that brands source from countries where institutional support is weak due to a number of factors such as nation-state hostility to union organizing, lax labor law enforcement, and other political-economic factors, a GFA should enable the national union or workers to use the GFA to leverage their power. Without a binding dispute resolution mechanism, at the very minimum, the GFA reinforces neo-colonial relationships and facilitates the availability of production countries for commercial interests of MNCs of the Global North.

Labor militancy and the mobilization of worker power could disrupt H&M production throughout its supply chain. This disruption would impact the commercial interests of H&M. It could also provide the leverage

575. See Rahman & Langford, supra note 174, at 94 (describing gherao as a popular form of protest in Bangladesh). Workers engaged in labor protests in Bangladesh only after an employer refused or failed to address worker demands. See WRC 2019 Report, supra note 312, at 9.


577. Id. at 103.

578. See Brooks, supra note 190 (discussing different forms of power); Anner, supra note 432, at 24-41 (distinguishing structural and institutional power).

579. ANGHEE, supra note 416, at 249.

580. See Fischer-Daly & Raymond, supra note 390, at 156.
necessary to create a countervailing power to corporate interest that social
dialogue in the GFA alone cannot. A mobilized and organized national union
can place pressure on global brands and suppliers through local regulatory
mechanisms, which in turn can operationalize long-established labor and
human rights. Integrating worker movements can fundamentally change
international law and its lack of credibility with respect to actualizing human
rights. The privileging of formal non-binding processes and social dialogue
within the GFA system legitimizes it as a labor governance mechanism and
delegitimize the worker mobilization that often employs more successful
confrontational strategies. Although both social dialogue and disruption are
necessary to advance labor rights, under GFAs, sole reliance on social
dialogue and conciliatory approaches mute militancy. When workers,
especially women workers, take to the streets to peacefully protest for
increased wages and their freedom of association rights, their actions have
led to changes. Where global union federations lend their support to these
organizing efforts, there have been successes in achieving changes for
workers.

Global labor governance mechanisms such as GFAs are not inherently
imperialist or neocolonial. How they are formed and implemented, their
engagement with national movements, state and public international
regulatory bodies, the extent to which they enable worker power and
unionization, and whether unions in the Global North are truly committed to
international global labor solidarity rather than globalizing a Western labor-
management governance system will determine the character and
effectiveness of these agreements. This is what a decolonization
framework offers. GFAs can be changed to work to advance global labor
rights and support grassroots labor movements, but that would require a

581. Rajagopal, supra note 17, at 429.
582. Both approaches are necessary for building worker power: public protest and
negotiation with employers. See Zoom Interview with Nazma Akter, supra note 52; see also
Fichter & McCallum, supra note 44, at 581 (recognizing that the history of trade unionism is
replete with political conflict, discusses the idea of conflict partnership or “battle and dialogue"
for GFAs which involves a strategic approach to dealing with global capital including greater
transnational networking and mobilization at local level); see also Barrientos & Evers, supra
note 16, at 56 (discussing the use of adversarial and collaborative approaches for strengthening
women workers rights in the global supply chain).
583. Huq, supra note 299, at 66.
584. Niforou, supra note 396, at 307 (top down strategic and collaborative intervention of
global unions in local organizing can provide workers leverage).
585. The Inditex GFA, monitored by a global council of trade unionists from European
countries and global South, may prove to be a stronger monitoring structure because the
monitors are able to direct remediations when violations are brought to their attention. A
comparative study against labor specific GFAs is needed. In this structure, European unions can
use their leverage and support national unions in the Global South. See Zoom Interview with
Victor Garrido Sotomayor, supra note 52; see also PAHUJA, supra note 489, at 45 (discussing the
ambivalence of international law to be both imperial and anti-imperial).
586. See Rahman & Langford, supra note 174, at 100.
willingness to utilize all the economic and political tools that organized labor has historically used which includes strikes, boycotts, direct action, and mass-based mobilizing.\textsuperscript{587} They cannot be limited to social dialogue, conciliatory, and bureaucratic approaches. GFAs can be negotiated to allow for binding dispute resolution procedures, ones that provide workers institutional power over suppliers and brands to improve labor standards and to organize. For example, the GFA could enable workers to create collective bargaining agreements as part of their fundamental labor rights by requiring suppliers who source from H&M to negotiate with national unions. It could integrate fundamental labor rights from the factory level up to pressure for national legislation. A bottom-up framing of rights would ensure the GFA is responsive to the needs of the workers in production countries. NMCs can be made more effective with the input of national unions. Workers and other unions can be trained to strategically use GFAs to increase unions and collective agreements at the factory level. GFAs as a potential global labor governance strategy within international law, as discussed in Section I, can be sharpened with respect to the negotiation, content, and implementation of GFAs to actualize international labor and human rights for garment workers. It is a truism for any labor advocate that an agreement is only as strong as worker power. As currently formulated, GFAs mute that power and are susceptible to reproducing socio-economic inequalities.

CONCLUSION

By contextualizing GFAs within international law, and by closely examining the H&M GFA’s implementation in three Asian production countries through various interrelated social movement theories, we observe that GFAs must be strengthened in order to bind MNCs to enforce freedom of association and collective bargaining rights. National unions must also be involved in the negotiation, implementation, and enforcement of the GFA. Failure to do so reproduces and maintains the colonial and imperial hierarchies embedded in international law. Unions and collective agreements increase the likelihood that other labor standards are enforced. H&M’s GFA has been successful in opening direct communication between national unions and brands in all three countries. It has been successful in resolution of individual cases for termination benefits and maternity leave where national legislation provides that right but where the legal process is slow. It gives rhetorical power that unions can use to mobilize members to hold H&M to its obligation to respect fundamental labor rights in its supply chain. It has not substantially increased unionization or collective agreements in Cambodia and India but has shown some success in Bangladesh, which

\textsuperscript{587} See Rodriguez-Garavito, supra note 45, at 212 (described an empowered participatory labor regulation model where confrontational and direct action strategies such as boycotts and protest are included as well as dialogue and deliberation and where political mobilization is essential).
warrants further careful empirical study as to the reasons why. One explanation for this differentiation is the focused efforts by national unions since Rana Plaza to increase the number of unions in the garment industry prior to the GFA.  

Overall, GFAs have not improved labor standards in the global garment industry. Grassroots, multi-layered approaches to governance that pay attention to the socio-political context are essential to building worker power and agency from the bottom up.  

GFAs are legal instruments that do not enlarge spaces for worker-led organizations to form or allow organizations to leverage such agreements to build power and maintain the unequal power relations between workers, suppliers, and brands. Here, the dispute resolution procedures must be binding on H&M in order to increase worker power. In its absence, the default local realities and power relations that shape labor and management, including difficulties in unionizing, hinder the potential of the agreement to be a vehicle to promote trade unions and fundamental labor rights such as freedom of association.

A decolonization perspective challenges the colonial and imperial origins of the concept of governance. By applying the theory to labor movements reveals that even well-intentioned strategies by global unions are vulnerable to cooption of business interests and can maintain colonial relationships. Decolonization also uncovers the assumptions underlying the social dialogue process, to illustrate how cooperative model governance can operate to suppress labor militancy, and the need to create more local mechanisms to enable unions to exercise power and agency. Organizers in the Global South, with deep knowledge and long histories of organizing, need to be involved in shaping the decisions, policies, and strategies of global unions. Global unions, based in the United States and Europe, need to decenter themselves as the locus of decision-making.  

Challenging the colonial foundations to governance strategies embedded in GFAs would also foster greater labor transnationalism and solidarity.

Finally, in a global garment industry that is maintained by the devaluation of women’s labor, the GFAs must squarely address gender-related concerns and provide clear avenues for women workers to raise these issues. Only then might GFAs transform the international human rights law that fails to empower women workers.  

GFAs must also focus on building grassroots women’s leadership from the factory floor to change the global culture of trade unionism that remains, both at the national and global levels, male-dominated and Eurocentric.

588. Zoom Interview with Nazma Akter, supra note 52.
589. KUMAR, supra note 125, at 235 (bottom-up strategic organizing can lead to industry-wide global collective bargaining).
590. Saito, supra note 489, at 41 (discusses a move away from center-periphery at the heart of colonialism and empower multiplicities of realities and sources of information).
591. See Etienne, supra note 362, at 161.