

**Grievance mechanisms, remedies and trades unions: a discussion
document**

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Dr Aidan McQuade

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1. Executive Summary

Grievance mechanisms are essential processes to obtain access to remedy for workers when laws, policies or business practices fail to protect and respect workers' rights. There are diverse operational models of grievance mechanisms. But this paper argues that the most robust and appropriate model for any workplace is a mature system of industrial relations with a single code of conduct that reflects all the fundamental International Labour Organization conventions. That involves a trade union recognition agreement and management system, which forms a part of an operational grievance mechanism capable of addressing individual grievances, disciplinary issues and collective disputes, and which acknowledges the primacy of the employment relationship. Such approaches offer the prospect of a sustainable model of ethical business.

But these systems are lacking in many places because of business reluctance, weakness of labour law, and, sometimes, lack of trade union capacity or inclination. Global Framework Agreements (GFAs) between multi-national businesses and trades unions go some way towards redressing these limitations by establishing international partnerships frequently committed to promoting industrial relations throughout business operations and supply chains.

Non-governmental organisations (NGOs) have no role in mature systems of industrial relations. But approaches by some show examples of how labour rights NGOs may contribute to worker organisation to claim their rights in places where traditional trade unions are absent or, in the instance of child labour, where traditional trade union approaches may be inappropriate.

Given the centrality of decent work to the Sustainable Development Goals it may be useful for NGOs and trades unions to consider forming strategic partnerships to advance this goal. Alongside such partnerships, Global Framework Agreements, and mature systems of industrial relations could also provide a further basis for joint advocacy to strengthen the enabling environment for industrial relations by improvements in labour law and policy.

2. Introduction: remedy and decent work

a. Purpose

This paper seeks to set out perspectives on trade unions roles in remedy and grievance mechanisms, in situations where decent work is absent; to explore the strengths and weaknesses of these approaches, and to discuss how good practice may be replicated and augmented.

b. A note on methodology

This paper is based on interviews with trade unionists and other stakeholders, and a review of literature. It does not purport to be an “official” position, but rather a reflection upon diverse ideas relating to trade union roles in grievance mechanisms and remedies, and the challenges that pose a barrier to expanding access to decent work. As such portions of this paper may be contentious. Nevertheless, it is hoped that it will provoke further useful discussion and dialogue between relevant stakeholders.

c. Nature and scale of the problem

In a speech to the 2014 UN Forum on Business and Human Rights Sharan Burrow, the leader of the International Trade Union Confederation, noted that of the 2.9 billion workers in the world, 60% in the “formal” economy face increasingly precarious employment and deteriorating pay and standards. The remaining 40% of workers in the informal sector face even more difficult conditions with no guarantees of rights and few social protections.

The precarious nature of contemporary employment in the formal and informal economy is illustrated by the 2017 global estimate of forced labour, which suggests that there are about 25 million people in forced labour, and another 152 million are victims of child labour, almost half of those, 73 million, work in hazardous child labour¹. While these numbers represent the most extreme levels of exploitation they are part of a spectrum and illustrate that many millions of other workers are grievously exploited in the contemporary economy.

Against this backdrop, there is a need for effective systems at the workplace, and throughout business operations and international supply chains, to advance access to decent work. Grievance mechanisms are an essential part of such overall systems to enable access to decent work for all 2.9 billion of the world’s workers. They provide a corrective process when laws, policies or business practices fail to protect and respect workers’ rights. If effectively implemented, remedy and grievance mechanisms generate learning upon which wider reform of the world of work can be based.

3. Role of trades unions in obtaining remedies

a. Definitions

The “three-pillar concept” Protect-Respect-Remedy - of the UN Guiding Principles on Business and Human Rights (UNGPs) sets out the expectation that businesses must act to respect the human rights of workers. This requires both policy commitment from the businesses and due diligence, *“In order to identify, prevent, mitigate and account for how they address their adverse human rights*

¹ <http://www.ilo.org/global/topics/child-labour/lang--en/index.htm>

impacts...The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed².

The expectation to respect human rights includes the fundamental rights at work, in particular the right to join and form a union and to bargain collectively.

Under its third pillar, the UNGPs set out three categories of corrective actions – remedies – which workers should be able to access: state-based judicial, state-based non-judicial, and non-state based grievance mechanisms. What all have in common is they are the means by which remedy is obtained. Article 25 of the UN Guiding Principles on Business and Human Rights states: *“As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.”*

Remedy means putting to right any impact, harm and consequences of violations. An effective remedy in the context of business operation would usually require the establishment of operational grievance mechanisms³ that will ensure that affected workers are able achieve a remedy that is best suited to address the consequences of violations, including⁴:

- Restitution – the restoration to the original situation violations occurred. This can include restoration of employment, where workers were for example dismissed for complaining or for attempting to organise.
- Compensation – would usually come in the forms of damages – material and non-material, and would include financial compensation for lost earnings and potential earnings, lost opportunities – including employment, repayment of debt or fees (for example where excessive or unlawful recruitment fees were charged by agencies; and reimbursement of costs of treatment, legal fees and other services.
- Rehabilitation – would include provision of care and treatment, such as physiological and other medical treatment
- Satisfaction – these types of remedies would include public statement of truth, such as acknowledgement of the harm done to the workers, a public apology and restoring the reputation of the workers (for example ensuring that there are removed from any blacklists)
- Guarantee of non-repetition – there types of remedies relate to preventative mechanisms and systemic change, such as ensuring that codes of conduct and policies are adhered to, or

² Principle 17, page 18: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

³ UNGP define operation grievance mechanism “accessible directly to individuals and communities who may be adversely impacted by a business enterprise. They are typically administered by enterprises, alone or in collaboration with others, including relevant stakeholders. They may also be provided through recourse to a mutually acceptable external expert or body. They do not require that those bringing a complaint first access other means of recourse. They can engage the business enterprise directly in assessing the issues and seeking remediation of any harm.”

⁴ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

improved; or that an operational grievance mechanism is put in place and a trade union is engaged in a workplace.

b. Towards systems of mature industrial relations

Trades unions have an interest in establishing grievance mechanisms in order to prevent violations from occurring, to prevent issues from escalating, and to ensure that when violations do occur, workers have access to remedies.

A functioning collective bargaining system can provide effective remedy mechanisms with preventive and corrective functions. Jeff Vogt, Legal Director of Solidarity Center, put one of the key issues succinctly when he said. *“The best grievance mechanism is a collective bargaining system. And we have spent the best part of two decades coming up with alternative half-measures because we can’t get these collective bargaining agreements which would make other measures irrelevant.”*

Involving trade unions in operational grievance mechanisms is a key element of a mature system of industrial relations. At the core of the system is organising business operations in a way that ensures respect of core labour standards that withstand scrutiny, and thus would also form a fundamental basis of human rights due diligence.

Foundational to any mature system of industrial relations is partnership that aligns the business with the expectation of the UNGPs when it comes to the principles of effective grievance mechanisms⁵ As Anne Douglas, former President of the Scottish Trades Union Congress⁶, pointed out in an interview for this report, *“Fundamental to effective remedy is that workers have an effective voice in the workplace so that two-way dialogue and two-way respect can be established and a mechanism established to resolve problems before they become irresolvable... each [business and trades unions] bring vital and distinctive competences to the process.”*

The point that business partnership with unions can assist in dispute resolution before problems become intractable is one that is echoed by others, such as Adil Rehman of ASOS⁷. *“Of course there may be technical elements to a grievance mechanism, but the core thing necessary is direct partnership between trades unions and businesses.”*⁸ Tim Ryan⁹ of the Solidarity Center in Washington DC has a similar view: *“Trades unions role in grievance and remedy processes is first as advocates and representatives, and when drawn from the same workplace as those they are representing then they have the best possible level of understanding of what is involved in the grievance. Where unions are involved at this level then it provides an opportunity to resolve the issue at a local level and avoids the matter entering into the judicial system. This needs local organisation of course.”*

⁵ *Doing business with respect for human rights. A guidance tool for companies.* Shift. 2016.p. 107

⁶ Douglas also chaired the Fair Work Convention, a Scottish initiative to, *“Articulate a practical blueprint for Fair Work which promotes a new type of dialogue between employers, employees and trade unions, public bodies and the Scottish Government.”* One of its findings was that “Effective Voice” and workplace dialogue was fundamental to the obtaining the other key dimensions of Fair Work.

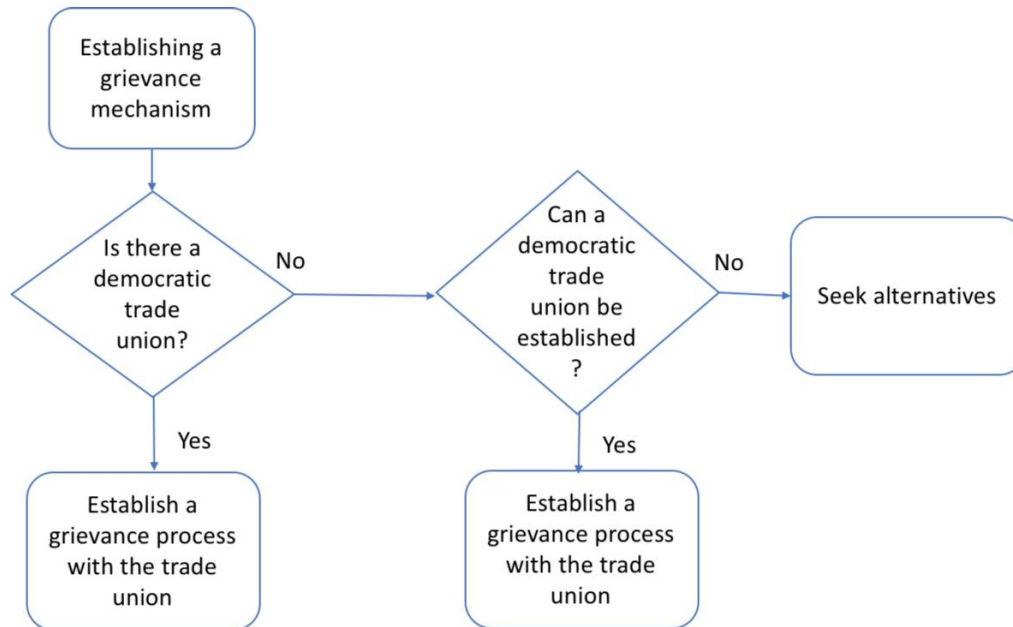
⁷ In 2017 ASOS signed a Global Framework Agreement with IndustriALL: http://www.industrialunion.org/sites/default/files/uploads/documents/2017/UK/asos_industrial_gfa.pdf

⁸ Interview with Adil Rehman, November 2017

⁹ Interview with Tim Ryan, Regional Program Director – Asia, Solidarity Center, Washington DC., November 2017

Trades unions' position on establishing grievance mechanisms to obtain remedies can therefore be summarised in the flow chart in figure 1.

Figure 1



Neil Kearney¹⁰, the late General Secretary of the International Textile, Garment and Leather Workers Federation, identified key elements that an ideal system of mature industrial relations should have, These include:

- A robust, single code of conduct that would reflect all the fundamental ILO conventions;
- A trade union recognition agreement and management system, which would form a part of an operational grievance mechanism and would be capable of addressing individual grievances, disciplinary issues and collective disputes.
- Acknowledgement of the primacy of the employment relationship: *'where the supplier, as employer, takes responsibility for those employed and where the exercise of that responsibility is regulated by a mature system of industrial relations at workplace level involving management and trade union representatives'*.

Kearney was dismissive of the sort of "scotch tape measures"¹¹ involving social audits or involvement of NGOs that appeared to be adopted to avoid establishing mature systems of industrial relations between trade unions and employers.

¹⁰ Doug Miller, Simon Turner, and Tom Grinter, *Back to the Future? Mature systems of industrial relations approaches and social upgrading in outsourced apparel supply chains*, June 2010 <http://www.capturingthegains.org/pdf/ctg-wp-2010-02.pdf>

¹¹ Another informant's description of non-union based approaches.

c. Benefits of mature systems of industrial relations

Elements of Kearney's model of mature industrial relations may seem too much of a challenge for some businesses. However, there are also clear benefits for ethical business from establishing such systems.

Many businesses share suppliers. If these businesses have diverse codes of conduct for their suppliers then this, at best, becomes a recipe for confusion amongst suppliers leading to the application of standards becoming something of a "tick-box exercise" rather than a meaningful basis for improving terms and conditions within a supply chain. The development by businesses with trades unions and other stakeholders of a robust, single code of conduct that reflects all the fundamental ILO conventions would bring a unity of voice to the discussions between businesses and their suppliers.

By being based on ILO conventions this would also mean that any code of conduct would assert the basic enabling rights of freedom of association and collective bargaining, and these then could form the basis for the establishment of operational grievance mechanisms with democratic trade unions in the supply chain.

Furthermore, with a mature system of industrial relations and the establishment of more formal dialogue with trade unions, then organisational theory indicates that more robust systems of decision making can be established, with ideas and their implications thoroughly tested before implementation.

In the long term, mature industrial relations based upon the premise that freedom of association is an enabling right from which many of the other aspects of decent work can be obtained and guaranteed, will benefit workers and have a clear commercial benefit of sustainability. Indeed, Rehman¹² stated that establishing effective partnerships with trades unions was the "*only approach that could really make sustainable an ethical business model.*" And, while in the short term, "*Implementing human rights, including the Freedom of Association does mean that costs will go up... workers organising around workplaces is the only sustainable way to ensuring decent work.*" Furthermore, demonstrating ASOS commitment to human rights principles through concluding the Global Framework Agreement with IndustriALL, they also recognised that "*the young consumers who are our customers have a desire and an expectation for ethical fashion*"¹³.

d. Resistance to industrial relations

Given this, and the impetus of the UN Guiding Principles for the past six years, it would be reasonable to expect that by now mature systems of industrial relations would be the norm. However, many businesses continue to perceive social dialogue as a burden and do not encourage freedom of association at the workplace, a consequence of a particular business culture that has been cultivated for decades. As Douglas noted, "*Obtaining this [mature systems of industrial relations] is often constrained by employers who do not want to engage and regard employees as little more than pieces of machinery.*"

Weak or ineffective legislation compounds this sort of business culture. For US led businesses, "*The core of the problem is that US management is trained to be anti-union, told that they need to fight*

¹² Interview with Adil Rehman of ASOS, November 2017

¹³ Rehman

against any initiatives to form unions and provided with tools to do so. And, of course, labour law in the United States is fairly weak.”¹⁴

Weak labour law is not a problem confined to the US. “*One of the problems,*” Ryan notes, “*is that [the systems to facilitate] Social Dialogue [between trades unions, employers and government] are lacking*” in many places even where there is “*law in place to facilitate employers bargaining with workers, this may not be enforced.*”

In some countries, like in China, the extant laws act as a barrier to full respect for trade union rights. Hence, in some contexts, alternative grievance mechanisms will need to be established, that are not trade union based, or are a “quasi” form of worker representation, such as worker committees. However, even in contexts where such mechanisms can be established, some businesses will not set those up because they are able to avoid doing so.

The UN Guiding Principles on Business and Human Rights explicitly recognised that, “*Operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms*”¹⁵.

Any operational level grievance mechanism must therefore be based on the eight principles set forth in, “*the UN Guiding Principles on Business and Human Rights. In particular, such a mechanism must embody the eight effectiveness criteria set forth in Article 31 of the Guiding Principles, namely that the grievance mechanism be: legitimate; accessible; predictable; equitable; transparent; rights-compatible; a source of continuous learning; and based on engagement and dialogue.*”¹⁶

Establishing grievance mechanisms is not a purely a matter of mechanics of setting up a technical process. It is also a political one. Establishing systems of industrial relations represents a rebalancing of power between businesses, employees, and workers in the wider supply chain beyond a business’ direct operations. It involves, recognising “*that workers are the counterpart of company management and if rights violations arise there is a mechanism to solve that problem.*”¹⁷

With increasing globalisation of the economy the issue of industrial relations is now firmly an international one. In response to that trans-national businesses and international trades unions have begun establishing Global Framework Agreements to facilitate the growth of industrial relations, even in some regions of the world hitherto hostile to worker organisation.

4. Global Framework Agreements

a. Definition

There is an absence of a firm definition of Global Framework Agreements (GFAs). The ILO defined a GFA as, “*an instrument negotiated between a multinational enterprise and a Global Union*

¹⁴ Beaty

¹⁵ Page 33: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹⁶ Jeff Vogt, Legal Director, Solidarity Center, interview November 2017

¹⁷ Hajagos-Clausen

Federation (GUF) in order to establish an ongoing relationship between the parties and ensure that the company respects the same standards in all the countries where it operates¹⁸.

The responsibilities of the business outlined in a GFA would usually include particular standards related to labour and social rights globally, regardless of the particular country of operation.

IndustriALL is one of the global unions with the largest number of GFAs – currently there are 47 agreements¹⁹ in place in 14 different industrial sectors including manufacturing, and oil and gas. On its website, IndustriALL describes Global Framework Agreements as “[agreements] negotiated on a global level between trade unions and a multinational company. They put in place the very best standards of trade union rights, health, safety and environmental practices, and quality of work principles across a company's global operations, regardless of whether those standards exist in an individual country²⁰.”

In general, Global Framework Agreements, as the name suggests, seek to establish a framework for mature systems of industrial relations to be established. The expectation is that as such relations are established at each workplace collective agreements will be established that will include setting out the processes by which grievance will be resolved.

b. Strengths of GFAs

Global framework Agreements can therefore be viewed as a basis to improve industrial relations across an international business in spite of the diverse challenges that may emerge from local law or managerial culture. The agreements are negotiated between the management of a company and workers’ representatives and are derived from ILO core labour standards.

Some agreements, such as the agreement between IndustriALL and ASOS commit to promotion of trade union rights within a supply chain. For example, it states that “*This framework agreement is intended to facilitate the negotiation of detailed collective agreements between local trades unions and all suppliers to ASOS at national and other levels. It should serve as an important basis for developing mature systems of industrial relations within each company and through the companies supply chain.*” In recognition of the scale of this ambition the Agreement also sets out a process on how ASOS and IndustriALL will work together to advance this, which includes dialogue, training and a hotline so that all workers, at least potentially, have access to a grievance mechanism.

Other agreements, such as that between Industrial and H&M, while recognising rights to freedom of association and collective bargaining, are more neutral on their promotion. Nevertheless, this agreement also establishes structures, such as the National Monitoring Committees, and a Joint Industrial Relations Development Committee, through which disputes can be escalated if not resolvable within a specific workplace. How such escalation might work is shown below (See Box 1: IndustriALL, H&M and Bangladesh).

Hence Global Framework Agreements can be viewed as a tool to drive better standards in all parts of the supply chain. For example the GFA between IndustriALL and H&M arose from “*a shared*

¹⁸ Hadwiger, F.: Global framework agreements Achieving decent work in global supply chains, Background paper. ILO 2015

¹⁹ <http://www.industrialall-union.org/issues/confronting-global-capital/global-framework-agreements>

²⁰ <http://www.industrialall-union.org/what-is-a-global-framework-agreement>

conviction that collaboration between the parties on the labour market is crucial for lasting improvements for the garment workers and the creation of well-functioning industrial relations.²¹

And the agreement between IndustriALL and Inditex, *“underlines that freedom of association and the right to bargain collectively play a central role in a sustainable supply chain because they provide workers with the mechanisms to monitor and enforce their rights at work.”*

Ryan also notes that *“There are examples of some reasonable Global Framework Agreements relating to extractive industry, particularly oil and gas, and seafarers, particularly regarding cargo transport. In part this is because they relate to very large industries which have consistency of issues across the world.”*

Jim Baker, Co-ordinator of Council of Global Unions, in his paper Global Agreements and Protect, Respect, Remedy (undated) notes how Global Framework Agreements have been used in environments somewhat hostile to trades unions, such as the United States to promote fundamental labour rights such as freedom of association and collective bargaining. For example, in addition to the GFA signed between IndustriALL and Electrolux, *“the parties made a separate agreement which commits the company to not organize or finance company or ‘yellow’ unions, to not implement or support any union busting activities and to not adopt any initiatives capable of discouraging workers from forming authentic unions.”*

Christina Hajagos-Clausen, notes that GFAs which are concluded with direct employers are the more straightforward. Where the agreements have to go through *“an extra layer”* such as in the garment industry, which has long and often opaque supply chains spanning across multiple countries, IndustriALL need to work with global brands to leverage work with their suppliers to implement the Agreements. Through this mechanism, a basis can be provided for industrial relations in previously unorganised and frequently exploited sectors. For example, the October 2017 Global Framework Agreement signed between IndustriALL and ASOS makes commitments to promote of freedom of association through its supply chain²².

Hajagos-Clausen cites several positive examples the impacts of Global Framework Agreements, including one with H&M in which the systems of industrial relations established by the agreement helped settle through dialogue an increasingly bitter dispute in Bangladesh (See Box 1).

Box 1 : IndustriALL, H&M and Bangladesh²³

20.07.2017 IndustriALL’s Global Framework Agreement (GFA) with H&M paves the way for 986 workers in six factories to receive termination benefits, and the disposal of cases filed against workers by suppliers following the crackdown on unions and workers earlier this year

In December 2016, Bangladesh garment workers demanded an increase in minimum wages. Employers and the government responded with repression on trade union activities, incarceration, and terminations for thousands of workers.

IndustriALL and its affiliates launched a global campaign against the repression. Based on the GFA, IndustriALL called on the Swedish clothing giant H&M to intervene and urge its suppliers to reinstate terminated workers, withdraw criminal cases filed by its suppliers and take steps to

²¹ <http://www.industriall-union.org/industriall-global-union-and-hm-sign-global-framework-agreement>

²² https://www.asosplc.com/~/_media/Files/A/Asos-V2/documents/corporate-responsibility/asos-industriALL-gfa.pdf

²³ <http://www.industriall-union.org/bangladesh-workers-win-termination-benefits>

create an environment conducive to well-functioning industrial relations. Subsequently, H&M issued three conditions to its suppliers from the Ashulia area:

- Withdrawal of the criminal cases filed by the six suppliers
- Reinstatement of the wrongfully dismissed workers
- Actively commit to engage with the National Monitoring Committee in order to achieve well function industrial relations

The national monitoring committee (NMC), set up to monitor the implementation of IndustriALL's GFA with H&M in Bangladesh, worked together with brand representatives and held series of meetings starting in March, with its six suppliers including Artistic Design (Ha-Meem Group), Windy Apparels, Rose Dresses Ltd., Sharmin Apparels Ltd., Fountain Garments Ltd., Dekko Design Ltd. Representatives of BGMEA, the garment factory owners' association, also participated in the process.

Following hard negotiations during the meetings it was agreed by all attendee factory management that they will withdraw charges and call for the disposal of pending cases in accordance with legal procedure. Respective legal advisors of workers and factory management will hold time-to-time consultations to expedite the process.

Factory management will be open to reinstating workers, and where it is not possible, the worker will be paid termination benefit and owed wages. Suppliers also agreed to continue to engage with NMC in order to create well-functioning industrial relations.

Out of 1,074 dismissed workers from the six suppliers, a total 984 workers (92 per cent) have received their compensation. 76 workers who have not responded so far, can visit the respective factory anytime within this year to claim termination benefits. On the criminal cases filed against workers, the court dismissed four out of seven cases. About 11 cases of reinstatement are expected to be resolved soon.

Timothy Beaty, Director of Global Strategies for the Teamsters, cites, *"The ongoing dialogue between IUF and Coca Cola"* as a positive example of partnership between trades unions and a company. *"There is no framework agreement but every 6 months representatives sit down and talk about labour issues in Coca Cola around the world. This has been helpful in some problems, not all, but some. Because it creates a place where there is an accountable conversation between trade union and company leaders. Just seeing each other regularly creates accountability. It helps create a better understanding of the global management of the organisation. Otherwise real issues may be lost or suppressed in management reporting lines... There certainly have been a few multi-national corporations, such as Danone, with a Global Framework Agreement [with IUF], where all the agreement provisions have been implemented in the US. But these are a minority."*

c. The Bangladesh Accord – an example of a quasi GFA

The dreadful carnage in Bangladeshi manufacturing, culminating in the ghastly Rana Plaza disaster that left over 1,000 people dead and thousands more injured finally prompted the Bangladesh Accord on Fire and Building Safety. Ryan cites this as a *"good example of a de facto global framework agreement"*²⁴... *The success of this in improving standards arises from a number of sources. First of all, it brings certain commercial benefits to participating businesses, demonstrating to potential customers*

²⁴ <http://bangladeshaccord.org/>

that you are less of a reputation risk to them, that you are improving plant and trying to avoid killing workers.

“Second the Accord exists in a more positive enabling environment where Bangladesh has an incentive that the Accord works because of the Generalised Systems of Trade Preferences: the US has already withdrawn trade preferences from Bangladesh and the EU is considering such a measure. Having a system for worker protection in place helps defend against the loss of trade.

“Third there are legally binding elements to the Accord, that compel brands and suppliers to arbitration if not living up to the standards of the Accord, and that the legal arbitration would occur in the home country of the brand.” In this regard the Accord may be seen as giving practical expression to Principle 2 of the UNGPs: *“States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.”* In the commentary on this principle the UNGPs go on to note that, *“There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State’s own reputation.”*

Ryan notes that, the absence of these three elements underpinning the Bangladesh Accord can contribute to difficulties *“obtaining remedy, particularly in countries with weak rule of law and corrupt judiciaries.”*

d. Weaknesses of GFAs

In addition to these absences, the main reservations voiced about Global Framework Agreements are that they are not a panacea. Fichter and Stevis²⁵, in their 2013 paper, note that in four countries in which they undertook case study research, *“GFAs were still widely unknown among local managers and union officials. Where knowledge of them existed, local actors often lacked an understanding of how they could use the GFA in the context of their labor relations.”* Furthermore, it is possible for GFAs to be undermined by the bad faith of unconvinced managers, or weaknesses in the agreements that may have resulted from unsatisfactory or difficult negotiations.

Beaty notes that, *“Global Framework Agreements ...can create dialogue if the company is really committed to actual dialogue over time listening to workers’ perspectives. But this tends to happen only when member unions are coordinated and prepared to apply pressure.”* He cites the global framework agreements negotiated with BWI²⁶ for construction workers, which, *“despite assurances that they would be fully applied in the United States, were not.”*

Ryan notes that, *“Global Framework Agreements are in principle effective and must be judged on their own merit and track record... they set reasonable frameworks and mechanisms to extend grievance handling, but there are frequent shortfalls in their application,”* which Ryan explains as *“The main reasons for these shortfalls relate to the primacy of the local environment and law in which they are set. Often what happens is what should be floors become ceilings, because of lack of enforcement of labour laws and ILO standards.”*

²⁵ MICHAEL FICHTER AND DIMITRIS STEVIS, [Global Framework Agreements in a Union-Hostile Environment: The Case of the USA](http://library.fes.de/pdf-files/id/10377.pdf), November 2013 <http://library.fes.de/pdf-files/id/10377.pdf>

²⁶ Building and Wood Workers' International, the Global Union Federation grouping free and democratic unions with members in the Building, Building Materials, Wood, Forestry and Allied sectors.

Hajagos-Clausen strongly counsels against allowing negative US experiences taint the entire global system of framework agreements. And in spite of the shortfalls that they found Fichter and Stevis did also find *“there are a remarkable number of cases in each country in which the GFA was used successfully – and even innovatively.”*

e. Conclusion

While there are challenges, Global Framework Agreements represent a recognition of the complementarity of the roles of businesses and trades unions in the establishment of industrial relations, including grievance mechanisms and provision of access to remedy. They also represent an effort to give real expression to fundamental principles and rights at work in the face of challenging international environments.

Beaty argues that: *“Often [Global Framework Agreements] ... work better as a result of a process of struggle from coordinated groups of member unions, aware of the real difficulties that exist between labour and management in different parts of the company and prepared to act in solidarity with each other.”*

Hence Hajagos-Clausen notes that *“national unions play a big role in writing the Agreements, and are signatories to them,”* ensuring their fitness to local contexts. This is in keeping with Fichter and Stevis finding that *“Involvement of local actors throughout the GFA process, from its initiation to its implementation and its evaluation, is crucial for establishing a viable multi-level GFA arena throughout a global production network.”* They further note that *“Policies of the organizations involved can have a greater impact on the success of a GFA by overriding the particular environmental constraints of local and national institutions.”* This conclusion would seem to be borne out by the experience of IndustriALL and H&M in Bangladesh.

Vogt suggests that, *“If there was provision for neutral third-party arbitration to resolve disputes resulting in binding awards, this could strengthen Global Framework Agreements. But, of course, this would be a disincentive for some brands to sign GFAs in the first place: the more enforceable the agreement, the less ambitious the agreement might become,”* and perhaps also the more costly. But Douglas suggests perhaps an intermediate way: *“An opportunity that could arise from more widespread uptake of global framework agreements is that other signatories to such agreements not affected by disputes could potentially act as mediators when disputes become fraught.”*

Furthermore, as basic human rights standards should be a pre-competitive issue, there is perhaps a possibility that the extension of GFAs could allow smaller businesses purchasing only a small percentage of output from a supplier to ensure more ethical supply chains by coordinating or perhaps affiliating with those larger businesses that have GFAs.

5. Alternative approaches to remedy

As noted above, many businesses have been evading the benefits and responsibilities of establishing mature systems of industrial relations by establishing alternative mechanisms, sometimes with NGOs, that can undermine the proper roles of trades unions. This has led, in some instances, to a very robust repudiation of any role for NGOs in systems of mature industrial relations²⁷.

However, issues of exploitation and hostile environments suggest the need for non-traditional approaches. These would include strategic partnerships between trades unions and NGOs to

²⁷ Kearney

advance access to remedy in otherwise unreached parts of the economy, or NGO and grassroots civil society action acting as a precursor for developing industrial relations in a hostile environment or on issues that are usually seen as being out of scope of trade union activity.

a. Grassroots initiatives

Grassroots initiatives function as a remedy mechanism often in remote sections of the informal economy where there is little union activity, or where established trades unions are slow to organise, or do not organise particular groups of vulnerable workers (such as migrant workers, minority workers or undocumented workers). In these circumstances NGOs and grassroots organisations may still fulfil important roles in solidarity with workers claiming their rights.

Examples of such initiatives includes:

The Coalition of Immokalee in Florida (CIW)²⁸, USA is a worker based organisation that has demonstrated the potential impact that non-traditional trades union based approaches might obtain, through its combination of farmworker community organising and national campaigning. Their Fair Food Program, a partnership between farmworkers, tomato growers, and retail buyers has led to establishment of human rights due diligence and improved terms and conditions for farmworkers. Investigations by CIW has also assisted the prosecution of traffickers for forced labour in US agriculture and the liberation of over 1,200 enslaved workers.

Beaty is not sure that this is a model to be emulated however. Based on his previous experience working to organise farmworkers his understanding is that there is limited worker participation in the CIW approach.

Bruce Goldstein, of Farmworker Justice, identifies another approach, in the form of the **Equitable Food Initiative (EFI)**²⁹, a corporate social responsibility project in the US arising from a multi-stakeholder initiative focused on workers on fruit and vegetable farms.

This began as an effort by a small group of organizations including the United Farm Workers (founded by Cesar Chavez) and the Farm Labor Organizing Committee, AFL-CIO. Other originators that advocate for farmworkers include the NGOs Farmworker Justice and Oxfam America, and the farm labour union in the state of Oregon, PCUN (Pineros y Campesinos Unidos del Noroeste).

Goldstein notes that, *“These unions decided to develop this project in addition to their collective bargaining (and organizing for collective bargaining) because, after several decades of effort, so few farmworkers are covered by collective bargaining agreements and new approaches were needed to help more farmworkers. [Farmworker Justice] has always assisted farm labour unions and is very pro-collective bargaining because it has been the most effective mechanism for large groups to improve their conditions and exert control over their own destinies. Farmworker Justice joined this effort from the beginning for similar reasons and because the unions were co-founding it.*

“Although the EFI system is not a union/employer collective bargaining system, the standards in the EFI certification system have strong protections to guarantee workers at EFI-certified farms the rights to organize and join unions and engage in collective bargaining, which are not granted to farmworkers by federal labour laws... Really, the system is about culture change so that workers are

²⁸ <http://www.ciw-online.org/about/>

²⁹ www.equitablefood.org

recognized for their value and companies reap the benefits in the form of enhanced productivity through non-exploitative, modern labour relations.”

Organising of bonded labourers

Anti-Slavery International, in partnership with Volunteers for Social Justice, and Jan Jakriti Kendra (JJK) in India, have followed an approach of community organisation of brick kiln workers, who have been largely excluded from traditional organising, to claim their rights under Indian National law. Such engagements are a vital approach to remedy in South Asia, particularly in India, *“where the dynamics of the caste system have largely excluded [“scheduled” and “backward” castes] from playing crucial leadership roles in the workers’ movement. There are many reasons for this. One is certainly the attitude of the upper-caste employees who often dominate trade-union membership³⁰.”*

The issue of caste is a major challenge. As Meena Varma, the Chair of the International Dalit Solidarity Network, points out: *“Hundreds of millions of South Asians are affected by caste-based discrimination, and many of those do not see trades unions as allies confronting this system of human rights abuses, but rather as part of the system that is abusing them.”*

b. Child Labour

When considering grievance mechanisms and remedy for human rights abuses within business operations and supply chains, then the question of child labour poses particular challenges.

As noted above there are over 150 million child labourers in the world, 73 million of these in hazardous work. There have certainly been radical decreases in the numbers in child labour over the past decade, but during that time new risks have emerged. One, which is perhaps illustrative of others, relates to the system of Sumangali. This is a system of forced labour of girls and young women in the manufacture of textiles and garments in South Asia³¹.

At the turn of the 21st Century much of the workforce in these industries was adult, male and unionised. As technology advanced many factory owners became aware that there was no longer a need for such an expensive workforce. So, over a period of years, they were replaced with unskilled female workers, many of them children. These workers, and other child labourers in garment supply chains, have remained un-unionised, in part because trade unions have pointed out that because child labour is proscribed it would be illegal to organise them.

This is a Catch-22 situation which benefits no one but the unscrupulous factory owners who are aware that whatever their transgressions of Indian child labour law, they will not be held accountable for them. Elsewhere child labour poses different challenges. For example, in West African agriculture, including cocoa, one of the primary motivations for child labour is the inadequacy of the education system: schools are often few and far between, with unsatisfactory curriculums, poorly trained teachers, poor equipment, and inadequate safe sanitation facilities, particularly for girls.

Industry has responded to public scrutiny, notably with the establishment of the International Cocoa Initiative, the board of which is composed of both businesses and trades unions. This and independent business initiatives have invested significantly in addressing sustainability issues, including child labour, in this supply chain.

³⁰ <http://newlaborforum.cuny.edu/2011/05/03/indians-on-strike-caste-and-class-in-the-indian-trade-union-movement/>

³¹ http://www.antislavery.org/wp-content/uploads/2017/01/1_slavery_on_the_high_street_june_2012_final.pdf

In this instance of agriculture even if worker organisation was permissible, it could be unfeasible as it would frequently amount to organising children against parents, who, in the vast majority of cases, have the best interests of their children at heart.

But community development approaches are also important, particularly ones that demonstrate remedies such as the promotion of child rights to parents and children alike and support for them in claiming their rights. The initiatives of the ICI and the cocoa industry illustrate the benefit that can be obtained from working with NGOs on community development approaches to ending child labour.

The issue of child labour also illustrates the importance of constructing an enabling environment that reduces and eliminates the risks of child labour by upholding the law, inspecting workplaces, promoting decent work for adults, so that parents do not feel compelled by economic necessity to employ their children, and ensuring that national education systems are fit for purpose. Globally, trade unions have been at the forefront of national and international campaigns to end child labour, including its worst forms, and have been particularly important in the establishment of a vital body of international law against these practices. Business can and should also make common cause with trade unions and with child labour afflicted communities on these issues, and NGOs can be important interlocutors towards this end.

c. Conclusion

Alternative grievance mechanisms entail a risk that parallel organisations are established, in competition with each other rather than complementary, doing exactly what the UN Guiding Principles warn against, undermining the traditional role of trade unions. The New Labour Forum paper warns that where “scheduled” and “backward” caste associations have been established in India, the relationships between them and the trades unions is, “*at worst, confrontational and, at best, mutually exclusive*”³².

However, ensuring that trade unions are fit to their purpose nationally and internationally, entrenched prejudices within trade union movements, such as those related to caste, gender, sexuality, or immigration status of workers, are actively confronted by trade unionists and external stakeholders, including businesses and NGOs.

The challenge posed by Ryan, of how the ideals of mature systems of industrial relations stand or fall on the foundations of organisation, along with the examples shown by the Coalition of Immolokee Workers, Equitable Food Initiative, and Anti-Slavery International suggest the possibility of more formal collaboration between labour rights NGOs and trades unions. The inclusion of Goals relating to decent work in the Post-2015 Sustainable Development Goals, suggests that more strategic partnerships may be possible with some of the larger NGOs, which have hitherto ignored fundamental issues of labour rights and decent work, but which have unquestionable expertise in community organisation that is desperately needed in some of the least organised, and hence exploited, parts of the globalised economy.

In most instance, it will be inappropriate for NGOs to be directly involved in trade union type grievance mechanisms: they should never substitute for proper worker organisation. But there still appears to be at least an intermediate term role for NGOs in establishing policy and practice in relation to such mechanisms.

³² Ibid

6. Towards more effective systems

The importance of partnership is a key theme in paper, whether those relate to local agreements between trades unions and businesses, Global Framework Agreements, or potential new partnerships between trades unions and NGOs to confront prejudice and bring organisation to places where it is currently absent. This is in keeping with the spirit of the UN Guiding Principles on Business and Human Rights, which set out another de facto partnership between governments with their responsibility to protect the human rights of workers, and businesses with their responsibility to respect those same human rights.

But Rehman suggests that the business responsibility set out in the UNGPs, of “*respecting*” the human rights of workers “*is too passive an approach, and misses the potential and opportunity for business to actually promote rights and protect workers*”. In a context in which governments are failing to protect the human rights of workers, or worse, where they are cynically seeking to reduce costs or establish competitive advantage by facilitating the exploitation of workers, then businesses should be required to establish more approaches to uphold their “respect responsibility” and their partnerships with trade unions, including Global Framework Agreements, which establish mechanisms for formal and informal dialogue with management and systems for grievance resolution, become all the more important in these situations.

Global Framework Agreements, and other forms of partnerships with trades unions and civil society, will increasingly, provide the basis for joint advocacy to governments in transforming the enabling environment towards one more conducive to decent work. The Bangladesh Accord has already been cited as one example where such joint advocacy brought substantial positive changes and future joint advocacy may be necessary to maintain this achievement. As Beaty notes, “*As good as the Bangladesh Accord is it is still a challenge to organising unions there because neither companies nor the government want to risk any increases in labour costs. Don’t forget that many companies want to work in places where there is weak labour law because that contributes to lower costs.*”

Some businesses are different though. The Transparency in Supply Chain Clause of the UK Modern Slavery Act 2015 was similarly consequent from joint advocacy by business, trades unions and NGOs, and ultimately persuaded a reluctant British Government to introduce a measure to which it had previously indicated itself opposed. Most recently, Dutch businesses have sent letter to their parliamentarians in support of legislation on child labour due diligence.

It is important to understand how decisive the interventions of business in these instances are. Governments tend to pay more attention to the voice of business than to the voices of human and labour rights advocates. A growing recognition by business of the importance of sustainability, of changing expectations of society regarding the role of business, and an increased awareness of the scrutiny of citizen-consumers, may increasingly embolden more businesses to take a more transformative view of their political-economic roles, particularly in relation to the questions of how to increase access to decent work.

The question of increasing access to decent work is a political one, and not one that can be properly achieved everywhere by businesses and unions (or NGOs) acting alone, or even only with each other. Without governments taking up their responsibilities to protect the human rights of workers it cannot be achieved. For example: if the fishing industries of Ireland or Thailand are unpoliced and uninspected by the relevant authorities on the high seas then the possibility of satisfactory grievance mechanisms let alone the prospect of decent work recedes further irrespective of the protestations of unions or the managerial practices of business.

7. Conclusions and Recommendations

In a 1962 interview President John F Kennedy was asked his opinion of the press. He responded, *“I think it is invaluable... there is a terrific disadvantage not having the abrasive quality of the press applied to you daily...even though we never like it, and even though we wish they didn't write it, and even though we disapprove, there isn't any doubt that we could not do the job at all in a free society without a very, very active press.”*

The role of democratic trades unions in business operations and supply chains is analogous to that abrasive role of a free press in democratic society. They are one of the vital checks on corporate behaviour, the one truly sustainable way to establish an ethical supply chain. Businesses must recognise and embrace this. Global Framework Agreements offer an important avenue for the promotion of mature industrial relations in even the most unpromising of contexts.

But the extant models of unionisation are not perfect, notably in South Asia where the caste-based violations disfigure all society including the trade union movement. This limits its capacity to respond to the needs of discriminated against workers. Furthermore, the capacity, and sometimes capability, to deliver on organisation is not sufficient, particularly remote parts of supply chains, where the workforce may be diffused and unorganised. Vogt notes that *“currently, there are too many fights in too many places for the existing trade union movement to be in all of them”*. New models of organising, including with other parts of civil society, may be necessary to redress this lack of capacity.

Recommendations

- a. **Businesses must recognise the vital role of trades unions.** They must immediately establish dialogue with international and national trade unions to understand their roles, responsibilities and benefits that they may bring to businesses including establishing credible grievance mechanisms and access to remedy through mature systems of industrial relations. These should be the default choice of mechanism, and other systems only considered where approaches with democratic trade unions are precluded.
- b. **Operational grievance mechanisms** involving trade unions and democratic worker representation must be properly communicated through business operations and supply chains with training to both management and worker representatives and with inter-organisational teams established to monitor systems and establish accountable dialogue.
- c. All **trans-national businesses should establish Global Framework Agreements** with democratic trades unions, and include within those agreements joint commitments to promote the establishment of democratic trades unions within all the supply chains of businesses.
- d. **Small and medium sized businesses should explore new approaches to ensuring industrial relations** in their operations and supply chains by, for example, establishing some forms of partnerships with larger businesses which have already established Global Framework Agreements, or by allying with other SMEs to explore the possibilities with international trades unions of establishing GFAs in shared supply chains.

- e. **Trades unions must recognise the limitations on their capacity** to organise and consider strategic partnerships with NGOs and other civil society institutions to redress this limitation.
- f. **Trades unions must recognise that damaging prejudices that materially limit their capacity to represent some marginalised workers**, particularly those subject to caste-based human rights violations in South Asia, and women and girls. These must be confronted and repudiated by trade unionists and other stakeholders nationally and internationally.
- g. **Businesses, trades unions and Civil Society must develop joint advocacy** towards government aimed at ensuring that all governments fulfil their responsibilities to protect the Human Rights of workers and to expand the enabling environment for decent work. It is only by doing this that the full realisation of the UN Guiding Principles on Business and Human Rights can be properly obtained.