



# The integration of EU development, trade and human rights policies

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## Executive Summary

FRAME Work Package 9 is concerned with assessing how human rights are integrated into EU policies on development and trade and to what extent this is translated in concrete policy instruments and tools. It analyses the various EU institutional structures responsible for developing and implementing human rights policies in development and trade and the challenges in creating a coherent and consistent framework for implementing human rights into EU action. It is also aimed at studying the contribution the EU can make as part of its development and trade policies to counter the erosion of basic rights in lower income countries, in particular through EU initiatives. This report follows from previous reports in the Work Package that have illustrated the contribution the EU makes to integrating human rights into trade and development policies.

The report contains two case studies that explore the practical implementation of EU trade and development policies targeted at addressing complex human rights challenges facing lower income countries. In both cases these human rights challenges arise from industrialisation linked to economic development – the ready-made garment (RMG) industry in Bangladesh and the extractive industries in Mozambique. These challenges include: exploitation; gender issues; corruption; the operation of commercial interests in supply chains; rapid economic growth alongside wide inequalities; a low level of education; low skilled work and shrinking or narrow civil society space. This report proposes a number of recommendations on how the EU can tackle these challenges in its goal of supporting sustainable development and promoting human rights in the countries studied.

The first case study, in Part II of the Report, focuses on issues in the RMG industry in Bangladesh. The case study demonstrates how EU policy responds to human rights concerns in the RMG Global Value Chain (GVC). It is based on the method that the EU has taken of ‘deep engagement’ with government, garment businesses, trade unions and civil society through the instrument of the Bangladesh Sustainability Compact to bring about change in labour rights in response to global concerns about labour standards and health and safety in RMG factories following the Rana Plaza factory collapse in 2013.

This case study shows that Bangladesh has a challenging political backdrop, institutional corruption and a shrinking democratic space. Bangladesh has significant levels of extreme poverty and high levels of illiteracy. The domestic strategic framework and development priorities reveal ambitious development goals based on the continuing success of the export-driven RMG sector. The rapid growth of the RMG sector in Bangladesh is evaluated taking into account the unique relationship Bangladesh has with the EU as the largest market for its garment exports. Its position in the RMG Global Value Chain (GVC) is assessed and the precariousness of this position regarding new competitors on the international scene and the need for export diversification is revealed. Owing to its position on the lower segments of the GVC, the RMG sector comes coupled with significant human rights concerns which are also addressed within the report, showing a particular focus on the lack of collective bargaining rights, the position of women within the industry, child labour, deficient health and safety, with a specific focus on the risk of fire, and the need for responsible business conduct within the GVC. Civil society engagement and worker empowerment is also analysed.

Three specific areas of EU involvement will be addressed: the EU’s trade relations with Bangladesh under the Generalised Scheme of Preferences (GSP), which provides trade preferences conditional on meeting international human rights standards; the EU’s development cooperation with Bangladesh, detailing the programmes and policies that are in place to support sustainable

development in conjunction with ILO programmes targeted at working conditions in the RMG sector; and a range of initiatives associated with the EU's response to the Rana Plaza factory collapse. This section will assess the initiatives that have been concluded by the international community in response to the industrial disasters, the role of sectoral social dialogue in initiating change in code of conducts and CSR, and finally the case study analyses in detail the Sustainability Compact, introducing it as an innovative form of engagement, and the progress and challenges that have come with the Compact. Overarching topics of importance through these areas include: the challenges the EU faces in exercising its trade leverage to further human rights whilst not harming Bangladesh's economy; the coordinating role played by the EU to ensure that labour rights and safety issues are fully addressed; and the need for strong cooperation with the ILO. Policy suggestions are made in response to research questions that are posed as part of this case study.

The Mozambique case study focuses on extractive resource management and the developmental and human rights challenges this raises for the EU as a donor and economic actor trying to balance normative and commercial interests. The aim of this case study is to provide a comprehensive analysis of how EU policy, encompassing both trade and development cooperation, deals with human rights concerns arising from extractive riches in a rapidly changing country context. What are the channels used to discuss human rights concerns, how does the EU experience (if any) change in its engagement with the government at hand, and how does the EU balance its multifaceted interests in this regard? By focusing on the extractive sector, this case study provides a comprehensive assessment of EU trade, development and human rights policy in a changing domestic environment with a particularly challenging political economy.

Ever since the end of its devastating civil war in 1992, Mozambique has embarked on an impressive post-war recovery process and achieved rapid economic growth but this has not translated into job creation or significant socioeconomic development. Moreover, while the Mozambican economy may be changing rapidly, the country's political economy dynamics seem resistant to change. Mozambican politics are characterised by a high degree of centralization and an almost complete overlap between the Frelimo party and the state. Meanwhile, public access to information is limited, space for public scrutiny is circumscribed, and accountability mechanisms in place are weak and easy to bypass.

In light of massive gas findings in the northern province of Cabo Delgado, questions arise about who will benefit from the foreseen revenues. How the country manages its natural resources will arguably define its socioeconomic development trajectory and many have warned of a paradox of similar to that of Angola. In addition to risks related to the resource curse, international observers have in the past also warned of human rights violations, particularly in relation to mining-induced resettlements. Mozambican civil society has been, and continues to be, exceptionally vocal in protecting local communities' rights to consultation and adequate compensation.

In terms of international cooperation, prospects of gas revenues have not only led to a diversification of the country's external relations - with an influx of emerging partners like China, India, Indonesia and Brazil - they have also impacted on the way development assistance is delivered. For the EU and its Member States in Mozambique, the coming years will therefore be crucial in terms of striking a balance between, on the one hand, contributing to the much needed development assistance and inclusive and sustainable economic growth, and, on the other hand, taking a commercial stake in Mozambique's economic growth process. As such, donors face the challenge of adapting their ways

of engaging with the Mozambican government. If not, declining aid dependency will likely translate into a reduction of donor influence, most notably on so-called 'soft interests' like human rights protection. Like other 'traditional' donors in Mozambique, the EU and its MSs face a challenging period of transition.

Albeit less so compared to Member States' commercial stakes, the EU's commitment to better link commercial and development interests, including a demand from EU headquarters to intensify economic diplomacy, will likely have an impact on how the Union engages with the Mozambican government and how it decides to substantiate its political dialogue vis-à-vis the latter. Overall, we find that interviewees from donor agencies supported a plea for pragmatism, stressing that, while the 'commercialization of aid' comes with a number of question marks, the situation in countries like Mozambique is changing in such a manner that donors will increasingly have to use their economic leverage in terms of FDI and commercial activity in order to remain politically relevant on human rights.

EU support to independent watch dogs and civil society was widely perceived as an increasingly important vehicle to serve the EU's normative agenda on human rights, particularly i) amidst rampant corruption with public budgets; and ii) since it allows donors to indirectly influence policy making and the public debate without openly interfering with domestic affairs or endangering commercial interests.

With regard to the EU's political and human rights dialogue with Mozambique, we find that extractive-related human rights issues like land rights and the right to adequate consultation have so far featured only marginally in these discussions, yet are becoming increasingly more prominent topics of discussion between the two parties. Overall, however, EU dialogue with Mozambique on human rights is characterised by a rather reactive, ad hoc approach, focusing on cases of political violence and kidnappings. It was noted that, in recent years, the overall quality of the political dialogue had decreased significantly and discussions on good governance and respect for human rights had become very difficult.

Finally, despite its limitations, we find that the EU is generally recognised and valued as a vocal and credible advocate for inclusive economic growth and human rights. Many observers and Civil Society Organisations (CSOs) continue to look to the EU to speak out against political maladministration, and to push for a rights-based approach in the country's management of extractive resources.

## List of Abbreviations

AC	Africa Confidential
ACC	Anti-Corruption Commission
ACHPR	African Commission on Human and Peoples' Rights
ACP	Group of African, Caribbean and Pacific countries
AfDB	African Development Bank
AL	Awami League
AMRF	Alternative Movement for Resources and Freedom Society
APRM	African Peer Review Mechanism
ASK	AIN O Salish Kendra
BGMEA	Bangladesh Garment Manufacturers and Exporters Association
BILS	Bangladesh Institute of Labour Studies
BKMEA	Bangladesh Knitwear and Exporters Association
BLA	Bangladesh Labour Act
BLAST	Bangladesh Legal Aid and Services Trust
BLL	Bangladesh Labour Law
BLWF	Bangladesh Labour Welfare Foundation
BNP	Bangladesh Nationalist Party
BNWLA	Bangladesh National Women Lawyers Association
BTI	Bertelsmann Transformation Index
CAP	Central Africa Party
CAP	Common Agricultural Policy
CAPs	Corrective Action Plans
CARIFORUM	The Caribbean Forum
CBCR	Country-By-Country-Reporting
CCP	Common Commercial Policy
CPA	Cotonou Partnership Agreement

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CPD	Centre for Policy Dialogue
CPI	Corruption Perception Index
CLS	Core Labour Standard
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
CSRM	Center for Social Responsibility in Mining
D-8	Developing-8 Organization for Economic Co-operation
DAC	Development Assistance Committee of the OECD
DCGCI	Development Consultant and Global Compliance Initiative
DCI	Development Cooperation Instrument
DFQF	Duty Free Quota Free
DG DEVCO	Directorate-General for International Cooperation and Development of the EC
DG TRADE	Directorate-General for Trade of the EC
DIFE	Department of Inspections for Factories and Establishments
DWA	Decent Work Agenda
DWCP	Decent Work Country Programme
EBA	Everything But Arms
EC	European Commission
EEAS	European External Action Service
EIDHR	European Instrument for Democracy and Human Rights
EITI	Extractive Industries Transparency Initiative
ENH	Empresa Nacional de Hidrocarbonetos de Moçambique
EPA	Economic Partnership Agreement
EPZ	Export Processing Zone
ESA	Eastern and Southern Africa
ETUC	European Trade Union Confederation
EU	European Union
EUD	European Union Delegation



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FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FYP	Five Year Plan
G19	Group of (formerly) 19 donors providing GBS to Mozambique
GATT	General Agreement on Tariffs and Trade
GBS	General Budget Support
GDP	Gross Domestic Product
GoB	Government of Bangladesh
GPA	General Peace Agreement
GSP	Generalised Scheme of Preferences
GVC	Global Value Chain
HDI	Human Development Index
HRD	Human Rights Defender
HRW	Human Rights Watch
ICFTU	International Confederation of Free Trade Unions
ICMM	International Council on Mining and Metals
ICT	Information and Communication Technology
ICTs	International Crimes Tribunals
IDEA	Institute for Democracy and Electoral Assistance
IFC	International Finance Corporation
IFI	International Financial Institution
IHDI	Inequality-adjusted Human Development Index
IHRB	Institute for Human Rights and Business
ILO	International Labour Organisation
ILPI	International Law and Policy Institute
IMF	International Monetary Fund
ISS	Institute for Security Studies
ITUC	International Trade Union Confederation

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JMB	Jama'at ul Mujahideen Bangladesh
JP	Jatiya Party
LDC	Least Developed Country
LGTB	Lesbian, Gay, Transgender and Bisexual
LMIC	Lower Middle Income Country
MDG	Millenium Development Goal
MFA	Multifibre Arrangement
MIC	Middle Income Country
MIP	Multi-Annual Indicative Plan 2014-2020
MNC	Multi-National Cooperations
MoLE	Ministry of Labour and Employment
MoU	Memorandum of Understanding
MS	Members State
NAO	National Authorizing Officer
NGO	Non-Governmental Organisation
NGWF	National Garment Workers' Federation
NIR	Net International Price Reserves
NRGI	Natural Resource Governance Institute
NTPA	National Tripartite Plan of Action
ODA	Official Development Assistance
OECD	Organization for Economic Cooperation and Development
OHS	Occupational Health and Safety
PAF	Performance Assessment Framework
PAP	Program Aid Partners
PFM	Public Financial Management
PP	Perspective Plan
PPP	Public-Private Partnerships
RAB	Rapid Attack Batallion

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RBC	Responsible Business Conduct
RMG	Ready Made Garment
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAFTA	South Asian Free Trade Area
SAP	Structural Adjustment Program
SDG	Sustainable Development Goals
SME	Small and Medium Enterprise
SNF	Sromik Nirapotta Forum (Worker’s Safety Forum)
SSA	sub-Saharan Africa
SSDC	Sectoral Social Dialogue Committee
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TI	Transparency International
TIB	Transparency International Bangladesh
UK	United Kingdom
UMIC	Upper Middle Income Country
UN	United Nations
UNCTAD	United National Conference on Trade and Development
UNGC	United Nations Global Compact
UNGP	United Nations Guiding Principles
UNHRC	Human Rights Council of the United Nations
U.S.	United States of America
WB	World Bank
WFP	World Food Program
WHO	World Health Organization
WTO	World Trade Organisation

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## I. Introduction

FRAME Work Package 9 (WP9) is concerned with the coherence, consistency and effectiveness of the EU's strategy of integrating human rights considerations into its trade and development policies. In previous reports in WP9, the concrete policy instruments and tools developed by the EU for integrating human rights into these policy areas have been assessed (Deliverable 9.1), and the methods for measuring impacts and compliance with human rights obligations in trade agreements and development policy instruments have been analysed (Deliverable 9.2). WP9 also considers the extent to which the EU can shape its development and trade policies and tools to secure the most basic of rights, to food, to health, to water and clean air, in partnership with developing countries (Deliverable 9.3). The next step, in this report (Deliverable 9.4), is to use case studies to explore the practical implementation of EU trade and development policies targeted at addressing complex human rights challenges facing lower income countries.

For the purposes of this report, case studies have been selected on specific human rights challenges in Bangladesh and Mozambique. These countries have been selected for several reasons. Both countries have strong and long-lasting partnerships with the EU in trade and development post-independence. Each of them has had to recover from war and liberation struggles which came at a huge cost in human life and had lasting political consequences. Both are on the UN list of Least Developed Countries (LDCs)<sup>1</sup> and therefore benefit from the EU's most favourable trade regimes and development cooperation, as the Union seeks to meet its priority objectives of trade liberalisation and poverty reduction.<sup>2</sup> Both countries have adapted their economies to maximise the opportunities offered by the EU's policies on trade and development and both are reliant on particular industries associated with human rights challenges: ready-made garments (RMG) in Bangladesh; extractive industries in Mozambique. Each of them has benefited economically from industrial development but each also suffers from high levels of inequality. Both countries are on the cusp of potentially transformative change that could significantly improve the human rights situation and bring about progress towards achieving the UN Sustainable Development Goals (SDGs) by 2030.

The first case study, in Part II of the report, is on Bangladesh. Over the last 25 years Bangladesh has rapidly expanded its RMG industry to meet the ever-growing demands of global brands seeking high quality and low cost through their 'value' chains to provide cheap clothes for predominantly European consumers. Garments now account for 90% of Bangladesh's exports to the EU.<sup>3</sup> Not only that, but 82% of the country's total exports are garments.<sup>4</sup> 6% annual economic growth has been achieved over recent years on the back of the RMG boom. The exponential growth of Bangladesh's RMG industry has been fuelled by the granting of the EU's special GSP arrangement for the LDCs, known as 'Everything But Arms' (EBA), under which, LDCs are granted full duty-free and quota-free

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<sup>1</sup> 48 countries are on the UN list. See further, UN Development Policy and Analysis Division, information page <[www.un.org/en/development/desa/policy/cdp/ldc\\_info.shtml](http://www.un.org/en/development/desa/policy/cdp/ldc_info.shtml)>

<sup>2</sup> Treaty on European Union (TEU) art 21(2)(d) and (e).

<sup>3</sup> Delegation of the EU to Bangladesh, 'Trade and Investment' <[http://eeas.europa.eu/delegations/bangladesh/eu\\_bangladesh/trade/index\\_en.htm](http://eeas.europa.eu/delegations/bangladesh/eu_bangladesh/trade/index_en.htm)>

<sup>4</sup> Bangladesh Garment Manufacturers and Exporters Association (BGMEA), 'Trade Information' <<http://bgmea.com.bd/home/pages/TradeInformation>>

access to the EU's Single Market for all their products, except arms and ammunition.<sup>5</sup> Bangladesh is also a beneficiary of the EU's Development Co-operation Instrument (DCI). Under the GSP arrangements, Bangladesh is expected to comply with international human rights obligations including ratifying core International Labour Organisation (ILO) Conventions.

Bangladesh's economic success has come at a high price for workers in the RMG industry. The predominantly female workforce receives low wages, works very long hours, all too frequently in hazardous conditions that may lead to death or serious injury at work. However, it took an almost unimaginable disaster, the Rana Plaza tragedy, to finally focus the world's attention on labour conditions in Bangladesh's garment factories. On 24 April 2013, 1,136 people died and 2,535 more suffered serious injuries following the collapse of a garment factory complex known as Rana Plaza.<sup>6</sup> The majority of the victims were female garment workers who had been told to work for fear of loss of wages despite compelling evidence that the building was unsafe.<sup>7</sup> Just a few months earlier, 112 garment workers had perished in a fire at the Tazreen Fashions factory, one of many lethal fires in garment factories in Bangladesh.<sup>8</sup>

Following Rana Plaza and Tazreen Fashions, and subsequent disasters,<sup>9</sup> the EU, as Bangladesh's foremost trading partner, owes a particular responsibility to ensure that, firstly, labour rights are respected for all factory workers in accordance with international standards, secondly, safety and health issues are addressed through a professional, transparent regime of inspection and remediation and, thirdly, the brands and factory owners' organisations must ensure that businesses act responsibly towards workers and their families. In order to secure these three objectives, the EU has signed the Bangladesh Sustainability Compact, hereinafter the Compact, with the Government of Bangladesh (GoB) and the ILO.<sup>10</sup>

The aim of this case study is to examine the effectiveness of this innovative agreement which is based on deep engagement, including social dialogue with government, garment businesses, trade unions and civil society to bring about systemic changes in labour rights, business practices and real improvements on the ground for workers, measured against agreed targets. It is a test case, in which the EU has invested a great deal, for a long-term sustained effort in 'experimental governance',<sup>11</sup> in dynamic co-operation with the ILO, to promote labour rights in the prism of its trade and development policies. At the same time, it must be recognised that the EU has chosen pragmatism over politics by staying engaged with Bangladesh rather than withdrawing the GSP and development

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<sup>5</sup> Regulation (EU) No 978/2012 of the European Parliament and the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council regulation (EC) No 732/2008, [2012] OJ L 303/1, recital 16.

<sup>6</sup> Khondaker G Moazzem and Ariful Islam, 'Moving Beyond the Shadow of the Rana Plaza Tragedy: In Search of a Closure and Restructuring Strategy', Fourth Monitoring Report, Centre for Policy Dialogue Bangladesh (21 April 2015) 6 <<http://cpd.org.bd/wp-content/uploads/2013/07/Fourth-Monitoring-Report-Rana-Plaza-Tragedy-FINAL-April-2015.pdf>>

<sup>7</sup> Jeremy Seabrook, *The Song of the Shirt* (Hurst 2015) 21.

<sup>8</sup> *ibid* 24.

<sup>9</sup> In the most serious factory fire since Tareen Fashions, 34 people died following a boiler explosion and fire at Tampoco Foils north of Dhaka on 10 September 2016. See Roshni Kapur, '34 Dead in Bangladesh Factory Fire', *The Diplomat* (15 September 2016) <<http://thediplomat.com/2016/09/34-dead-in-bangladesh-factory-fire/>>

<sup>10</sup> European Commission, 'Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh' (Joint Statement) <[http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151601.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf)>

<sup>11</sup> See Charles F Sabel and Jonathan Zeitlin, 'Experimental Governance' in David Levi-Faur (ed), *The Oxford Handbook of Governance* (OUP 2011) 169-187.

assistance, which would potentially harm both the workers, who would lose their jobs, the families who depend on them, and also European businesses and consumers. Three years on from Rana Plaza, this case study assesses how much has been achieved by the experimental Compact and related initiatives and, in the light of shortcomings in securing its objectives, what more needs to be done to secure real improvements in human rights for garment workers and their families.

The case study is based on desk research of an extensive range of primary and secondary sources, including EU and ILO reports, policy documents of the GoB and the garment owners' organisation, and commentary by international trade unions and specialist NGOs operating in Bangladesh. It has also been aided by invaluable local research undertaken in Bangladesh.

The second case study, in Part III of the report, focuses on extractive resource management in Mozambique, and the developmental and human rights challenges this raises for the EU's trade and development cooperation with the country. Once again the EU has a particular responsibility because its policies encourage developing country partners to seek foreign direct investment (FDI) as a means to fulfil their potential. Mozambique, a long-term beneficiary of EU development assistance, has traditionally been hailed as an example of (neoliberal) reform-driven development. Rapid economic growth, however, has not translated into job creation or significant socioeconomic development, and the country once again finds itself at a crossroads of economic and political transition.

While the combination of a newly elected President and recent gas discoveries in the north of the country offer potential to transform the Mozambique's socio-economic outlook, recent developments raise serious questions about human rights. Besides concerns over a resource curse that could suffocate the non-gas economy and stir corruption and violence, observers have also warned about human rights violations, particularly in relation to the ongoing resettlement programmes in the Afungi Peninsula area in Cabo Delgado. Previous experiences with resettlements, in the Tete region especially, raised major concerns about their human rights' impact on local communities. Similar concerns about the legitimacy of ongoing resettlement programmes run by the American company Anadarko are now increasingly the subject of criticism by Civil Society Organisations (CSOs) and legal prosecution.

While the Mozambican legal framework for land transfer and involuntary resettlement provides sufficient regulation to ensure that affected communities benefit from the extractive operations conducted on their lands, past experiences on the ground tell a different story. Reports by Human Rights Watch (HRW) and Oxfam each documented cases of human rights' violations following large resettlement programmes organized by Vale, Rio Tinto and a string of other multinational mining companies in the coal-rich Tete Province. Associated human rights' violations included food and water insecurity, loss of economic opportunities or non-farming livelihoods, inadequate housing and access to electricity, the fracturing of communities and households and limited access to information both before, during and after the moving process.<sup>12</sup> Since the resettlement plans for local communities on the Afungi Peninsula are still under development, contestation about the impact of

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<sup>12</sup> See Human Rights Watch, 'What is a House without Food?' (2013) <<https://www.hrw.org/report/2013/05/23/what-house-without-food/mozambiques-coal-mining-boom-and-resettlements>> and Serena Lillywhite, Deanna Kemp, and Kathryn Sturman, *Mining, Resettlement and Lost Livelihoods: Listening to the Voices of Resettled Communities in Mualadzi, Mozambique* (Oxfam 2015) <[https://www.oxfam.org.au/wp-content/uploads/2015/04/mining-resettlement-and-lost-livelihoods\\_eng\\_web.pdf](https://www.oxfam.org.au/wp-content/uploads/2015/04/mining-resettlement-and-lost-livelihoods_eng_web.pdf)>



gas extraction in Cabo Delgado has mostly centred around issues of land rights and consultation procedures with local communities.

Throughout the 30+ years of EU-Mozambique cooperation, the EU has invested over €3 billion in the country and contributed to its transformation from a war-torn revolutionary Marxist state to one of Africa's major new FDI destinations. The Union is also Mozambique's primary export market, notably for fuels and mining products. As a premium development and trade partner, the EU used to be well placed to raise normative issues such as the protection of human rights. Prospects of gas revenues, however, have not only led to a diversification in Mozambique's external relations, and an overall reduction of aid dependence, they have also impacted on the type of international cooperation and on the way development aid is delivered. For the EU and its Member States in Mozambique, the coming years will be crucial, as they seek to balance between, on the one hand, contributing to much needed development assistance, and on the other hand, taking a commercial stake in Mozambique's economic growth process. In view of decreasing aid leverage and emerging commercial opportunities, the donor-community in Mozambique is thus gradually reassessing and rebalancing its strategic priorities in the country. While the EU finds itself in a comparatively comfortable position to raise human rights issues vis-à-vis the Mozambican government, notably since European companies generally prefer to protect their economic interests through their respective Member States, the Union's use of General Budget Support to deliver development assistance raises thorny questions in view of the country's problematic political economy and the role of the ruling elite therein.

Based on extensive desk research, as well as a series of 30 semi-structured interviews in both Brussels and Maputo, the Mozambican case-study offers a comprehensive analysis of how EU foreign policy, notably through trade and development cooperation, deals with the human rights concerns associated with the extraction of natural resources in a rapidly changing country context, characterised by a particularly challenging political economy. We, along with other observers, argue that, unless donors like the EU fundamentally rethink their ways of engaging with the Mozambican government toward a more politically savvy approach, a reduced need for development assistance is likely to translate into a reduction of their political leverage and normative credibility. This rings particularly true for so-called 'soft interests' like the protection human rights.

## II. Bangladesh Case Study

### A. Introduction

FRAME Work Package 9 (WP9) is concerned with the integration of human rights into EU policies on sustainable development and trade. In particular, it examines methods to monitor the effectiveness of the integration of the human rights dimension within the development and trade policy nexus with an emphasis on the effect of such policies on vulnerable groups and the need to counter the erosion of basic rights in lower income countries. In conducting this research, one of the key tasks of WP9 is to analyse the effectiveness of the EU's partnerships with international organisations, such as the International Labour Organisation (ILO), concerned with the implementation of human rights objectives. These international relations are of particular importance in the coordination and oversight of EU trade and development policies, such as the Generalised Scheme of Preferences (GSP) and the Development Cooperation Instrument (DCI), which grant economic benefits to developing country partners subject to compliance with conditions concerning human rights and democratic principles. The GSP, DCI and related trade and development policies are elaborated in depth in a previously published report for WP9 (Deliverable 9.1).

The Lisbon Treaty brings the EU's development and trade policy objectives closer together, under which, the Union's development policy is tasked to 'foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty',<sup>13</sup> whereas trade policy 'must encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade'.<sup>14</sup>

In order to understand the synergies between these policies and human rights objectives, and assess their effectiveness in a specific country context, this case study describes and analyses the effectiveness of the EU's trade and development policies towards Bangladesh, which is a beneficiary of the special GSP arrangement for the least-developed countries (LDCs),<sup>15</sup> known as Everything But Arms (EBA), under which LDCs are granted full duty-free and quota-free access to the EU's Single Market for all their products except for arms and ammunition.<sup>16</sup>

The interaction between the EU's development and trade relationship with Bangladesh and human rights issues has been selected for this case study for several reasons.

Firstly, with 47 million out of its 161 million people living in poverty,<sup>17</sup> Bangladesh is a priority for the EU in its development policy as it seeks to contribute to the eradication of global poverty and the fulfilment of the UN's Sustainable Development Goals (SDGs) by 2030.<sup>18</sup> Bangladesh is a long-

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<sup>13</sup> Art 21(2)(d) of the Treaty on European Union (TEU).

<sup>14</sup> Art 21(2)(e) TEU.

<sup>15</sup> The LDCs are recognised and classified by the UN. See further, UN Development Policy and Analysis Division (DESA), information page <[www.un.org/en/development/desa/policy/cdp/ldc\\_info.shtml](http://www.un.org/en/development/desa/policy/cdp/ldc_info.shtml)>

<sup>16</sup> Regulation (EU) No 978/2012 of the European Parliament and the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council regulation (EC) No 732/2008, [2012] OJ L 303/1, recital 16.

<sup>17</sup> World Bank, 'Bangladesh Overview' <[www.worldbank.org/en/country/bangladesh/overview](http://www.worldbank.org/en/country/bangladesh/overview)>

<sup>18</sup> UN, 'Sustainable Development Goals' (2015). The SDGs, effective from January 2016, are designed to 'build on the successes' of the Millennium Development Goals <[www.undp.org/content/undp/en/home/sustainable-development-goals.html](http://www.undp.org/content/undp/en/home/sustainable-development-goals.html)>

standing development partner of the EU and is a beneficiary of a €690 million country-specific allocation under the DCI.<sup>19</sup>

Secondly, Bangladesh, as one of the world's 48 LDCs qualifying for the EBA, is overwhelmingly the main beneficiary of the EBA, accounting for 69.1% of all EBA preferential imports into the EU in 2014, valued at €11,774,829,000.<sup>20</sup> The GSP trade preference, and specifically the EBA, as the most favourable scheme for developing country partners, has contributed to making the EU the country's largest trading partner.<sup>21</sup>

Thirdly, 90% of Bangladesh's exports to the EU are from a single economic sector, Ready-Made Garments (RMGs).<sup>22</sup> The RMG industry has fuelled economic growth in Bangladesh of 6% per annum over the last decade.<sup>23</sup> It has acted as a vector for Global Value Chains (GVCs) supplying European consumers with cheap clothing produced by sub-contracted local suppliers. By 2015, such was the dominance of the RMG sector, it accounted for 82% of Bangladesh's export earnings.<sup>24</sup> It employs 4 million workers,<sup>25</sup> approximately 85% of whom are women.<sup>26</sup> With the RMG industry as an economic and social driver, Bangladesh has been transformed, meeting several of the UN Millennium Development Goals' (MDGs) 2015 targets for, inter alia, cutting extreme poverty and hunger, reducing child mortality and achieving almost universal primary education.<sup>27</sup> Women in Bangladesh have gained improvements both economically and socially over the last twenty years, in part because of the employment opportunities and relative independence that the RMG industry has provided, but much more needs to be done to empower women and combat exploitative practices.<sup>28</sup>

<sup>19</sup> European External Action Service and European Commission, 'Development Cooperation Instrument Multi-Annual Indicative Programme 2014-2020' (30 March 2014)

<[http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020\\_en.pdf](http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020_en.pdf)>

<sup>20</sup> European Commission, 'Report on the Generalised Scheme of Preferences covering the period 2014-2015', COM(2016) 29 final, 28.01.2016, 8.

<sup>21</sup> The EU received 47% of Bangladesh's total exports in 2015. The next largest export market was the US with 14%. Source: European Commission DG Trade, 'European Union, Trade in goods with Bangladesh', 8 (21 June 2016) <[http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_113349.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113349.pdf)>

<sup>22</sup> Delegation of the EU to Bangladesh, 'Trade and Investment'

<[http://eeas.europa.eu/delegations/bangladesh/eu\\_bangladesh/trade/index\\_en.htm](http://eeas.europa.eu/delegations/bangladesh/eu_bangladesh/trade/index_en.htm)>

<sup>23</sup> World Bank, data available at <<http://data.worldbank.org/country/Bangladesh>>

<sup>24</sup> Bangladesh Garment Manufacturers and Exporters Association (BGMEA), 'Trade Information'

<<http://bgmea.com.bd/home/pages/TradeInformation>>

<sup>25</sup> *ibid.*

<sup>26</sup> Emilie Schultz (Fashion Revolution), 'Exploitation or emancipation: Women workers in the garment industry' (European Year of Development 2015) <<https://europa.eu/eyd2015/en/fashion-revolution/posts/exploitation-or-emancipation-women-workers-garment-industry>>; M. Habibur Rahman and Sayeed Ahmed Siddiqui, 'Female RMG Worker: Economic Contribution in Bangladesh' (2015) 5(9) *International Journal of Scientific and Research Publications* 1.

<sup>27</sup> Reaz Ahmad, 'Millennium Development Goals: Dhaka ready to face new challenges', *The Daily Star* (Dhaka, 18 September 2015) <[www.thedailystar.net/backpage/dhaka-ready-face-new-challenges-143818](http://www.thedailystar.net/backpage/dhaka-ready-face-new-challenges-143818)>.

Bangladesh's MDG scorecard shows that, for the period 1990-2015, extreme poverty and hunger was cut from 58% to 24.8%, universal primary education rose from 60.5% to 98.7%, and child (under-5) mortality was reduced from 146 deaths per thousand to 46 deaths per thousand. See UNDP, 'Millennium Development Goals: Bangladesh Progress Report' (September 2015)

<<http://www.bd.undp.org/content/bangladesh/en/home/library/mdg/mdg-progress-report-2015.html>>

<sup>28</sup> Naomi Hussain, 'Exports, Equity, and Empowerment: The Effects of Readymade Garments Manufacturing Employment on Gender Equality in Bangladesh' (World Development Report 2012 Background Paper)

<[http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-](http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1322671773271/Hossain-Export-Equity-employment.pdf)

1322671773271/Hossain-Export-Equity-employment.pdf>; Emilie Schultz (Fashion Revolution), 'Exploitation or

The rapid pace of globalisation and liberalisation has, however, been a ‘double-edged sword’ for the people of Bangladesh.<sup>29</sup> It has enabled RMG employers to exploit Bangladesh’s comparative advantage in global trade by maintaining the second lowest wages among its competitors.<sup>30</sup> It has encouraged rapid construction of factories often without permits and adequate safety.<sup>31</sup> Many of these factories are situated in designated Export Processing Zones (EPZs) which are subject to lighter regulation and where trade unions are banned.<sup>32</sup> Expansion of the RMG industry has also taken place against a backdrop of labour unrest caused, in part, by repression of workers seeking to organise, and a culture of impunity towards attacks on trade unionists.<sup>33</sup>

The EU’s GSP-driven trade relations with Bangladesh are therefore both inextricably linked with the country’s dependency on its RMG industry, as the overwhelmingly dominant export sector, and also intersect with human rights concerns about a lack of labour rights, unsafe working conditions, exploitation of women and girls, corruption and failure to respect the law by factory owners and public officials.<sup>34</sup>

All of the above reasons would have made the Bangladesh RMG sector suitable for a case study on the integration of the EU’s policies on development and trade with human rights’ objectives before 24 April 2013. But, on that fateful day, in Savar, on the edge of Dhaka, the Rana Plaza garment factory complex collapsed in the worst industrial accident of the 21<sup>st</sup> century. When the building crumbled ‘like a pack of cards’,<sup>35</sup> 1,136 people died and 2,535 suffered serious injuries.<sup>36</sup> It took this immense and wholly avoidable tragedy, to finally focus the world’s attention on the contrast between, on the one hand, liberalised trade and rapid economic growth in Bangladesh and, on the other hand, low pay, poor labour conditions, inadequate factory safety and a lack of corporate responsibility for supply chain production in the country’s RMG industry. 29 global brands were

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emancipation: Women workers in the garment industry’ (European Year of Development 2015) <<https://europa.eu/eyd2015/en/fashion-revolution/posts/exploitation-or-emancipation-women-workers-garment-industry>>

<sup>29</sup> ActionAid, ‘Diversify and Conquer: transforming Bangladesh into an industrialised country’ (December 2015) 4.

<sup>30</sup> Bangladesh now has a minimum wage of €68 per month ahead of Sri Lanka at €66 per month. See ILO Regional Office for Asia and the Pacific, ‘Global Wage Report 2014/15: Asia and the Pacific Supplement’, (December 2014) 3 <[www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\\_325219.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_325219.pdf)>

<sup>31</sup> Jeremy Seabrook, *The Song of the Shirt* (Hurst 2015) 33-36.

<sup>32</sup> International Trade Union Confederation, UNI Global Union and IndustriALL Global Union, ‘An Evaluation of the Bangladesh Sustainability Compact’ (March 2015) 1.d <[www.ituc-csi.org/IMG/pdf/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact\\_march\\_final.pdf](http://www.ituc-csi.org/IMG/pdf/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_march_final.pdf)>

<sup>33</sup> *ibid.* 1.f.

<sup>34</sup> ActionAid, ‘Diversify and Conquer: transforming Bangladesh into an industrialised country’ (December 2015) Summary; Emilie Schultz (Fashion Revolution), ‘Exploitation or emancipation: Women workers in the garment industry’ (European Year of Development 2015) <<https://europa.eu/eyd2015/en/fashion-revolution/posts/exploitation-or-emancipation-women-workers-garment-industry>>

<sup>35</sup> Shaheen Mollah and Wasim Bin Habib, ‘It crumbles like a pack of cards’, *The Daily Star* (Dhaka, 25 April 2013) <[www.thedailystar.net/news/like-a-pack-of-cards-it-crumbles](http://www.thedailystar.net/news/like-a-pack-of-cards-it-crumbles)>

<sup>36</sup> Khondaker G Moazzem and Ariful Islam, ‘Moving Beyond the Shadow of the Rana Plaza Tragedy: In Search of a Closure and Restructuring Strategy’ (Fourth Monitoring Report, Centre for Policy Dialogue Bangladesh, 21 April 2015) 6 <<http://cpd.org.bd/wp-content/uploads/2013/07/Fourth-Monitoring-Report-Rana-Plaza-Tragedy-FINAL-April-2015.pdf>>

supplied directly or indirectly by the factories in the building, including Benneton, Bonmarché, C & A, El Corte Inglés, Joe Fresh, Mango, Matalan, Monsoon, Primark and Walmart.<sup>37</sup>

Jeremy Seabrook has described the Rana Plaza Tragedy as ‘a story of such appalling contempt for human life that it must rank among the most callous in the brutal history of industrialism’.<sup>38</sup> The day before the disaster, a TV channel released footage showing cracks in the building.<sup>39</sup> It was immediately evacuated. It is alleged that the building’s owner, Sohel Rana,<sup>40</sup> was told by inspection teams that the factory complex was dangerous but later declared that it was safe. Workers were ordered to return the next day, in some cases under the threat of loss of wages.<sup>41</sup> Tragically, over 3,000 workers came to work on that day in the five overcrowded factories that made up the complex.<sup>42</sup> It later transpired that four upper floors of the eight-storey building had been constructed illegally without permits and a ninth floor was under construction.<sup>43</sup> It was only in late 2015 that the target of US\$30 million was reached for compensation to be paid in full for claims relating to over 5,000 injured workers and dependants of the deceased.<sup>44</sup> In July 2016, after lengthy proceedings, 38 people, including Rana, were charged with murder and could face the death penalty.<sup>45</sup>

The Rana Plaza factory collapse came just a few months after a tragic fire at the Tazreen Fashions factory near Dhaka on 24 November 2012, which left 112 dead. In the past ten years, at least 500 garment workers have been killed in factory fires.<sup>46</sup> Evidence suggests that in many cases fire doors had been locked or there were no fire escapes in buildings filled with flammable material. The risk of fire is even greater than that of building collapse.<sup>47</sup> In the aftermath of the Tazreen Fashions fire, a National Tripartite Plan of Action (NTPA) on Fire Safety and Structural Integrity in the RMG sector

<sup>37</sup> Clean Clothes Campaign, ‘Rana Plaza’ <<https://cleanclothes.org/safety/ranaplaza>>; Julfikar Ali Manik and Jim Yardley, ‘Building Collapse in Bangladesh Leaves Scores Dead’, *The New York Times* (New York, 24 April 2013) <[www.nytimes.com/2013/04/25/world/asia/bangladesh-building-collapse.html](http://www.nytimes.com/2013/04/25/world/asia/bangladesh-building-collapse.html)>

<sup>38</sup> Jeremy Seabrook, *The Song of the Shirt* (Hurst 2015) 21.

<sup>39</sup> ‘Bangladesh: cracks in the walls before building collapsed – video’, *The Guardian* (sourced from ITN) (London, 26 April 2013) <[www.theguardian.com/world/video/2013/apr/26/bangladesh-cracks-walls-before-building-collapsed-video](http://www.theguardian.com/world/video/2013/apr/26/bangladesh-cracks-walls-before-building-collapsed-video)>

<sup>40</sup> Rana was a leading member of the youth wing of the governing Awami League party. See, Julfikar Ali Manik and Jim Yardley, ‘Building Collapse in Bangladesh Leaves Scores Dead’, *The New York Times* (New York, 24 April 2013) <[www.nytimes.com/2013/04/25/world/asia/bangladesh-building-collapse.html](http://www.nytimes.com/2013/04/25/world/asia/bangladesh-building-collapse.html)>

<sup>41</sup> ‘Interview with jailed Rana Plaza factory owner Bazlus Samad Adnan’ (CBC, 11 October 2013) <[www.cbc.ca/fifth/blog/interview-with-jailed-rana-plaza-factory-owner-bazlus-samad-adnan](http://www.cbc.ca/fifth/blog/interview-with-jailed-rana-plaza-factory-owner-bazlus-samad-adnan)>

<sup>42</sup> ‘In Pictures: Recounting horror of Rana Plaza’, *Al Jazeera* (27 April 2014) <[www.aljazeera.com/indepth/inpictures/2014/04/pictures-bangladesh-remembers-r-201442114058144178.html](http://www.aljazeera.com/indepth/inpictures/2014/04/pictures-bangladesh-remembers-r-201442114058144178.html)>

<sup>43</sup> Julfikar Ali Manik and Jim Yardley, ‘Building Collapse in Bangladesh Leaves Scores Dead’, *The New York Times* (New York, 24 April 2013) <<http://www.nytimes.com/2013/04/25/world/asia/bangladesh-building-collapse.html>>

<sup>44</sup> ILO, ‘Strengthening workplace safety and labour rights in the Bangladesh Ready-Made Garment Sector’, (September 2016) 23 <[www.ilo.org/dhaka/Whatwedo/Publications/WCMS\\_474048/lang--en/index.htm](http://www.ilo.org/dhaka/Whatwedo/Publications/WCMS_474048/lang--en/index.htm)>

<sup>45</sup> ‘Bangladesh charges 38 with murder over 2013 garment factory collapse’, *Reuters* (Dhaka, 18 July 2016) <<http://uk.reuters.com/article/uk-bangladesh-disaster-trial-idUKKCN0ZY1GX>>

<sup>46</sup> Jeremy Seabrook, *The Song of the Shirt* (Hurst 2015) 24.

<sup>47</sup> *ibid* 24-25.

was signed between the Ministry of Labour and Employment (MoLE), the Government of Bangladesh (GoB) and the ILO.<sup>48</sup>

Notwithstanding concerns expressed after the Tazreen Fashions fire, it was the sheer enormity of the Rana Plaza tragedy that spurred the EU into action. The EU was faced with a stark choice in the spring of 2013. Under intense media pressure, a warning was issued six days after the tragedy indicating that the GSP EBA arrangement could be in jeopardy.<sup>49</sup> Following bilateral discussions, however, the EU Trade Commissioner and the Bangladesh Foreign Minister issued a joint statement in late May indicating a shared commitment to the EBA and export-oriented RMG industry ‘through determined action to improve health and occupational safety standards’ in garment factories.<sup>50</sup> Whereas the U.S. proceeded with the rare political step of withdrawing its GSP by Executive Order in June<sup>51</sup> (albeit that it was of lesser importance because most apparel items were excluded from it),<sup>52</sup> the EU chose a different path, committing to engagement in Bangladesh for the long-term. In July 2013, the EU issued a joint statement with the ILO and the GoB to establish a ‘Sustainability Compact’ for ‘continuous improvements in labour rights and factory safety’ in the RMG and knitwear industry.<sup>53</sup> ‘Staying engaged’ was both a pragmatic and economic choice for the EU,<sup>54</sup> given the importance of the RMG industry for European firms, but it was also in line with the thinking of the ILO, to ‘stay with Bangladesh’ so as to protect the millions of jobs and families that depend on the sector.<sup>55</sup> Together, the EU and the ILO would use their leverage to send a message to the GoB, the domestic garment manufacturers and the global brands that ‘business could not continue as usual for the Bangladesh RMG sector’ because ‘Rana Plaza simply could not be allowed to happen again’.<sup>56</sup>

<sup>48</sup> ILO, ‘National Tripartite Plan of Action on Fire Safety and Structural Integrity in the Ready-Made Garment Sector in Bangladesh’ (25 July 2013) <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/genericdocument/wcms\\_221543.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/genericdocument/wcms_221543.pdf)>

<sup>49</sup> European Commission, ‘Joint Statement by HR/VP Catherine Ashton and EU Trade Commissioner Karel De Gucht following the recent building collapse in Bangladesh’ (Brussels, 30 April 2013) <[http://europa.eu/rapid/press-release\\_MEMO-13-395\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-395_en.htm)>. Discussed by James Yap, ‘One step forward: the European Union Generalised System of Preferences and labour rights in the garment industry in Bangladesh’ in Jan Wouters, Axel Marx, Dylan Geraets and Bregt Natens (eds), *Global Governance through Trade: EU Policies and Approaches* (Edward Elgar 2015) 214-244, 228.

<sup>50</sup> European Commission DG Trade, ‘Joint Statement by EU Trade Commissioner Karel De Gucht and Bangladesh Foreign Minister Dr Dipu Moni following recent disasters in the Bangladeshi garment manufacturing industry’, (Brussels, 28 May 2013) <[http://europa.eu/rapid/press-release\\_MEMO-13-469\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-469_en.htm)>

<sup>51</sup> The US GSP was valued at \$US34.7 million in 2012. The US has maintained its position to keep pressure on the GoB to do more to improve labour conditions. See, Office of the United States Trade Representative, ‘GSP Review of Bangladesh Recognizes Progress, Urges that More be Done on Worker Safety and Rights’ (January 2015) <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/january/gsp-review-bangladesh-recognizes>>

<sup>52</sup> James Yap, ‘One step forward: the European Union Generalised System of Preferences and labour rights in the garment industry in Bangladesh’ in Jan Wouters, Axel Marx, Dylan Geraets and Bregt Natens (eds), *Global Governance through Trade: EU Policies and Approaches* (Edward Elgar 2015) 214-244, 228.

<sup>53</sup> European Commission, ‘Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh’ (Joint Statement) <[http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151601.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf)>

<sup>54</sup> The Governments of the EU Member States were represented by the European Commission.

<sup>55</sup> ILO, ‘Strengthening workplace safety and labour rights in the Bangladesh Ready-Made Garment Sector’ (September 2016) 6 <[http://www.ilo.org/dhaka/Whatwedo/Publications/WCMS\\_474048/lang--en/index.htm](http://www.ilo.org/dhaka/Whatwedo/Publications/WCMS_474048/lang--en/index.htm)>

<sup>56</sup> *ibid.*

The Bangladesh Accord on Fire Building Safety in Bangladesh (the Accord) and, in parallel, the Alliance for Bangladesh Worker Safety (the Alliance), are twin initiatives, driven by the global brands, working with trade unions, factory owners, NGOs and civil society, to improve their reputation and restore the image of the 'made in Bangladesh' label by carrying out a comprehensive programme of factory inspection to be followed up by remediation to make buildings safe.<sup>57</sup> Other initiatives include the ILO-led Better Work Bangladesh programme to implement the Tripartite Plan of Action on Fire and Building Safety in the RMG sector,<sup>58</sup> and the US Action Plan on Labour Rights and Factory Safety in Bangladesh, fulfilment of which would form the basis for the US to reinstate its GSP.<sup>59</sup>

Each of these initiatives will be discussed in this case study to ensure that a comprehensive picture is presented of the action taken post-Rana Plaza and the follow-up as part of the broader agenda to enhance and protect labour rights and systematically improve factory safety in Bangladesh, but it is the Sustainability Compact that will be examined most closely. The EU-led Compact, which now includes the US and, from 2016, Canada, is the most significant point of reference for this study. It is a unique form of deep country-level engagement, in which the EU, working jointly with the ILO, the GoB, and stakeholders in civil society, seeks, on an ongoing basis, to facilitate a fundamental transformation in the living and working conditions and prospects for Bangladeshi people, recognising the extraordinary impact of globalisation on the country over the last 25 years. An important dynamic is the inter-institutional working of the EU and the ILO as partners on the ground. The specific focus of the Compact on labour rights is of interest, because rights at work have not always been the foremost human rights' priority when the EU exercises its influence in the spheres of trade and development.<sup>60</sup> It is also useful to consider the potential of sectoral social dialogue, drawing on experience in the EU, to build trust and reduce labour unrest.

Progress under the Compact is measured by ongoing multilateral surveillance of a series of targets identified under three pillars, namely (1) respect for labour rights (2) structural integrity of buildings and occupational safety and (3) responsible business conduct. Under the umbrella of multilateral governance, the EU, with the leverage of its trade power and policy commitment to sustainable development, seeks to drive forward the delivery of the Compact's objectives.

The case study addresses a number of challenges that extend beyond the narrow confines of the Compact and the programmes, such as the Accord and Alliance, concerned with safety in the Bangladesh RMG sector. It considers questions concerning the need to respond to broader human rights issues, such as, gender equality and combating sexual exploitation. The rapid expansion of the RMG sector has also impacted on development in rural areas, which have suffered population loss, particularly of young women.

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<sup>57</sup> See, the Accord <<http://bangladeshaccord.org/>> and the Alliance <<http://www.bangladeshworkersafety.org/>>

<sup>58</sup> Better Work Bangladesh <<http://betterwork.org/global/>>

<sup>59</sup> U.S. Department of State, 'Statement by the U.S. Government on Labor Rights and Factory Safety in Bangladesh' (19 July 2013) <<http://www.state.gov/r/pa/prs/ps/2013/07/212209.htm>>

<sup>60</sup> See Jeff Kenner, 'Economic Partnership Agreements: Enhancing the Labour Dimension of Global Governance?' in Bart Van Vooren, Steven Blockmans, and Jan Wouters (eds), *The Legal Dimension of Global Governance: What Role for the EU?* (Cambridge University Press 2013) 306-321.

Also, the case study debates the justification for the EU to maintain engagement in Bangladesh through the Compact when, more than three years after Rana Plaza, results have been mixed with ‘tangible progress’ made on occupational safety and health but much less success in the area of labour rights, which remains ‘challenging’,<sup>61</sup> as reflected in the deep concerns expressed in 2015 by the ILO Committee on Application of Standards regarding the lack of freedom of association and inadequate protection of the rights to organise in EPZs.<sup>62</sup> Finally, as part of this assessment, the case study takes account of the domestic political context in Bangladesh, where the opposition is marginalised, freedom of expression is under increasing threat, and use of the death penalty is on the increase, against the backdrop of recent terrorist outrages.<sup>63</sup>

It asks the following research questions:

- To what extent is export diversification needed to widen opportunities for skilled employment and promote more sustainable development?
- Is the EU’s development partnership with Bangladesh sufficiently focused to meet the development needs of the country, specifically those of RMG workers and their families?
- How effective is the EU’s strong partnership with the ILO in development cooperation and in the implementation of the Sustainability Compact?
- Is the EU correct in deciding to ‘stay engaged’ in Bangladesh notwithstanding slow progress in realising the objectives of the Sustainability Compact?
- Should the EU go into reverse gear and threaten to suspend the GSP EBA as a response to the worsening human rights situation?

The case study starts, in Part B, with an analysis of the political, economic and social context in Bangladesh with reference to issues most relevant to the RMG sector. It continues with an outline of the domestic strategic framework and development priorities. Part C explores the development of the RMG sector in more depth addressing issues concerning ‘Global Value Chains’ (GVCs), civil society engagement and human rights. Part D aims to analyse the EU’s engagement in Bangladesh encompassing trade relations through the GSP EBA, development cooperation policies and tools, including partnership with the ILO, and human rights issues raised in the response to the Rana Plaza tragedy. The effectiveness of mechanisms adopted to engage with international partners, government, factory owners, brands, trade unions and civil society, to deliver improvements in human rights in the RMG sector will be evaluated with reference to each mechanism in turn, concluding with the Compact. Part E offers concluding remarks.

Research for the case study is based on a broad range of primary and secondary sources, including books and journal articles, policy documents and reports from the EU, the ILO, the Government of Bangladesh, international trade unions and NGOs specialising in Bangladesh, such as Action Aid and Amnesty International, and in the RMG sector, such as the Clean Clothes Campaign. On the ground research in Bangladesh has been conducted on behalf of the Indian Society of International Law.

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<sup>61</sup> European Commission, ‘Bangladesh Sustainability Compact Technical Status Report July 2016’ (26 August 2016) 2 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>62</sup> See the Decision adopted at the 104<sup>th</sup> International Labour Conference (June 2015) and followed up by the Report of the High-Level Tripartite Mission to Bangladesh (17-20 April 2016)

<[http://www.ilo.org/ilc/ILCSessions/105/committees/standards/WCMS\\_488339/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/105/committees/standards/WCMS_488339/lang--en/index.htm)>

<sup>63</sup> See II.B below.



## B. Country Context and prospects

### 1. Political Context

The People's Republic of Bangladesh is a South Asian country situated in the eastern part of the region of Bengal bounded by India and Myanmar (see Annex 1 for a map). Bangladesh's population has rapidly increased from 48 million in the 1960s to 161 million in 2015 according to World Bank data.<sup>64</sup> With a land mass of 147,570 sq km, Bangladesh is among the most densely populated countries in the world.<sup>65</sup> 90% of the population is Sunni Muslim, with a Hindu minority of 9.5%.<sup>66</sup> Bengali is the official language. Dhaka, the capital and largest city, is the centre of the Ready Made Garment (RMG) industry. Chittagong, the main sea port, is the hub for RMG exports. The highly fertile Bengal delta, where the Ganges (Padma), Brahmaputra (Jamuna) and Meghna rivers meet, is the largest delta in the world. Bangladesh has to face the constant challenges of climate change, experiencing many devastating floods and cyclones in the flat lands and the delta on the Bay of Bengal.<sup>67</sup> The Bhola Cyclone, which struck the Bay of Bengal in 1970, was the deadliest ever recorded causing approximately 350,000 deaths.<sup>68</sup>

Following independence from Britain and the partition of India in 1947, the province of East Bengal became East Pakistan. The relationship between East and West Pakistan, one State but geographically separate, and each with its own distinct language and culture, was always an uneasy one. It was also unequal, with West Pakistan politically, militarily and economically dominant. The authorities' response to the catastrophic Bhola Cyclone of 1970 was widely regarded as wholly inadequate.<sup>69</sup> The cyclone hit at a time of rising tension between East and West Pakistan. One month later, the opposition Awami League (AL), a nationalist, mainly secular, party, was elected to govern East Pakistan. As resistance grew, enmity between Bengali and non-Bengali Pakistan increased. In a huge operation, the Pakistan military intervened in March 1971 and, within a month, a proclamation of independence was issued.<sup>70</sup> The ensuing nine-month war, known in Bangladesh as the 'War of Liberation', was brutal. Archer K. Blood, the United States consul in Dacca (now Dhaka), sent a remarkable 'dissenting' telegram describing the actions of the Pakistan military, supported by Islamist militias, which included systematic rape and killings, as a 'selective genocide', a view officially rejected by the U.S. at the time.<sup>71</sup> There is an academic consensus that the Hindu population

<sup>64</sup> World Bank, 'Bangladesh' <<http://data.worldbank.org/country/bangladesh>>

<sup>65</sup> World Bank, 'Bangladesh Overview' <<http://www.worldbank.org/en/country/bangladesh/overview>>

<sup>66</sup> Based on the 2011 Census, see U.S. Department of State, 'Bangladesh 2012 International Religious Freedom Report' (2012) <<http://www.state.gov/documents/organization/208636.pdf>>

<sup>67</sup> Colin Knox, 'Building Trust amidst Corruption in Bangladesh' (2009) 98 (403) *The Round Table* 449-459, 459.

<sup>68</sup> Benjamin Reilly, *Disaster and Human History: Case Studies in Nature, Society and Catastrophe* (McFarland 2009) 172.

<sup>69</sup> See Adil Najam, 'The cyclone that broke Pakistan's back', *The Express Tribune* (Karachi, 18 August 2010) <<http://tribune.com.pk/story/40218/the-cyclone-that-broke-pakistans-back/>>

<sup>70</sup> The proclamation was issued on 17 April 1971 on behalf of the 'Provisional Government of Bangladesh' by the leader of the Awami League, Sheikh Mujibur Rahman, who was to become the first President of independent Bangladesh in December 1971 and Prime Minister from 1972 to 1975.

<sup>71</sup> Ellen Barry, 'To U.S. in '70s, a Dissenting Diplomat. To Bangladesh 'a True Friend'', *The New York Times* (New York, 27 June 2016) <[www.nytimes.com/2016/06/28/world/asia/bangladesh-archer-blood-cable.html](http://www.nytimes.com/2016/06/28/world/asia/bangladesh-archer-blood-cable.html)> The "Blood Telegram", as it became known, was the first 'dissenting' cable issued by U.S. diplomat under a procedure introduced by the State Department in 1971. The official U.S. archive copy can be viewed at: <http://nsarchive.gwu.edu/NSAEBB/NSAEBB79/BEBB1.pdf>. See further: Gary J. Bass, *The Blood Telegram: Nixon, Kissinger and a Forgotten Genocide* (Hurst 2014).

of East Pakistan was subjected to genocide.<sup>72</sup> Eventually, aided by the intervention of India, Pakistani forces were defeated and an independent Bangladesh emerged on 16 December 1971.

Politics in Bangladesh today is still configured by the divisions of the civil war 45 years ago. According to various sources between 300,000 and 3,000,000 people were killed and millions were displaced in the war but it is accepted that there are no reliable records.<sup>73</sup> The three million figure and the fact of genocide has become totemic for the governing Awami League party,<sup>74</sup> which, in 2009, established two 'International Crimes Tribunals' (ICTs) to hear cases based on evidence from a War Crimes Fact Finding Committee. Despite the nomenclature, the ICTs are not international tribunals, and have been criticised as a form of victors' justice.<sup>75</sup> By 2016, 26 people had been convicted by the ICTs on charges of genocide and crimes against humanity. Among those prosecuted have been leading members of the Jama'at-e-Islami (Jama'at), the largest Islamist Party in Bangladesh, whose student wing was responsible for atrocities in the war, and the main opposition party, the Bangladesh Nationalist Party (BNP). Jama'at, which has played a role in BNP-led administrations, has been deregistered as a political party by the Electoral Commission and was banned from participating in the 2014 general election.<sup>76</sup> Concerns have been expressed by human rights groups about the fairness of the trial process.<sup>77</sup>

Opposition groups regard the trials as a political witch hunt and regard the ICTs as biased.<sup>78</sup> The leader of Jama'at, Matiur Rahman Nizami, and later Mir Quasem Ali, a key financier of the party, were the latest in a series of high ranking convicted prisoners to be executed following conviction by the ICTs, eliciting strong condemnation by Amnesty International.<sup>79</sup> The European External Action Service has called for a general moratorium on the death penalty in Bangladesh,<sup>80</sup> rather than pressing for its abolition, but the continuing executions have not affected the EU's trade relations with Bangladesh under its Generalised Scheme of Preferences (GSP) and its deep engagement in the country to implement the Sustainability Compact concerning the RMG and knitwear industries.

<sup>72</sup> David Bergman, 'The Politics of Bangladesh's Genocide Debate', *The New York Times* (New York, 5 April 2016) <<http://www.nytimes.com/2016/04/06/opinion/the-politics-of-bangladeshs-genocide-debate.html>>

<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.*

<sup>75</sup> Sir Desmond de Silva QC, 'The Bangladesh War Crimes Tribunal should be internationalised – for the sake of the nation's future' (No Peace without Justice, 23 October 2013) <<http://www.npwj.org/ICC/Bangladesh-War-Crimes-Tribunal-should-be-internationalised-sake-nation-s-future.html>>. Sir Desmond de Silva QC is a former prosecutor of the Special Court for Sierra Leone.

<sup>76</sup> See 'With Jamaat marginalised, Bangladesh's political dynamics headed for change' *South Asia Monitor* (18 January 2016); Gerald Stang, 'Bangladeshi elections: the last woman standing', European Union Institute for Security Studies, Alert No 2 (10 January 2014) 1-2, 1

<<http://www.iss.europa.eu/publications/detail/article/bangladeshi-elections-the-last-woman-standing>>

<sup>77</sup> For example, Human Rights Watch, 'War Crimes Verdict Based on Flawed Trial' (22 March 2016)

<<https://www.hrw.org/news/2016/03/22/bangladesh-war-crimes-verdict-based-flawed-trial>>

<sup>78</sup> Gerald Stang, 'Bangladeshi elections: the last woman standing', European Union Institute for Security Studies, Alert No 2 (10 January 2014) 1-2, 2

<<http://www.iss.europa.eu/publications/detail/article/bangladeshi-elections-the-last-woman-standing>>

<sup>79</sup> Amnesty International, 'Bangladesh: Nizami execution will not deliver justice' (10 May 2016)

<<https://www.amnesty.org/en/latest/news/2016/05/bangladesh-nizami-execution-will-not-deliver-justice>>;

Amnesty International, 'Bangladesh: Execution of Mir Quasem Ali Will Not Deliver Justice' (3 September 2016)

<<https://www.amnesty.org/en/press-releases/2016/09/bangladesh-mir-quasem-ali-execution-will-not-deliver-justice/>>

<sup>80</sup> EEAS, Statement by the Spokesperson on capital punishment in Bangladesh (5 November 2014)

<[http://eeas.europa.eu/statements-eeas/2014/141105\\_05\\_en.html](http://eeas.europa.eu/statements-eeas/2014/141105_05_en.html)>

After a short period as a virtual one party state under the Awami League, in 1975, the Prime Minister, Sheikh Mujibur Rahman, and many of his family members, were assassinated in a military coup. Bangladesh was under military rule from 1975 until 1991 and, thereafter, it has been a multi-party democracy except for a short interlude of military rule in 2007-2008. Since 1991 the political scene has been dominated by two major political parties both led by women. First, the Awami League (AL), under the leadership of Sheikh Hasina,<sup>81</sup> who has been Prime Minister from 1996-2001 and from 2009 onwards, having been re-elected in 2014 in a controversial election boycotted by the opposition.<sup>82</sup> Second, is the Bangladesh Nationalist Party (BNP), led by Khaleda Zia,<sup>83</sup> who was Prime Minister from 1991-1996 and 2001-2006. Both the AL and the BNP derive their legitimacy from the liberation struggle. Jama'at, despite its association with atrocities in the War of Liberation,<sup>84</sup> re-emerged as a strong force after 1991 because of an increasing identification with Islam in Bangladeshi politics.<sup>85</sup>

Bangladesh has experienced multiple political upheavals and crises of governance during its 25 years of democracy which have, as their root cause, a dynamic of confrontational politics rather than ideology. The AL used to espouse socialism but now there are no fundamental ideological differences between the parties with both supporting market capitalism.<sup>86</sup>

Ferdous Arfina Osman explains that:

Restoration of parliamentary democracy marked the emergence of an adversely competitive political system where the parties are merely committed to democratic practices. The party that wins the election monopolizes the state apparatus with a 'winner takes all' attitude, leaving little scope for the losing party to take part in the process of governance, which leads them to be violent, destructive and irresponsible. In the monopolization process, the ruling party exerts a strong control over all the key state institutions. Thus a political culture of impunity, patronage and institutionalization of partisanship has been developed.<sup>87</sup>

This process of monopolisation has led to a kind of 'clientelist' politics under which the party leader, always fearing assassination, holds onto power by maintaining a system of personal favours to secure the loyalty of key followers.<sup>88</sup> The governing party controls Parliament, the Jatiyo Shangsad, to such an extent that the opposition have little chance to speak or otherwise hold the government to account. Once in power, the ruling party uses state machinery to obtain financial benefits for itself and its loyal supporters.<sup>89</sup> Clientelism operates at every level. Socio-economic factors play a part. Workers living in poverty and insecurity are easily captured by clientelist politics. In return for a small

<sup>81</sup> Hasina is the daughter of Bangladesh's founding leader, Sheikh Mujibur Rahman, assassinated in 1975.

<sup>82</sup> Gerald Stang, 'Bangladeshi elections: the last woman standing', European Union Institute for Security Studies, Alert No 2 (10 January 2014) 1-2, 2

<<http://www.iss.europa.eu/publications/detail/article/bangladeshi-elections-the-last-woman-standing>>

<sup>83</sup> Zia's husband was Ziaur Rahman, President of Bangladesh from 1977 to 1981. He was assassinated in 1981.

<sup>84</sup> Ali Riaz, 'Bangladesh's Failed Election' (2014) 25(2) *Journal of Democracy* 119-130, 124.

<sup>85</sup> Sreeradha Datta, 'Bangladesh's political evolution: Growing uncertainties' (2003) 27 *Strategic Analysis* 233-249, 241.

<sup>86</sup> Ferdous Arfina Osman, 'Bangladesh Politics: Confrontation, Monopoly and Crisis in Governance' (2010) 18 *Asian Journal of Political Science* 310-333, 315.

<sup>87</sup> *ibid*, 310-311.

<sup>88</sup> *ibid*, 313.

<sup>89</sup> *ibid*, 317.

pay-off, they will offer loyalty and support for a party during elections, strikes and other forms of mobilisation, often risking their lives.<sup>90</sup>

In turn, the opposition is marginalised, plays little part in Parliament, or boycotts it, and instead mobilises opposition through street protests.<sup>91</sup> Each party engages in hostile discourse, often over petty, personal matters, contributing to polarisation in society.<sup>92</sup> Over time, one type of politics reinforces the other as the governing party reacts to 'mobilisation politics' by becoming more autocratic and violence increases.<sup>93</sup> Caretaker governments for holding free and fair elections became the norm during each election period after 1991 because neither main party could trust the other to take responsibility for holding an election.<sup>94</sup>

Such a system provides a fertile ground for corruption as key state institutions, the civil service, judiciary, bureaucracy and local government are monopolised by the ruling party.<sup>95</sup> Corruption is defined by Transparency International (TI) as 'the abuse of entrusted power for private gain'.<sup>96</sup> Incidences of corruption date back to colonial times, but, over the period of independence, corruption has become 'endemic, chronic and all pervasive'<sup>97</sup> among politicians at all levels and throughout the public service in Bangladesh, leading to a loss of trust from citizens, a lack of accountability and a crisis in governance. The culture of partisanship within the bureaucracy is such that professional advancement in the public service is unrelated to performance or integrity.<sup>98</sup> Local government is controlled through the disbursement of funds, including development monies, to reward those who support the ruling party.<sup>99</sup>

Although the Constitution enshrines a duty of care on the state to provide public services, a wide ranging academic study found, in 2001, that 'most of the services offered by the public sector are in the clasp of unfettered corruption'.<sup>100</sup> Transparency International Bangladesh (TIB), in its surveys, has found a perception among citizens of widespread corruption involving, inter alia, bribery, nepotism, negligence of duties, embezzlement and deception.<sup>101</sup> Bribes, in particular, known as the *tadbir*, are

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<sup>90</sup> *ibid.*

<sup>91</sup> Sreeradha Datta, 'Bangladesh's political evolution: Growing uncertainties' (2003) 27 *Strategic Analysis* 233-249, 238.

<sup>92</sup> Ferdous Arfina Osman, 'Bangladesh Politics: Confrontation, Monopoly and Crisis in Governance' (2010) 18 *Asian Journal of Political Science* 310-333, 315.

<sup>93</sup> *ibid.*, 313-314.

<sup>94</sup> Sreeradha Datta, 'Bangladesh's political evolution: Growing uncertainties' (2003) 27 *Strategic Analysis* 233-249, 237.

<sup>95</sup> Ferdous Arfina Osman, 'Bangladesh Politics: Confrontation, Monopoly and Crisis in Governance' (2010) 18 *Asian Journal of Political Science* 310-333, 318-319.

<sup>96</sup> Transparency International <<http://www.transparency.org/what-is-corruption>>

<sup>97</sup> Habib Zafarullah and Noore Alam Siddiquee, 'Dissecting Public Sector Corruption in Bangladesh: Issues and Problems of Control' (2001) 1 *Public Organization Review* 465-486, 467.

<sup>98</sup> Abu Elias Sarker, 'Administrative reform in Bangladesh: three decades of failure' (2004) 7(3) *International Public Management Journal* 365-384, 377.

<sup>99</sup> Ferdous Arfina Osman, 'Bangladesh Politics: Confrontation, Monopoly and Crisis in Governance' (2010) 18 *Asian Journal of Political Science* 310-333, 325.

<sup>100</sup> Habib Zafarullah and Noore Alam Siddiquee, 'Dissecting Public Sector Corruption in Bangladesh: Issues and Problems of Control' (2001) 1 *Public Organization Review* 465-486, 467.

<sup>101</sup> Colin Knox, 'Building Trust amidst Corruption in Bangladesh', (2009) 98 (403) *The Round Table* 449-459, 452. Know cites TIB surveys for the education and health services in 2008.

all pervasive, usually being paid by a broker in return for a fee.<sup>102</sup> Pilferage and theft from construction departments was estimated to lead to the loss of 40-60% of the development budget every year by the early 1990s.<sup>103</sup> From 2001-2005, TI's highly regarded global Corruption Perception Index (CPI), which measures peoples' perception of corruption in public services, found that Bangladesh was the most corrupt country in the world for five successive years.<sup>104</sup> In 2007, an Anti-Corruption Commission (ACC) was established during a brief period of military caretaker government, but it was unable to effectively tackle the system of patronage and trust remains very low.<sup>105</sup> The ACC has become a relatively toothless organisation under the AL post-2008.<sup>106</sup> According to TIB, the ACC is widely perceived to have been subjected to direct or indirect political and government influence, undermining its independence and effectiveness.<sup>107</sup> Although the position has improved a little since 2005, Bangladesh remains 139th out of 167 countries in the TI CPI for 2015 with a score of 25 out of 100.<sup>108</sup> It is the second worst performer in South Asia ahead only of Afghanistan.

The web of influence extends deep into the RMG industry. Corruption and political influence present major obstacles to hopes for safe working conditions and genuinely effective labour rights' reforms in Bangladesh.<sup>109</sup> An estimated 10% of parliamentarians are factory owners, but as many as a half have a financial interest in the garment industry.<sup>110</sup> The main industry organisation, the Bangladesh Garment Manufacturers and Exporters Association (BGMEA), is hugely powerful because it literally controls the garment industry which is 'the engine of the national economy'.<sup>111</sup> It makes large political contributions which help to cement its power. The state has delegated wide ranging regulatory and administrative powers to the BGMEA over export rules raising questions about the extent of its influence and conflict of interest.<sup>112</sup> In 2010 the government created an industrial police force to tackle growing unrest among RMG workers but, even though it is meant to act as an independent arbiter, many labour organisations say the police force almost always favours the owners.<sup>113</sup>

<sup>102</sup> Habib Zafarullah and Noore Alam Siddiquee, 'Dissecting Public Sector Corruption in Bangladesh: Issues and Problems of Control' (2001) 1 *Public Organization Review* 465-486, 468.

<sup>103</sup> *ibid*, 469.

<sup>104</sup> Colin Knox, 'Building Trust amidst Corruption in Bangladesh', (2009) 98 (403) *The Round Table* 449-459, 453.

<sup>105</sup> *ibid*, 456.

<sup>106</sup> *ibid*, 458.

<sup>107</sup> Transparency International Bangladesh, 'Bangladesh's 2015 CPI score is the same as 2014, slips one position from bottom: TIB calls for challenging impunity and bringing the corrupt to justice' (2016) <<https://www.ti-bangladesh.org/beta3/index.php/en>>

<sup>108</sup> Transparency International Corruption Perceptions Index 2015 <<http://www.transparency.org/cpi2015>>. The TI CPI scores on a scale 0 (highly corrupt) to 100 (very clean). Bangladesh's scores for the previous years were: 25 (2014), 27 (2013) and 26 (2012).

<sup>109</sup> See James Yap, 'One step forward: the European Union Generalised System of Preferences and labour rights in the garment industry in Bangladesh' in Jan Wouters J, Axel, Dylan Geraets and Bregt Natens (eds), *Global Governance through Trade: EU Policies and Approaches* (Edward Elgar 2015) 214-244, 234.

<sup>110</sup> Jeremy Seabrook, *The Song of the Shirt* (Hurst 2015) 50; John Chalmers, 'Special report: How Textile Kings Weave a Hold on Bangladesh', *Reuters* (Dhaka, 3 May 2013) <<http://www.reuters.com/article/us-bangladesh-garments-special-report-idUSBRE9411CX20130503>>

<sup>111</sup> Jim Yardley, 'Garment Trade Wields Power in Bangladesh', *The New York Times* (New York, 24 July 2013) <<http://www.nytimes.com/2013/07/25/world/asia/garment-trade-wields-power-in-bangladesh>>

<sup>112</sup> *ibid*.

<sup>113</sup> *ibid*. This is perhaps not surprising as, according to *The New York Times* article, the BGMEA is supposed to buy patrol cars for the officers.

The problem is compounded by corruption in labour relations. Although Bangladesh has ratified 35 ILO conventions,<sup>114</sup> and has fairly comprehensive labour laws, labour standards are often compromised as managers lack the capacity to enforce standards and the State lacks willingness to enforce labour laws. Trade unions are controlled by party patronage and do little to promote the interests of workers.<sup>115</sup>

According to TIB, typically US\$25,000 is paid in bribes for permits for a new factory.<sup>116</sup> The Rana Plaza factory was owned by an influential figure in the AL, Mohammed Sohel Rana, who had been a leader in its Youth Wing and was swiftly disowned by the AL after the disaster.<sup>117</sup> It later transpired that numerous regulations had been violated in the building and operation of the Rana Plaza complex in collusion with corrupt officials.<sup>118</sup> In June 2013, in response to Rana Plaza, seven factory inspectors were suspended after it was found that they had renewed operating licences without making inspections.<sup>119</sup>

After 2009, the AL consolidated its power further and cracked down on the opposition. The establishment of the ICTs has divided the opposition parties. In 2011, the Prime Minister, Sheikh Hasina, dispensed with the constitutional requirement to have a caretaker government to oversee elections,<sup>120</sup> leading to two years of extreme political violence and a boycott of the 2014 general election by the opposition.<sup>121</sup> Khaleda Zia, the BNP leader, was placed under virtual house arrest. General Ershad, military dictator of Bangladesh from 1982-1990, but a member of the governing coalition from 2006, who switched the support of his Jatiya Party (JP) to back the election boycott, was forcibly detained in hospital.<sup>122</sup> The AL and its allies, including some JP members, secured nearly all of the 300 seats in Parliament. After the 2014 elections, the opposition made a concerted effort to oust the government. Many hundreds were killed or injured in riots and attacks. The BNP has been virtually wiped out as a political force with many of its leaders detained or in hiding. The media, which has been relatively free and diverse in the past, has been subject to more limitations including the shutting down of TV stations opposed to the governing AL.<sup>123</sup> As Jason Burke has reported: 'The result is no credible opposition – and no democratic channel to express dissent'.<sup>124</sup>

<sup>114</sup> See ILO table of ratifications per country <<http://www.ilo.org/dyn/normlex/en>>

<sup>115</sup> Habib Zafarullah, 'Globalisation, state and politics in Bangladesh: implications for democratic governance' (2003) 26(3) *Journal of South Asian Studies* 283-296, 294-295.

<sup>116</sup> Iftekar Zaman, 'Corruption Rampant a Year after Bangladesh Factory Collapse', *Financial Times* (London, 24 April 2014).

<sup>117</sup> Jeremy Seabrook, *The Song of the Shirt* (Hurst 2015) 66.

<sup>118</sup> Iftekar Zaman, 'Corruption Rampant a Year after Bangladesh Factory Collapse', *Financial Times* (London, 24 April 2014).

<sup>119</sup> 'Bangladesh suspends seven factory inspectors over disaster', *Straits Times* (Singapore, 9 June 2013) <<http://www.straitstimes.com/asia/bangladesh-suspends-seven-factory-inspectors-over-disaster>>

<sup>120</sup> Ali Riaz, 'Bangladesh's Failed Election' (2014) 25(2) *Journal of Democracy* 119-130, 122.

<sup>121</sup> Gerald Stang, 'Bangladeshi elections: the last woman standing', European Union Institute for Security Studies, Alert No 2 (10 January 2014) 1-2, 1

<<http://www.iss.europa.eu/publications/detail/article/bangladeshi-elections-the-last-woman-standing>>

<sup>122</sup> Ali Riaz, 'Bangladesh's Failed Election' (2014) 25(2) *Journal of Democracy* 119-130, 128.

<sup>123</sup> Gerald Stang, 'Bangladeshi elections: the last woman standing', European Union Institute for Security Studies, Alert No 2 (10 January 2014) 1-2, 1

<<http://www.iss.europa.eu/publications/detail/article/bangladeshi-elections-the-last-woman-standing>>

<sup>124</sup> Jason Burke, 'Progress fans flames of militant unrest in changing Bangladesh', *The Observer* (London, 7 November 2015) <<https://www.theguardian.com/world/2015/nov/07/bangladesh-killings-islamic-militant-unrest-economic-progress>>

In part, increasingly authoritarian rule is a reaction to rising levels of Islamist violence in Bangladesh, which, in turn, is filling the political vacuum. Such violence is understood as an attack on secularism, which is protected under the Constitution, and as a response to economic exclusion by those who have not benefited from Bangladesh's rapid economic growth.<sup>125</sup> Bangladesh has not had the levels of violence of Pakistan, but there has been a rise in homegrown terrorism from groups such as Jama'at ul Mujahideen Bangladesh (JMB). Over the last year, there have been attacks on aid workers, LGTB activists, secular bloggers and religious minorities, including a Sh'ia cleric and a Hindu priest.<sup>126</sup> It is a matter of dispute whether groups responsible for terrorist attacks in Bangladesh are linked to ISIS or al-Qaeda.<sup>127</sup> The government of Bangladesh has rejected suggestions of links with international terrorism but JMB claims to be affiliated to ISIS.<sup>128</sup> The state has cracked down using its controversial Rapid Attack Battalion (RAB), which has been accused of systematic human rights abuses.<sup>129</sup>

However, on 1 July 2016, terrorism in Bangladesh reached a new level, when an appalling attack by at least five gunmen on the Holey Artisan Bakery, a popular upmarket café in the diplomatic district of Dhaka, ended with 29 dead, including 18 foreign nationals, many of who had been taken hostage by the attackers. Two police were killed and many injured. It was, by far, the worst terrorist outrage in Bangladesh's history and has come to be described locally as 7/16. Although ISIS swiftly claimed responsibility for the attack, the Bangladeshi authorities have placed the blame on JMB and its domestic political opponents.<sup>130</sup> The sense of relative security in Dhaka has fundamentally changed.<sup>131</sup> After the attack, there have been many arrests and, on 27 August 2016, the government claimed that the alleged 'mastermind' of the attack was killed along with other militants in a shootout with police.<sup>132</sup>

## 2. Economic and Social Context

Bangladesh has a civilian labour force of 58 million, of which 41.2 million are male and 16.8 million are female.<sup>133</sup> Informal employment<sup>134</sup> is a significant problem in the country. The vast majority of

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<sup>125</sup> *ibid.*

<sup>126</sup> Alexandra Stark, 'Dhaka Attack Part of a Larger Pattern of Terrorism in Bangladesh', *The Diplomat* (Tokyo, 22 July 2016) <<http://thediplomat.com/2016/07/dhaka-attack-part-of-a-larger-pattern-of-terrorism-in-bangladesh>>

<sup>127</sup> *ibid.*

<sup>128</sup> *ibid.*

<sup>129</sup> Jason Burke, 'The Bangladesh café attack is the predictable result of unchecked violence', *The Guardian* (London, 2 July 2016) <<https://www.theguardian.com/world/2016/jul/01/dhaka-attack-bangladesh-muslim-extremism-holey-artisan-bakery>>

<sup>130</sup> *ibid.*

<sup>131</sup> Alexandra Stark, 'Dhaka Attack Part of a Larger Pattern of Terrorism in Bangladesh', *The Diplomat* (Tokyo, 22 July 2016) <<http://thediplomat.com/2016/07/dhaka-attack-part-of-a-larger-pattern-of-terrorism-in-bangladesh>>

<sup>132</sup> 'Bangladesh police kill 'mastermind' of Dhaka café attack', *Reuters* (Dhaka, 27 August 2016) <<http://www.reuters.com/article/us-bangladesh-militants-idUSKCN11204G>>. The 'mastermind' has been named as Tamim Ahmed Chowdhury, a Bangladeshi-born Canadian citizen.

<sup>133</sup> Government of Bangladesh, 'Report on Labour Force Survey 2013' (Bangladesh Bureau of Statistics, 2015) xi <<http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/LatestReports/LabourForceSurvey.2013.pdf>>.

The figures are based on the population aged 15 and above.

<sup>134</sup> Informal employment comprises jobs that are outside the formal framework of employment regulation. The ILO defines informal employment, for statistical purposes, as 'the total number of informal jobs, whether carried out in formal sector enterprises, informal sector enterprises, or households, during a given reference

working people, 88%,<sup>135</sup> are in informal employment, mainly self-employed or unpaid family workers,<sup>136</sup> outside of wage protection, health and safety rules and social protection.<sup>137</sup> Agriculture, which accounts for 45% of the labour force,<sup>138</sup> is the largest sector of the economy, contributing 17% of GDP.<sup>139</sup> Although Bangladesh is predominantly an agricultural country, a number of large-scale industries based on both indigenous and imported raw materials have been set up. Among these industries, RMGs, cotton textile, pharmaceuticals, fertiliser, wood product, iron and steel, ceramics, cement, plastic products and chemicals are important.

Bangladesh has liberalised its economy extensively. It became a member of the World Trade Organisation (WTO) in 1995 and has signed 34 bilateral and multilateral investment agreements, alongside being a member of the South Asian Free Trade Area (SAFTA) and the Developing-8 Organisation for Economic Co-operation (D-8).<sup>140</sup> The RMG industry, has grown exponentially from the 1980s as global businesses established sub-contracting arrangements with Bangladesh garment producers, now known as Global Value Chains (GVCs). Bangladesh now exports garments worth US\$25 billion and employs four million workers. By 2015 it accounted for 82% of Bangladesh's export earnings.<sup>141</sup> It is the world's second largest exporter of garments after China.<sup>142</sup>

The RMG sector has acted as a catalyst for the development of Bangladesh.<sup>143</sup> GDP has increased from US\$24 billion in 1987 to US\$195 billion in 2015.<sup>144</sup> The country has maintained a steady 6% annual growth rate over recent years. Over this period there has been remarkable social and human development.<sup>145</sup> According to World Bank statistics, more than 15 million people have moved out of

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period'. See Ralf Hussmanns, 'Defining and measuring informal employment' (ILO 2005) 5  
<[www.ilo.org/public/english/bureau/stat/download/papers/meas.pdf](http://www.ilo.org/public/english/bureau/stat/download/papers/meas.pdf)>

<sup>135</sup> In agricultural areas 92.2% of workers are in the informal sector, whereas in urban areas the figure is 72.1%. See Government of Bangladesh, 'Report on Labour Force Survey 2013' (Bangladesh Bureau of Statistics, 2015) 66

<<http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/LatestReports/LabourForceSurvey.2013.pdf>>

<sup>136</sup> ILO, 'Bangladesh: Seeking Better Employment Conditions for Better Socioeconomic Outcomes' (2013) 83.

<sup>137</sup> Dalisay S Maligalig, Sining Cuevas and Aleli Rosario, 'Informal Employment in Bangladesh', Asian Development Bank Economics Working Paper Series No 155 (2009) 1 <<https://think-asia.org/bitstream/handle/11540/1806/economics-wp155.pdf>>

<sup>138</sup> Government of Bangladesh, 'Report on Labour Force Survey 2013' (Bangladesh Bureau of Statistics, 2015) xvi

<<http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/LatestReports/LabourForceSurvey.2013.pdf>>

<sup>139</sup> BGMEA, 'Working Today to Shine Tomorrow, Knit Communiqué Incentives on RMG: A Comparative Analysis Based On The Competitor Countries of Bangladesh and Policy Suggestion', Volume 9 (May 2015)

<[http://www.bkmea.com/images/media/iART-pdf/Knit\\_Communique\\_Volume\\_9.pdf](http://www.bkmea.com/images/media/iART-pdf/Knit_Communique_Volume_9.pdf)>

<sup>140</sup> ActionAid, 'Diversify and Conquer: transforming Bangladesh into an industrialised country' (December 2015) 3.

<sup>141</sup> BGMEA, 'Trade Information' <<http://bgmea.com.bd/home/pages/TradeInformation>>

<sup>142</sup> Sanjay Kathuria and Mariem Mezghenni Malouche, 'Towards New Sources of Competitiveness in Bangladesh' (World Bank Group 2016) xix

<<https://openknowledge.worldbank.org/bitstream/handle/10986/22712/9781464806476.pdf?sequence=1&isAllowed=y>>

<sup>143</sup> Faruque Hassan, 'RMG industry of Bangladesh: Past, present and future', *Dhaka Tribune* (Dhaka, 14 September 2014) <[www.dhakatribune.com/long-form/2014/sep/16/rmg-industry-bangladesh-past-present-and-future](http://www.dhakatribune.com/long-form/2014/sep/16/rmg-industry-bangladesh-past-present-and-future)>

<sup>144</sup> World Bank, 'Bangladesh' <<http://data.worldbank.org/country/bangladesh>>

<sup>145</sup> Government of Bangladesh, 'Rio+ 20: National Report On Sustainable Development' (Ministry of Environment and Forests, May 2012)

<<https://sustainabledevelopment.un.org/content/documents/981bangladesh.pdf>>



poverty since 1992,<sup>146</sup> cutting extreme poverty in half.<sup>147</sup> Life expectancy, literacy and per capita income have increased hand in hand with economic development.<sup>148</sup> For example, on liberation, the female literacy rate was only 11%, it is now around 56%.<sup>149</sup> Bangladesh has reduced maternal mortality by 40% between 2001 and 2010, and has increased school enrolment, particularly of girls, who now outnumber boys in school.<sup>150</sup>

It is well recognised that women's participation in income generation activities lends them a better status within the family and provides them with considerable freedom.<sup>151</sup> In fact, of the total four million workers in the garment industry of Bangladesh, approximately 3.5 million are women.<sup>152</sup> The increase in female employment has changed the lives of millions of women and their children. In addition to increasing school enrolment, the child marriage rate in the country has decreased to a great extent due to girls and young women's engagement in the RMG industry, as they have their own source of income and are self-dependent.<sup>153</sup> Working women are less likely to get married at an early age.<sup>154</sup> A job ensures equitable access to household resources (nutrition) and larger investment on female human capital (health and education).<sup>155</sup> An independent income for women reduces dependency on male income and makes women less vulnerable to exploitation within the family.<sup>156</sup> Independent earnings also allow these women to have a greater share in household decision making.<sup>157</sup> Women in Bangladesh are, on average, better savers than men and save about 17.6% of their otherwise small incomes.<sup>158</sup> Employment opportunities, especially for women, create a positive impact on family planning and population control in the country.<sup>159</sup>

<sup>146</sup> World Bank, 'Bangladesh Overview' <<http://www.worldbank.org/en/country/bangladesh/overview>>

<sup>147</sup> Simon Tisdall and Anna Ridout, 'Sheik Hasina: 'I want to make Bangladesh poverty-free'', *The Guardian* (London, 25 September 2015) <<https://www.theguardian.com/global-development/2015/sep/25/sheikh-hasina-i-want-to-make-bangladesh-poverty-free-sustainable-development-goals>>

<sup>148</sup> World Bank, 'Bangladesh Overview' <<http://www.worldbank.org/en/country/bangladesh/overview>>

<sup>149</sup> Ibid.

<sup>150</sup> Simon Tisdall and Anna Ridout, 'Sheik Hasina: 'I want to make Bangladesh poverty-free'', *The Guardian* (25 September 2015) <<https://www.theguardian.com/global-development/2015/sep/25/sheikh-hasina-i-want-to-make-bangladesh-poverty-free-sustainable-development-goals>>

<sup>151</sup> Md. Mafizur Rahman, 'Wage Discrimination of Ready Made Garment Workers in Dhaka District', thesis submitted to the University of Dhaka 2014

<<http://repository.library.du.ac.bd/xmlui/bitstream/handle/123456789/774/Mafizur%20Rahman.pdf?sequence=1>>

<sup>152</sup> Syed Zain Al-Mahmood, 'Bangladesh's Garment Industry Still Offers Women Best Work Opportunity', *The Guardian* (London, 23 May 2013) <<https://www.theguardian.com/global-development/2013/may/23/bangladesh-garment-industry-women-opportunity>>

<sup>153</sup> World Bank, 'Getting to Equal, Promoting Gender Equality through Human Development' (2011) <[http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099080014368/Getting\\_to\\_equal.pdf](http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099080014368/Getting_to_equal.pdf)>

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> Naila Kabeer, 'Violence against Women as 'Relational' Vulnerability: Engendering the Sustainable Human Development Agenda', UNDP Human Development Report Office Occasional Paper (2014)

<[http://hdr.undp.org/sites/default/files/kabeer\\_hdr14.pdf](http://hdr.undp.org/sites/default/files/kabeer_hdr14.pdf)>

<sup>157</sup> Mustafizur Rahman, 'Trade Benefits for Least Developed Countries: The Bangladesh Case', Centre for Policy Dialogue (CPD) Dhaka (May 2011)

<<http://esango.un.org/ldcportal/documents/10179/13459/Bangladesh%2520case-study.pdf>>

<sup>158</sup> Ibid

<sup>159</sup> Abir Mahmud, 'Ready-Made Garments Factory in a Sub-Urban Settings', thesis submitted to the BRAC University 2014 <<http://dspace.bracu.ac.bd/bitstream/handle/10361/3888/Final.pdf?sequence=1>>

Despite these rapid improvements, Bangladesh remains one of the world's 48 Least Developed Countries (LDCs) with around 47 million people living in poverty.<sup>160</sup> Workers in the RMG sector are, comparative to competitor countries, the lowest paid.<sup>161</sup> Social protection is among the lowest in the world, with less than 40% of the poorest quartile of the population covered by social assistance.<sup>162</sup> Most workers are uneducated and unskilled and receive a very low salary despite high living costs.<sup>163</sup>

Bangladesh aspires to be a middle income country (MIC) by 2021 but this will require an annual growth rate of 7.5-8%.<sup>164</sup> According to the World Bank, this can only be achieved by, inter alia, public and private investment and more inclusive growth, adapting to climate change, improving labour skills and promoting productive employment opportunities for the growing number of job-seekers.<sup>165</sup> It will also require more intensive action to address corruption. Whilst exports of RMGs will continue to be the powerhouse of the economy, Action Aid has urged more diversification beyond its dependency on garments, into 'high value-added, technology intensive manufacturing industries like electronics and engineering'.<sup>166</sup>

### 3. Domestic Strategic Framework and Development Priorities

Bangladesh's domestic strategic framework and development priorities consists of, on a domestic level, the 7th Five Year Plan 2016-2020<sup>167</sup> and the Perspective Plan 2010-2021 ('Vision 2021'),<sup>168</sup> and, on an international level, fulfilling the Sustainable Development Goals 2030 (SDGs).<sup>169</sup> Follow up to these plans and goals highlights achievements in development progress and challenges that need to be tackled.

<sup>160</sup> *ibid.* See the UN list of LDCs as of May 2016

<[www.un.org/en/development/desa/policy/cdp/lcd/lcd\\_list.pdf](http://www.un.org/en/development/desa/policy/cdp/lcd/lcd_list.pdf)>. Bangladesh has been on the UN list of LDCs since 1975. The UN Committee for Development Policy defines LDCs as 'low-income countries confronting severe structural impediments to sustainable development'

<[http://www.un.org/en/development/desa/policy/cdp/lcd\\_info.shtml](http://www.un.org/en/development/desa/policy/cdp/lcd_info.shtml)>

<sup>161</sup> ILO, 'Bangladesh: Seeking Better Employment Conditions for Better Socio-Economic Outcomes' (ILO 2013) 2. According to the ILO study, in 2013, the monthly minimum wage for entry-level garment workers in Bangladesh was US\$39 per month, which is about half of the applicable rate for comparable garment-exporting countries such as Cambodia (US\$80), India (US\$71), Pakistan (US\$79), Sri Lanka (US\$73), and Viet Nam (US\$78).

<sup>162</sup> *ibid.*, 4.

<sup>163</sup> Mohammad Yunus and Tatsufumi Yamagata, 'The Garment Industry in Bangladesh, Dynamics of the Garment Industry in Low-Income Countries: Experience of Asia and Africa (Interim Report)' (IDE-JETRO 2012) <[http://www.ide.go.jp/English/Publish/Download/Report/2011/pdf/410\\_ch6.pdf](http://www.ide.go.jp/English/Publish/Download/Report/2011/pdf/410_ch6.pdf)>

<sup>164</sup> Government of Bangladesh, General Economics Division, 'Perspective Plan of Bangladesh 2010-2021: Making Vision 2021 A Reality' (Planning Commission, Government of the People's Republic of Bangladesh, April 2012)

<[http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a\\_9857\\_4656\\_bce6\\_139584b7f160/Perspective-Plan-of-Bangladesh.pdf](http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a_9857_4656_bce6_139584b7f160/Perspective-Plan-of-Bangladesh.pdf)>

<sup>165</sup> World Bank, 'Bangladesh Overview' <<http://www.worldbank.org/en/country/bangladesh/overview>>

<sup>166</sup> ActionAid, 'Diversify and Conquer: transforming Bangladesh into an industrialised country' (December 2015) summary.

<sup>167</sup> Government of Bangladesh, Planning Commission, 'Seventh Five Year Plan FY2016-FY2020 – Final Draft' (11 November 2015) <[http://www.plancomm.gov.bd/wp-content/uploads/2015/11/7FYP\\_after-NEC\\_11\\_11\\_2015.pdf](http://www.plancomm.gov.bd/wp-content/uploads/2015/11/7FYP_after-NEC_11_11_2015.pdf)>

<sup>168</sup> Government of Bangladesh, General Economics Division, 'Perspective Plan of Bangladesh 2010-2021: Making Vision 2021 A Reality' (April 2012) 2

<[http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a\\_9857\\_4656\\_bce6\\_139584b7f160/Perspective-Plan-of-Bangladesh.pdf](http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a_9857_4656_bce6_139584b7f160/Perspective-Plan-of-Bangladesh.pdf)>

<sup>169</sup> UN, 'Sustainable Development Goals' <<http://www.un.org/sustainabledevelopment/sustainable-development-goals/>>

On an international level, the Sustainable Development Goals (SDGs) 2030 are the overarching point of reference for Bangladesh's development progress. The SDGs consist of 17 goals that have the aim of ending poverty, protecting the planet and ensuring prosperity as part of a new sustainable development agenda in the period to 2030. These goals include: no poverty, quality education, gender equality, decent work and economic growth, and reduced inequalities.<sup>170</sup> The SDGs follow on from the Millennium Development Goals (MDGs) 2015 that had set goals with regard to the right to development, peace and security, gender equality, the eradication of many dimensions of poverty and to sustainable human development.<sup>171</sup> As noted in the Introduction, II.A above, Bangladesh has made significant progress towards attaining the MDGs,<sup>172</sup> but it still has around 26 million people (17.6% of the population) living in extreme poverty.

On a domestic level, the Perspective Plan (PP) setting out Bangladesh's 'Vision 2021' has the aspirational goal of turning Bangladesh into a Middle Income Country (MIC)<sup>173</sup> by 2021 to mark the 50<sup>th</sup> anniversary of independence.<sup>174</sup> This would have to be sustained by accelerating annual GDP growth to as high as 10% by 2021.<sup>175</sup> According to Elisa Muzzini and Gabriela Aparicio, to achieve MIC status, Bangladesh will need to 'undergo a structural transformation that will change the geography of economic production and urbanization'.<sup>176</sup> Bangladesh has rapidly urbanised to support the growth of the RMG sector but to reach MIC status it needs cities that are 'more capable of innovating, better connected internally and with the global economy, and more liveable'.<sup>177</sup>

The development priorities of the PP run parallel to those of the MDGs and now SDGs, although are perhaps more ambitious. They include: ensuring broad-based growth and food security, addressing globalisation and regional cooperation, providing energy security, establishing a knowledge-based society, building a sound infrastructure, ensuring effective governance and promoting innovation under a 'digital Bangladesh'.<sup>178</sup>

Bangladesh's 7th Five Year Plan (FYP) 2016-2020 forms a concentrated part of the PP, and also runs with the SDGs in mind. The FYPs have been pivotal in fostering development within Bangladesh. The

<sup>170</sup> *ibid.*

<sup>171</sup> Government of Bangladesh, General Economics Division, 'Bangladesh: Progress Report 2015' (September 2015) 15 <<http://www.bd.undp.org/content/bangladesh/en/home/library/mdg/mdg-progress-report-2015.html>>

<sup>172</sup> *ibid.* 9.

<sup>173</sup> MICs are defined by the World Bank as having a per capita gross national income of US\$1,026 to \$12,475 (2011). These countries are 'a diverse group by size, population, and income level. Middle income countries are home to five of the world's seven billion people and 73 percent of the world's poor people. At the same time, middle income countries represent about one third of global GDP and are major engines of global growth'. See World Bank, 'Middle Income Countries Overview' <<http://www.worldbank.org/en/country/mic/overview>>

<sup>174</sup> Government of Bangladesh, General Economics Division, 'Perspective Plan of Bangladesh 2010-2021: Making Vision 2021 A Reality' (April 2012) 2 <[http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a\\_9857\\_4656\\_bce6\\_139584b7f160/Perspective-Plan-of-Bangladesh.pdf](http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a_9857_4656_bce6_139584b7f160/Perspective-Plan-of-Bangladesh.pdf)>

<sup>175</sup> *ibid.*

<sup>176</sup> Elisa Muzzini and Gabriela Aparicio, *Bangladesh: The Path to Middle-Income Status from an Urban Perspective* (World Bank 2013) 13.

<sup>177</sup> *ibid.* xiii.

<sup>178</sup> Government of Bangladesh, General Economics Division, 'Perspective Plan of Bangladesh 2010-2021: Making Vision 2021 A Reality' (April 2012) 11-12 <[http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a\\_9857\\_4656\\_bce6\\_139584b7f160/Perspective-Plan-of-Bangladesh.pdf](http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a_9857_4656_bce6_139584b7f160/Perspective-Plan-of-Bangladesh.pdf)>

FYP aims to empower people by creating employment and skills' development opportunities, supplying credit for SME development and further ways for people to be more productive.<sup>179</sup> Broad development goals underlying the FYP include: building a secular tolerant liberal progressive democratic state, promoting sustainable human development, promoting a favourable industrialisation and trade policy regime, and building a digital Bangladesh.<sup>180</sup> Whilst the FYP is evidently beneficial in setting down more specific goals, it has been deemed difficult to determine its success owing to the lack of updated databases or recent surveys.<sup>181</sup>

Certain areas can be identified as key development challenges that have a particular impact on labour rights in the RMG industry. The following will be considered in turn:

- the need for export product diversification
- high quality education to foster a skilled labour force, and
- gender equality and the empowerment of women

#### *a) Product Diversification*

International experience shows that countries do not reach MIC status without diversification in exports and an increase in sophistication of exports.<sup>182</sup> In order to transition to an MIC, Bangladesh must gain a competitive edge in higher value-added products and services, and a key to gaining this edge is its city infrastructure centres such as Dhaka.<sup>183</sup> The domestic strategic framework for development places product diversification high in its agenda. The FYP highlights the increasing reliance of the RMG sector and the fact that product diversification remains a concern, particularly given that the share of RMG exports has increased from 78% of exports in 2010 to 80% in 2015.<sup>184</sup> The PP aims to change the composition of output with the shares of agriculture, industry and services being 15%, 36% and 47% respectively by 2021.<sup>185</sup> Such diversification would require annual GDP growth to rise to 8% to fully absorb the available labour surplus, and more labour-intensive sectors including garments will also have to grow.<sup>186</sup>

<sup>179</sup> UNDP, 'Government Approved the 7<sup>th</sup> Five Year Plan Aiming at Empowering People' <<http://www.bd.undp.org/content/bangladesh/en/home/presscenter/pressreleases/2015/10/19/the-7th-five-year-plan-like-to-be-approved-by-nec-in-october.html>>

<sup>180</sup> Government of Bangladesh, General Economics Division, 'Seventh Five Year Plan FY2016-2020: Accelerating Growth, Empowering Citizens' (December 2015) 23 <[http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th\\_FYP\\_18\\_02\\_2016.pdf](http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th_FYP_18_02_2016.pdf)>

<sup>181</sup> *ibid.* 4-5.

<sup>182</sup> Elisa Muzzini and Gabriela Aparicio, *Bangladesh: The Path to Middle-Income Status from an Urban Perspective* (World Bank 2013) 15.

<sup>183</sup> *ibid.* 54.

<sup>184</sup> Government of Bangladesh, General Economics Division, 'Seventh Five Year Plan FY2016-2020: Accelerating Growth, Empowering Citizens' (December 2015) 39 <[http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th\\_FYP\\_18\\_02\\_2016.pdf](http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th_FYP_18_02_2016.pdf)>

<sup>185</sup> Government of Bangladesh, General Economics Division, 'Perspective Plan of Bangladesh 2010-2021: Making Vision 2021 A Reality' (April 2012) 14

<[http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a\\_9857\\_4656\\_bce6\\_139584b7f160/Perspective-Plan-of-Bangladesh.pdf](http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a_9857_4656_bce6_139584b7f160/Perspective-Plan-of-Bangladesh.pdf)>

<sup>186</sup> ILO and Asian Development Bank, 'Bangladesh: Looking Beyond Garments: Employment Diagnostic Study' (2016) 2 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_517561.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_517561.pdf)>

There are a number of different facets of export diversification:<sup>187</sup> first, product diversification, which involves introducing a range of new products; second, geographical diversification, which consists of widening the range of destination markets for exports; third, quality diversification, meaning the upgrading of the value of existing products (moving from low end to high end) and, finally, intermediate goods diversification. The latter would involve plugging into the supply chain of export powerhouses like China, something that East Asian economies have been successful at.

Diversification through one, or all, of these routes will be challenging for a number of reasons. There is a lack of suitable trade infrastructure to support diversification. In Bangladesh the enabling environment for trade is deficient and the country is performing poorly on cost competitiveness in technology and labour productivity.<sup>188</sup> There is also a lack of trade policy and export incentives. Furthermore, the expansion of market opportunity will need to be done through a greater reliance on world trade,<sup>189</sup> whilst trade reforms are needed to eliminate the bias against non-RMG exports.<sup>190</sup> Intermediate goods diversification and geographical diversification would further require advanced knowledge of economies and trade information of other countries.<sup>191</sup>

Bangladesh has also had industrial policies that have emphasised the role of the private sector in product diversification, but they have lacked coordination with other agencies of government and largely fail in implementation. If Bangladesh were to have a realistic and acceptable industrial policy that could contribute to the domestic strategic framework on development, it would need to combine the interests of different stakeholder groups. Without an industrial policy and/or the creation of new enterprises, the prospects for forming new jobs in manufacturing, particularly in higher value-added sectors are slim.<sup>192</sup>

Several potential routes for product diversification have been identified by the domestic strategic framework. Manufacturing products such as jute goods, footwear and leather products, electrical and electronic goods have strong potential for export in driving the economy to higher growth.<sup>193</sup> Yet the contribution of these products to export earnings are significantly dwarfed by those from the RMG sector.<sup>194</sup> The area of services has also been identified as an area of potential.<sup>195</sup> Bangladesh could follow India and Pakistan which have had success in increasing services' exports within the neighbourhood.<sup>196</sup> There have been a number of positive developments identified by the FYP made

<sup>187</sup> Government of Bangladesh, General Economics Division, 'Seventh Five Year Plan FY2016-2020: Accelerating Growth, Empowering Citizens' (December 2015) 39 <[http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th\\_FYP\\_18\\_02\\_2016.pdf](http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th_FYP_18_02_2016.pdf)>

<sup>188</sup> *ibid.* 198-203.

<sup>189</sup> *ibid.* 39.

<sup>190</sup> *ibid.*

<sup>191</sup> Bangladesh Knitwear Manufacturers Exports Associations (BKMEA), 'Vision 2050: The Future of Bangladesh Knitwear Sector' <[http://www.bkmea.com/future\\_of\\_bangladesh\\_knitwear\\_sector.html](http://www.bkmea.com/future_of_bangladesh_knitwear_sector.html)>

<sup>192</sup> ILO and Asian Development Bank, 'Bangladesh: Looking Beyond Garments: Employment Diagnostic Study' (2016) 36-37 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_517561.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_517561.pdf)>

<sup>193</sup> Government of Bangladesh, General Economics Division, 'Seventh Five Year Plan FY2016-2020: Accelerating Growth, Empowering Citizens' (December 2015) 184 <[http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th\\_FYP\\_18\\_02\\_2016.pdf](http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th_FYP_18_02_2016.pdf)>

<sup>194</sup> *ibid.* 15.

<sup>195</sup> *ibid.*

<sup>196</sup> *ibid.* 212-213.

towards diversification, notwithstanding the challenges to product diversification.<sup>197</sup> Firstly, within the RMG sector, it identifies that there has been a growing diversification of products, from low end to high end. Secondly, the performance of ICT, leather, jute goods and footwear, if sustained, could also provide a basis for strengthening the export base.<sup>198</sup> The focus on diversification will intensify until Bangladesh is able to reach MIC status.

### b) Education

Alongside product diversification, improving the quality of education and increasing participation rates is a further challenge in the path towards achieving MIC status. It is also key to improving labour rights in the RMG sector, and is an important element in whether a person is able to find a decent job.<sup>199</sup> Indeed, 88% of the labour force consists of informal employment, which requires a long-term investment in education and skills training.<sup>200</sup> An educated and trained workforce, which is prepared for jobs in higher value-added sectors is vital to make the transition towards product diversification in exports and higher labour productivity.<sup>201</sup> Importantly, Bangladesh has achieved a net primary enrolment ratio of 97.7% in 2014 (girls 98.8% and boys 96.6%).<sup>202</sup>

The domestic strategic framework sets out goals to be met with regard to education. The PP includes the goal of eradicating illiteracy after 2014 and ensuring a 100% net enrolment at primary level.<sup>203</sup> Additionally, one of the goals within the FYP, is building good jobs for the under-employed and new labour force entrants through increasing the share of employment in the manufacturing sector from 15 to 20%.<sup>204</sup>

Within the PP, education is identified as not only an issue for the GoB but also for civil society, the community and other stakeholders in sharing responsibilities in ensuring quality education and different branches and stages of education and training.<sup>205</sup> As part of this, the FYP identifies that the East Asian experiences provide examples of best practice in upgrading workforce skills with training owing to unique partnerships with the public sector in the design and implementation of training programmes, including support for on-the-job training. It suggests that consultations with businesses

<sup>197</sup> *ibid.* 186.

<sup>198</sup> *ibid.*

<sup>199</sup> Pierella Paci and Marcin Sasin, *Making Work Pay in Bangladesh: Employment, Growth, and Poverty Reduction* (World Bank 2008) 16.

<sup>200</sup> Government of Bangladesh, General Economics Division, 'Seventh Five Year Plan FY2016-2020: Accelerating Growth, Empowering Citizens' (December 2015) 221 <[http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th\\_FYP\\_18\\_02\\_2016.pdf](http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th_FYP_18_02_2016.pdf)>

<sup>201</sup> ILO, *Bangladesh: Seeking Better Growth Employment Conditions for Better Socioeconomic Outcomes* (2013) 11.

<sup>202</sup> Government of Bangladesh, General Economics Division, 'Bangladesh: Progress Report 2015' (September 2015) 35 <<http://www.bd.undp.org/content/bangladesh/en/home/library/mdg/mdg-progress-report-2015.html>>

<sup>203</sup> *ibid.*

<sup>204</sup> Government of Bangladesh, General Economics Division, 'Seventh Five Year Plan FY2016-2020: Accelerating Growth, Empowering Citizens' (December 2015) 24 <[http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th\\_FYP\\_18\\_02\\_2016.pdf](http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th_FYP_18_02_2016.pdf)>

<sup>205</sup> Government of Bangladesh, General Economics Division, 'Perspective Plan of Bangladesh 2010-2021: Making Vision 2021 A Reality' (April 2012) 82 <[http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a\\_9857\\_4656\\_bce6\\_139584b7f160/Perspective-Plan-of-Bangladesh.pdf](http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a_9857_4656_bce6_139584b7f160/Perspective-Plan-of-Bangladesh.pdf)>

on a training strategy could be a useful step towards this.<sup>206</sup> This is part of the challenge to upgrade the capacity to deliver technical and vocational education and skills training.<sup>207</sup> Several recently developed countries of Asia dealt with rapid industrialisation by meeting this challenge.<sup>208</sup>

### c) Gender Equality

Gender equality and empowerment of women and girls, which is the fifth SDG, is a core challenge to advance Bangladesh's development, particularly given that Bangladeshi women are recognised as an integral part to the country's economic development.<sup>209</sup> Gender equality must also be addressed to give women alternative employment opportunities to the RMG industry. RMG jobs provide economic independence and employment outside the home but end up as a double-edged sword because, too often, the industry has created tragically unsafe, exploitative and dangerous workplaces where 'women workers face poor pay, inequality, harassment and violence'.<sup>210</sup>

The PP recognises the need for change, and stimulating women's participation in the labour force has been deemed part of the strategy for accelerating poverty reduction.<sup>211</sup> Bangladesh has made some progress in gender parity, and has been identified as a leader among developing countries in eliminating the gender gap at primary and secondary education levels.<sup>212</sup> For example, in 2011, of the 19 million enrolled in primary schools, half were girls.<sup>213</sup> Nevertheless, the tertiary level of education is an area of particular concern. The FYP highlights the need to raise the female to male ratio at this level from 70% to 100% alongside raising the ratio of literate females to males for the 20-24 age group.<sup>214</sup> The MDG progress report noted this need, and underlined that issues related to gender parity at tertiary level were explained by factors such as violence towards women and restricted mobility that needed to be dealt with.<sup>215</sup> Even if women do undergo tertiary education,

<sup>206</sup> Government of Bangladesh, General Economics Division, 'Seventh Five Year Plan FY2016-2020: Accelerating Growth, Empowering Citizens' (December 2015) 19 <[http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th\\_FYP\\_18\\_02\\_2016.pdf](http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th_FYP_18_02_2016.pdf)>

<sup>207</sup> *ibid.* 41-42.

<sup>208</sup> ILO and Asian Development Bank, 'Bangladesh: Looking Beyond Garments: Employment Diagnostic Study' (2016) 4 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_517561.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_517561.pdf)>

<sup>209</sup> ILO, *Bangladesh: Seeking Better Growth Employment Conditions for Better Socioeconomic Outcomes* (2013) 3.

<sup>210</sup> UN Women, 'Progress of the World's Women 2015-2016: Transforming Economies, Realizing Rights' (2015) 59 <[http://progress.unwomen.org/en/2015/pdf/UNW\\_progressreport.pdf](http://progress.unwomen.org/en/2015/pdf/UNW_progressreport.pdf)>

<sup>211</sup> Government of Bangladesh, General Economics Division, 'Perspective Plan of Bangladesh 2010-2021: Making Vision 2021 A Reality' (April 2012) 89 <[http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a\\_9857\\_4656\\_bce6\\_139584b7f160/Perspective-Plan-of-Bangladesh.pdf](http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a_9857_4656_bce6_139584b7f160/Perspective-Plan-of-Bangladesh.pdf)>

<sup>212</sup> Government of Bangladesh, General Economics Division, 'Seventh Five Year Plan FY2016-2020: Accelerating Growth, Empowering Citizens' (December 2015) 18 <[http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th\\_FYP\\_18\\_02\\_2016.pdf](http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th_FYP_18_02_2016.pdf)>

<sup>213</sup> Government of Bangladesh, General Economics Division, 'Bangladesh: Progress Report 2015' (September 2015) 44 <<http://www.bd.undp.org/content/bangladesh/en/home/library/mdg/mdg-progress-report-2015.html>>

<sup>214</sup> Government of Bangladesh, General Economics Division, 'Seventh Five Year Plan FY2016-2020: Accelerating Growth, Empowering Citizens' (December 2015) 25 <[http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th\\_FYP\\_18\\_02\\_2016.pdf](http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th_FYP_18_02_2016.pdf)>

<sup>215</sup> Government of Bangladesh, General Economics Division, 'Bangladesh: Progress Report 2015' (September 2015) 46 <<http://www.bd.undp.org/content/bangladesh/en/home/library/mdg/mdg-progress-report-2015.html>>



highly educated women face 'frighteningly high unemployment rates'.<sup>216</sup> Technical and vocational education for women is a matter that similarly needs addressing.

## C. The RMG Sector in Bangladesh

### 1. The Rapid Growth of the RMG sector in Bangladesh

In the distant past, prior to British colonial rule in the eighteenth century, the textile industry of Bangladesh achieved worldwide fame because of the quality of the material and the weaving.<sup>217</sup> Muslin and Jamdani cloth of Bangladesh was used for the luxurious garments of the royal figures in Europe and beyond.<sup>218</sup> Following British occupation, the textile industry fell into decline in the 1800s as a deliberate policy of the East India Company, which imposed stringent conditions on weavers so as to eliminate competition. In turn, this provided the opportunity for the textile manufacturers of England, concentrated in Lancashire, to gain a decisive advantage in exporting their goods to India.<sup>219</sup> Today, as textile manufacturing has declined in Europe, a quite different garment industry has developed in Bangladesh based on ready-made rather than bespoke garments produced as cheaply and speedily as possible for the mass market of Western consumers.

Bangladesh has witnessed a rapid transformation in its economy in recent years. In the early 1970s, it was largely an agricultural economy and had little to offer in terms of global trade. Newly born Bangladesh hardly had any export-oriented industries to accelerate the wheel of its economy and generate employment for a huge population with a low rate of literacy and skills.<sup>220</sup> The phenomenal growth of the RMG sector provided an economic lifeline for the country. Both internal and external factors contributed to this growth. Following independence, the GATT-approved Multifibre Arrangement (MFA),<sup>221</sup> which imposed export quotas on certain countries, gave Bangladesh the leverage it required for this new export-oriented industry to develop. While nations such as Korea, Hong Kong, China and India faced export limits from the U.S. and Canada, importers began to look to Bangladesh as a replacement source. Additionally, Bangladeshi garment firms were able to act as subcontractors for textile entrepreneurs from countries whose own exports were restricted.<sup>222</sup> After

<sup>216</sup> ILO and Asian Development Bank, 'Bangladesh: Looking Beyond Garments: Employment Diagnostic Study' (2016) 4 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_517561.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_517561.pdf)>

<sup>217</sup> Muhammad Nasir Uddin, 'Garment Industry: Challenges and Opportunities' (MSS Thesis, Institute of Social Welfare and Research, University of Dhaka 2013) <<http://repository.library.du.ac.bd/xmlui/bitstream/handle/123456789/417/Nasir%20Uddin.pdf?sequence=1>>

<sup>218</sup> *ibid.*

<sup>219</sup> Jeremy Seabrook, *The Song of the Shirt* (Hurst 2015) 54.

<sup>220</sup> Mohammad Yunus and Tatsufumi Yamagata, 'The Garment Industry in Bangladesh, Dynamics of the Garment Industry in Low-Income Countries: Experience of Asia and Africa (Interim Report)' (IDE-JETRO, 2012) <[http://www.ide.go.jp/English/Publish/Download/Report/2011/pdf/410\\_ch6.pdf](http://www.ide.go.jp/English/Publish/Download/Report/2011/pdf/410_ch6.pdf)>

<sup>221</sup> The MFA, 1974, was an international trade agreement under which two countries could negotiate quota restrictions on textile and apparel imports from each other. MFA restrictions were normally prohibited under WTO rules and had to be phased out by 2005. See WTO, 'Textiles: Back in the Mainstream' <[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm5\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm5_e.htm)>

<sup>222</sup> ActionAid, 'Diversify and Conquer: Transforming Bangladesh into an Industrialised Country' (December 2015) 3 <<https://www.actionaid.org.uk/sites/default/files/publications/diversify-and-conquer-transforming-bangladesh-into-an-industrialised-country.pdf>>



the GSP trade facility was adopted in 1971, Bangladesh received preferential treatment from the U.S and the EU accelerating international relocation of garment production.<sup>223</sup>

Growth of the garment sector was further supported by the Bangladesh government in the early 1980s, when the military ruler, General Ershad, allowed 'businesses and banks to use back-to-back letters of credit', thus relieving garment manufacturers from 'having to come up with the huge capital needed to buy fabric'.<sup>224</sup> Furthermore, the government approved bonding facilities/bonded warehouses. This meant that garment manufacturers could import materials duty free if they were to be used for garments made for export. This governmental support, along with entrepreneurial risk-taking, low wages and the advantages of the MFA and GSPs, helped to propel the growth of the sector.

While it was thought that the expiration of the MFA in 2005 might lead to the end of Bangladesh's unprecedented garment industry success, the opposite in fact occurred. Domestic politics in the U.S. and Europe led to the imposition of quotas on China by the George W. Bush Administration.<sup>225</sup> The RMG industry has since grown exponentially, contributing significantly to the extensive liberalisation of Bangladesh's economy. In 1983-84, Bangladesh exported garments worth just over US\$31.5 million (4% of total exports), and employed 120,000 workers in 384 factories. By 2013-2014, it exported garments worth more than US\$24 billion (82% of total exports), and employed some 4 million workers in 5,400 factories.<sup>226</sup> The RMG sector contributes 10% to the country's GDP.<sup>227</sup>

Growth in Bangladesh's garment industry shows no sign of slowing down. It is predicted that sourcing from China will decrease while Bangladesh sourcing will correspondingly increase as a result of the rise in wages in China's labour force.<sup>228</sup> However, as markets open up in the Middle East, Latin America and Africa for RMGs, it seems likely that Bangladesh will face increasing competitive pressure from other developing countries.<sup>229</sup> Currently, Bangladesh has one of Asia's youngest and cheapest labour forces, paying the second lowest minimum wage among the top ten apparel-

<sup>223</sup> Mustafizur Rahman, 'Trade Benefits for Least Developed Countries: The Bangladesh Case Market Access Initiatives, Limitations and Policy Recommendations' (Centre for Policy Dialogue, Dhaka, May 2011) <<http://esango.un.org/ldcportal/documents/10179/13459/Bangladesh%2520case-study.pdf>>; See Md Rashedul Islam and Kamruddin Nur Maruf, 'Impact of EU GSP Facilities on Export Growth of Bangladesh: Especially on Readymade Garments Industry' (2014) 3(9) *International Journal of Scientific and Technology Research* 100.

<sup>224</sup> Sarah Labowitz, Dorothée Baumann-Pauly, 'Business as Usual is Not an Option: Supply Chains and Sourcing after Rana Plaza' (NYU Stern Center for Business and Human Rights, New York, April 2014) 14 <<http://www.stern.nyu.edu/experience-stern/about/departments-centers-initiatives/centers-of-research/business-human-rights/activities/supply-chains-sourcing-after-rana-plaza>>

<sup>225</sup> Mohammad Abdul Munim Joarder, A.K.M. Nurul Hossain and Md. Mahbulul Hakim, 'Post-MFA Performance of Bangladesh Apparel Sector' (2010) 6(4) *International Review of Business Research Papers* 134-144, 139.

<sup>226</sup> BGMEA, 'Trade Information' <<http://www.bgmea.com.bd/home/pages/TradeInformation>>

<sup>227</sup> BGMEA, 'Made in Bangladesh with pride' <[www.bgmea.com.bd/blog/story/877](http://www.bgmea.com.bd/blog/story/877)>

<sup>228</sup> Björn Claeson, *Deadly Secrets: What companies know about dangerous workplaces and why exposing the truth can save workers' lives in Bangladesh and Beyond* (International Labor Rights Forum, 2012) 13.

<sup>229</sup> Khadija Farhana, 'Ready-Made Garments in Bangladesh: No Longer a Forgotten Sector' (OECD Observer 2014) <[http://oecdobserver.org/news/fullstory.php/aid/4368/Ready-made\\_garments\\_in\\_Bangladesh:\\_No\\_longer\\_a\\_forgotten\\_sector.html](http://oecdobserver.org/news/fullstory.php/aid/4368/Ready-made_garments_in_Bangladesh:_No_longer_a_forgotten_sector.html)>

exporting countries at US\$68 per month.<sup>230</sup> Bangladesh had the world's lowest minimum wage in the early 2000s but it has increased by 219% during the past five years.<sup>231</sup> Nevertheless, relatively low wages make Bangladesh 'ideally positioned to benefit from rising costs in China'.<sup>232</sup> Labour in Bangladesh remains cheap because of its high density population and widespread poverty, attracting women from rural villages mainly into the city of Dhaka to earn a living.<sup>233</sup> Dhaka has 75% of the country's garment factories.<sup>234</sup> The remainder are in Chittagong and Khulna.<sup>235</sup> If Bangladesh becomes the world's largest exporter of garments, the prospect of it becoming a MIC within the next decade or two, will be more attainable than ever.

## 2. Global Value Chain Issues

The RMG sector in Bangladesh is governed by an intricate Global Value Chain (GVC) or supply chain. GVC analysis is concerned with the organisation of global production and distribution systems.<sup>236</sup> A GVC represents the whole process that results in a product being delivered to a consumer from input to output.<sup>237</sup> The RMG sector is considered one of the oldest and largest export industries in the world, and one of the most global, as the majority of countries, if not all, are involved in the GVC.<sup>238</sup> In order to fully understand the rapid growth of the RMG sector in Bangladesh and the challenges therein regarding labour rights and factory safety, it is necessary to consider the way in which the garment sector in Bangladesh operates within the overarching global structure.<sup>239</sup> From this perspective, the RMG industry in Bangladesh is a piece of a complex global jigsaw.

Globalisation founded the GVC. With improved transport, communication and labour linkages between countries, outsourcing of manufacturing has been an inevitable part of globalisation particularly owing to the spaghetti bowl of trade deals that can be seen worldwide and the promotion of free trade by the World Trade Organisation (WTO).<sup>240</sup> GVCs link firms, workers and

<sup>230</sup> The lowest minimum wage is in Sri Lanka at US\$66 per month. See ILO Regional Office for Asia and the Pacific, 'Global Wage Report 2014/15: Asia and the Pacific Supplement' (December 2014) 3 <[www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\\_325219.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_325219.pdf)>

<sup>231</sup> BGMEA, 'Made in Bangladesh with pride' <[www.bgmea.com.bd/blog/story/877](http://www.bgmea.com.bd/blog/story/877)>

<sup>232</sup> Björn Claeson, *Deadly Secrets: What companies know about dangerous workplaces and why exposing the truth can save workers' lives in Bangladesh and Beyond* (International Labor Rights Forum, 2012) 13.

<sup>233</sup> Sarah Labowitz and Dorothee Baumann-Pauly, 'Business as Usual is Not an Option: Supply Chains and Sourcing after Rana Plaza' (NYU Stern Center for Business and Human Rights, New York, April 2014) 13 <<http://www.stern.nyu.edu/experience-stern/about/departments-centers-initiatives/centers-of-research/business-human-rights/activities/supply-chains-sourcing-after-rana-plaza>>

<sup>234</sup> Muhammad Nasir Uddin, 'Garment Industry: Challenges and Opportunities' (MSS Thesis, Institute of Social Welfare and Research, University of Dhaka 2013) <<http://repository.library.du.ac.bd/xmlui/bitstream/handle/123456789/417/Nasir%20Uddin.pdf?sequence=1>>

<sup>235</sup> *ibid.*

<sup>236</sup> John Humphrey and Hubert Schmitz, 'How does Insertion in Global Value Chains Affect Upgrading in Industrial Clusters?' (2002) 36(9) *Regional Studies* 1017, 1021.

<sup>237</sup> Gary Gereffi and Karina Fernandez-Stark, 'Global Value Chain Analysis: A Primer' (Center on Globalization Governance and Competitiveness, 31 May 2011) 5 <[http://www.cggc.duke.edu/pdfs/2011-05-31\\_GVC\\_analysis\\_a\\_primer.pdf](http://www.cggc.duke.edu/pdfs/2011-05-31_GVC_analysis_a_primer.pdf)>

<sup>238</sup> Gary Gereffi and Stacey Frederick, 'The Global Apparel Value Chain, Trade and the Crisis: Challenges and Opportunities for Developing Countries' (The World Bank Development Research Group Policy Research Working Paper 5281, 2010) 2 <<http://elibrary.worldbank.org/doi/abs/10.1596/1813-9450-5281>>

<sup>239</sup> See Peter Lund-Thomsen, Adam Lindgreen, 'Corporate Social Responsibility in Global Value Chains: Where are we now and where are we going?' (2014) 123(1) *Journal of Business Ethics* 11.

<sup>240</sup> Richard E. Baldwin, 'Multilateralising Regionalism: Spaghetti Bowls as Building Blocs on the Path to Global Free Trade' (2006) 29(11) *The World Economy* 1451.

consumers across nations, and are also viewed as a 'stepping stone' for firms and workers in developing countries to integrate into the global economy.<sup>241</sup> Firms are in competition with those across the world.<sup>242</sup> This makes it particularly difficult for developing countries focused on one export industry, such as Bangladesh, to continue maintaining a high degree of competitiveness.

Owing to the global nature of the RMG supply chain, supply chain management systems aim at cutting time and cost within the chain.<sup>243</sup> Lead time, the time between when a process starts and its completion, is a significant factor of concern for supply chain management. In Bangladesh, on average, this takes around 90-120 days and companies are constantly looking for ways to minimise this lead time.<sup>244</sup> The problem is that the supply chain is 'driven by the pursuit of the lowest nominal costs' of production and the lowest lead time which undermines 'wages and working conditions, investment in technology and training, and improvements in productivity and quality'.<sup>245</sup> This pursuit of low costs and the consequent need for high productivity has led to a number of Export Processing Zones (EPZs) being established in Bangladesh. These are free trade zones established to promote exports.<sup>246</sup> EPZs are higher productivity and higher cost garment production centres.<sup>247</sup> The zones attract foreign direct investment and create demand for cheap labour.<sup>248</sup> As such, they are recognised as key to export-led growth strategies.<sup>249</sup>

The RMG GVC is organised around five main segments: (1) raw material supply, including natural and synthetic fibres; (2) provision of components (yarns and fabrics); (3) production networks made up of garment factories; (4) export channels established by trade intermediaries and (5) marketing networks at the retail level.<sup>250</sup> The skills required at the first few segments of the GVC may be high owing to the time limits and high quality expectations on textile workers, but educational requirements are low.<sup>251</sup> The majority of workers within this production-related part of the GVC are traditionally young female workers with limited or no education.<sup>252</sup> Each stage of the supply chain is

<sup>241</sup> Gary Gereffi and Karina Fernandez-Stark, 'Global Value Chain Analysis: A Primer' (Center on Globalization Governance and Competitiveness, 31 May 2011) 2 <[http://www.cggc.duke.edu/pdfs/2011-05-31\\_GVC\\_analysis\\_a\\_primer.pdf](http://www.cggc.duke.edu/pdfs/2011-05-31_GVC_analysis_a_primer.pdf)>

<sup>242</sup> John Humphrey and Hubert Schmitz, 'How does Insertion in Global Value Chains Affect Upgrading in Industrial Clusters?' (2002) 36(9) *Regional Studies* 1017, 1017.

<sup>243</sup> Avizit Basak, M M Israfil Shahin Seddiqe, Md Rifaul Islam and Md Omar Faruk Akanda, 'Supply Chain Management in Garments Industry' (2014) 14(11) *Global Journal of Management and Business Research: A Administration and Management*, Research Paper <[https://globaljournals.org/GJMBR\\_Volume14/4-Supply-Chain-Management-in-Garments.pdf](https://globaljournals.org/GJMBR_Volume14/4-Supply-Chain-Management-in-Garments.pdf)>

<sup>244</sup> Nuruzzaman and Ahasanul Haque, 'Lead Time Management in the Garment Sector of Bangladesh: An Avenues for Survival and Growth', (2009) 33(4) *European Journal of Scientific Research* 617.

<sup>245</sup> Sarah Labowitz and Dorothee Baumann-Pauly, 'Business as Usual is Not an Option: Supply Chains and Sourcing after Rana Plaza' (NYU Stern Center for Business and Human Rights, New York, April 2014) 17 <<http://www.stern.nyu.edu/experience-stern/about/departments-centers-initiatives/centers-of-research/business-human-rights/activities/supply-chains-sourcing-after-rana-plaza>>

<sup>246</sup> Elisa Muzzini and Gabriela Aparicio, *Bangladesh: The Path to Middle-Income Status from an Urban Perspective* (World Bank 2013) 108.

<sup>247</sup> *ibid.*

<sup>248</sup> ActionAid, 'Close the Gap! The Cost of Inequality in Women's Work' (January 2015) 11 <[https://www.actionaid.org.uk/sites/default/files/publications/womens\\_rights\\_on-line\\_version\\_2.1.pdf](https://www.actionaid.org.uk/sites/default/files/publications/womens_rights_on-line_version_2.1.pdf)>

<sup>249</sup> Asif Dowla, 'Export Processing Zones in Bangladesh: The Economic Impact' (1997) 37(6) *Asian Survey* 561.

<sup>250</sup> Karina Fernandez-Stark, Stacey Frederick and Gary Gereffi, 'The Apparel Global Value Chain: Economic Upgrading and Workforce Development' (Duke Center on Globalization, Governance and Competitiveness November 2011) 11 <[http://www.cggc.duke.edu/pdfs/2011-11-11\\_CGGC\\_Apparel-Global-Value-Chain.pdf](http://www.cggc.duke.edu/pdfs/2011-11-11_CGGC_Apparel-Global-Value-Chain.pdf)>

<sup>251</sup> *ibid.* 19.

<sup>252</sup> *ibid.* 2.

connected through the flow of products, information and funds. In the RMG sector, manufacturers, suppliers, transporters, warehouses, retailers and customers are all essential links in the chain.<sup>253</sup> There is a diversity of manufacturers, including factories of large, multinational brand name retailers, some smaller factories and even workers operating from home.<sup>254</sup> The value-adding activities within the GVC are separated as: research and new product development; design; production; logistics (purchasing and distribution); marketing and branding; and services.<sup>255</sup> A consequence of globalisation is that developing countries, with their low cost labour and lack of resources, have entered the lowest segments of the value chain.<sup>256</sup> This is due to, inter alia, low entry barriers and low skilled workers.<sup>257</sup>

The RMG GVC is buyer-driven. This means that global buyers, based in leading markets such as the EU, are able to determine what is to be produced, where, by whom and at what price.<sup>258</sup> They outsource manufacturing to a global network of contract manufacturers in developing countries.<sup>259</sup> Unlike producer-driven chains in which profits are sourced from scale, volume and technological advances, in the buyer-driven GVC, profits come from combinations of high-value research, design, sales, marketing and financial services that facilitate the acting of retailers, designers and marketers as strategic brokers in linking overseas factories and traders with product niches in their main consumer markets.<sup>260</sup> The large retailers, marketers and branded manufacturers are able to play the pivotal roles in setting up decentralised production networks.<sup>261</sup>

Bangladesh benefited enormously from preferential trade agreements with the EU and the U.S. as it became an attractive location for outsourcing.<sup>262</sup> It also benefited from foreign investment. Lead buyers within Bangladesh include U.S., European and Japanese firms like Gap and H&M.<sup>263</sup> From the early 1990s, it has been increasing its overall RMG market share, and is identified as a 'steady growth

<sup>253</sup> Sunil Chopra and Peter Meindl, *Supply Chain Management: Strategy, Planning, and Operation*, (3<sup>rd</sup> edn, Prentice Hall 2006) 3.

<sup>254</sup> Jennifer Hurley, 'Unravelling the Web: Supply Chains and Workers' Lives in the Garment Industry' in Angela Hale and Jane Wills (eds), *Threads of Labour: Garment Industry Supply Chains from the Workers' Perspective* (Blackwell Publishing 2005) 102.

<sup>255</sup> Karina Fernandez-Stark, Stacey Frederick and Gary Gereffi, 'The Apparel Global Value Chain: Economic Upgrading and Workforce Development' (Duke Center on Globalization, Governance and Competitiveness November 2011) 12 <[http://www.cggc.duke.edu/pdfs/2011-11-11\\_CGGC\\_Apparel-Global-Value-Chain.pdf](http://www.cggc.duke.edu/pdfs/2011-11-11_CGGC_Apparel-Global-Value-Chain.pdf)>

<sup>256</sup> *ibid* 2.

<sup>257</sup> Gary Gereffi and Olga Memedovic, 'The Global Apparel Value Chain: What Prospects for Upgrading by Developing Countries?' (UN Industrial Development Organization, Vienna, 2003) 6 <<http://www.yieldopedia.com/paneladmin/reports/f450cbbe9bd588ee98dcc2ac7c47946c.pdf>>

<sup>258</sup> Karina Fernandez-Stark, Stacey Frederick and Gary Gereffi, 'The Apparel Global Value Chain: Economic Upgrading and Workforce Development' (Duke Center on Globalization, Governance and Competitiveness November 2011) 7 <[http://www.cggc.duke.edu/pdfs/2011-11-11\\_CGGC\\_Apparel-Global-Value-Chain.pdf](http://www.cggc.duke.edu/pdfs/2011-11-11_CGGC_Apparel-Global-Value-Chain.pdf)>

<sup>259</sup> *Ibid* 7.

<sup>260</sup> Gary Gereffi and Olga Memedovic, 'The Global Apparel Value Chain: What Prospects for Upgrading by Developing Countries?' (UN Industrial Development Organization, Vienna, 2003) <<http://www.yieldopedia.com/paneladmin/reports/f450cbbe9bd588ee98dcc2ac7c47946c.pdf>>

<sup>261</sup> *ibid* 5.

<sup>262</sup> Karina Fernandez-Stark, Stacey Frederick and Gary Gereffi, 'The Apparel Global Value Chain: Economic Upgrading and Workforce Development' (Duke Center on Globalization, Governance and Competitiveness November 2011) 2 <[http://www.cggc.duke.edu/pdfs/2011-11-11\\_CGGC\\_Apparel-Global-Value-Chain.pdf](http://www.cggc.duke.edu/pdfs/2011-11-11_CGGC_Apparel-Global-Value-Chain.pdf)>

<sup>263</sup> *ibid* 33.

supplier'.<sup>264</sup> There are three different types of garment manufacturing in Bangladesh: integrated manufacturing, where factories import the cotton and do the rest of the production on their own, including the spinning, weaving, cutting and sewing; factories that import the yarn and complete the rest of the manufacture; and those that import the fabric and sew the garment.<sup>265</sup> Evidently, none of these can be identified as activities that feature high on the GVC despite the fact that Bangladesh has moved to full garment production.<sup>266</sup>

One of the major issues with GVCs is concerned with what has been termed 'sustainable supply chain management'.<sup>267</sup> This can also be considered imperative to the success and continued growth of the RMG sector in an increasingly competitive environment. The goal of sustainable supply chain management is to ensure respectable manufacturing conditions throughout the GVC.<sup>268</sup> It is directly linked to industrial disasters, such as Rana Plaza, as these indicate a failure, or lack, of sustainable supply chain management (an important part of responsible business conduct). Three tools have been identified to facilitate the governance of sustainable supply chain management: networking activities, for example through collaborating with other organisations and joining international or national campaigns (such as those of the ILO); corporate social responsibility (CSR) projects; and convincing stakeholders in developed countries that activities will be beneficial for the locals.<sup>269</sup>

The problem is that as the GVC grows in complexity, it is difficult for the global buyers, who are often perceived as responsible for industrial accidents in developing countries, to manage and monitor standards across their value chain.<sup>270</sup> The lower down the value chain, the worse the conditions for workers ordinarily become. This means that often basic worker rights, such as access to clean drinking water and toilets, safety equipment and the legal minimum wage are withheld.<sup>271</sup> Also many other rights, such as freedom of association and collective bargaining rights, are violated.<sup>272</sup> Indeed, the sheer diversity of components to GVCs means that it is easy to see how workers can be exploited. Outsourcing, therefore, becomes a CSR risk as many global buyers will lose consumer support if they do not affirm the pursuit of certain labour standards. There is also difficulty holding foreign companies operating in developing countries to account for laxity of GVC standards.<sup>273</sup>

<sup>264</sup> Gary Gereffi and Stacey Frederick, 'The Global Apparel Value Chain, Trade and the Crisis: Challenges and Opportunities for Developing Countries' (2010) The World Bank Development Research Group Policy Research Working Paper 5281, 9 <<http://elibrary.worldbank.org/doi/abs/10.1596/1813-9450-5281>>

<sup>265</sup> Karina Fernandez-Stark, Stacey Frederick and Gary Gereffi, 'The Apparel Global Value Chain: Economic Upgrading and Workforce Development' (Duke Center on Globalization, Governance and Competitiveness November 2011) 33 <[http://www.cggc.duke.edu/pdfs/2011-11-11\\_CGGC\\_Apparel-Global-Value-Chain.pdf](http://www.cggc.duke.edu/pdfs/2011-11-11_CGGC_Apparel-Global-Value-Chain.pdf)>

<sup>266</sup> *ibid.* 35.

<sup>267</sup> Duygu Turker and Ceren Altuntas, 'Sustainable Supply Chain Management in the Fast Fashion Industry: An Analysis of Corporate Reports' (2014) 32 *European Management Journal* 837, 845.

<sup>268</sup> *ibid.*

<sup>269</sup> *ibid.* 846.

<sup>270</sup> *ibid.* 847.

<sup>271</sup> Human Rights Watch, 'Whoever Raises their Head Suffers the Most' (2015) <<https://www.hrw.org/report/2015/04/22/whoever-raises-their-head-suffers-most/workers-rights-bangladeshs-garment>>

<sup>272</sup> See ILO, 'Report of the High-Level Tripartite Mission to Bangladesh' (Dhaka, 17-20 April 2016) <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_488339.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_488339.pdf)>

<sup>273</sup> War on Want, 'Ignoring the Law: Labour rights violations in the garment industry in Bangladesh' (July 2009) 2 <[www.waronwant.org/resources/ignoring-law](http://www.waronwant.org/resources/ignoring-law)>

Subcontracting is a further issue related to sustainable supply chain management. GVCs do not always form direct contractual relationships between buyers and sellers, and subcontracting may occur whereby an 'indirect sourcing' approach is taken through the GVC. Local manufacturers and global brands may rely on subcontracting relationships to 'increase margins and boost production capacity while keeping costs low'.<sup>274</sup> The difficulty is that subcontracting tends to be done through purchasing agents and lacks transparency. The manner in which profit is accrued is through using small subcontracted units that employ marginalised workers on an exploitative basis.<sup>275</sup> With less oversight of these subcontracted units, the chance to regulate them by both global buyers and public authorities is more difficult.

Unauthorised subcontracting is similarly problematic, consisting of manufacturers subcontracting to other factories without the knowledge or permission of the, typically Western, retailer they have contracted to work for. However, retailers usually have strict rules about such practices, often requiring manufacturers to sign disclosures to ensure that subcontracting factories can be inspected.<sup>276</sup> Often, even though the buyer may have no knowledge of the subcontract, trade associations will require that it is registered with them. The BGMEA issue an 'interbond license', whereby 'the BGMEA and the two parties to the subcontract record basic information about the terms of the arrangement in a one-page, typewritten form'.<sup>277</sup> This somewhat limits the risks of subcontracting.

One report estimates that there are 2000 unregistered factories in Bangladesh,<sup>278</sup> which is concerning as it is unlikely the owners of these comply with any form of codes of conduct or standards. For example, Wal-Mart was accused of taking part in unauthorised subcontracting and, as it faced a backlash, asserted that 'any product that may have been produced in the unregistered facility was 'improperly acquired' or in violation of the brand's 'zero-tolerance policy for unauthorized subcontracting'.<sup>279</sup> Likewise, after the Rana Plaza factory disaster, French label Camaïeu stated that orders being fulfilled for their brand were without their permission.<sup>280</sup> Similarly, Spanish retailer Zara's child company, Inditex, claimed that an order being fulfilled at the time of a fatal fire at Smart Fashions, two months after the Tazreen Fashions fire, was also without their

<sup>274</sup> Sarah Labowitz and Dorothee Baumann-Pauly, 'Business as Usual is Not an Option: Supply Chains and Sourcing after Rana Plaza' (NYU Stern Center for Business and Human Rights, New York, April 2014) 17 <<http://www.stern.nyu.edu/experience-stern/about/departments-centers-initiatives/centers-of-research/business-human-rights/activities/supply-chains-sourcing-after-rana-plaza>>

<sup>275</sup> Jennifer Hurley, 'Unravelling the Web: Supply Chains and Workers' Lives in the Garment Industry' in Angela Hale and Jane Wills (eds), *Threads of Labour: Garment Industry Supply Chains from the Workers' Perspective* (Blackwell Publishing 2005) 96.

<sup>276</sup> Tripti Lahiri and Christina Passariello, 'Why retailers don't know who sews their clothing', *The Wall Street Journal* (New York, July 24 2013) <[www.wsj.com/articles/SB10001424127887324436104578579552855683948](http://www.wsj.com/articles/SB10001424127887324436104578579552855683948)>

<sup>277</sup> Sarah Labowitz and Dorothee Baumann-Pauly, 'Business as Usual is Not an Option: Supply Chains and Sourcing after Rana Plaza' (NYU Stern Center for Business and Human Rights, New York, April 2014) 21 <<http://www.stern.nyu.edu/experience-stern/about/departments-centers-initiatives/centers-of-research/business-human-rights/activities/supply-chains-sourcing-after-rana-plaza>>

<sup>278</sup> *ibid* 22.

<sup>279</sup> *ibid* 22-23.

<sup>280</sup> Tripti Lahiri and Christina Passariello, 'Why retailers don't know who sews their clothing', *The Wall Street Journal* (New York, July 24 2013) <[www.wsj.com/articles/SB10001424127887324436104578579552855683948](http://www.wsj.com/articles/SB10001424127887324436104578579552855683948)>

knowledge or permission.<sup>281</sup> These brands are therefore able to escape blame. The International Federation for Human Rights confirms that the risks for human rights violations are the greatest in factories at the very start of the supply chain due to unauthorised subcontracting.<sup>282</sup> Therefore, supply chain transparency is especially necessary in the RMG sector in Bangladesh.<sup>283</sup>

Global buyers profit from these subcontracting relationships. Kalpona Akter, executive director of the Bangladesh Centre for Worker Solidarity, has emphasised the negative effects of non-transparent subcontracts, arguing that ‘a convoluted and opaque supply chain is largely to blame for the lack of compliance with international labour standards’.<sup>284</sup> Indeed, contrary to the existence of company policies with regards to non-transparent subcontracting, it has been identified in a report by Labowitz and Baumann-Pauly, that ‘buyers turn a blind eye’ on subcontracting as they know that the volumes and prices they desire cannot be produced without quick and cheap labour (i.e. a huge production capacity).<sup>285</sup> However, it must be noted that global trade unions, UNI Global Union and IndustriALL, have responded to the criticisms of subcontracting in Bangladesh made within that report. These unions assert that, in fact, subcontracted factories are covered by private initiatives such as the Accord, as will be later assessed, whether authorised or unauthorised, and therefore they are under the scope of some form of regulation.<sup>286</sup> In addition, they state that the claim that the greatest safety risk lies with subcontractors ‘misstates the reality and gives the impression that the factories with a direct relationship are operating ‘safely enough’’.<sup>287</sup> Instead, more workers have died in factories that have openly acknowledged their sourcing relationships with major brands, and it ‘is important to bear in mind that almost all of the major factory disasters in recent years in Bangladesh occurred in factories that were recognised producers for major brands’.<sup>288</sup>

To move beyond the primary segments of the GVC, and to respond effectively to pressures faced by increasing competition, manufacturers must either ‘increase the skill content of their activities and/or move into market niches which have entry barriers and are therefore insulated to some

<sup>281</sup> ‘Spain's Inditex cuts supplier ties after Bangladesh fire’, *Reuters* (Dhaka, 27 January 2013) <<http://uk.reuters.com/article/uk-bangladesh-fire-idUKBRE90Q0GF20130127>>

<sup>282</sup> International Federation for Human Rights, ‘One Year After the Rana Plaza Catastrophe: Slow Progress and Insufficient Compensation’ (21 April 2014) <<https://www.fidh.org/en/issues/globalisation-human-rights/15179-one-year-after-the-rana-plaza-catastrophe-slow-progress-and-insufficient>>

<sup>283</sup> Supply chain transparency essentially means that corporations fully disclose all the suppliers they use so that independent third parties have the opportunity to look into the factories where their products are being manufactured and are able to assess whether the promises that are pledged, often in codes of conduct, are consistent.

<sup>284</sup> Syed Zain Al-Mahmood, ‘Bangladesh garment industry scrambles to save reputation after fires’, *The Guardian* (London, 10 January 2013) <[www.theguardian.com/global-development/2013/jan/10/bangladesh-garment-industry-reputation-fires](http://www.theguardian.com/global-development/2013/jan/10/bangladesh-garment-industry-reputation-fires)>

<sup>285</sup> Sarah Labowitz and Dorothee Baumann-Pauly, ‘Business as Usual is Not an Option: Supply Chains and Sourcing after Rana Plaza’ (NYU Stern Center for Business and Human Rights, New York, April 2014) 21 <<http://www.stern.nyu.edu/experience-stern/about/departments-centers-initiatives/centers-of-research/business-human-rights/activities/supply-chains-sourcing-after-rana-plaza>>

<sup>286</sup> UNI Global Union and IndustriALL, ‘“Business as Usual is Not an Option: Supply Chains and Sourcing after Rana Plaza”: UNI Global Union and IndustriALL Respond’ (26 May 2014) 3 <[https://business-humanrights.org/sites/default/files/media/documents/business\\_as\\_usual\\_is\\_not\\_an\\_option\\_-\\_uni\\_industriall\\_respond.pdf](https://business-humanrights.org/sites/default/files/media/documents/business_as_usual_is_not_an_option_-_uni_industriall_respond.pdf)>

<sup>287</sup> *ibid.*

<sup>288</sup> *ibid.*

extent from these pressures'.<sup>289</sup> There are four forms of upgrading that have been identified: functional (moving to higher-value functions); product (producing higher value products); process (incorporation of more sophisticated technologies, and intersectoral, leveraging expertise gained in one industrial sector to enter another.<sup>290</sup>

Upgrading within the GVC will be difficult, and several factors must be dealt with before Bangladesh can make any progress. This includes the need for a strong commitment to industry growth by both the public and private sectors to develop the necessary skills and establish a national brand.<sup>291</sup> In Turkey and Sri Lanka, where the industry upgraded to the higher levels of the GVC, there was a high degree of stakeholder coordination and Public-Private Partnerships (PPPs) to support workforce development.<sup>292</sup> Indeed, in Sri Lanka, the Government collaborated with the private sector to establish a five-year plan to upgrade the industry with an emphasis on relationships with global buyers to develop the capabilities needed to move up the value chain.<sup>293</sup> Workforce development through such initiatives should focus on increasing productivity and preparing employees for upgrading into higher value segments, and this has been addressed to an extent within the domestic strategic development framework for Bangladesh.<sup>294</sup>

### 3. Identified Human Rights Concerns

Human rights priorities for the RMG sector in the Bangladesh Sustainability Compact are: a) labour rights b) health and safety and c) responsible business conduct. Before turning to the Compact in detail in Part II.D.3 below, this section identifies the human rights issues for each of these priorities in turn.

#### a) Labour Rights

The RMG sector has evidently played an essential role in the rapid growth of Bangladesh's economy. Nevertheless, the human rights of garment workers have been neglected and the Rana Plaza disaster drew the world's attention to the paucity of labour rights in the Bangladeshi RMG industry. It was pointed out that the workers within the Rana Plaza factories, and RMG factories on the whole, had little to no labour rights protection. Particular labour rights concerns in Bangladesh relate to workers' freedom of association, the position of women workers, child labour and deficient laws governing Export Processing Zones (EPZs). In a nutshell, the RMG sector in Bangladesh is characterised by long working hours, short and infrequent rest breaks, low wages, job insecurity, gender inequality and child labour.<sup>295</sup> It is difficult to attribute responsibility for this laxity of labour rights, and there is no one actor that is without some form of responsibility.

<sup>289</sup> John Humphrey and Hubert Schmitz, 'How does Insertion in Global Value chains Affect Upgrading in Industrial Clusters?' (2002) 36(9) *Regional Studies* 1017, 1018.

<sup>290</sup> *ibid.* 1017.

<sup>291</sup> Karina Fernandez-Stark, Stacey Frederick and Gary Gereffi, 'The Apparel Global Value Chain: Economic Upgrading and Workforce Development' (Duke Center on Globalization, Governance and Competitiveness November 2011) 2 <[http://www.cggc.duke.edu/pdfs/2011-11-11\\_CGGC\\_Apparel-Global-Value-Chain.pdf](http://www.cggc.duke.edu/pdfs/2011-11-11_CGGC_Apparel-Global-Value-Chain.pdf)>

<sup>292</sup> *ibid.* 3-4.

<sup>293</sup> *ibid.* 50.

<sup>294</sup> See II.B.3 above.

<sup>295</sup> Riccardo David Mariani and Fabrizio Valenti, 'Working conditions in the Bangladeshi garment sector: Social dialogue and compliance' (Delft University of Technology and Fair Wear Foundation 2013) <<http://www3.fairwear.org/ul/cms/fck-uploaded/documents/countrystudies/bangladesh/WorkingconditionsintheBangladeshigarmentsectorSocialdialogueandcompliance.pdf>>



Bangladesh has only ratified 35 ILO Conventions, and has not ratified all of the ILO 8 fundamental conventions (see Annex 2).<sup>296</sup> Its compliance with ILO standards has been bleak. The ILO assisted in attempting to improve labour rights in Bangladesh before the Rana Plaza disaster but little progress was made.<sup>297</sup> Only a sparsity of protection is given by national labour law and there are only vague commitments made to labour rights within the law.<sup>298</sup> Labour law is also rarely implemented or enforced and has proved for the most part ineffective in improving the rights of workers in the RMG sector. In 2006, the Bangladesh Ministry of Labour and Employment, for example, had only 20 inspectors responsible for 'monitoring the conditions of more than 20,000 factories, docks and other businesses across Bangladesh'.<sup>299</sup>

Under intense global scrutiny after the Rana Plaza and Tazreen Fashions factory disasters, and in the context of implementation of the Sustainability Compact, the Bangladesh Labour Act was amended in 2013 (implementing rules have also since been adopted in September 2015).<sup>300</sup> However, important sections of the amended Labour Act still do not fully meet international standards.<sup>301</sup> The ILO issued a statement following the labour law reform, highlighting some of its shortcomings:

A number of restrictions to workers' freedom of association rights which have been the subject of ILO concerns were not addressed by the amendments.<sup>302</sup> The amendments also do not extend freedom of association and collective bargaining rights to workers in export processing zones. Some new provisions of the law, for example with respect to rights of workers who are contracted for services and new exclusions from coverage of the labour law of certain sectors, may raise new and additional concerns about conformity with ratified conventions.<sup>303</sup>

Freedom of association and collective bargaining are of particular concern within Bangladesh. None of the factories within Rana Plaza had trade unions. Phil Robertson, Deputy Asia Director of Human Rights Watch (HRW), asserted that 'if their workers had more of a voice, they might have been able to resist managers who ordered them to work in the doomed building a day after large cracks

<sup>296</sup> ILO, 'Ratifications for Bangladesh'

<[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:103500](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103500)>

<sup>297</sup> ILO, 'Decent work country profile: Bangladesh' (2013) <[http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms\\_216901.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_216901.pdf)>

<sup>298</sup> ILO, 'ILO Statement on Reform of Bangladesh Labour Law' (22 July 2013) <[http://www.ilo.org/global/about-the-ilo/newsroom/statements-and-speeches/WCMS\\_218067/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/statements-and-speeches/WCMS_218067/lang--en/index.htm)>

<sup>299</sup> War on Want, 'Ignoring the Law: Labour rights violations in the garment industry in Bangladesh' (July 2009) 2 <[www.waronwant.org/resources/ignoring-law](http://www.waronwant.org/resources/ignoring-law)>

<sup>300</sup> ILO, 'International Labour Standards in Bangladesh' available online: <http://www.ilo.org/dhaka/areasofwork/international-labour-standards/lang--en/index.htm>.

<sup>301</sup> 'Law Reform: Current labour law and ILO standard', *The Daily Star* (Dhaka, July 30 2013) <<http://www.thedailystar.net/news/current-labour-law-and-ilo-standard>>

<sup>302</sup> For example, major areas that remain to be addressed include the reduction of the 30% minimum membership requirement to form a union (see over).

<sup>303</sup> ILO, 'ILO statement on reform of Bangladesh Labour Law' (22 July 2013) <[http://www.ilo.org/global/about-the-ilo/media-centre/statements-and-speeches/WCMS\\_218067/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/media-centre/statements-and-speeches/WCMS_218067/lang--en/index.htm)>

appeared in it'.<sup>304</sup> Indeed, only 10% of the 4,500 garment factories in Bangladesh have registered unions.<sup>305</sup> There are a number of reasons for the lack of unionisation within Bangladesh.

First, the law itself is integrally prejudiced against unions. It makes founding and operating a union unnecessarily difficult, for example by requiring that 30% of workers in a factory must agree to form a union.<sup>306</sup> Furthermore, the law mandates excessive registration procedures and 'the government has vaguely defined powers to cancel a union's registration'.<sup>307</sup> Indeed, HRW point out that under the law the Government 'will be able to stop a strike if it decides it would cause 'serious hardship to the community' or is 'prejudicial to the national interest'; terms that are not defined but can easily be misused.<sup>308</sup> The recent ILO high-level tripartite mission to Bangladesh highlighted that even the trade unions that do exist are considered 'fake, paper-based, organized without workers' support, initiated by employers or dissolved'.<sup>309</sup>

The right to form trade unions is further suppressed by harassment and abuse faced by union members from factory owners. Workers have reported that where committees have been formed, they are often facilitated by management, which discourages workers from speaking out against factory abuses.<sup>310</sup> Factory owners, protected by a culture of impunity, use 'physical assault, intimidation and threats, dismissal of union leaders, and false criminal complaints by factory officials or their associates against garment workers' in order to discourage the use of unions.<sup>311</sup> Threats of murder have also been reported and factory managers often employ 'an armed *mastan* (muscleman) group to drive out the union'.<sup>312</sup>

The response to these abusive practices has been limited. All too often the authorities fail to hold factory managers involved in attacks against union members accountable. The need for improved rights of freedom of association and collective bargaining is a fundamental requirement if the garment industry is to continue to expand. As stated by Babul Akhter, General Secretary of the IndustriALL Bangladesh Council, 'if there is no Freedom of Association or trade unions, then it will

<sup>304</sup> Human Rights Watch, 'Bangladesh: Garment Worker's Union Rights Bleak' (21 April 2016) <<https://www.hrw.org/news/2016/04/21/bangladesh-garment-workers-union-rights-bleak>>

<sup>305</sup> *ibid.*

<sup>306</sup> *ibid.*

<sup>307</sup> *ibid.*

<sup>308</sup> Human Rights Watch, 'Whoever raises their head suffers the most: Workers' rights in Bangladesh's garment factories' (22 April 2015)

<[http://features.hrw.org/features/HRW\\_2015\\_reports/Bangladesh\\_Garment\\_Factories/index.html?\\_ga=1.1281692](http://features.hrw.org/features/HRW_2015_reports/Bangladesh_Garment_Factories/index.html?_ga=1.1281692)>. See also, ILO, 'ILO statement on reform of Bangladesh labour law' (22 July 2013)

<[http://www.ilo.org/global/about-the-ilo/media-centre/statements-and-speeches/WCMS\\_218067/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/media-centre/statements-and-speeches/WCMS_218067/lang-en/index.htm)>

<sup>309</sup> ILO, 'Report of the High-Level Tripartite Mission to Bangladesh' (17-20 April 2016) 5

<[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_488339.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_488339.pdf)>

<sup>310</sup> War on Want, 'Ignoring the Law: Labour rights violations in the garment industry in Bangladesh' (July 2009) 5 <[www.waronwant.org/resources/ignoring-law](http://www.waronwant.org/resources/ignoring-law)>

<sup>311</sup> Human Rights Watch, 'Bangladesh: Garment Worker's Union Rights Bleak' (21 April 2016)

<<https://www.hrw.org/news/2016/04/21/bangladesh-garment-workers-union-rights-bleak>>

<sup>312</sup> Jennifer Hurley, 'Unravelling the Web: Supply Chains and Workers' Lives in the Garment Industry' in Angela Hale and Jane Wills (eds), *Threads of Labour: Garment Industry Supply Chains from the Workers' Perspective* (Blackwell Publishing 2005) 126, 130.

not be possible to address workers' rights or safety issues'.<sup>313</sup> Factory owners must commit to reform and there is clearly much more the Government, BGMEA and BKMEA can do to ensure protection of freedom of association.<sup>314</sup> The persistent and 'growing' violations of freedom of association has also led the ITUC to lodge a freedom of association case at the ILO.<sup>315</sup>

The position of women's rights is particularly precarious in Bangladesh's RMG sector. Women make up around 85% of the workforce.<sup>316</sup> Despite this, they face an especially low standard of labour rights protection compared to men. Owing to their gender they have a significant lack of bargaining power as unlike men they have few alternatives to RMG work. Other opportunities would involve either domestic service or day labour in rural areas.<sup>317</sup> They also face difficulties forming trade unions as historically unions are associated with the public sector, male-dominated, and closely linked to political parties.<sup>318</sup> Women further face limited career paths or opportunities to advance in the RMG sector, thus are restricted to the lower segments of the GVC and the lowest paid jobs.<sup>319</sup> A major cause of the female-dominant workforce is that most are not involved in unions and tend to be more subdued than men, not asking questions about low pay and working conditions.<sup>320</sup>

Additionally, women are regularly denied an equal rate of pay with men carrying out similar work and they receive significantly lower salaries than male colleagues.<sup>321</sup> This is despite the fact that equal pay is guaranteed by Bangladesh Labour Law.<sup>322</sup> Women workers also suffer from sexual harassment in the form of physical and/or verbal abuse from management. Such abuse can involve 'obscene language and humiliation, as well as corporal punishment, beatings and molestation'.<sup>323</sup> Examples of sexual harassment are manifest in various human rights reports. HRW draw upon an example in which a supervisor said that any woman joining the union would be 'stripped of her

<sup>313</sup> ILO, 'Strengthening Workplace Safety and Labour Rights in the Bangladesh Ready-Made Garment Sector' (September 2016) 29 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_474048.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_474048.pdf)>

<sup>314</sup> Human Rights Watch, "'Whoever Raises their Head Suffer the Most' Worker's Rights in Bangladesh's Garment Factories' (22 April 2015) <[http://features.hrw.org/features/HRW\\_2015\\_reports/Bangladesh\\_Garment\\_Factories](http://features.hrw.org/features/HRW_2015_reports/Bangladesh_Garment_Factories)>

<sup>315</sup> International Trade Union Confederation, 'Bangladesh: Government's Anti-Union Actions Prompt Complaint to ILO' (25 April 2016) <<http://www.ituc-csi.org/bangladesh-government-s-anti-union>>

<sup>316</sup> War on Want, 'Ignoring the Law: Labour rights violations in the garment industry in Bangladesh' (July 2009) 1 <[www.waronwant.org/resources/ignoring-law](http://www.waronwant.org/resources/ignoring-law)>

<sup>317</sup> ILO, *Bangladesh: Seeking Better Growth Employment Conditions for Better Socioeconomic Outcomes* (2013) 70.

<sup>318</sup> Naomi Hossain, 'Exports, Equity, and Empowerment: The Effects of Readymade Garments Manufacturing Employment on Gender Equality in Bangladesh' (World Bank, World Development Report 2012) 20 <<http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1322671773271/Hossain-Export-Equity-employment.pdf>>

<sup>319</sup> ILO, *Bangladesh: Seeking Better Growth Employment Conditions for Better Socioeconomic Outcomes* (2013) 70.

<sup>320</sup> Gawher Nayeem Wahra and Ferdausur Rahman, 'A Right to Live: Girl Workers in the Bangladeshi Garment Industry' (1995) 3(2) *Gender and Development* 54, 55.

<sup>321</sup> ILO, *Bangladesh: Seeking Better Growth Employment Conditions for Better Socioeconomic Outcomes* (2013) 66.

<sup>322</sup> War on Want, 'Ignoring the Law: Labour rights violations in the garment industry in Bangladesh' (July 2009) 4 <[www.waronwant.org/resources/ignoring-law](http://www.waronwant.org/resources/ignoring-law)>

<sup>323</sup> *Ibid.* 5.

clothes and thrown into the street'.<sup>324</sup> Furthermore, women may be fired if they refuse to have sexual relations with their manager, while others may be offered attractive work privileges in return for this.<sup>325</sup> Without effective trade unions, it is difficult for women workers to speak out against these abusive practices. This is particularly problematic as women who have been subjected to sexual abuse or harassment at work may also face the risk of ostracism from their community and punishment or disownment by their family. The support of trade unions is vital in order for women garment workers to be empowered to seek justice.

Women also face problems with regards to their marital status and childcare responsibilities. Often garment factory owners dismiss women when they get married, during pregnancy or when they have children, choosing instead to 'hire a new cohort of younger women'.<sup>326</sup> It is assumed that these women will have fewer care responsibilities and so will be able to work longer hours.<sup>327</sup> Furthermore, pregnant women are more often than not refused maternity leave, which is also guaranteed by Bangladesh law. If they take maternity leave, it is predominantly unpaid or paid by a reduced wage which can have a severe impact on the entire family and their ability to sustain living costs. Even where women are married, they tend to be either deserted by their husbands or divorced.<sup>328</sup> Yet it must be noted that RMG jobs have facilitated personal empowerment for most, if not all, women and in some cases economic independence or greater equality in the household.<sup>329</sup>

Alongside issues regarding women's rights, child labour is also prevalent within the industry. The rapid growth of the RMG industry in Bangladesh during the 1980s was coupled with a sharp increase in child labour.<sup>330</sup> Many families rely on the work of their children to generate income and reduce the cost of child support.<sup>331</sup> Indeed, poverty is the main cause of child labour.<sup>332</sup> Children are employed in the RMG sector for a number of reasons. Child workers are far less expensive than adults, and children are considered capable of hard work, easy to control and overall less demanding than adults.<sup>333</sup> Children are particularly less able to demand higher wages or a change in working conditions. RMG factory owners often prefer girls under the age of 15 as they are also likely to be unmarried with no children or domestic responsibilities.<sup>334</sup> Indeed, most of the child labour that has

<sup>324</sup> Human Rights Watch, 'Bangladesh: Protect Garment Workers' Rights' (6 February 2016) <<https://www.hrw.org/news/2014/02/06/bangladesh-protect-garment-workers-rights>>

<sup>325</sup> War on Want, 'Ignoring the Law: Labour rights violations in the garment industry in Bangladesh' (July 2009) 1 <[www.waronwant.org/resources/ignoring-law](http://www.waronwant.org/resources/ignoring-law)>

<sup>326</sup> ActionAid, 'Diversify and Conquer: Transforming Bangladesh into an Industrialised Country' (December 2015) 6 <<https://www.actionaid.org.uk/sites/default/files/publications/diversify-and-conquer-transforming-bangladesh-into-an-industrialised-country.pdf>>

<sup>327</sup> *ibid.*

<sup>328</sup> Gawher Nayeem Wahra and Ferdousur Rahman, 'A Right to Live: Girl Workers in the Bangladeshi Garment Industry' (1995) 3(2) *Gender and Development* 54, 55.

<sup>329</sup> Thalia Kidder and Kate Raworth, 'Good Jobs' and Hidden Costs: Women Workers Documenting the Price of Precarious Employment' (2004) 12(2) *Gender and Development* 12, 14.

<sup>330</sup> Haradhan Kumar Mohajan, 'Child Rights in Bangladesh' (2014) 2 *Journal of Social Welfare and Human Rights* 207, 213.

<sup>331</sup> Emily Delap, 'Economic and Cultural Forces in the Child Labour Debate: Evidence from Urban Bangladesh' (2001) 37 *The Journal of Development Studies* 1, 16.

<sup>332</sup> Haradhan Kumar Mohajan, 'Child Rights in Bangladesh' (2014) 2 *Journal of Social Welfare and Human Rights* 207, 213.

<sup>333</sup> *ibid.*

<sup>334</sup> Ferdous Ahamed, 'Child labour and Bangladesh: To what extent can Bangladesh remove child labour particularly in the Bangladesh Ready-made Garment (RMG) sector?' (2013) 8(2) *International NGO Journal* 31.

been reported is estimated to be undertaken by girls with an average age of 13, 10% of whom are in fact already married.<sup>335</sup> Many young women workers share rented rooms in slums communities, often paying 'rent' as protection money, while others live in basic huts provided by owners.<sup>336</sup> Suicides are common.<sup>337</sup> Inevitably, as children have little or no choice when they are required to work, and are often forcibly taken from rural areas to urban slums to work in factories,<sup>338</sup> there is a close overlap between child labour and forced labour.<sup>339</sup>

Owing to the global concerns over the prevalence of child labour, both the GoB and the BGMEA made efforts to encourage manufacturers to prohibit child labour and a Memorandum of Understanding was signed by the BGMEA, UNICEF Bangladesh and the ILO in 1995 to eradicate the employment of children in RMG factories.<sup>340</sup> This was unique as the industry formed a global partnership on the issue.<sup>341</sup> Whilst the components of the Memorandum held potential, for example as it covered monitoring on progress,<sup>342</sup> its scope was limited and it included only the members of the BGMEA.<sup>343</sup> Further focus is needed on child labour to effectively tackle this issue. The BGMEA has laid down punishments and penalties for owners who did not comply,<sup>344</sup> but more will need to be done to tackle this ingrained and illegal practice.

Labour rights in Export Processing Zones are especially lacking in comparison to factories outside these zones. The ILO High-Level Tripartite Mission to Bangladesh noted the need to change laws in the EPZs. The Executive Chairperson of the Bangladesh EPZs Authority considered that freedom of association and collective bargaining existed in EPZs since workers could associate in full freedom.<sup>345</sup> This was in line with the recent draft law on export processing zones. Yet the report highlighted challenges faced by workers in these zones in relation to the lack of freedom of association and observed the separate legislation for EPZ factories.<sup>346</sup> As such, it recommended that the Government ensure any new legislation allowed for full freedom of association, including the right to form free and independent trade unions and to associate with organisations of their choosing.<sup>347</sup> A new law entitled 'Bangladesh EPZ Labour Act 2014' was approved on the 7 July 2014 which regulates all

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<sup>335</sup> *ibid.*

<sup>336</sup> See Jeremy Seabrook, *The Song of the Shirt* (Hurst 2015) 38.

<sup>337</sup> *ibid.* 40. Seabrook reports that in 2004, more than 50 garment workers committed suicide, mostly young women, at Konabari industrial village near Gazipur.

<sup>338</sup> *ibid.* 37-46.

<sup>339</sup> UNICEF, 'Child Labour in Bangladesh' (June 2010) <[http://www.unicef.org/bangladesh/Child\\_labour.pdf](http://www.unicef.org/bangladesh/Child_labour.pdf)>

<sup>340</sup> Memorandum of Understanding between BGMEA, UNICEF and ILO Bangladesh regarding the placement of child workers in school programmes and the elimination of child labour, 4 July 1995. See Anisur Rahman Sinha, 'Bangladesh: A Multilateral Collaboration to Eliminate Child Labor in the Export-Oriented Garment Industry' in *Advancing the Global Campaign Against Child Labor: Progress Made and Future Actions* (U.S. Department of Labor, Bureau of International Labor Affairs 2002) 61–66.

<sup>341</sup> Michael E. Nielsen, 'The Politics of Corporate Responsibility and Child Labour in the Bangladeshi Garment Industry' (2005) 81(3) *Critical Perspectives on Corporate Social Responsibility* 559, 559.

<sup>342</sup> *ibid.* 560-561.

<sup>343</sup> *ibid.* 561-562.

<sup>344</sup> Ferdous Ahamed, 'Child labour and Bangladesh: To what extent can Bangladesh remove child labour particularly in the Bangladesh Ready-made Garment (RMG) sector?' (2013) 8(2) *International NGO Journal* 31.

<sup>345</sup> ILO, 'Report of the High-Level Tripartite Mission to Bangladesh' (17-20 April 2016) 5

<[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_488339.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_488339.pdf)>

<sup>346</sup> *ibid.* 15.

<sup>347</sup> *ibid.*

aspects of industrial relations between individual employers and worker representatives.<sup>348</sup> Yet this needs to be revised as the protection that it gives does not even meet the standards of the already deficient Bangladesh Labour Act,<sup>349</sup> and the core ILO labour standards have once again been ignored.

### *b) Health and Safety*

In this section of the case study the immediate health and safety issues in the RMG sector are discussed. Later in the report, in Part D.3, the effectiveness of the specific measures taken to address workers' health and safety post-Rana Plaza – the Accord,<sup>350</sup> the Alliance,<sup>351</sup> Better Work Bangladesh<sup>352</sup> and the Sustainability Compact<sup>353</sup> – will be assessed in the context of the specific input of the EU in addressing human rights concerns in partnership with the ILO, the GoB and civil society.

From 1950, the International Labour Organisation (ILO) and the World Health Organization (WHO) have shared a common definition of occupational health. It was adopted by the Joint ILO/WHO Committee on Occupational Health at its first session in 1950 and revised in 1995.<sup>354</sup> In line with the WHO definition, the main focus in occupational health is on three different objectives:<sup>355</sup> (i) the maintenance and promotion of workers' health and working capacity; (ii) the improvement of the working environment and efforts to be conducive to safety and health and (iii) development of work organisations and working cultures in a direction which supports health and safety at work and in doing so also promotes a positive social climate and smooth operation and may enhance productivity of the workers.

Following the Tazreen Fashions fire disaster and the catastrophic Rana Plaza factory collapse, in 2012-13, leaving a combined death and injury toll of over 4,000 workers,<sup>356</sup> the issue of health and

<sup>348</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 12 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)> accessed 14 September 2016.

<sup>349</sup> Ibid.

<sup>350</sup> The Accord on Fire and Building Safety in Bangladesh, 'About the Accord' <<http://bangladeshaccord.org/wp-content/uploads/Brochure-about-the-Accord.pdf>>

<sup>351</sup> Alliance for Bangladesh Worker Safety <<http://www.bangladeshworkersafety.org/>>

<sup>352</sup> Better Work Bangladesh <<http://betterwork.org/global/>>

<sup>353</sup> European Commission, 'Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh' (Joint Statement) <[http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151601.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf)>

<sup>354</sup> See Weihong Chen and Tangchun Wu, 'Occupational Health' in Siân M Griffiths, Jin Tin Lang and Eng Kiong Yeoh (eds), *Routledge Handbook of Global Public Health in Asia* (Routledge, 2014) 403; and ILO, 'ILO standards on occupational safety and health: Promoting a safe and healthy working environment' (International Labour Conference, 98th Session, 2009) <[www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_103485.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_103485.pdf)>. The ILO/WHO definition is:

'Occupational health should aim at: the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations; the prevention amongst workers of departures from health caused by their working conditions; the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of the worker in an occupational environment adapted to his physiological and psychological capabilities; and, to summarize, the adaptation of work to man and of each man to his job'.

<sup>355</sup> 'Good Practice in Occupational Health Services: A Contribution to Workplace Health' (WHO Regional Office for Europe 2002) <[www.euro.who.int/\\_\\_data/assets/pdf\\_file/0007/115486/E77650.pdf](http://www.euro.who.int/__data/assets/pdf_file/0007/115486/E77650.pdf)>

<sup>356</sup> See Introduction, Part A above. For the detailed report on deaths, injuries and people still missing following the Rana Plaza factory collapse see, Khondaker G Moazzem and Ariful Islam, 'Moving Beyond the Shadow of the Rana Plaza Tragedy: In Search of a Closure and Restructuring Strategy' (Fourth Monitoring Report, Centre

safety at the work place in the RMG industry in Bangladesh has moved centre stage. These tragic events were on a different scale from previous factory disasters in Bangladesh and drew the world's attention to hazardous working conditions – mainly in mass production RMG factories – that had been known about for many years.<sup>357</sup> The safety deficiencies in the Bangladesh garment industry are the product of years of inadequate oversight, both by the government and by the brands, and they are widespread, affecting large factories and small, direct suppliers and subcontractors, newer facilities and older ones.<sup>358</sup>

Indeed, in July 2013, just a few months after Rana Plaza, 40% of Bangladesh's factories were estimated to have major safety issues,<sup>359</sup> and, in April 2016, nearly three years on from Rana Plaza, Labour behind the Label claimed that many garment factories were still 'death-traps' and pointed to 55% of factories without a fire escape in the case of a major supplier to H&M.<sup>360</sup> This continuing danger is not limited to garment factories. On 10 September 2016, a fire engulfed the Tampoco Foils Factory north of Dhaka leaving at least 34 dead and around 70 injured at a packaging plant for processed food and tobacco GVCs.<sup>361</sup>

The garments sector is an especially dangerous one for workers, as it contains many hazards and risks to workers, ranging from overcrowding, exposure to noise and dangerous substances, to working with dangerous machinery.<sup>362</sup> It is common for factory buildings to be dangerous because they are often constructed at great speed without planning permission or building permits. They may also be constructed with extra floors illegally added, as in the case of Rana Plaza.<sup>363</sup> Indeed, the rapid expansion of the RMG industry in Bangladesh has led to the adaptation of many buildings that were

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for Policy Dialogue Bangladesh, 21 April 2015) 6 <<http://cpd.org.bd/wp-content/uploads/2013/07/Fourth-Monitoring-Report-Rana-Plaza-Tragedy-FINAL-April-2015.pdf>>

<sup>357</sup> See Fatima Tania and Nasrin Sultana, 'Health Hazards of Garments Sector in Bangladesh: The Case Studies of Rana Plaza' (2014) 1(3) *Malaysian Journal of Medical and Biological Research* 111; Solidarity Center, 'Garment and Textile Factory Fire Incidents' (April 2015) <<http://www.solidaritycenter.org/wp-content/uploads/2015/04/Bangladesh.Garment-Textile-Factory-Fire-Incidents-since-Tazreen.4.15.pdf>>; and Fardaus Mobarok, '1,841 workers killed in 12 yrs', *The Daily Star* (Dhaka, April 24 2014) <<http://www.thedailystar.net/1-841-workers-killed-in-12-yrs-19973>>

<sup>358</sup> UNI Global Union and IndustriALL, "'Business as Usual' is Not an Option: Supply Chains and Sourcing after Rana Plaza": UNI Global Union and IndustriALL Respond' (26 May 2014) 3 <[https://business-humanrights.org/sites/default/files/media/documents/business\\_as\\_usual\\_is\\_not\\_an\\_option\\_-\\_uni\\_industriall\\_respond.pdf](https://business-humanrights.org/sites/default/files/media/documents/business_as_usual_is_not_an_option_-_uni_industriall_respond.pdf)>

<sup>359</sup> BBC, 'Bangladesh Factories: 'About 40% have major safety issues'' (5 July 2013) <<http://www.bbc.co.uk/news/world-asia-23196948>>

<sup>360</sup> Ilana Winterstein, 'Death-Trap Clothing Factories Persist Three Years on from Rana Plaza', *Huffpost Style* (United Kingdom, 19 April 2016) <[http://www.huffingtonpost.co.uk/ilana-winterstein/rana-plaza-clothing-factories\\_b\\_9719782.html](http://www.huffingtonpost.co.uk/ilana-winterstein/rana-plaza-clothing-factories_b_9719782.html)>. The author is the Director of Labour Behind the Label.

<sup>361</sup> See Roshni Kapur, '34 Dead in Bangladesh Factory Fire', *The Diplomat* (Tokyo, 15 September 2016) <<http://thediplomat.com/2016/09/34-dead-in-bangladesh-factory-fire/>>

<sup>362</sup> European Agency for Safety and Health at Work, 'Occupational safety and health in the textiles sector' (E-facts, 2 April 2008) <<https://osha.europa.eu/en/publications/e-facts/efact30/view>>

<sup>363</sup> Enrico D'Ambrogio, 'Workers' conditions in the textile and clothing sector: just an Asian affair? Issues at stake after the Rana Plaza tragedy', Briefing, European Parliamentary Research Service (August 2014).

built for other purposes, such as residential, into factories.<sup>364</sup> Overcrowding, well beyond the safety capacity of buildings is another dangerous factor.<sup>365</sup>

Fire is the most severe risk. For example, between 2006 and 2009, 414 garment workers were killed in at least 213 factory fires as reported by the Bangladesh Fire Department.<sup>366</sup> Unlike textile making, the manufacture of clothing in a mass, supervised environment poses a high risk of fire. Machinery used (sewing machines) is light, a circumstance that allows workers to be concentrated in multi-storied buildings.<sup>367</sup> But there are more fundamental problems arising from failure to comply with building codes and safety standards.<sup>368</sup> Garrett Brown notes that the causes of fires include: improper storage of flammable materials; unprotected ignition sources; damaged or overloaded electrical circuits; the lack of sprinklers; insufficient exits; a lack of fire doors; no emergency evacuation plans; and the 'widespread practice of locked metal gates leading to exits and staircases'.<sup>369</sup> Many of these inadequacies featured in the Tazreen Fashions fire.<sup>370</sup> Often 'outsiders' or 'agitators' are blamed to shift responsibility from the owners and others further up the supply chain.<sup>371</sup> Fear of fire – for example, a rumour that a factory is on fire – can cause panic among workers and, in overcrowded conditions, people have died from being trampled on or jumping to escape buildings.<sup>372</sup> Moreover, many workers, often children, are informal, unregistered or without permanent employment contracts. This means that if they are injured in factory fires, they and their relatives, do not receive any compensation as they are not recognised as formal employees.<sup>373</sup>

Every stage of the garment manufacturing process is fraught with danger for workers. Garment work is physically demanding to extent that careers are often cut short because of sustained exhaustion or industrial accidents.<sup>374</sup> It is particularly dangerous for the health of women.<sup>375</sup> Studies have shown a

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<sup>364</sup> *ibid.*

<sup>365</sup> *ibid.* See also, Sam Maher, 'Hazardous workplaces: Making the Bangladesh Garment industry safe' (Clean Clothes Campaign, November 2012) <[www.cleanclothes.org/resources/publications/2012-11-hazardousworkplaces.pdf](http://www.cleanclothes.org/resources/publications/2012-11-hazardousworkplaces.pdf)>

<sup>366</sup> See Martje Theuws, Mariette van Huijstee, Pauline Overeem, Jos van Seters and Tessel Pauli, 'Fatal Fashion: Analysis of recent factory fires in Pakistan and Bangladesh: A call to protect and respect garment workers' lives (Clean Clothes Campaign and Centre for Research on Multinational Corporations (SOMO), March 2013) 5 <<https://cleanclothes.org/resources/publications/fatal-fashion.pdf>>

<sup>367</sup> Bradley Bowden, 'Commentary – Bangladesh Clothing Factory Fires: The Way Forward' (2014) 1(2) *South Asian Journal of Human Resources Management* 283, 285.

<sup>368</sup> Björn Claeson, *Deadly Secrets: What companies know about dangerous workplaces and why exposing the truth can save workers' lives in Bangladesh and Beyond* (International Labor Rights Forum, Washington, 2012) 20.

<sup>369</sup> Garrett Brown, 'Bangladesh: Currently the Worst, But Possibly the Future's Best' (2015) 24(4) *New Solutions* 469, 469.

<sup>370</sup> See Martje Theuws, Mariette van Huijstee, Pauline Overeem, Jos van Seters and Tessel Pauli, 'Fatal Fashion: Analysis of recent factory fires in Pakistan and Bangladesh: A call to protect and respect garment workers' lives (Clean Clothes Campaign and Centre for Research on Multinational Corporations (SOMO), March 2013) 5 <<https://cleanclothes.org/resources/publications/fatal-fashion.pdf>>

<sup>371</sup> Jeremy Seabrook, *The Song of the Shirt* (Hurst 2015) 28.

<sup>372</sup> *ibid.* 25-29.

<sup>373</sup> Owasim Akram, 'Occupational Health and Safety in Urban and Peri-Urban Bangladesh: An Important Cause and Consequence of Extreme Poverty' (Working Paper, 23, May 2014) <[www.shiree.org/wp-content/uploads/2012/02/23-Occupational-Health-and-Safety-in-Urban-and-Peri-Urban-Bangladesh-ADD.pdf](http://www.shiree.org/wp-content/uploads/2012/02/23-Occupational-Health-and-Safety-in-Urban-and-Peri-Urban-Bangladesh-ADD.pdf)>

<sup>374</sup> Naomi Hossain, 'Exports, Equity, and Empowerment: The Effects of Readymade Garments Manufacturing Employment on Gender Equality in Bangladesh' (World Bank, World Development Report 2012) 18 <<http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1322671773271/Hossain-Export-Equity-employment.pdf>>



higher incidence of illness among women workers ‘ranging from eye and head pains, to respiratory and gastric conditions’.<sup>376</sup> Many women suffer from reproductive health problems and pregnancy complications.<sup>377</sup> The lack of social protection means that they cannot afford health care on their low incomes.<sup>378</sup>

Many workers commence employment at factories without sufficient training, and this means that they lack essential health and safety understanding.<sup>379</sup> Factory owners may also fail to provide workers with adequate health and safety training on the job. Owners face competitive pressure to keep costs low, which further undermines their ‘ability to invest in safety’.<sup>380</sup> This is due to buyers making purchasing decisions based on price and quality rather than the quality of the work environment their orders will be fulfilled in.<sup>381</sup>

Health and safety law was updated post Rana Plaza. The Bangladesh Labour Act (BLA), adopted on 15 July 2013,<sup>382</sup> has several provisions to improve workplace safety, including strengthening the labour inspectorate and its powers of inspection, including on the spot inspections.<sup>383</sup> The BLA mandates the creation of safety committees and workplace health centres, and some improvements in the compensation regime for workplace accidents. Employers are obliged to report occupational accidents and diseases and workers and unions have the right to judicial redress.<sup>384</sup>

As part of the implementation process, the inspection service was upgraded to a Department and its budget was boosted from US\$900,000 in 2013-14 to US\$4.1 million in 2015-16.<sup>385</sup> By May 2015, 199 new inspectors had been recruited, increasing the total to 284.<sup>386</sup> By 31 December 2015, 3,780

<sup>375</sup> Fatima Tania and Nasrin Sultana, ‘Health Hazards of Garments Sector in Bangladesh: The Case Studies of Rana Plaza’ (2014) 1(3) *Malaysian Journal of Medical and Biological Research* 111.

<sup>376</sup> Naomi Hossain, ‘Exports, Equity, and Empowerment: The Effects of Readymade Garments Manufacturing Employment on Gender Equality in Bangladesh’ (World Bank, World Development Report 2012) 18 <<http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1322671773271/Hossain-Export-Equity-employment.pdf>>

<sup>377</sup> Fatima Tania and Nasrin Sultana, ‘Health Hazards of Garments Sector in Bangladesh: The Case Studies of Rana Plaza’ (2014) 1(3) *Malaysian Journal of Medical and Biological Research* 111.

<sup>378</sup> S Akhter, AFM Salahuddin, M Iqbal, ABMA Malek and N Jahan, ‘Health and occupational safety for female workforce of garment industries in Bangladesh’ (2010) 41 *Journal of Mechanical Engineering* 65.

<sup>379</sup> Salma A Iqbal, Mohammed Iqbal, Zubair Taufiq and Shamim Ahmed, ‘Identification of occupational injury among the workers of selected cement industries in Bangladesh - A case study’ (2010) 25 *Journal of Chemical Engineering* 22.

<sup>380</sup> Björn Claeson, ‘Deadly Secrets: What companies know about dangerous workplaces and why exposing the truth can save workers’ lives in Bangladesh and Beyond’ (International Labor Rights Forum, Washington D.C. 2012) 20.

<sup>381</sup> *ibid.*

<sup>382</sup> ILO, ‘Bangladesh – labour codes, general labour and employment acts’ <[http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=94286&p\\_country=BGD&p\\_classification=01.02](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94286&p_country=BGD&p_classification=01.02)>

<sup>383</sup> ILO, ‘Occupational safety and health country profile: Bangladesh’ <<http://www.ilo.org/safework/countries/asia/bangladesh/lang--en/index.htm>>

<sup>384</sup> ILO, ‘ILO statement on reform of Bangladesh labour law’ (Geneva, 22 July 2013) <[http://www.ilo.org/global/about-the-ilo/media-centre/statements-and-speeches/WCMS\\_218067/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/media-centre/statements-and-speeches/WCMS_218067/lang--en/index.htm)>

<sup>385</sup> ILO, ‘Improving working conditions in the ready made garment industry: Progress and achievements’ (Dhaka, September 2016) <[http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS\\_240343/lang--en/index.htm](http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_240343/lang--en/index.htm)>

<sup>386</sup> *ibid.*

factories had been inspected under the various initiatives and, of these, 39 had been closed for 'posing an immediate danger' to workers.<sup>387</sup> The main issue now is implementation of remedial action.<sup>388</sup> Additionally, national labour law administration, industrial relations and social dialogue systems remain weak, which have worsened non-compliance with national law and regulations.<sup>389</sup>

Moreover, Bangladesh has not ratified several ILO Conventions concerning occupational health and safety.<sup>390</sup> Even in the face of international pressure, Bangladesh is still not compliant with international safety and health standards that should protect its workers.<sup>391</sup>

One option to radically improve workplace safety in the Bangladesh RMG sector would be to introduce a more regulated industrial environment that sees production shift to specialised facilities that have inbuilt smoke alarms, automated sprinklers and a capacity for mass exit in a very short time. Given that such facilities are best provided in low-rise, rather than high-rise, buildings this more or less necessitates a geographical shift away from highly populated inner-city areas to new industrial estates located on the urban fringes. All of this, of course, entails financial investment in infrastructure that will increase costs. These costs, in turn, may (and most certainly will) cause a loss of custom as GVCs switch to countries with even lower costs and even worse health and safety outcomes.<sup>392</sup> It is this paradox that has to be addressed by global actors in the long term.

### c) *Responsible Business Conduct*

The concept of responsible business conduct (RBC) by transnational corporations and business enterprises is based on the principle that private actors have obligations to fulfil human rights standards as well as states.<sup>393</sup> Responsible business conduct is a term associated in particular with the Revised OECD Guidelines for Multinational Enterprises<sup>394</sup> and also the UN Guiding Principles on Business and Human Rights.<sup>395</sup> Other relevant international 'soft law' includes the UN Global

<sup>387</sup> *ibid.*

<sup>388</sup> ILO, 'Rana Plaza Two Years On: Progress made & challenges ahead for the Bangladesh RMG Sector' (April 2015) 9-10 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_317816.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_317816.pdf)>

<sup>389</sup> Better Work Bangladesh, 'Case Study: Fire and building safety in the ready-made garment sector of Bangladesh' <<http://betterwork.org/global/?p=4321>> accessed 19 September 2016.

<sup>390</sup> See ILO, 'Ratifications for Bangladesh' <[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:103500](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103500)>. Bangladesh has not ratified the Occupational Safety and Health Convention, 1981 (No.155), the Occupational Health Services Convention, 1985 (No.161), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), the Social Security (Minimum Standards) Convention, 1952 (No. 102) or the Employment Injury Benefits Convention, 1964 (No. 121).

<sup>391</sup> Zillur Rahman, 'Accord on "Fire and Building Safety in Bangladesh": A Breakthrough Agreement?' (2014) 4 *Nordic Journal of Working Life Studies* 69, 70.

<sup>392</sup> See Bradley Bowden, 'Commentary – Bangladesh Clothing Factory Fires: The Way Forward' (2014) 1(2) *South Asian Journal of Human Resources Management* 283, 287-288; and ILO, *Bangladesh: Seeking Better Growth Employment Conditions for Better Socioeconomic Outcomes* (2013) 29

<sup>393</sup> See John Gerrard Ruggie, 'Business and Human Rights: The Evolving International Agenda' (Working Paper No. 38, John F. Kennedy School of Government, Harvard University, June 2007) <[http://www.ksg.harvard.edu/m-rcbg/CSRI/publications/workingpaper\\_38\\_ruggie.pdf](http://www.ksg.harvard.edu/m-rcbg/CSRI/publications/workingpaper_38_ruggie.pdf)>

<sup>394</sup> OECD, 'OECD Guidelines on Multinational Enterprises: Recommendations for Responsible Business Conduct in a Global Environment' (OECD, 25 May 2011) <<http://www.oecd.org/daf/inv/mne/48004323.pdf>>

<sup>395</sup> UN Human Rights Council, 'Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie' (21 March 2011) UN Doc A/HRC/17/31.

Compact,<sup>396</sup> the ILO Tripartite Declaration of Principles concerning multinational enterprises and social policy,<sup>397</sup> and the ISO 26000 Guidance Standard on Social Responsibility.<sup>398</sup> FRAME Deliverable 7.4 provides an in-depth and comprehensive report on these instruments.<sup>399</sup> According to these instruments, RBC or Corporate Social Responsibility (CSR) covers human rights, labour and employment practices, environmental issues and bribery and corruption.<sup>400</sup>

The OECD defines RBC as follows:<sup>401</sup>

Responsible business conduct (RBC) entails above all compliance with laws, such as those on respecting human rights, environmental protection, labour relations and financial accountability, even where these are poorly enforced. It also involves responding to societal expectations communicated by channels other than the law, e.g. inter-governmental organisations, within the workplace, by local communities and trade unions, or via the press. Private voluntary initiatives addressing this latter aspect of RBC are often referred to as corporate social responsibility (CSR).

In respect of corporate social responsibility, the OECD notes that: ‘Previously, the term corporate social responsibility (CSR) had been used and it continues to be synonymous with responsible business conduct’.<sup>402</sup>

For the purposes of this case study, the terms RBC and CSR will be used synonymously in line with the OECD definition. In the context of the RMG industry RBC/CSR is about the responsibility of business to adopt a comprehensive approach to ‘due diligence and responsible supply chain management’ covering all parts of the GVC.<sup>403</sup> Businesses should avoid adverse impacts on human rights from their ‘business relationships’.<sup>404</sup> These business relationships include ‘relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services’.<sup>405</sup> The essence is that businesses may be held, at least indirectly, responsible for the actions of a business with whom they have a relationship. On a case by case basis, businesses, such as global clothing brands, may be held responsible for the actions of entities further down the RMG supply chain so long as a ‘business relationship’ has been established. This would not help, therefore, in cases of unauthorised subcontracting.<sup>406</sup> Nevertheless,

<sup>396</sup> UN, ‘United Nations Global Compact’ (1999) <<http://www.unglobalcompact.org/>>

<sup>397</sup> ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (204th Conference Session Geneva November 1977) as amended at (279th Conference Session Geneva November 2000) and (295th Conference Session Geneva March 2006).

<sup>398</sup> ISO 26000 is an international ‘guidance’ standard on social responsibility. International Standards Organisation, ‘ISO 26000’ (ISO, 1 November 2010) <<http://www.iso.org/iso/socialresponsibility.pdf>>

<sup>399</sup> See Stephanie Bijlmakers and others, ‘The EU’s Engagement with the Main Business and Human Rights Instruments’ (Work Package No.7, Deliverable No. 4) available online: <http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-7.4.pdf>.

<sup>400</sup> European Commission, ‘A renewed EU strategy 2011-14 for Corporate Social Responsibility’ COM (2011) 681 final, 7.

<sup>401</sup> OECD, ‘Policy Framework for Investment’ (2015) Chapter 7 <<https://www.oecd.org/investment/toolkit/policyareas/responsiblebusinessconduct/>>

<sup>402</sup> *ibid.*

<sup>403</sup> OECD, ‘OECD Guidelines for Multinational Enterprises: Responsible Business Conduct Matters’ (2014) 3 <[https://mneguidelines.oecd.org/MNEguidelines\\_RBCmatters.pdf](https://mneguidelines.oecd.org/MNEguidelines_RBCmatters.pdf)>

<sup>404</sup> *ibid.* 7.

<sup>405</sup> *ibid.*

<sup>406</sup> See Chapter II.C.2.

the very existence of these rules, and the reinforcement thereof in the Bangladesh Sustainability Compact, is intended to engender a behavioural shift towards a more ethical approach to supply chain management.

RBC/CSR has resulted from international pressure on businesses to take on certain responsibilities when conducting their business, whether domestically or not. Indeed, what is clear in the light of globalisation is that many business leaders, academics and stakeholders have the opinion that businesses should take a greater role in solving some of the problems of society.<sup>407</sup> According to the European Commission, in its Green Paper on CSR,<sup>408</sup> public authorities should play only a supporting role where necessary.<sup>409</sup> In line with this, factors that have been driving such a move towards CSR, include new concerns and expectations from consumers and increased concern about the impact of business activities.<sup>410</sup> Therefore, businesses that undertake CSR strategies aim to maximise the creation of shared value for stakeholders and identify, prevent and mitigate their possible adverse impacts.<sup>411</sup> CSR hence becomes an essential component of a long term business strategy,<sup>412</sup> and, therefore, it extends 'beyond the doors of the company' and into the GVC.<sup>413</sup> As put by Daniel T. Bross:

Every business, no matter what its size, is also like the proverbial pebble dropped in a pond. It sends out ripples that change the society in which it operates. The understanding is that at the heart of corporate social responsibility, the idea that companies do have a responsibility to society and should operate in ways that lessen their negative effects and/or enhance their positive effects on the environment, on the people whose lives they touch, on the communities in which they do business – whether local or global – and on society at large.<sup>414</sup>

The Bangladeshi industrial disasters of 2012-13 were a 'jarring reminder of the need to strengthen the corporate responsibility' of some firms over their entire GVCs as 'the world has piled up an embarrassingly long list of industrial and other business disasters involving unnecessary loss of life over the past century'.<sup>415</sup> It showed that 'business as usual is not an option'<sup>416</sup> and CSR is identified as the way forward with regard to improving labour rights and working conditions.

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<sup>407</sup> Oliver F Williams (eds), *Sustainable Development: The UN Millennium Development Goals, the UN Global Compact and the Common Good* (University of Notre Dame Press 2014) 1-2.

<sup>408</sup> European Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' COM(2011) 681 final, 6.

<sup>409</sup> *ibid.* 7.

<sup>410</sup> European Commission, 'Green Paper: Promoting a European Framework for Corporate Social Responsibility' COM(2001) 366 final, para 10.

<sup>411</sup> European Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' COM(2011) 681 final, 6.

<sup>412</sup> Daniel T Bross, 'The Role of Business in Society: The Microsoft Vision' in Oliver F Williams (eds), *Sustainable Development: The UN Millennium Development Goals, the UN Global Compact and the Common Good* (University of Notre Dame Press 2014) 27.

<sup>413</sup> European Commission, 'Green Paper: Promoting a European Framework for Corporate Social Responsibility' COM(2001) 366 final, para 42.

<sup>414</sup> Daniel T Bross, 'The Role of Business in Society: The Microsoft Vision' in Oliver F Williams (eds), *Sustainable Development: The UN Millennium Development Goals, the UN Global Compact and the Common Good* (University of Notre Dame Press 2014) 20.

<sup>415</sup> Roel Nieuwenkamp, 'Corporate Leaders: Your Supply Chain is Your Responsibility' (OECD Observer 2014) <[http://www.oecdobserver.org/news/fullstory.php/aid/4366/Corporate\\_leaders:\\_Your\\_supply\\_chain\\_is\\_your\\_responsibility.html](http://www.oecdobserver.org/news/fullstory.php/aid/4366/Corporate_leaders:_Your_supply_chain_is_your_responsibility.html)>

For example, the UN Global Compact (UNGC), a voluntary initiative by over 9,000 companies across 167 countries,<sup>417</sup> addresses issues such as eliminating child labour and avoiding complicity in human rights abuses.<sup>418</sup> The UNGC is the largest voluntary corporate responsibility initiative in the world,<sup>419</sup> involving over 9,000 companies across 167 countries,<sup>420</sup> provides a detailed framework for companies to think about issues that can help to define their role in society.<sup>421</sup> It even gives a ‘hope’ that a regime of global governance, at least over our largest global businesses, may be in its early stages.<sup>422</sup> The UN Guiding Principles (UNGP) present concrete and practical guidance to governments and business enterprises on a ‘Protect, Respect and Remedy framework’. These three pillars are: the state duty to protect against human rights abuses by third parties including business enterprises, the corporate responsibility to respect human rights, and the need for effective access to remedies for victims of business-related abuses.<sup>423</sup>

None of these initiatives form ‘hard law’ and CSR should not, thus, be seen as a substitute to regulation or legislation concerning social rights, including the development of new legislation.<sup>424</sup> In Bangladesh, therefore, the GoB should not take a step back in light of CSR initiatives that have been concluded in response to Rana Plaza,<sup>425</sup> but must instead focus on continuing to improve its own labour rights regulation and laws. This is notwithstanding the fact that the mobilisation of private stakeholders into those initiatives has been viewed as a ‘silver lining to Rana Plaza’.<sup>426</sup> Indeed, even business *not* proceeding as usual will not ‘get us to the systematic changes that are needed for sustainability, social justice and democracy to thrive’.<sup>427</sup> There needs to be a ‘societal, if not a

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<sup>416</sup> Sarah Labowitz and Dorothee Baumann-Pauly, ‘Business as Usual is Not an Option: Supply Chains and Sourcing after Rana Plaza’ (NYU STERN, Center for Business and Human Rights, April 2014) <[http://www.stern.nyu.edu/sites/default/files/assets/documents/con\\_047408.pdf](http://www.stern.nyu.edu/sites/default/files/assets/documents/con_047408.pdf)>

<sup>417</sup> UN Global Compact <<https://www.unglobalcompact.org/>>

<sup>418</sup> Daniel T Bross, ‘The Role of Business in Society: The Microsoft Vision’ in Oliver F Williams (eds), *Sustainable Development: The UN Millennium Development Goals, the UN Global Compact and the Common Good* (University of Notre Dame Press 2014) 25.

<sup>419</sup> UN, ‘Global Compact: What is UN Global Compact’ <<https://www.unglobalcompact.org/what-is-gc>>

<sup>420</sup> UN ‘UN Global Compact’ <<https://www.unglobalcompact.org/>>

<sup>421</sup> Daniel T Bross, ‘The Role of Business in Society: The Microsoft Vision’ in Oliver F Williams (eds), *Sustainable Development: The UN Millennium Development Goals, the UN Global Compact and the Common Good* (University of Notre Dame Press 2014) 25.

<sup>422</sup> Kirk O Hanson, ‘The Future of the United Nations Global Compact’ in Oliver F Williams (eds), *Sustainable Development: The UN Millennium Development Goals, the UN Global Compact and the Common Good* (University of Notre Dame Press 2014) 363, 363-364.

<sup>423</sup> Stephanie Bijlmakers and others, ‘The EU’s Engagement with the Main Business and Human Rights Instruments’ (Work Package No.7, Deliverable No. 4) 6 <<http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-7.4.pdf>>

<sup>424</sup> European Commission, ‘Green Paper: Promoting a European Framework for Corporate Social Responsibility’ COM(2001) 366 final, para 22.

<sup>425</sup> See Chapter II.D.3.

<sup>426</sup> Roel Nieuwenkamp, ‘Corporate Leaders: Your Supply Chain is Your Responsibility’ (OECD Observer 2014) <[http://www.oecdobserver.org/news/fullstory.php/aid/4366/Corporate\\_leaders:\\_Your\\_supply\\_chain\\_is\\_your\\_responsibility.html](http://www.oecdobserver.org/news/fullstory.php/aid/4366/Corporate_leaders:_Your_supply_chain_is_your_responsibility.html)>

<sup>427</sup> Sandra Waddock, ‘Beyond Corporate Responsibility to the Common Good: The Millennium Development Goals, UN Global Compact and Business Enterprise’ in Oliver F Williams (eds), *Sustainable Development: The UN Millennium Development Goals, the UN Global Compact and the Common Good* (University of Notre Dame Press 2014) 369, 369.

planetary, perspective on the role of business' in order to do so,<sup>428</sup> something that seems some way off from realisation at the bottom end of the RMG GVC.

#### 4. Civil Society Engagement

Civil society is central to the protection of labour rights and working conditions in the RMG industry in Bangladesh. The ability of Civil Society Organisations (CSOs) to effectively participate in the public sphere depends on what is described as the 'CSO enabling environment', characterised by a democratic legal and judicial system, access to information and freedom of expression.<sup>429</sup> Countries should ensure these basic conditions.<sup>430</sup> Worldwide, however, spaces for civil society are either narrow or shrinking.<sup>431</sup> In Bangladesh, one human rights defender (HRD) observed that 'the question of shrinking space is not there in Bangladesh, in fact, there is no space to shrink'.<sup>432</sup> This is due to restrictive legislation that requires, inter alia, NGOs to apply for permission from the government for certain activities<sup>433</sup> – much like the position with regards to trade union registration. HRDs<sup>434</sup> and journalists face arrests,<sup>435</sup> and extra-judicial killings and forced disappearances are relatively widespread.<sup>436</sup> The EU pledges to take action where the government in question fails to recognise civil society, with potential consequences being the suspension of cooperation with national authorities and strengthening of support for local populations through CSOs.<sup>437</sup>

The EU's engagement with civil society is guided by the objectives of enhancing efforts to promote a conducive environment for CSOs, promoting a meaningful and structured participation of CSOs in domestic policies, EU and international processes, and increasing local CSOs capacity to perform their roles of independent development actors more effectively.<sup>438</sup> A comprehensive and detailed discussion of the EU's engagement with civil society and HRDs is contained in FRAME Deliverable 7.3.<sup>439</sup>

<sup>428</sup> *ibid.* 370.

<sup>429</sup> European Commission, 'The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations' COM(2012) 492 final.

<sup>430</sup> *ibid.*

<sup>431</sup> *ibid.* 4.

<sup>432</sup> KIOS Foundation, 'Perspectives on the Shrinking Space for Civil Society and Human Rights Defenders' (KIOS Seminar Report 2015) 16, available online: <http://www.kios.fi/wp-content/uploads/KIOS-Seminar-Report-2015.pdf>.

<sup>433</sup> *ibid.*

<sup>434</sup> The EU defines HRDs as: 'those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence'. See European External Action Service, 'Guidelines on Human Rights Defenders' (2004, updated 2008), I.3 <[eeas.europa.eu/human\\_rights/guidelines/defenders/docs/16332-re02\\_08\\_en.pdf](http://eeas.europa.eu/human_rights/guidelines/defenders/docs/16332-re02_08_en.pdf)>

<sup>435</sup> KIOS Foundation, 'Perspectives on the Shrinking Space for Civil Society and Human Rights Defenders' (KIOS Seminar Report 2015) 16, available online: <http://www.kios.fi/wp-content/uploads/KIOS-Seminar-Report-2015.pdf>.

<sup>436</sup> *ibid.*

<sup>437</sup> Commission, 'The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations' (Communication) COM (2012) 492 final, 5.

<sup>438</sup> *ibid.*

<sup>439</sup> Jeffrey Kenner, Pierre Schmitt, Katrina Sissins and Stuart Wallace, 'Structures and Mechanisms to Strengthen Engagement with Non-State Actors in the Protection and Promotion of Human Rights' (FRAME

In Bangladesh in particular, there are a number of ways in which the EU supports civil society. Firstly, there is the European Instrument for Democracy and Human Rights (EIDHR).<sup>440</sup> In 2014-2015 this provided €1.8 million to Bangladesh. The objective of the programme is to support civil society and HRDs in their human rights' activities to, inter alia, pursue common agendas for human rights and democratic reform and counter the worrying trends of shrinking space for civil society. Secondly, there is a thematic programme 'Civil Society Organisations and Local Authorities' with overall amounts to €1.907 billion for the period 2014-2020; this aims to strengthen CSOs and local authorities in partner countries, supporting contributions to governance and accountability through inclusive policymaking, enhancing the contributions of CSOs to development, and developing citizens' awareness and understanding of the interdependent world and their engagement in, inter alia, social responsibility.<sup>441</sup> Thirdly, the EU grants €118 million for civil society participation in decision making, food and nutrition security, and skills development in Bangladesh.<sup>442</sup> This includes a programme for empowering citizens for 'inclusive and sustainable growth' and strengthening inclusion and participation in decision making and accountability mechanisms in Bangladesh'.<sup>443</sup>

Such projects to support the work of CSOs and help them thrive are vital for improving labour rights and working conditions in Bangladesh. This is especially so as the establishment and intervention of local and international CSOs has been instrumental in advancing the cause of improving labour rights and working conditions in Bangladesh. The support of such organisations in driving forward the global agenda for improvements in the RMG industry is essential for its success. Domestic and international civil society were at the forefront of demanding and initiating change after the Tazreen Fashions and Rana Plaza disasters and in retaining the impetus thereafter. CSOs have maintained pressure, backed up by evidence, by highlighting human rights violations.<sup>444</sup> In their campaigning they have demanded fundamental change in the policies and practices of global brands and retailers, domestic entrepreneurs, and the GoB, regarding, inter alia, compensation for victims and their families, improving health and safety in garment factories and strengthening labour rights and representation of workers by independent trade unions.<sup>445</sup>

Internationally, CSOs have been key to drawing global attention to human rights violations in the RMG sector in Bangladesh by way of shaming the most serious violators and demanding rapid change.<sup>446</sup> Certainly, perhaps the most successful outcome of international and national civil society

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Work Package No. 7 Deliverable No. 3, 30 April 2016) Chapter III(C) and (D) <<http://www.fp7-frame.eu/wp-content/uploads/2016/08/26-Deliverable-7.3.pdf>>

<sup>440</sup> Regulation (EU) No 235/2014 of the European Parliament and the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide [2014] L 77/85.

<sup>441</sup> See European Commission, 'Multiannual Indicative Programme for the Thematic Programme "Civil Society Organisations and Local Authorities" for the period 2014-2020', COM(2014) 4865 final <[http://eeas.europa.eu/delegations/bangladesh/documents/projects/cso\\_la\\_mip\\_cso\\_la\\_2014\\_2020\\_en.pdf](http://eeas.europa.eu/delegations/bangladesh/documents/projects/cso_la_mip_cso_la_2014_2020_en.pdf)>

<sup>442</sup> EU Delegation to Bangladesh, 'The European Union grants EUR 118 million for Civil Society Participation in Decision Making, Food and Nutrition Security, and Skills Development in Bangladesh' (Press Release, EU Delegation to Bangladesh, 6 January 2016)

<[http://eeas.europa.eu/delegations/bangladesh/documents/press\\_corner/all\\_news/news/2016/20160107\\_en.pdf](http://eeas.europa.eu/delegations/bangladesh/documents/press_corner/all_news/news/2016/20160107_en.pdf)>

<sup>443</sup> *ibid.*

<sup>444</sup> See Human Rights Watch, 'Bangladesh' <<https://www.hrw.org/asia/bangladesh>>.

<sup>445</sup> Mohd Raisul, Islam Khan and Christa Wichterich, 'Safety and labour conditions: the Accord and the National Tripartite Plan of Action for the garment industry of Bangladesh' (ILO, Global Labour University 2015) <[www.global-labour-university.org/fileadmin/GLU\\_Working\\_Papers/GLU\\_WP\\_No.38.pdf](http://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.38.pdf)>

<sup>446</sup> *ibid.*

activity post Rana Plaza was the Accord, which was borne as a result of an unprecedented public outcry and corresponding levels of activism. It was signed, as a legally binding agreement, between major brands and national CSOs such as trade unions. The ILO and the GoB are also cooperating with the Accord.<sup>447</sup> This has given civil society a voice.

Nationally, CSOs form the heart of worker protection, despite facing governmental pressure. Influential CSOs include the Centre for Policy Dialogue (CPD), the Bangladesh Labour Welfare Foundation (BLWF) and the Bangladesh National Women Lawyer's Association (BNWLA). One of the most dominant CSOs in the RMG sector is the National Garment Workers' Federation (NGWF) as it promotes the rights of garment workers, such as decent working conditions, fair wages and freedom of association.<sup>448</sup> The NGWF has also campaigned for changes to legislation, including: demanding a review of the minimum wage structure, allowing for a living wage; conducting an annual review of the implementation of the Bangladesh labour law in the RMG sector with participation from trade unions and worker representation organisations; and ensuring the maximum participation of women in all consultation bodies and review mechanisms.<sup>449</sup> The latter is indicative of an overall focus on women's rights. ActionAid have called for CSOs to 'hold governments and businesses accountable for their commitments to deliver on women's rights and women's economic equality'.<sup>450</sup>

Furthermore, national CSOs have advocated for labour law reform and aided individuals seeking to rely on labour rights. In the aftermath of Rana Plaza, BLAST (Bangladesh Legal Aid and Services Trust)<sup>451</sup> was closely involved with the Worker's Safety Forum (Sromik Nirapotta Forum),<sup>452</sup> a platform of labour and human rights activists, to campaign for a reform in the law to provide for criteria for assessing worker compensation and to put in place a realistic and practical process for the recovery of compensation for worker deaths and injuries.<sup>453</sup> In the meantime it is pursuing remedies for victims through public interest litigation in the Supreme Court.<sup>454</sup> BLAST's dedicated labour section continues to provide direct legal services (advice, referrals, mediation and litigation) to workers and to conduct rights awareness sessions.<sup>455</sup>

In addition, the CPD has set up an independent programme to monitor the delivery of commitments made by the GoB, RMG manufacturers, international buyers and development partners post Rana Plaza.<sup>456</sup> This programme was carried out for two years from May 2013 to April 2015, which led to four in-depth reports. Dialogue on the commitments and delivery was carried out with a number of

<sup>447</sup> ILO, 'Improving working conditions in the ready made garment industry: Progress and achievements' (September 2016) <[www.ilo.org/dhaka/Whatwedo/Projects/WCMS\\_240343/lang--en/index.htm](http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_240343/lang--en/index.htm)>

<sup>448</sup> War on Want, 'Ignoring the Law: Labour rights violations in the garment industry in Bangladesh' (War on Want, London July 2009) 6 <[www.waronwant.org/resources/ignoring-law](http://www.waronwant.org/resources/ignoring-law)> accessed 22 September 2016.

<sup>449</sup> *ibid.*

<sup>450</sup> ActionAid, 'Close the Gap! The Cost of Inequality in Women's Work' (January 2015) 17 <[https://www.actionaid.org.uk/sites/default/files/publications/womens\\_rights\\_on-line\\_version\\_2.1.pdf](https://www.actionaid.org.uk/sites/default/files/publications/womens_rights_on-line_version_2.1.pdf)>

<sup>451</sup> See Blast 'About Blast' <<http://www.blast.org.bd/who>>

<sup>452</sup> See ASK, 'Sramik Nirapotta Forum [Worker's Safety Forum] Mark One Year Since Tazreen Incident' (24 November 2013) <<http://www.askbd.org/ask/2013/11/24/sramik-nirapotta-forum-workers-safety-forum-mark-year-tazreen-incident/>>

<sup>453</sup> Bangladesh Legal Aid and Services Trust (BLAST), 'Annual Report 2014' (Dhaka 2014) <[www.blast.org.bd/content/annualreport/AR-2014.pdf](http://www.blast.org.bd/content/annualreport/AR-2014.pdf)>

<sup>454</sup> *ibid.*

<sup>455</sup> *ibid.*

<sup>456</sup> Centre for Policy Dialogue, 'Post-Rana Plaza Monitoring: A Civil Society Initiative' <<http://cpd.org.bd/index.php/post-rana-plaza-monitoring-a-civil-society-initiative/>>



members of civil society and business groups such as the BGMEA.<sup>457</sup> During the dialogue Professor Sobhan reiterated the importance of the RMG sector to the economy and the role of international stakeholders.<sup>458</sup> Mr Atiqul Islam, the president of the BGMEA, the factory owners and manufacturers organisation, noted improvements, such as the removal of generators from the upper floors of RMG factory buildings, particularly of unplanned buildings. Dr Bhattacharya,<sup>459</sup> opined that the national level improvements had not been sufficient to improve the conditions of the workers since a majority percentage of the value chain is retained abroad. This is key with regard to the role of responsible business conduct in securing meaningful change.

Trade unions face particular difficulties, as already illustrated.<sup>460</sup> Without adequate representation and even with the support of some CSOs, there is often conflict between factory owners and garment workers.<sup>461</sup> This often emerges when workers protest, making requests with regard to their working rights and conditions, which employers are not receptive to.<sup>462</sup> From the perspective of the governmental authorities, these protests can be caused by NGOs financed by foreign donors that spur up the workers' courage in protecting their rights.<sup>463</sup> The GoB is particularly hostile to such protests as they cause losses to factory owners, affect production and tarnish the image of the country abroad.<sup>464</sup> For example, on 12 December 2010, all 11 factories of the Korean Youngone Ltd in the Chittagong EPZ were shut for an indefinite period following workers' unrest over wages.<sup>465</sup> Likewise, in Narayanganj and Gazipur, at least 25 people at three garment factories were injured in a protest about wages.<sup>466</sup> Even children have allegedly been beaten by the Bangladeshi police when joining garment workers' strikes.<sup>467</sup> Some stipulate that the rising price of essentials, unpaid salaries, government inaction and absence of responsible trade unions are some of the reasons responsible for rising RMG violence.<sup>468</sup> Unsurprisingly, demands for higher wages form a fundamental part of

<sup>457</sup> Held on 26 January 2014 at the BRAC Centre In Auditorium, Dhaka.

<sup>458</sup> Bangladeshi economist born in Calcutta on March 12, 1935. He played an active role in the Bengali nationalist movement in the 1960s and was also a freedom fighter during the 1971 War of Liberation.

<sup>459</sup> A macroeconomist and public policy analyst. He is a Distinguished Fellow at the Centre for Policy Dialogue (CPD) a globally reputed think-tank in Bangladesh.

<sup>460</sup> See Chapter II.C.3.

<sup>461</sup> Mohammad Yunus and Tatsufumi Yamagata, 'The Garment Industry in Bangladesh, Dynamics of the Garment Industry in Low-Income Countries: Experience of Asia and Africa (Interim Report)' (IDE-JETRO, 2012) <[http://www.ide.go.jp/English/Publish/Download/Report/2011/pdf/410\\_ch6.pdf](http://www.ide.go.jp/English/Publish/Download/Report/2011/pdf/410_ch6.pdf)>

<sup>462</sup> Mohammad Bhuiyan, 'Reasonable Wages for Workers to Eliminate Unrest in Bangladesh's Ready-made Garments (RMG) Sector' (Working Paper Series No 17, Bangladesh Development Research Center 2013) <[www.bangladeshstudies.org/files/WPS\\_no17.pdf](http://www.bangladeshstudies.org/files/WPS_no17.pdf)>

<sup>463</sup> Mamunur Rashid, 'Developing Bangladesh Ready Made Garments (RMG) Industry in the Global Value Chain' (GERAC Working paper 2014) <[www.gerac.hei.ulaval.ca/sites/gerac.hei.ulaval.ca/files/md.\\_mamunur\\_rashid.pdf](http://www.gerac.hei.ulaval.ca/sites/gerac.hei.ulaval.ca/files/md._mamunur_rashid.pdf)>

<sup>464</sup> Kamrul Hasan, Ashraful Islam, Md. Arifuzzaman, 'A Study on the Major Causes of Labour Unrest and Its Effect on the RMG Sector of Bangladesh' (2015) 6(11) *International Journal of Scientific and Engineering Research* 199.

<sup>465</sup> See 'RMG Workers go Berserk', *The Daily Star* (Dhaka, 12 December 2010) <<http://www.thedailystar.net/news-detail-165748>>

<sup>466</sup> *ibid.*

<sup>467</sup> Jason Burke, 'Children Beaten by Bangladeshi Police as they Join Garment Workers' Strikes', *The Guardian* (London, 30 June 2010) <<https://www.theguardian.com/world/2010/jun/30/bangladesh-strikes-children-beaten-police>>

<sup>468</sup> Mohammad Bhuiyan, 'Reasonable Wages for Workers to Eliminate Unrest in Bangladesh's Ready-made Garments (RMG) Sector' (Working Paper Series No 17, Bangladesh Development Research Center 2013) <[www.bangladeshstudies.org/files/WPS\\_no17.pdf](http://www.bangladeshstudies.org/files/WPS_no17.pdf)>

these conflicts as Bangladesh has one of the lowest minimum wages in the industry.<sup>469</sup> There are further difficulties with civil society engagement as there is an inherent bias against workers, and the police predominantly take the side of the rich and influential owners.<sup>470</sup> The causes of labour unrest must be addressed and proper action taken to solve the problem of the protests.<sup>471</sup> The EU can play a role in this respect, and its support of CSOs through the thematic programming may go some way in assisting such organisations.

## D. The Role of the EU in Bangladesh

### 1. EU-Bangladesh-trade relations – GSP Everything But Arms

The EU has a long-standing trading relationship with Bangladesh. At the point of independence, after the War of Liberation in 1971, a preferential trading arrangement was established with Bangladesh under the Community's first Generalised Scheme of Preferences (GSP), adopted after the United Nations Conference on Trade and Development (UNCTAD) approved the principle of GSP schemes for developing countries in 1968.<sup>472</sup> The UNCTAD decision, which now forms part of the WTO legal framework,<sup>473</sup> recognised that the international economic order was not working for the benefit of developing countries and former colonial powers had an obligation to facilitate their development by granting them trade preferences.<sup>474</sup>

Under its GSP, the EU unilaterally and non-reciprocally grants reduced tariffs to certain developing countries for their goods when entering the EU market. It makes it cheaper and less cumbersome for those countries to export products to the EU and helps them integrate into the global trading system.<sup>475</sup> Through the additional export revenue which is generated, the EU GSP aims to promote growth in the income of the developing country fostering job creation and a reduction in poverty-levels.<sup>476</sup> From 1995, the EU promoted 'positive conditionality'<sup>477</sup> by introducing 'special incentive' provisions, known as GSP+, to provide for more beneficial trade preferences for countries prepared to commit to meeting certain human rights obligations. From 2001, there have been three types of GSP scheme: the ordinary GSP, which provides for reduced tariffs, the GSP+, which grants more generous tariff reductions only where countries comply with human rights' standards, and the Everything But Arms (EBA) arrangement, which is the most beneficial of the schemes. Following

<sup>469</sup> ILO, Sectoral Activities Department, 'Wages and Working Hours in the Textiles, Clothing, Leather and Footwear Industries: Issues Paper for Discussion at the Global Dialogue Forum on Wages and Working Hours in the Textiles, Clothing, Leather and Footwear Industries' (23-25 September 2014) <[www.ilo.org/wcmsp5/groups/public/@ed\\_dialogue/@sector/documents/publication/wcms\\_300463.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/publication/wcms_300463.pdf)>

<sup>470</sup> Ibid.

<sup>471</sup> Mamunur Rashid, 'Developing Bangladesh Ready Made Garments (RMG) Industry in the Global Value Chain' (GERAC Working paper 2014) <[www.gerac.hei.ulaval.ca/sites/gerac.hei.ulaval.ca/files/md.\\_mamunur\\_rashid.pdf](http://www.gerac.hei.ulaval.ca/sites/gerac.hei.ulaval.ca/files/md._mamunur_rashid.pdf)>

<sup>472</sup> Delegation of the EU to Bangladesh, 'General System of Preferences' <[http://eeas.europa.eu/delegations/bangladesh/eu\\_bangladesh/trade/gsp/index\\_en.htm](http://eeas.europa.eu/delegations/bangladesh/eu_bangladesh/trade/gsp/index_en.htm)>

<sup>473</sup> Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, Decision L4903 (28 November 1979) GATT B.I.S.D (26<sup>TH</sup> Supp) 203 (1980).

<sup>474</sup> See Olivier De Schutter, *Trade in the Service of Sustainable Development* (Hart Publishing, 2015) 102.

<sup>475</sup> Laura Beke and others, 'The Integration of Human Rights in EU Development and Trade Policies' (FRAME Work Package No.9 Deliverable No.1, 30 September 2014) 31 <<http://www.fp7-frame.eu/wp-content/uploads/2016/08/07-Deliverable-9.1.pdf>>

<sup>476</sup> European Commission, 'The EU's Generalised Scheme of Preferences' (2012) <[http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc\\_150582.pdf](http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150582.pdf)>

<sup>477</sup> See Lorand Bartels, 'The WTO Enabling Clause and Positive Conditionality in the European Community's GSP Program' (2003) 6 *Journal of International Economic Law* 507, 523-527.

reform of the GSP system the EBA has been strengthened under the 2012 GSP Regulation,<sup>478</sup> effective from 1 January 2014. Preferences are now targeted at the Least Developed Countries (LDCs) because they need tariff reductions the most.<sup>479</sup> Differential and more favourable treatment of countries to meet development, financial and trade needs is expressly permitted under WTO rules.<sup>480</sup> Following this reform, the number of GSP beneficiaries has reduced significantly, from 178 to 92.<sup>481</sup>

Access to the EBA is limited, and the reduction in GSP beneficiaries means that there has been a greater focus on LDCs, like Bangladesh, that are in greater need of trade preferences, reducing the competitive pressure on the LDCs and meaning that the preferences are not undermined when granted.<sup>482</sup> Beneficiaries for the EBA are objectively assessed, and their eligibility is dependent upon classification of the beneficiary country by the UN as a LDC.<sup>483</sup> The EBA endows the beneficiary country with full duty-free, quota-free access for all products except arms and ammunition, subject to conditions concerning human rights.<sup>484</sup> Unlike the standard GSP and the GSP+, the EBA has no time-limit and the criteria for entry is automatic.<sup>485</sup> It is not surprising, therefore, that the EBA has quickly become the 'showpiece' of development-friendly EU trade policy.<sup>486</sup>

In the 1980s and 1990s Bangladesh found it difficult to take full advantage of the scheme as the garment industry developed. This was particularly due to rules of origin that constituted the small print of the GSP.<sup>487</sup> The rules were in place to prevent backdoor access to preferences as products would be shipped through countries not beneficiaries of the scheme to qualify for the tariff preferences.<sup>488</sup> In Bangladesh, the rules of origin were stringent and the rule for clothing restricted imports of woven garments by requiring that the fabric be manufactured locally, then cut and assembled in Bangladesh to benefit from the trade preferences.<sup>489</sup> Compliance with the rules of

<sup>478</sup> Regulation (EU) No 978/2012 of the European Parliament and the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 [2012] OJ L 303.

<sup>479</sup> European Commission, 'Report on the Generalised Scheme of Preferences covering the period 2014-2015' COM(2016) 29 final, 2.

<sup>480</sup> WTO, 'Doha Declaration' (14 November 2001), WT/MIN(01)/DEC/1. Para 42 declares that: 'We commit ourselves to the objective of duty-free, quota-free market access for products originating from LDCs'.

<sup>481</sup> European Commission, 'Report on the Generalised Scheme of Preferences covering the period 2014-2015' COM(2016) 29 final, 2.

<sup>482</sup> European Commission, 'Everything But Arms (EBA) – Who Benefits?' (2014) <[http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc\\_152839.pdf](http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152839.pdf)>

<sup>483</sup> *ibid.* See the UN list as of May 2016 available

<[http://www.un.org/en/development/desa/policy/cdp/ldc/ldc\\_list.pdf](http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf)>. The UN Committee for Development Policy defines LDCs as 'low-income countries confronting severe structural impediments to sustainable development' <[http://www.un.org/en/development/desa/policy/cdp/ldc\\_info.shtml](http://www.un.org/en/development/desa/policy/cdp/ldc_info.shtml)>

<sup>484</sup> Regulation (EU) No 978/2012 of the European Parliament and the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 [2012] OJ L 303, Article 1(2)(c), Chapter IV.

<sup>485</sup> European Commission, 'Everything But Arms (EBA) – Who Benefits?' (2014) <[http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc\\_152839.pdf](http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152839.pdf)>

<sup>486</sup> Gerrit Faber and Jan Orbie, 'Everything But Arms: Much More than Appears at First Sight' (2009) 47(4) *Journal of Common Market Studies* 767, 768.

<sup>487</sup> Louise Curran and Khalid Nadvi, 'Shifting Trade Preferences and Value Chain Impacts in the Bangladesh Textiles and Garment Industry' 8 *Cambridge Journal of Regions, Economy and Society* (2015) 459, 460.

<sup>488</sup> Kimberly Ann Elliott and others, 'Open Markets for the Poorest Countries: Trade Preferences That Work' (Center for Global Development 2010) 10 <[http://www.cgdev.org/files/1423918\\_file\\_OpenMarkets\\_Final.pdf](http://www.cgdev.org/files/1423918_file_OpenMarkets_Final.pdf)>

<sup>489</sup> *ibid.*

origin thus required Bangladesh to have a 'functioning and efficient' domestic supply chain,<sup>490</sup> something that it simply did not have. Gradually, as the industry expanded, this became less of a problem and now the rules of origin have been reformed removing this problem.<sup>491</sup>

Bangladesh has benefited from the EBA from 2001. Indeed, Bangladesh's products constituted 69.1% of the EBA preferential imports to the EU by 2014, making it, by some distance, the largest beneficiary of the EBA.<sup>492</sup> EBA preferential imports to the EU now constitute 33.6% of those under the GSP.<sup>493</sup> This illustrates the importance of the EU's trade relations with Bangladesh, and, in particular, as garments represent 90% of Bangladesh's exports to the EU,<sup>494</sup> the EU's GSP has been a significant factor in fuelling the rapid growth of the RMG industry.<sup>495</sup> It can be argued that the EBA arrangement creates a relationship of economic dependency based on garment exports,<sup>496</sup> which, in turn, places a particular responsibility on the EU to ensure that the RMG industry in Bangladesh is human rights compliant.

As the GSP is primarily aimed at fostering development within beneficiary countries, the EBA is regarded as particularly important for LDCs because, in theory, the generous tariff advantages promote the volume of trade and thus export earnings.<sup>497</sup> Expanding trade encourages investment, creates jobs and raises incomes - ultimately reducing poverty.<sup>498</sup> Bangladesh benefits especially from the scheme as nearly all its trade with the EU is suitable for the EBA tariff preferences.<sup>499</sup> Yet, whilst the EBA has been beneficial for the Bangladeshi economy, in boosting growth and employment in the RMG industry, the mere existence of tariff preferences is not enough to bring about sustainable development. Effective sustainable development policies and tools are needed to ensure that Bangladesh is able to take full advantage of the tariff preferences across a range of productive sectors, not just RMGs.<sup>500</sup> It has been suggested that Bangladesh is exporting at such a large volume and growing so fast that it could become a middle income country (MIC) and graduate to GSP+ status

<sup>490</sup> Louise Curran and Khalid Nadvi, 'Shifting Trade Preferences and Value Chain Impacts in the Bangladesh Textiles and Garment Industry' 8 *Cambridge Journal of Regions, Economy and Society* (2015) 459, 461.

<sup>491</sup> See European Commission, 'Questions and Answers – Reform of GSP rules of origin' (18 November 2010) <[http://europa.eu/rapid/press-release\\_MEMO-10-588\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-10-588_en.htm?locale=en)>

<sup>492</sup> European Commission, 'Report on the Generalised Scheme of Preferences covering the period 2014-2015' COM(2016) 29 final 8.

<sup>493</sup> *ibid.* 4.

<sup>494</sup> Delegation of the EU to Bangladesh, 'Trade and Investment' <[http://eeas.europa.eu/delegations/bangladesh/eu\\_bangladesh/trade/index\\_en.htm](http://eeas.europa.eu/delegations/bangladesh/eu_bangladesh/trade/index_en.htm)>

<sup>495</sup> Shahrukh Rafi Khan and others, *Export Success and Industrial Linkages: The Case of Readymade Garments in South Asia* (Palgrave Macmillan 2009) 51-52.

<sup>496</sup> See ActionAid, 'Diversify and Conquer: Transforming Bangladesh into an Industrialised Country' (ActionAid, December 2015) <<https://www.actionaid.org.uk/sites/default/files/publications/diversify-and-conquer-transforming-bangladesh-into-an-industrialised-country.pdf>>

<sup>497</sup> Gene M. Grossman and Alan O. Skyes, 'A Preference for Development: The Law and Economics of GSP' in Gene M. Grossman and Alan O. Skyes, *WTO Law and Developing Countries* (CUP 2007) 255, 274.

<sup>498</sup> Kimberly Ann Elliott and others, 'Open Markets for the Poorest Countries: Trade Preferences That Work' (Center for Global Development 2010) 3 <[http://www.cgdev.org/files/1423918\\_file\\_OpenMarkets\\_Final.pdf](http://www.cgdev.org/files/1423918_file_OpenMarkets_Final.pdf)>

<sup>499</sup> See Michael Gasiorek and others, 'Mid-Term Evaluation of the EU's Generalised System of Preferences' (Centre for the Analysis of Regional Integration, University of Sussex 2010) 58.

<sup>500</sup> Kimberly Ann Elliott, 'Trade Preferences for the Least Developed Countries: Opportunities Not Panaceas' (Think Piece, E15 Expert Group on Trade, Finance and Development, ICTSD and World Economic Forum, September 2015) 7 <<http://www.ictsd.org/sites/default/files/research/E15-Finance-Elliott-final.pdf>>

by 2021.<sup>501</sup> In this eventuality, Bangladesh would be given a three-year transition period during which it would continue to benefit from the EBA.<sup>502</sup>

Research suggests that the GSP is playing a vital role in meeting the EU's commitment to sustainable development.<sup>503</sup> As a tool of the Common Commercial Policy (CCP), an area of exclusive competence of the EU,<sup>504</sup> the GSP is conducted by the Commission under the same objectives as the CCP.<sup>505</sup> The values guiding the GSP pertain to the principles guiding the Union's action on the international scene as a whole. Paragraph 2 of the preamble to the GSP Regulation notes that the EU's Common Commercial Policy (CCP) shall be guided by the principles and pursue the objectives in the general provisions on the Union's external action as laid down in Article 21 TEU. Article 21(1) TEU lists the guiding principles, including democracy, the rule of law, and the universality and indivisibility of human rights and fundamental freedoms. Article 21(2)(d) states that one of the objectives of the Union is to 'foster the sustainable economic, social and environmental development of developing countries'. On the same note, Article 3(5) TEU states that, in its international relations, the EU shall uphold and promote its values and, particularly relevant in this context, contribute to the sustainable development of the earth and free and fair trade. FRAME Deliverable 9.1 provides an extensive discussion of the human rights, trade, development linkage within the EU and an overview of the role played by the GSP in advancing the Union's objectives.<sup>506</sup>

An integral part of the trade-sustainable development nexus is the strengthening of human rights protection. This is the only way that any country can truly develop sustainably. A significant feature of the GSP Regulation is the prospect of negative conditionality in the form of temporary withdrawal of the GSP in cases of human rights violations.<sup>507</sup> Indeed, the unilateral nature of the act of revocation means that the scheme 'theoretically provides the EU with the utmost clout to make its scheme conditional upon the compliance with human rights'.<sup>508</sup> The reasons for withdrawal include 'serious and systematic violations' of the principles within the international conventions listed in Part A of Annex VIII of the GSP Regulation, including 15 core UN and ILO Conventions on human and labour rights.<sup>509</sup> This list includes, inter alia, the UN Convention on the Elimination of All Forms of Discrimination Against Women and ILO Conventions concerning forced labour, child labour, the

<sup>501</sup> See II.B.3 above. Also, see Sajjad Kareem MEP, 'Bangladesh should aim for GSP+ status by 2021', 2 September 2015 <<https://www.sajjadkarim.eu/news/sajjad-bangladesh-should-aim-gsp-status-2021>>

<sup>502</sup> European Commission, 'Everything But Arms (EBA) – Who Benefits?' (2014) <[http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc\\_152839.pdf](http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152839.pdf)>

<sup>503</sup> Michael Gasiorek and others, 'Mid-Term Evaluation of the EU's Generalised System of Preferences' (Centre for the Analysis of Regional Integration, University of Sussex 2010) 58.

<[http://trade.ec.europa.eu/doclib/docs/2010/may/tradoc\\_146196.pdf](http://trade.ec.europa.eu/doclib/docs/2010/may/tradoc_146196.pdf)>

<sup>504</sup> Article 3(1)(e) TFEU.

<sup>505</sup> Article 207(1) TFEU.

<sup>506</sup> Laura Beke and others, 'The Integration of Human Rights in EU Development and Trade Policies' (FRAME Work Package No.9 Deliverable No.1, 30 September 2014) Section III <<http://www.fp7-frame.eu/wp-content/uploads/2016/08/07-Deliverable-9.1.pdf>>

<sup>507</sup> Regulation (EU) No 978/2012 of the European Parliament and the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 [2012] OJ L 303, Chapter V.

<sup>508</sup> Laura Beke and others, 'The Integration of Human Rights in EU Development and Trade Policies' (FRAME Work Package No.9 Deliverable No.1, 30 September 2014) 31 <<http://www.fp7-frame.eu/wp-content/uploads/2016/08/07-Deliverable-9.1.pdf>>

<sup>509</sup> Regulation (EU) No 978/2012 of the European Parliament and the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 [2012] OJ L 303, Article 19(1)(a).

minimum age of employment, equal pay between men and women, freedom of association and the right to organise, and collective bargaining.<sup>510</sup>

In effect, conditional preferences<sup>511</sup> are being provided to reward those developing countries that comply with the ILO's Core Labour Standards which underpin its Declaration of Fundamental Principles at Work,<sup>512</sup> without endangering the comparative advantage in world trade that developing countries have, in part, because of lower wages. The EU can withdraw the GSP if it is satisfied that violations of the referenced human rights instruments are 'serious and systematic'.

One of the most important features of the system of conditional preferences is the close working relationship it requires between the EU and the ILO. The EU must cooperate with the ILO and engage in constructive dialogue.<sup>513</sup> The EU-ILO Strategic Partnership, agreed in 2004,<sup>514</sup> targeted EU and ILO engagement to developing countries including EU co-funding of ILO initiatives and direct involvement of the ILO in EU programmes.<sup>515</sup> The EU has recognised that, by working closely with the ILO in the oversight of the GSP, it is pursuing a broadly supported global agenda on the social dimension of globalisation, which is far less contentious than the EU seeking to impose its own labour standards agenda.<sup>516</sup>

In considering the temporary withdrawal of trade preferences, the EU's decision must be based on the supervisory determinations of the ILO that 'shall serve as a point of departure for the investigation as to whether temporary withdrawal is justified'.<sup>517</sup> Cooperation with the ILO is therefore a second dimension to trade conditionality.<sup>518</sup> The temporary withdrawal procedure has

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<sup>510</sup> *ibid*, Annex VIII. The full list is: 1. Convention on the Prevention and Punishment of the Crime of Genocide (1948) 2. International Convention on the Elimination of All Forms of Racial Discrimination (1965) 3. International Covenant on Civil and Political Rights (1966) 4. International Covenant on Economic Social and Cultural Rights (1966) 5. Convention on the Elimination of All Forms of Discrimination Against Women (1979) 6. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) 7. Convention on the Rights of the Child (1989) 8. Convention concerning Forced or Compulsory Labour, No 29 (1930) 9. Convention concerning Freedom of Association and Protection of the Right to Organise, No 87 (1948) 10. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No 98 (1949) 11. Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No 100 (1951) 12. Convention concerning the Abolition of Forced Labour, No 105 (1957) 13. Convention concerning Discrimination in Respect of Employment and Occupation, No 111 (1958) 14. Convention concerning Minimum Age for Admission to Employment, No 138 (1973) 15. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No 182 (1999).

<sup>511</sup> See Olivier De Schutter, *Trade in the Service of Sustainable Development* (Hart Publishing, 2015) 102-123.

<sup>512</sup> ILO, 'Declaration of Fundamental Principles at Work' (1998) <<http://www.ilo.org/declaration/lang--en/index.htm>>

<sup>513</sup> Tonia Novitz, 'The European Union and International Labour Standards: The Dynamics of Dialogue between the EU and the ILO' in Philip Alston (ed), *Labour Rights as Human Rights* (OUP, 2005) 214-241, 215.

<sup>514</sup> See further, ILO, 'Strategic Partnership ILO-EU' (2012)

<[http://www.ilo.org/integration/themes/mdw/map/WCMS\\_195582/lang--en/index.htm](http://www.ilo.org/integration/themes/mdw/map/WCMS_195582/lang--en/index.htm)>

<sup>515</sup> Jan Orbie and Lisa Tortell, 'The New GSP+ Beneficiaries: Ticking the Box or Truly Consistent with ILO Findings?' [2009] 14 *European Foreign Affairs Review* 663, 667.

<sup>516</sup> *ibid*.

<sup>517</sup> Regulation (EU) No 978/2012 of the European Parliament and the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 [2012] OJ L 303, Art 28(3).

<sup>518</sup> Jan Orbie and Lisa Tortell, 'The New GSP+ Beneficiaries: Ticking the Box or Truly Consistent with ILO Findings?' [2009] 14 *European Foreign Affairs Review* 663, 665.

been invoked only twice by the EU in the cases of Myanmar in 1995<sup>519</sup> and Belarus in 2006.<sup>520</sup> In each case complaints had been filed with the ILO by the European Trade Union Confederation (ETUC) and the International Confederation of Free Trade Unions (ICFTU) based on non-compliance with ILO Conventions, namely forced labour in the case of Myanmar, and violations of freedom of association and collective bargaining in the case of Belarus.<sup>521</sup> In both cases the ILO established a Commission of Inquiry, which is the highest level of reaction of the ILO in response to evidence of serious and systematic labour rights' violations.<sup>522</sup> The EU was acting, therefore, in full concert with the ILO when it withdrew the GSP.

In practice, the withdrawal of the GSP to Myanmar and Belarus had little impact in bringing these countries into compliance with international labour rights.<sup>523</sup> Unlike a country like Bangladesh, neither had a significant level of trade with the EU. The relative paucity of examples where the EU has deployed negative conditionality has raised questions about whether the EU is demonstrating 'double standards' when it comes to upholding labour rights.<sup>524</sup>

Close EU-ILO working was a critical factor in the EU's decision not to temporarily withdraw the GSP from Bangladesh in the immediate aftermath of the Rana Plaza tragedy in 2013. Rana Plaza drew the world's attention to dangerous labour conditions and labour rights' violations in the country's export-driven RMG sector. The EU had to consider using its considerable leverage to threaten to withdraw the GSP. It was the ILO's support for deep engagement rather than punishment of Bangladesh that helped to bring about the consensus to use the Sustainability Compact as a tool to positively advance labour rights, factory safety and responsible business conduct in the Bangladesh RMG sector in partnership with the GoB.<sup>525</sup> Significantly, unlike in the cases of Myanmar and Belarus, there had been no joint complaint by the European and global trade unions against Bangladesh before Rana Plaza, nor had there been an ILO Commission of Inquiry. Despite concerns about, inter alia, child labour, forced labour, lack of freedom of association and denial of collective bargaining rights, formally, at least, Bangladesh had ratified the relevant ILO Conventions.<sup>526</sup> Therefore, there was not a normative basis for the EU to temporarily suspend the GSP. Also, while the global trade unions have urged the EU to use the GSP to exert maximum pressure on the GoB to address labour

<sup>519</sup> Council Regulation (EC) No 552/97 of 24 March 1997 temporarily withdrawing access to generalised tariff preferences from the Union of Myanmar [1997] OJ L 85/8.

<sup>520</sup> Council Regulation (EC) No 1933/2006 of 21 December 2006 temporarily withdrawing access to the generalised tariff preferences from the Republic of Belarus [2006] OJ L 405/35.

<sup>521</sup> See James Yap, 'One step forward: the European Union Generalised System of Preferences and labour rights in the garment industry in Bangladesh' in Jan Wouters, Axel Marx, Dylan Geraets and Bregt Natens (eds), *Global Governance through Trade: EU Policies and Approaches* (Edward Elgar 2015) 214-244, 224-226.

<sup>522</sup> Jan Orbie and Lisa Tortell, 'The New GSP+ Beneficiaries: Ticking the Box or Truly Consistent with ILO Findings?' [2009] 14 *European Foreign Affairs Review* 663, 666.

<sup>523</sup> James Yap, 'One step forward: the European Union Generalised System of Preferences and labour rights in the garment industry in Bangladesh' in Jan Wouters, Axel Marx, Dylan Geraets and Bregt Natens (eds), *Global Governance through Trade: EU Policies and Approaches* (Edward Elgar 2015) 214-244, 225.

<sup>524</sup> Jan Orbie and Lisa Tortell, 'The New GSP+ Beneficiaries: Ticking the Box or Truly Consistent with ILO Findings?' [2009] 14 *European Foreign Affairs Review* 663, 679.

<sup>525</sup> ILO, 'Strengthened workplace safety and labour rights in the Bangladesh Ready-Made Garment sector', September 2016, available [www.ilo.org/wcmsp5/groups/public/---asia/---ro.../---ilo.../wcms\\_474048.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro.../---ilo.../wcms_474048.pdf)

<sup>526</sup> See Annex 2.

rights' violations, they have not called for the GSP arrangements to be revoked because of the millions of jobs that depend on them.<sup>527</sup>

The climate could, however, be changing. Three years on from Rana Plaza, in April 2016, the ITUC lodged a Freedom of Association case at the ILO because, it claims, there are 'persistent and growing violations' by the GoB of its responsibility to respect workers' rights.<sup>528</sup> Also, following a decision of the ILO Committee on Application of Standards in June 2015 to urge the GoB to take action on labour rights, specifically freedom of association and collective bargaining and other acts of anti-union discrimination, a High-Level ILO Tripartite Mission visited Dhaka on 17-20 April 2016 to ensure compliance with the Committee's recommendations. In the light of these developments, to be discussed further in II.D.3, the issue of withdrawal of the GSP may soon be back on the agenda.<sup>529</sup>

One factor to consider in assessing the effectiveness of the GSP in Bangladesh is the issue of diversification of the country's product base. The RMG sector has become the crutch of the Bangladeshi export industry, and it has been suggested that over-reliance on the RMGs is an obstacle to sustainable development in the country.<sup>530</sup> This is an issue not just in Bangladesh but elsewhere in South Asia where global firms have embarked on strategies to take advantage of the international dispersion of production processes to outsource their operations to low wage countries where cheap garments can be produced.<sup>531</sup> These globally outsourced goods can then easily enter the EU Single Market under the GSP arrangements. This is how the GVC grows as a proportion of world trade.<sup>532</sup> In turn, what Robert Baldwin has described as 'factory economies'<sup>533</sup> emerge and, quite quickly, poor countries can become world-class exporters with high growth rates. As a result, Bangladesh and other similarly situated countries are trapped in the low value RMG sector.<sup>534</sup> This may explain why inequalities have increased even in emerging economies.<sup>535</sup> The RMG sector could lead Bangladesh into classification as a middle income country (MIC), but this may aggravate the race to the bottom

<sup>527</sup> See ITUC, Uni and industriALL, 'An Evaluation of the Bangladesh Sustainability Compact' (March 2015) 1 <[http://www.ituc-csi.org/IMG/pdf/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact\\_march\\_final.pdf](http://www.ituc-csi.org/IMG/pdf/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_march_final.pdf)>

<sup>528</sup> ITUC, 'Bangladesh: Government's Anti-Union Actions Prompt Complaint to the ILO' <<http://www.ituc-csi.org/bangladesh-government-s-anti-union>>

<sup>529</sup> ILO, 'Report of the High-Level Tripartite Mission to Bangladesh, Dhaka 17-20 April 2016' <[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---/wcms\\_488339.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---/wcms_488339.pdf)>

<sup>530</sup> ActionAid, 'Diversify and Conquer: Transforming Bangladesh into an Industrialised Country' (December 2015) 4 <<https://www.actionaid.org.uk/sites/default/files/publications/diversify-and-conquer-transforming-bangladesh-into-an-industrialised-country.pdf>>

<sup>531</sup> Arnaud Zacharie, 'Afterword: Linking Trade to Social and Environmental Standards: An Answer to the Challenges of Globalization' in Olivier De Schutter, *Trade in the Service of Sustainable Development* (Hart Publishing, 2015) 174-186, 175-176.

<sup>532</sup> According to UNCTAD, GVCs account for 80% of world trade. UN, UNCTAD, 'World Investment Report 2013, Global Value Chains: Investment and Trade for Development' <[unctad.org/en/PublicationsLibrary/wir2013\\_en.pdf](http://unctad.org/en/PublicationsLibrary/wir2013_en.pdf)>

<sup>533</sup> Robert Baldwin, 'Trade and Industrialisation After Globalisation's 2<sup>nd</sup> Unbundling: How Building and Joining a Supply Chain Are Different and Why it Matters' (NBER Working Paper, December 2011) <[www.nber.org/chapters/c12590](http://www.nber.org/chapters/c12590)>

<sup>534</sup> ActionAid, 'Diversify and Conquer: Transforming Bangladesh into an Industrialised Country' (December 2015) 4 <<https://www.actionaid.org.uk/sites/default/files/publications/diversify-and-conquer-transforming-bangladesh-into-an-industrialised-country.pdf>>

<sup>535</sup> Arnaud Zacharie, 'Afterword: Linking Trade to Social and Environmental Standards: An Answer to the Challenges of Globalization' in Olivier De Schutter, *Trade in the Service of Sustainable Development* (Hart Publishing, 2015) 174-186, 181.



of labour rights as Bangladesh attempts to expand its trade and remain competitive in the global RMG industry.<sup>536</sup> As a MIC it would also be difficult for Bangladesh to diversify its export base without the benefits it could have gained from the EBA. Diversification seems a now or never scenario.

Therefore, one of the most important roles that the GSP can play in fostering development and labour rights in Bangladesh is to encourage growth in existing industry and diversification into new products.<sup>537</sup> The underlying challenge within this is to link sustainable economic development with providing decent work through diversification.<sup>538</sup> Diversification would lessen the focus on the RMG sector and the new products would benefit from the EBA arrangement and, after transition, potentially GSP+. Diversification is also vital as it reduces the impact of terms of trade shocks – sudden differences in the price of exports compared to imports.<sup>539</sup> Nevertheless, the path to diversification will not be a smooth one. Issues such as barriers to convincing foreign firms to work with Bangladeshi firms, the lack of modern technology and scarcity of land for industrial parks will provide many obstacles.<sup>540</sup> The EU, in its development cooperation, could provide assistance in this regard and thus enable Bangladesh to achieve its true potential in terms of its usage of the EBA.

Overall, the EU-Bangladesh trade relationship is embodied within the EBA, which has fostered the impressive and rapid growth of the RMG sector in Bangladesh and created millions of jobs that have contributed towards sustainable development. While the EBA has clearly been beneficial in promoting the development of the country, much remains to be done in order to ensure that Bangladesh can take full advantage of the scheme. Diversification may be the only way forward to initiate change in Bangladesh. In the meantime, it is important that the EU keeps in mind the possibility of withdrawing the GSP scheme if the supervisory bodies of the ILO find that Bangladesh is systematically violating labour rights.

## 2. EU-Bangladesh-development cooperation

EU development cooperation with Bangladesh is long-standing. When first established, in 1973, the overwhelming development need in Bangladesh was for humanitarian assistance as a response to the devastation caused by cyclones and floods.<sup>541</sup> Disaster-risk reduction and climate change issues continue to be high on the EU's development agenda in Bangladesh in recognition of the country's particular vulnerability to these phenomena,<sup>542</sup> as discussed in II.B.2 above. Over time, however, EU policy has evolved, from being primarily a donor of aid towards a relationship of partnership with

<sup>536</sup> ActionAid, 'Diversify and Conquer: Transforming Bangladesh into an Industrialised Country' (December 2015) 5 <<https://www.actionaid.org.uk/sites/default/files/publications/diversify-and-conquer-transforming-bangladesh-into-an-industrialised-country.pdf>>

<sup>537</sup> Michael Gasiorok and others, 'Mid-Term Evaluation of the EU's Generalised System of Preferences' (Centre for the Analysis of Regional Integration, University of Sussex 2010) 13.

<sup>538</sup> ActionAid, 'Diversify and Conquer: Transforming Bangladesh into an Industrialised Country' (December 2015) 10 <<https://www.actionaid.org.uk/sites/default/files/publications/diversify-and-conquer-transforming-bangladesh-into-an-industrialised-country.pdf>>

<sup>539</sup> Michael Gasiorok and others, 'Mid-Term Evaluation of the EU's Generalised System of Preferences' (Centre for the Analysis of Regional Integration, University of Sussex 2010) 13.

<sup>540</sup> ActionAid, 'Diversify and Conquer: Transforming Bangladesh into an Industrialised Country' (December 2015) 15-16 <<https://www.actionaid.org.uk/sites/default/files/publications/diversify-and-conquer-transforming-bangladesh-into-an-industrialised-country.pdf>>

<sup>541</sup> Delegation of the EU to Bangladesh, 'Development Cooperation'

<[http://eeas.europa.eu/delegations/bangladesh/eu\\_bangladesh/dev\\_coop/index\\_en.htm](http://eeas.europa.eu/delegations/bangladesh/eu_bangladesh/dev_coop/index_en.htm)>

<sup>542</sup> *ibid.*

governments and wider civil society in the pursuit of shared development objectives focusing on identified development needs and also governance and human rights.<sup>543</sup> Partnership with Bangladesh is now under the umbrella of the Cooperation Agreement of 2001,<sup>544</sup> which underpins domestic and international policies with respect for human rights and democratic principles.<sup>545</sup> It has supported poverty reduction by encouraging sustainable economic and social development.<sup>546</sup> The EU's approach is to use policy dialogue with the Government of Bangladesh (GoB) and link results to specific cooperation programmes or instruments.<sup>547</sup>

The EU and the Member States share a development consensus which has, as its basis, the goal of 'poverty elimination in the context of sustainable development'.<sup>548</sup> In line with the global agenda on human rights, the EU promotes a rights-based approach to development in recognition of the fact that human rights are a cross-cutting issue affecting the implementation of programmes and projects.<sup>549</sup> EU development cooperation, conducted jointly by the Union and the Member States,<sup>550</sup> therefore forms a nexus with trade and human rights objectives.<sup>551</sup> In this context, coordinated EU action and improved coherence among EU policies is necessary to ensure the best value for EU development assistance.<sup>552</sup>

Sustainable development is a multifaceted challenge for the EU, incorporating good governance, human rights and political, economic, social and environmental aspects.<sup>553</sup> It has been defined by the UN as development that 'meets the needs of the present without compromising the ability of future generations to meet their own needs'.<sup>554</sup> With the expiration of the global Millennium Development Goals (MDGs) in 2015, and the subsequent introduction of the Sustainable Development Goals

<sup>543</sup> See Mustafizur Rahman and Saifur Rahman, 'Bangladesh-EU Development Relationship: Major Features and Emerging Issues' (5 CPD Occasional Paper Series, Centre for Policy Dialogue 2000) 3

<[http://www.cpd.org.bd/pub\\_attach/op5.pdf](http://www.cpd.org.bd/pub_attach/op5.pdf)> and Lorand Bartels, 'The trade and development policy of the European Union' [2007] *European Journal of International Law* 715.

<sup>544</sup> Cooperation Agreement between the European Community and the People's Republic of Bangladesh on partnership and development [2001] L118/48.

<sup>545</sup> *ibid.* Article 1.

<sup>546</sup> European External Action Service and European Commission, 'Development Cooperation Instrument Multi-Annual Indicative Programme (MIP) 2014-2020 Bangladesh'

<[http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020\\_en.pdf](http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020_en.pdf)>

<sup>547</sup> European Commission, Green Paper, 'EU development policy in support of inclusive growth and sustainable development: Increasing the impact of EU development policy', COM(2010) 629 final, 10 November 2010, 3.

<sup>548</sup> Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' [2006] C 46/01.

<sup>549</sup> Council of the EU, 'EU Action Plan on Human Rights and Democracy' (2015) 41

<[https://eeas.europa.eu/human\\_rights/docs/eu\\_action\\_plan\\_on\\_human\\_rights\\_and\\_democracy\\_en.pdf](https://eeas.europa.eu/human_rights/docs/eu_action_plan_on_human_rights_and_democracy_en.pdf)>

<sup>550</sup> Article 208(1) TFEU.

<sup>551</sup> Maurizio Carbone and Jan Orbie, 'Beyond Economic Partnership Agreements: the European Union and the trade-development nexus' [2009] 20(1) *Contemporary Politics* 1.

<sup>552</sup> European Commission, 'Increasing the Impact of EU development Policy: an Agenda for Change', COM(2011) 637 final, 13 October 2011, 4.

<sup>553</sup> Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' [2006] C 46/01, para 7.

<sup>554</sup> UN, 'The Sustainable Development Agenda' <<http://www.un.org/sustainabledevelopment/development-agenda/>>

(SDGs),<sup>555</sup> with a target date of 2030, the concept holds even more importance. Combating global poverty, as recognised by the European Parliament, has come down to building a more stable, peaceful, prosperous and equitable world.<sup>556</sup> Ultimately, development cooperation must ensure that globalisation is a 'positive force for all of mankind'.<sup>557</sup> To be such a positive force, the EU must select a mix of policies, tools and resources that promote sustainable development within specific countries and adapt policy mixes to each partner country.<sup>558</sup>

Under the EU's Agenda for Change, launched in 2011, the Union seeks to tailor its development partnerships so as to achieve the greatest 'impact' towards eradicating poverty, or aid effectiveness.<sup>559</sup> In particular, the EU supports the twin objectives of: promoting human rights and democracy, and other elements of good governance; and attaining inclusive and sustainable growth for human development.<sup>560</sup> Aid effectiveness has improved under partnership and cooperation agreements, modernised financial instruments and mechanisms designed to improve policy coherence for development.<sup>561</sup>

As elaborated in II.B.3. above, Bangladesh progressed strongly towards achieving the MDGs in the period up to 2015, so much so that it has been praised by the UN as one of the developing world's major MDG success stories.<sup>562</sup> Bangladesh has made progress on food security, primary school enrolment, gender parity in primary and secondary-level education, lowering infant and under-five mortality rates and maternal mortality rates.<sup>563</sup> It has been suggested that the GoB cherry-picked some development goals over others,<sup>564</sup> but it is remarkable that the numbers in extreme poverty halved, from 58% to 29%, by 2013, two years ahead of the MDG target date.<sup>565</sup> Bangladesh is now committed to eradicating extreme poverty by 2030 in line with the SDGs.<sup>566</sup>

<sup>555</sup> UN, 'Sustainable Development Goals'. The SDGs, effective from January 2016, are designed to 'build on the successes' of the Millennium Development Goals <[www.undp.org/content/undp/en/home/sustainable-development-goals.html](http://www.undp.org/content/undp/en/home/sustainable-development-goals.html)>

<sup>556</sup> Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' [2006] C 46/01, para 1.

<sup>557</sup> *ibid.* para 39.

<sup>558</sup> European Commission, 'Increasing the Impact of EU Development Policy: An Agenda for Change', COM(2011) 637 final, 13 October 2011, 3.

<sup>559</sup> *ibid.*

<sup>560</sup> *ibid.*

<sup>561</sup> European Commission, Green Paper, 'EU development policy in support of inclusive growth and sustainable development: Increasing the impact of EU development policy', COM(2010) 629 final, 10 November 2010, 3.

<sup>562</sup> Simon Tisdall and Anna Ridout, 'Sheikh Hasina: 'I want to make Bangladesh poverty-free'', *The Guardian* (London, 25 September 2015) <<http://www.theguardian.com/global-development/2015/sep/25/sheikh-hasina-i-want-to-make-bangladesh-poverty-free-sustainable-development-goals>>

<sup>563</sup> UN, 'Millennium Development Goals: Bangladesh Progress Report 2015' <<http://www.bd.undp.org/content/bangladesh/en/home/library/mdg/mdg-progress-report-2015.html>>. See further, Reaz Ahmed, 'Dhaka ready to face new challenges', *The Daily Star* (Dhaka, 18 September 2015) <<http://www.thedailystar.net/backpage/dhaka-ready-face-new-challenges-143818>>

<sup>564</sup> Simon Tisdall and Anna Ridout, 'Sheikh Hasina: 'I want to make Bangladesh poverty-free'', *The Guardian* (London, 25 September 2015) <<http://www.theguardian.com/global-development/2015/sep/25/sheikh-hasina-i-want-to-make-bangladesh-poverty-free-sustainable-development-goals>>

<sup>565</sup> Reaz Ahmed, 'Dhaka ready to face new challenges' *The Daily Star* (Dhaka, 18 September 2015) <<http://www.thedailystar.net/backpage/dhaka-ready-face-new-challenges-143818>>

<sup>566</sup> *ibid.*

The EU acknowledges that the RMG sector, as supported through preferential access to the EU's Single Market, 'has made a significant contribution to economic development, employment, higher income level and skills ... and has had a positive impact on poverty eradication, empowerment of women' and progression towards attainment of the MDGs.<sup>567</sup> Nevertheless, in response to the Rana Plaza tragedy, the EU recognises that implementation of the Sustainability Compact is at the forefront of the EU's development priorities. At a meeting of the Joint Commission of the EU and the GoB in 2015, in accordance with the Cooperation Agreement,<sup>568</sup> both sides renewed their commitment to the Compact, indicating the potential to use development cooperation to meet the Compact's objectives.

Notwithstanding the progress towards meeting the MDGs, Bangladesh, remains a high priority for EU development cooperation. It is one of the world's 48 LDCs, with 47 million of its 161 million population still in poverty,<sup>569</sup> and has a Human Development Index rating of 146 out of 186 countries.<sup>570</sup> Collectively, the EU, including the Member States, is the largest donor of official development assistance (ODA) in the world, providing €58.2 billion of net ODA in 2014, half of the world's development assistance.<sup>571</sup> Bangladesh is the world's tenth highest ODA recipient, the EU being the second highest ODA provider.<sup>572</sup>

As part of the implementation of the Agenda for Change, the EU has developed a differentiated development partnership designed to be specific to the development needs and capacities of Bangladesh and consistent with the country's own development plan.<sup>573</sup> It takes account of Vision 2021, under which Bangladesh seeks to become a Middle Income Country (MIC) to mark 50 years of independence.<sup>574</sup> The EU's main implementation tool for providing country-specific support to Bangladesh is the Development Cooperation Instrument (DCI) Multi-Annual Indicative Plan (MIP)

<sup>567</sup> European External Action Service and European Commission, 'Development Cooperation Instrument Multi-Annual Indicative Programme (MIP) 2014-2020 Bangladesh' 1.1

<[http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020\\_en.pdf](http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020_en.pdf)>

<sup>568</sup> European External Action Service, 'European Union-Bangladesh Joint Commission held in Dhaka' (Joint Press Release, Dhaka, 24 November 2015). See, Cooperation Agreement between the European Community and the People's Republic of Bangladesh on partnership and development [2001] L118/48. The relevant provisions concerning Joint Commissions are found in Article 12

<[http://www.eeas.europa.eu/delegations/bangladesh/documents/press\\_corner/all\\_news/news/2015/20151124\\_en.pdf](http://www.eeas.europa.eu/delegations/bangladesh/documents/press_corner/all_news/news/2015/20151124_en.pdf)>

<sup>569</sup> World Bank, 'Bangladesh Overview' <[www.worldbank.org/en/country/bangladesh/overview](http://www.worldbank.org/en/country/bangladesh/overview)>

<sup>570</sup> European External Action Service and European Commission, 'Development Cooperation Instrument Multi-Annual Indicative Programme (MIP) 2014-2020 Bangladesh', point 1.1

<[http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020\\_en.pdf](http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020_en.pdf)>

<sup>571</sup> European Commission, '2015 Annual Report on the European Union's Development and External Assistance Policies and their Implementation in 2014' (2015) 5 <[http://ec.europa.eu/europeaid/sites/devco/files/2015-annual-report-web\\_en.pdf](http://ec.europa.eu/europeaid/sites/devco/files/2015-annual-report-web_en.pdf)>

<sup>572</sup> OECD, 'Development Aid at a Glance: Statistics by Region 1. Developing Countries' (2015)

<<http://www.oecd.org/dac/stats/documentupload/1%20World%20-%20Development%20Aid%20at%20a%20Glance%202015.pdf>>

<sup>573</sup> European External Action Service and European Commission, 'Development Cooperation Instrument Multi-Annual Indicative Programme (MIP) 2014-2020 Bangladesh', point 1.1

<[http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020\\_en.pdf](http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020_en.pdf)>

<sup>574</sup> Government of Bangladesh, 'Perspective Plan of Bangladesh 2010-2021' (April 2012)

<[bangladesh.gov.bd/sites/.../bangladesh...bd/.../Perspective-Plan-of-Bangladesh.pdf](http://bangladesh.gov.bd/sites/.../bangladesh...bd/.../Perspective-Plan-of-Bangladesh.pdf)>

2014-2020, which is designed to be ‘synchronised’ with Bangladesh’s 7<sup>th</sup> Five Year Plan 2015-2020.<sup>575</sup> Bangladesh is receiving an indicative €690 million of funding under the DCI MIP.<sup>576</sup> Following studies and consultations with stakeholders and partners, the EU has identified some of the main challenges facing Bangladesh, including, ‘youth unemployment, unavailability of skilled workforce, shrinking space for CSOs, widespread corruption leading to waste of scarce resources, unacceptable rates of malnutrition, violence against women, environmental unsustainability and climate change’.<sup>577</sup> EU development support under the DCI MIP focuses on three priority sectors:<sup>578</sup>

- *strengthening democratic governance*, which includes reinforcement of local government, and empowerment of civil society, social partners and youth, in particular girls and women;
- *food and nutrition security*, to include support for the most deprived and extreme poor; and
- *education and skills development*, which is recognised as a key driver for Bangladesh’s economic growth and social development

Each of these priority sectors inter-relates with issues arising from the rapid growth of the RMG sector, such as child labour, rural resilience in areas which have lost a large proportion of young women who have left to work in garment factories,<sup>579</sup> and improved education and skills to assist the diversification of Bangladesh’s economy. The focus on quality and equitable education<sup>580</sup> is vital for human development in Bangladesh because over half of the population have no schooling. Equally, skills development needs to be improved,<sup>581</sup> as only 0.4% of the labour force has received vocational, technical or skills development training.<sup>582</sup> Currently, around half of the ODA from the EU goes on education and skills development in Bangladesh.<sup>583</sup> In recognition of the additional investment needed, the EU has announced new long-term funding to support education in developing countries.<sup>584</sup> This is part of the Global Partnership for Education, which is made up of nearly 60 developing country governments and non-state actors.

Also important is the EU’s ‘Unique Intervention for Quality Primary Education’ (UNIQUE II) programme, which will contribute to improving the education system for primary school children.<sup>585</sup> Yet further efforts should be made to encourage women to stay in education.<sup>586</sup> One proviso is that, although a focus on education and skills development will create a higher skilled labour force, the

<sup>575</sup> European External Action Service and European Commission, ‘Development Cooperation Instrument Multi-Annual Indicative Programme (MIP) 2014-2020 Bangladesh’, point 1.1

<[http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020\\_en.pdf](http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020_en.pdf)>

<sup>576</sup> *ibid* point 2.

<sup>577</sup> *ibid* point 1.2.

<sup>578</sup> *ibid*.

<sup>579</sup> See Jeremy Seabrook, *The Song of the Shirt* (Hurst 2015) 110-112.

<sup>580</sup> European External Action Service and European Commission, ‘Development Cooperation Instrument Multi-Annual Indicative Programme (MIP) 2014-2020 Bangladesh’, specific objective 1

<[http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020\\_en.pdf](http://ec.europa.eu/europeaid/sites/devco/files/mip-bangladesh-2014-2020_en.pdf)>

<sup>581</sup> *ibid* specific objective 2.

<sup>582</sup> *ibid* point 2.

<sup>583</sup> *ibid* point 2.

<sup>584</sup> European Commission, ‘EU announces significant new funding for education’ (Press Release, Brussels, 26 June 2014) <[http://europa.eu/rapid/press-release\\_IP-14-741\\_en.htm](http://europa.eu/rapid/press-release_IP-14-741_en.htm)>

<sup>585</sup> European Commission, ‘Unique Intervention for Quality Primary Education (UNIQUE II)’

<[https://ec.europa.eu/europeaid/projects/unique-intervention-quality-primary-education-unique-ii\\_en](https://ec.europa.eu/europeaid/projects/unique-intervention-quality-primary-education-unique-ii_en)>

<sup>586</sup> ILO, *Bangladesh: Seeking Better Growth Employment Conditions for Better Socioeconomic Outcomes* (2013) 73.

main obstacle to progress in Bangladesh is that the dominant RMG sector, and the large agricultural sector, will remain low-skilled sectors unless diversification occurs.<sup>587</sup> Higher skilled workers will need the availability of higher skilled jobs.

Another vital tool of development cooperation, of heightened relevance following the Rana Plaza tragedy and the launch of the Sustainability Compact, is EU partnership with the ILO in Bangladesh. Article 10 of the EU-Bangladesh Cooperation Agreement states that the parties acknowledge the necessity of safeguarding the basic rights of workers by taking into account the ILO instruments.<sup>588</sup> In this respect, development cooperation ‘critically hinges’ on Bangladesh’s compliance with labour rights.<sup>589</sup> The EU has leverage through both development assistance and trade preferences in seeking to advance labour rights.

The EU’s partnership with ILO is vital for progressing the SDGs in Bangladesh to secure ‘decent work’, improve employment opportunities and strengthen social protection. In its external action, the EU is committed to ‘collaborating’ with the ILO ‘at an operational level in the service of sustainable development’.<sup>590</sup> The EU and ILO regard each other as allies in promoting the social dimension of globalisation through structured dialogue.<sup>591</sup> The development of closer ties can be explained by the distinct shift in the EU’s orientation concerning human rights and development cooperation in the late 1990s.<sup>592</sup> It spurred the establishment of a ‘strategic partnership’ between the EU and the ILO in 2004 in the field of development,<sup>593</sup> with the aim of enhancing the effectiveness of both partners in promoting the ILO’s Core Labour Standards (CLS)<sup>594</sup> and its Decent Work Agenda (DWA).<sup>595</sup> It is this strategic partnership that has provided the catalyst for EU-ILO collaboration in the establishment of the Sustainability Compact post Rana Plaza.

<sup>587</sup> Government of Bangladesh, ‘Seventh Five Year Plan: FY2016-FY2020’ (11 November 2015) 247 <[http://www.plancomm.gov.bd/wp-content/uploads/2015/11/7FYP\\_after-NEC\\_11\\_11\\_2015.pdf](http://www.plancomm.gov.bd/wp-content/uploads/2015/11/7FYP_after-NEC_11_11_2015.pdf)>

<sup>588</sup> Cooperation Agreement between the European Community and the People’s Republic of Bangladesh on partnership and development [2001] L118/48.

<sup>589</sup> Mustafizur Rahman and Saifur Rahman, ‘Bangladesh-EU Development Relationship: Major Features and Emerging Issues’ (5 CPD Occasional Paper Series, Centre for Policy Dialogue 2000) 20 <[http://www.cpd.org.bd/pub\\_attach/op5.pdf](http://www.cpd.org.bd/pub_attach/op5.pdf)>

<sup>590</sup> European Commission, ‘Corrigendum to the exchange of letters between the Commission of the European Communities and the International Labour Organisation’, OJ C 165, 8.6.2001, p. 23–27.

<sup>591</sup> The Commission contributed to the ILO’s ‘World Commission on the Social Dimension of Globalization’ (2004) <<http://www.ilo.org/public/english/wcsdg/index1.htm>>. See Jan Orbie and Olufemi Babarinde, ‘The Social Dimension of Globalization and EU Development Policy: Promoting Core Labour Standards and Corporate Social Responsibility’ (2008) 30 *Journal of European Integration* 459, 473.

<sup>592</sup> See Jeff Kenner, ‘Economic Partnerships: Enhancing the Labour Dimension of Global Governance’ in Bart Van Vooren, Steven Blockmans, and Jan Wouters (eds), *The EU’s Role in Global Governance: The Legal Dimension* (OUP 2013) 306-321, 312.

<sup>593</sup> European Commission-ILO Memorandum of Understanding (15-16 July 2004)

<[http://ec.europa.eu/europeaid/what/social-protection/documents/memorandum\\_of\\_understanding\\_ec\\_ilo\\_en.pdf](http://ec.europa.eu/europeaid/what/social-protection/documents/memorandum_of_understanding_ec_ilo_en.pdf)>

<sup>594</sup> ILO, ‘Declaration on Fundamental Principles and Rights at Work’ (1998)

<<http://www.ilo.org/public/english/bureau/leg/declarations.htm>>. The Declaration requires ILO members ‘to respect, to promote and to realise, in good faith and in accordance with the [ILO] Constitution, the principles concerning the fundamental rights which are the subject of those [ILO] Conventions, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;  
 (b) the elimination of all forms of forced or compulsory labour;  
 (c) the effective abolition of child labour; and  
 (d) the elimination of discrimination in respect of employment and occupation’.

<sup>595</sup> ILO, ‘Decent Work’ (1999) <<http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm>>

Decent work is now at the forefront of the EU's Agenda for Change.<sup>596</sup> The concept of decent work equates to a basic aspiration to offer *all* men and women access to decent and productive work 'in conditions of freedom, equality, security and human dignity'.<sup>597</sup> It recognises that while the CLS are important for those in formal employment, there is an urgent requirement to meet the needs of those who are in informal employment, unemployed or under-employed.<sup>598</sup> This is particularly important in Bangladesh, where informal employment, characterised by low pay and an absence of social protection, is the norm for most workers.<sup>599</sup> The DWA seeks to address 'the dual challenge of creating new productive jobs and improving the quality of existing ones'.<sup>600</sup> The DWA has four strategic pillars: creating jobs; guaranteeing rights at work; extending social protection; and promoting social dialogue. Gender equality is cross-cutting.<sup>601</sup>

Promoting inclusive and sustainable economic growth, employment and decent work for all is Goal 8 of the UN SDGs.<sup>602</sup> Decent work covering job creation, guarantees of rights at work, empowerment of women, social protection and social dialogue is vital in Bangladesh.<sup>603</sup> Indeed, it has been asserted that it is the 'centrepiece of the fight against poverty and social exclusion'.<sup>604</sup> The Commission has committed itself to work with the ILO, the UN and other organisations to implement the DWA and improve the capacity of partner countries.<sup>605</sup> In Bangladesh, the Decent Work Country Programme (DWCP) 2012-2015 has been the main instrument carrying out this Agenda.<sup>606</sup> Implementation is based on a Memorandum of Understanding between the ILO and the GoB to establish the DWCP based on achieving five priorities, all of which are relevant to the RMG industry:

Priority 1: Generating productive employment with improved sustainable enterprises and skills development.

Priority 2: Fundamental principles and rights at work promoted and implemented through effective social dialogue.

Priority 3: Extending social protection to the workers and their families, including migrant workers

Priority 4: Strong and representative employers and workers' organisations influencing economic, social and governance policies.

Priority 5: Ratification and application of international labour standards.

<sup>596</sup> European Commission Communication, 'Increasing the Impact of EU development Policy: an Agenda for Change', COM(2011) 637 final, 13 October 2011, 7.

<sup>597</sup> ILO, 'Decent Work' (1999) <<http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm>>

<sup>598</sup> ILO, 'Key Indicators of the Labour Market' (ILO, 5<sup>th</sup> ed, 2007).

<sup>599</sup> In 2010, 87% of the labour force were in informal employment. See ILO, *Bangladesh: Seeking Better Employment Conditions for Better Socio-Economic Outcomes* (2013) 83.

<sup>600</sup> UN ECOSOC Res 2008/18, preamble recital 7.

<sup>601</sup> ILO, 'Decent Work' (1999) <<http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>>

<sup>602</sup> ILO, 'Decent Work and the 2030 Agenda for Sustainable Development'

<<http://www.ilo.org/global/topics/sdg-2030/lang--en/index.htm>>

<sup>603</sup> European Commission, 'Increasing the Impact of EU Development Policy: An Agenda for Change', COM(2011) 637 final, 13 October 2011, 7.

<sup>604</sup> European Parliament Resolution of 23 May 2007 on promoting decent work for all (2006/2240(INI)), para 1.

<sup>605</sup> European Commission, 'Communication on Promoting Decent Work for all: The EU Contribution to the Implementation of the Decent Work Agenda in the World', COM(2006) 249 final, 5.

<sup>606</sup> ILO, 'Bangladesh: Decent Work Country Programme 2012-2015' (November 2012) <<http://www.ilo.org/public/english/bureau/program/dwcp/download/bangladesh.pdf>>

The EU has contributed to the implementation of the DWCP by providing direct funding to assist the ILO in monitoring and assessing the effectiveness of the DWCP in Bangladesh.<sup>607</sup> The DWCP has been important for establishing a triangular partnership between the EU, the ILO and the GoB as a forerunner to cooperation under the Compact.

Progress under the DWCP is linked to the specific action the ILO is taking in the RMG sector under the Better Work programme, a partnership between the ILO and the International Finance Corporation (IFC), designed to improve conditions and promote competitiveness in the global garment industry.<sup>608</sup> The EU's specific input into Better Work Bangladesh is analysed in D.3.a)(4) below.

### 3. The EU's Response to the Rana Plaza Factory Collapse – human rights issues

#### *a) Coordination with the ILO, US, Bangladesh, trade unions and employers – the Tripartite Plan of Action, the Accord on Fire and Building Safety, the Alliance for Bangladesh Worker Safety, the Better Work Programme*

The Rana Plaza factory collapse in 2013 was the worst industrial disaster of the 21<sup>st</sup> century to date, killing 1,136 people and seriously injuring 2,525 people.<sup>609</sup> The disaster followed close on the heels of the Tazreen Fashions factory fire, the worst of many such fires, which killed 112 people.<sup>610</sup> These disasters focused international attention on workers' rights and working conditions in the RMG industry in Bangladesh and other competitor countries in the garments GVC. Global actors were compelled to respond to demands for immediate action from international trade unions, NGOs, CSOs and consumers concerned about the ethics behind cheap clothing. The ILO, with its responsibility for labour standards and commitment to sustainable development, took the lead.<sup>611</sup> Bangladesh's major trading partners, the EU and the U.S., were also to play a pivotal role in the immediate aftermath. Moreover, the global focus also acted as a vector for trade unions, both international and domestic, and local CSOs, to have their demands for improvements in labour rights, empowerment of women and safe working conditions heard. The message was clear, 'business could not continue as usual'<sup>612</sup> without fundamental changes to safety, inspection, improvements in pay and working conditions and compliance with international labour standards.

<sup>607</sup> ILO, 'Decent Work Country Profile: Bangladesh' (2013) iii <[http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms\\_216901.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_216901.pdf)>

<sup>608</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 7 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>609</sup> Khondaker G Moazzem and Ariful Islam, 'Moving Beyond the Shadow of the Rana Plaza Tragedy: In Search of a Closure and Restructuring Strategy' (Fourth Monitoring Report, Centre for Policy Dialogue, Bangladesh, 21 April 2015) 6 <<http://cpd.org.bd/wp-content/uploads/2013/07/Fourth-Monitoring-Report-Rana-Plaza-Tragedy-FINAL-April-2015.pdf>>

<sup>610</sup> Jason Burke and Saad Hammadi, 'Bangladesh Textile Factory Fire Leaves more than 100 Dead', *The Guardian*, 25 November 2012 <<https://www.theguardian.com/world/2012/nov/25/bangladesh-textile-factory-fire>>

<sup>611</sup> ILO, 'About the ILO' <<http://www.ilo.org/global/about-the-ilo/lang--en/index.htm>>

<sup>612</sup> ILO, 'Improving working conditions in the ready made garment industry: Progress and achievements' (September 2016) <[http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS\\_240343/lang--en/index.htm](http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_240343/lang--en/index.htm)>



Undoubtedly, however, it is the EU, as Bangladesh's largest export market for RMG products, 60% by value,<sup>613</sup> facilitated by its trade preferences, that has had a particular responsibility post Rana Plaza to ensure that it utilises its trade and development leverage, and the range of tools at its disposal, to demand significant improvements in labour rights and working conditions from the Government of Bangladesh and factory owners, and also responsible business conduct from global brands and retailers. In the aftermath of Rana Plaza, Bangladesh has provided, over the last three years, a key test case for the EU, with the levers at its disposal, including both soft law and normative power, to demonstrate that its human rights response is both purposeful and efficacious.

There has been no single consolidated action plan in response to Rana Plaza. Instead, there have been a series of inter-related public and private initiatives involving different actors, with the ILO playing the pivotal role as both coordinator and collaborator with key partners, and with significant EU input. On a national level, the National Tripartite Plan of Action (NTPA) is a Government of Bangladesh initiative with the social partners backed up by the ILO with input from both the EU and its Member States. The global trade unions have been the driving force behind the Accord on Fire and Building Safety in Bangladesh, which is a ground breaking legally binding agreement with global brands. The Accord operates in parallel with the business-led Alliance for Bangladesh Worker Safety. The ILO's Better Work Programme also has a key role in improving working conditions and promoting decent work. These initiatives can be regarded as overlapping in their objectives, and coordination between all the relevant actors involved in them is vital to fostering the changes that need to be brought about in Bangladesh. The EU is linked to them all through the overarching Sustainability Compact with its specific focus on broad, ongoing engagement to secure implementation of human rights priorities.

#### (1) The National Tripartite Plan of Action

In January 2013, a joint meeting was held in the wake of the Tazreen Fashions Fire between the ILO and the Ministry of Labour and Employment (MoLE) of the Government of Bangladesh (GoB). This led, in March 2013, shortly before the Rana Plaza collapse, to a joint agreement between national stakeholders in the RMG sector, the NTPA on Fire Safety and Structural Integrity in the Garment Sector in Bangladesh.<sup>614</sup> The national stakeholders in the NTPA are the tripartite partners: the Government, employers' and workers' organisations. It was important, from the outset, for the national stakeholders to have ownership of the initiative and also to ensure that the GoB was not hostile to international engagement and cooperation.

The objectives of the NTPA are twofold: firstly, to identify activities that the partners agree fall within their responsibility and need to be implemented to ensure an integrated approach to promoting fire safety and structural integrity in Bangladesh and, secondly, to provide entry points for other stakeholders that wish to support implementation of the plan, and to provide a platform for coordination for stakeholders that wish to initiate additional fire safety promotion and building integrity activities.<sup>615</sup> As a result of the second objective, which recognised the limited institutional

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<sup>613</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 5  
<[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>614</sup> Government of Bangladesh, |Ministry of Labour and Employment, 'National Tripartite Plan of Action on Fire Safety and Structural Integrity in the Ready-Made Garment Sector in Bangladesh' (25 July 2013)  
<[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/genericdocument/wcms\\_221543.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/genericdocument/wcms_221543.pdf)>

<sup>615</sup> *ibid.* 3.

capacity of the national actors, responsibility for inspections was shared between the national actors under the NTPA and the international actors leading the Accord and Alliance. By April 2015, 3,632 factories had been inspected, exceeding the ILO's target of 3,508 export-driven factories, and of those under half, 1,549, had been inspected under the NTPA, with, overall, 39 factories closed for posing an immediate danger to workers.<sup>616</sup>

Broadly, the NTPA is designed to commit the stakeholders to ensuring that RMG workplaces comply with internationally accepted health and safety standards.<sup>617</sup> Certain goals were laid down within the plan, focusing on: legislation and policy, here including the need to submit a labour law reform package and adopt a national occupational safety and health policy; administration, for example improving the factory inspectorate programme and practical activities including factory level fire safety needs assessments, and providing for the establishment of a worker hotline to allow workers to report fire safety risks in factories.

The NTPA is the most ambitious initiative that has been undertaken by the GoB to address safety issues.<sup>618</sup> Despite this, it has been criticised in substance and in its implementation. In substance, it is lacking in key aspects.<sup>619</sup> There is no provision to monitor the implementation of the remediation plans, and no penalty for non-implementation of corrective action plans.<sup>620</sup> In its implementation, the quality of the safety inspections it provides are regarded as unsatisfactory when compared with the parallel inspection regimes of the Accord and Alliance, considered below.<sup>621</sup> A number of countries in the region, such as Indonesia, Malaysia and Viet Nam, could provide examples for Bangladesh in this respect as inspectors in these countries are better trained and have the authority to initiate civil proceedings and levy fines against violators.<sup>622</sup> Furthermore, there are challenges in implementing necessary remediation of factories as there is not enough pressure from foreign buyers with regard to the factories it is responsible for inspecting.<sup>623</sup> Effective monitoring is also lacking,<sup>624</sup> and there is a lack of union involvement<sup>625</sup> in NTPA factories.

The difficulties with the NTPA have been described as stemming from the fact that it was 'the outcome of outside pressure, not a deliberate decision by the government'.<sup>626</sup> The limits of the NTPA also have to be understood in the context of the political situation and level of corruption within

<sup>616</sup> ILO, 'Rana Plaza Two Years On: Progress made & challenges ahead for the Bangladesh RMG Sector' (April 2015) <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_317816.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_317816.pdf)>

<sup>617</sup> Mohd Raisul Islam Kahn and Christa Wichterich, 'Safety and Labour Conditions: the Accord and the National Tripartite Plan of Action for the Garment Industry of Bangladesh' (ILO, Global Labour University, September 2015) Working Paper No. 38, 20 <[http://www.global-labour-university.org/fileadmin/GLU\\_Working\\_Papers/GLU\\_WP\\_No.38.pdf](http://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.38.pdf)>

<sup>618</sup> *ibid.*

<sup>619</sup> *ibid.* 28.

<sup>620</sup> *ibid.*

<sup>621</sup> *ibid.*

<sup>622</sup> ILO, *Bangladesh: Seeking Better Growth Employment Conditions for Better Socioeconomic Outcomes* (2013) 72.

<sup>623</sup> Mohd Raisul Islam Kahn and Christa Wichterich, 'Safety and Labour Conditions: the Accord and the National Tripartite Plan of Action for the Garment Industry of Bangladesh' (ILO, Global Labour University, September 2015) Working Paper No. 38, 28 <[http://www.global-labour-university.org/fileadmin/GLU\\_Working\\_Papers/GLU\\_WP\\_No.38.pdf](http://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.38.pdf)>

<sup>624</sup> *ibid.*

<sup>625</sup> *ibid.* 35.

<sup>626</sup> *ibid.* 28.

Bangladesh discussed in II.B.1 above. It raises questions about the extent to which the GoB is a willing participant in these international efforts to improve factory safety and health in the RMG sector.<sup>627</sup> Nevertheless, the NTPA is vital for involvement at the national level and it is being reinforced by a US\$31.4 million, three-and-a-half year ILO programme funded by Canada, Netherlands and the UK to support its implementation,<sup>628</sup> highlighting the important role played by individual EU Member States in supporting the national initiative. The ILO has also developed 547 Corrective Action Plans (CAPs) for the NTPA factories as an essential step for remediation following inspections.<sup>629</sup> In the meantime, the Sustainability Compact, as an umbrella initiative, intended to provide comprehensive oversight of progress, plays a key role in ensuring the NTPA does not come to nothing regarding the commitments laid down therein.

## (2) The Accord on Fire and Building Safety

Following the 2012 and 2013 industrial disasters, the practices of global clothing brands and retailers were put in the spotlight. Evidently, they had failed to take sufficient action in the management of their supply chains or GVCs to prevent industrial disasters in their supplier factories.<sup>630</sup> Consequently, international civil society, including global trade unions, pressured the clothing brands and retailers to take responsibility by taking action to improve working conditions and workers' rights in accordance with the principles of responsible business conduct (RBC) of corporate social responsibility (CSR) that they had already committed to under initiatives such as the UN Global Compact (UNGC).<sup>631</sup>

As a response to global attention,<sup>632</sup> and in order to mitigate the damage to their reputation, many of these brands and retailers, a number of whom had previously joined RBC initiatives like the UN Compact, signed up, in 2013, to the Accord on Fire and Building Safety in Bangladesh (Accord)<sup>633</sup> or the Alliance for Bangladesh Worker Safety (Alliance),<sup>634</sup> as essentially private initiatives to improve health and safety in garment factories through a process of inspection and remediation. Both the Accord and the Alliance were presented as revolutionary private sector initiatives, and as a result have been labelled as representing an 'unprecedented commitment by international brands and retailers'.<sup>635</sup>

However, it is the Accord, signed by two European-based union federations, IndustriALL and UNI-Global, and more than 200 international clothing brands and retailers and the owners of 1600

<sup>627</sup> *ibid.*

<sup>628</sup> ILO, 'Improving working conditions in the ready made garment industry: Progress and achievements' (Dhaka, September 2016) <[http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS\\_240343/lang-en/index.htm](http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_240343/lang-en/index.htm)>

<sup>629</sup> *ibid.*

<sup>630</sup> Md Zillur Rahman, 'Accord on "Fire and Building Safety in Bangladesh": A Breakthrough Agreement?' (2014) 4(1) *Nordic Journal of Working Life Studies* 69, 70.

<sup>631</sup> UN, 'Global Compact' (1999) <<https://www.unglobalcompact.org/>>

<sup>632</sup> See Safia Minney, 'Dhaka Factory Collapse: Why Brands and Consumers must take Responsibility', *The Guardian* (London, undated) <<https://www.theguardian.com/sustainable-business/fairtrade-partner-zone/dhaka-factory-collapse-fashion-brands-consumers>>

<sup>633</sup> Accord on Fire and Building Safety in Bangladesh <<http://bangladeshaccord.org/>>

<sup>634</sup> The Alliance for Bangladesh Worker Safety <<http://www.bangladeshworkersafety.org/who-we-are/about-the-alliance>>

<sup>635</sup> ILO, 'Rana Plaza Two Years On: Progress made and challenges ahead for the Bangladesh RMG Sector' (April 2015) <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_317816.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_317816.pdf)>

factories, that breaks new ground in the form of an independent, legally binding agreement between parties who have given a joint commitment to work towards a safe and healthy RMG industry in Bangladesh.<sup>636</sup> The brands and retailers are from over 20 countries, predominantly in Europe, but also from North America, Asia and Australia. It covers over 1600 factories, totalling 2 million workers.<sup>637</sup>

In addition to the global trade unions, eight Bangladesh trade unions and four NGO witnesses are signatories. The Accord exhibits a number of features of worker participation somewhat like a European Works Council.<sup>638</sup> It is governed by a Steering Committee with equal representation of the signatory companies and trade unions and a neutral chair provided by the ILO.<sup>639</sup> The international nature of the Accord, which is best understood as a Transnational Company Agreement,<sup>640</sup> has been described as an 'industrial relations breakthrough that possibly could be setting precedence for future agreements'<sup>641</sup> as it is the first initiative in the 'history of industrial relations where all related stakeholders of a certain global value chain took responsibility' for workers' safety and rights.<sup>642</sup> It has therefore been described as a 'game changer'.<sup>643</sup> The Accord comes, therefore, coupled with a sense of expectation.

The Accord's ambitious purpose is: 'to enable a working environment in which no worker needs to fear fires, building collapses, or other accidents that could be prevented with reasonable health and safety measures'.<sup>644</sup> At its heart is an independent inspection programme supported by brands in which workers and trade unions are involved.<sup>645</sup> Democratically elected health and safety

<sup>636</sup> Accord on Fire and Building Safety in Bangladesh <<http://bangladeshaccord.org/>>; and Garrett Brown, 'Bangladesh: Currently the Worst, but Possibly the Best' (2015) 24(4) *New Solutions* 469, 470-472.

<sup>637</sup> Accord on Fire and Building Safety in Bangladesh, 'About the Accord' <<http://bangladeshaccord.org/wp-content/uploads/Brochure-about-the-Accord.pdf>>

<sup>638</sup> See IndustriALL, 'European Action Plan on the Bangladesh Accord on Fire & Building Safety' (18 February 2015) <<http://www.industriall-union.org/european-action-plan-following-the-bangladesh-accord-on-fire-building-safety>>

<sup>639</sup> See Accord on Fire and Building Safety in Bangladesh, 'Governance' <<http://bangladeshaccord.org/governance/>>

<sup>640</sup> See European Commission, 'Employee Involvement – Transnational Company Agreements' <<http://ec.europa.eu/social/main.jsp?catId=707&intPageId=214&langId=en>>. The Commission defines Transnational Company Agreements as 'agreements concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers' organisations on the other. They cover working and employment conditions and/or relations between employers and workers or their representatives'.

<sup>641</sup> Md Zillur Rahman, 'Accord on "Fire and Building Safety in Bangladesh": A Breakthrough Agreement?' (2014) 4(1) *Nordic Journal of Working Life Studies* 69, 72.

<sup>642</sup> Mohd Raisul Islam Kahn and Christa Wichterich, 'Safety and Labour Conditions: the Accord and the National Tripartite Plan of Action for the Garment Industry of Bangladesh' (ILO, Global Labour University, September 2015) Working Paper No. 38, 11 <[http://www.global-labour-university.org/fileadmin/GLU\\_Working\\_Papers/GLU\\_WP\\_No.38.pdf](http://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.38.pdf)>

<sup>643</sup> Tim Ryan, 'Experts: Bangladesh Accord is a Game Changer' (Solidarity Center, 12 September 2013) <<http://www.solidaritycenter.org/experts-bangladesh-accord-is-a-game-changer/>>

<sup>644</sup> Accord on Fire and Building Safety in Bangladesh <<http://bangladeshaccord.org/>>

<sup>645</sup> IndustriALL, 'European Action Plan on the Bangladesh Accord on Fire & Building Safety' (18 February 2015) <<http://www.industriall-union.org/european-action-plan-following-the-bangladesh-accord-on-fire-building-safety>>; Accord on Fire and Building Safety in Bangladesh, 'About the Accord' <<http://bangladeshaccord.org/wp-content/uploads/Brochure-about-the-Accord.pdf>>

committees must be established in all factories to identify and act on health and safety risks.<sup>646</sup> Its inspections are conducted by qualified Bangladeshi and international fire, electrical and structural engineers.<sup>647</sup> After inspection there is full disclosure of reports and Corrective Action Plans (CAPs).<sup>648</sup> Importantly, there is a commitment by the signatory brands and retailers to provide sufficient funds for remediation and also to continue to source from them, for two years after the initial inspection unless the company fails to make the required corrections.<sup>649</sup> Workers given training, have a complaints mechanism and the right to refuse unsafe work.<sup>650</sup> Finally, it should be emphasised, that the programme of factory safety inspections follow the Accord Building Standards, which are based on the Bangladesh National Building Code and the product of discussions facilitated by the ILO between the Accord, NTPA and the Alliance.<sup>651</sup> This is beneficial given the pressing need for coordination between these initiatives, and consistency regarding factory standards. This code could also be used within the SSDC on textiles and clothing (assessed below).

There are several crucial features that make the Accord an innovative and beneficial initiative. Firstly, it has its own enforcement system, meaning it is able to impose punishments where necessary to reinforce actions taken under it. Where suppliers do not participate in the inspection, remediation, health and safety and training activities of the Accord, business with a supplier may be terminated.<sup>652</sup> In other words, there is a heavy burden on suppliers to comply with the terms of the Accord. For example, this occurred with regards to 'Han A Hats & Caps Ltd' and 'Kento Asia Ltd' as both companies failed to make adequate progress with CAP implementation.<sup>653</sup> Clearly, the Accord is to be taken seriously. Loss of business from such a large amount of companies is a genuine threat, and it reinforces the legal nature of the Accord. Yet the ILO does advocate that world buyers do not 'exit' due to the negative consequences this would have on the garment workers.<sup>654</sup> Much like the prospect of GSP withdrawal, it is difficult to find a solution to the negative consequences of withdrawal as a punitive measure.

<sup>646</sup> IndustriALL, 'European Action Plan on the Bangladesh Accord on Fire & Building Safety' (18 February 2015) <<http://www.industriall-union.org/european-action-plan-following-the-bangladesh-accord-on-fire-building-safety>>

<sup>647</sup> Garrett Brown, 'Bangladesh: Currently the Worst, But Possibly the Future's Best' (2015) 24(4) *New Solutions* 469, 471.

<sup>648</sup> *ibid.*

<sup>649</sup> *ibid.*

<sup>650</sup> IndustriALL, 'European Action Plan on the Bangladesh Accord on Fire & Building Safety' (18 February 2015) <<http://www.industriall-union.org/european-action-plan-following-the-bangladesh-accord-on-fire-building-safety>>

<sup>651</sup> Accord on Fire and Building Safety in Bangladesh, 'About the Accord' <<http://bangladeshaccord.org/wp-content/uploads/Brochure-about-the-Accord.pdf>>

<sup>652</sup> Accord on Fire and Building Safety in Bangladesh, 'Terminated Suppliers' <<http://bangladeshaccord.org/terminated-suppliers/>>

<sup>653</sup> Accord on Fire and Building Safety in Bangladesh, 'Termination of Accord Companies' Business with Han A Hats & Caps Ltd' (8 September 2016) <<http://bangladeshaccord.org/wp-content/uploads/160902-Termination-of-Business-statement-Han-A-Hats-Caps.pdf>>; Accord on Fire and Building Safety in Bangladesh, 'Statement on Business Termination with Kento Asia Ltd' <<http://bangladeshaccord.org/2016/09/statement-on-business-termination-with-kento-asia-limited/>>

<sup>654</sup> ILO, 'Strengthening Workplace Safety and Labour Rights in the Bangladesh Ready-Made Garment Sector' (September 2016) 6 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_474048.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_474048.pdf)>

Secondly, the Accord can be regarded as a transparent initiative. The inspection reports and CAPs are published and updated on the website.<sup>655</sup> This makes factory inspection results available to trade unions, labour rights groups and international media.<sup>656</sup> It enhances pressure on Accord companies to initiate change, and allows continued engagement with Bangladesh. Transparency also facilitates cooperation with the other initiatives, and the EU within the Sustainability Compact. Thirdly, the Accord covers factories that produce garments for Accord brands through subcontracting meaning that if a factory is producing the garments of a certain brand, then that brand is responsible for that factory.<sup>657</sup> Although, it must be noted that some take the perspective that the list of factories does not include subcontracted factories in practice, despite the commitment to doing so in theory,<sup>658</sup> but this criticism is debatable.

Additionally, the Accord has seen progress. 63% of all safety issues have been reported or verified as fixed, and it has increased efforts to accelerate remediation.<sup>659</sup> It now has more than 100 engineers on staff, conducting between 400 and 500 follow-up inspections every month and escalation measures have been taken at 496 suppliers and business terminated at 34.<sup>660</sup> As a result, it can certainly not be said that the Accord is a solely superficial initiative.

Despite this, some criticise the Accord for promoting merely ‘noble sentiments’,<sup>661</sup> constituting ‘an example of gesture masquerading as meaningful action’<sup>662</sup> on the basis that the factory issues inherent in the RMG sector cannot be overcome by mere safety inspections, remediation and fire safety training.<sup>663</sup> Additionally, remediation has somewhat ground to a halt. Whereas funds for low-cost measures have been given and these measures hence taken, the more expensive CAP measures such as fire protected safety doors have not yet been undertaken and many have overrun their stipulated deadline.<sup>664</sup> Furthermore, most factories run on rented floors of multipurpose buildings

<sup>655</sup> Accord on Fire and Building Safety in Bangladesh, ‘About the Accord’ <<http://bangladeshaccord.org/wp-content/uploads/Brochure-about-the-Accord.pdf>>

<sup>656</sup> Md Zillur Rahman, ‘Accord on “Fire and Building Safety in Bangladesh”: A Breakthrough Agreement?’ (2014) 4(1) *Nordic Journal of Working Life Studies* 69, 70.

<sup>657</sup> UNI Global Union and IndustriALL, ‘“Business as Usual is Not an Option: Supply Chains and Sourcing after Rana Plaza”: UNI Global Union and IndustriALL Respond’ (26 May 2014) 2 <[https://business-humanrights.org/sites/default/files/media/documents/business\\_as\\_usual\\_is\\_not\\_an\\_option\\_-\\_uni\\_industriall\\_respond.pdf](https://business-humanrights.org/sites/default/files/media/documents/business_as_usual_is_not_an_option_-_uni_industriall_respond.pdf)>

<sup>658</sup> Mohd Raisul Islam Kahn and Christa Wichterich, ‘Safety and Labour Conditions: the Accord and the National Tripartite Plan of Action for the Garment Industry of Bangladesh’ (ILO, Global Labour University, September 2015) Working Paper No. 38, 24 <[http://www.global-labour-university.org/fileadmin/GLU\\_Working\\_Papers/GLU\\_WP\\_No.38.pdf](http://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.38.pdf)>

<sup>659</sup> Accord on Fire and Building Safety in Bangladesh, ‘Quarterly Aggregate Report on Remediation Progress at RMG Factories covered by the Accord’ (22 July 2016) 4 <<http://bangladeshaccord.org/wp-content/uploads/Quarterly-Aggregate-Report-22-July-2016.pdf>>

<sup>660</sup> *ibid.* 4.

<sup>661</sup> Bradley Bowden, ‘Commentary – Bangladesh Clothing Factory Fires: The Way Forward’ (2014) 1(2) *South Asian Journal of Human Resources Management* 283, 286.

<sup>662</sup> *ibid.* 287.

<sup>663</sup> *ibid.* 286.

<sup>664</sup> Mohd Raisul Islam Kahn and Christa Wichterich, ‘Safety and Labour Conditions: the Accord and the National Tripartite Plan of Action for the Garment Industry of Bangladesh’ (ILO, Global Labour University, September 2015) Working Paper No. 38, 24 <[http://www.global-labour-university.org/fileadmin/GLU\\_Working\\_Papers/GLU\\_WP\\_No.38.pdf](http://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.38.pdf)>

with other garment factories so measures under the CAP that need to be taken with regard to the whole building (for example, a fire system) cannot be taken.<sup>665</sup>

On the whole, it is clear the Accord is an initiative with great potential, although pressure must remain on its signatories to continue to undertake remedial measures and to uphold the rigorous follow up of its progress. The global trade unions involved conclude that ‘it is not credible to suggest that this effort is too small to make a difference’.<sup>666</sup> Indeed, it could revolutionise the way companies view RBC/CSR internationally, and instigate a change of attitude to the race to the bottom in labour standards.

### (3) The Alliance for Bangladesh Worker Safety

Parallel to the Accord, a parallel initiative, the Alliance for Bangladesh Worker Safety was concluded in July 2013 by, predominantly, a group of North American retailers and brands including Wal-Mart, Gap and Target.<sup>667</sup> The Alliance is less global than the Accord, and its ‘glaring flaw is a lack of participation from unions’.<sup>668</sup> There also seems to be a geographical divide between the two initiatives. A merger of the two would be beneficial, based on the stronger rules of the Accord, but this is very unlikely. The Alliance resembles a more unilateral CSR policy, as opposed to the multi-stakeholder nature of the Accord and even the tripartite nature of the NTPA. Indeed, there is little or no cooperation with public institutions or initiatives.<sup>669</sup> It is not surprising, therefore, that the Accord is considered a more promising initiative.<sup>670</sup> Under the Alliance, likewise to the Accord, companies commit to ensuring the implementation of health and safety measures, mainly through undertaking factory safety assessments.<sup>671</sup> The Alliance covers less than half the number of those covered by the Accord, with 685 active factories, as of September 2016, deemed to cover around 1.2 million workers.<sup>672</sup>

On the one hand, the Alliance has been extremely successful despite its more limited remit. The Alliance has resulted in a number of factory inspections being undertaken. As of September 2015, 661 factories had been inspected.<sup>673</sup> In 414 factories workers had access to a helpline.<sup>674</sup> The helpline provides a space for workers to anonymously report safety concerns and labour issues.<sup>675</sup> Not only

<sup>665</sup> *ibid.* 25.

<sup>666</sup> UNI Global Union and IndustriALL, ‘“Business as Usual is Not an Option: Supply Chains and Sourcing after Rana Plaza”: UNI Global Union and IndustriALL Respond’ (26 May 2014) 3 <[https://business-humanrights.org/sites/default/files/media/documents/business\\_as\\_usual\\_is\\_not\\_an\\_option\\_-\\_uni\\_industriall\\_respond.pdf](https://business-humanrights.org/sites/default/files/media/documents/business_as_usual_is_not_an_option_-_uni_industriall_respond.pdf)>

<sup>667</sup> See <<http://www.bangladeshworkersafety.org/who-we-are/about-the-alliance>>

<sup>668</sup> Marc Gunther, ‘Gap spearheads new alliance for Bangladeshi worker safety’, *The Guardian* (London, 11 July 2013) <<https://www.theguardian.com/sustainable-business/gap-alliance-bangladeshi-worker-safety>>

<sup>669</sup> Beryl ter Haar, ‘The Collapse of Rana Plaza and the Limits, Options and Challenges of transnational Labour Regulation’ (Alibi Online Publishing November 2013) 31 <<https://issuu.com/alibionline/docs/alibinum4/28>>

<sup>670</sup> *ibid.* 32.

<sup>671</sup> Alliance for Bangladesh Worker Safety <<http://www.bangladeshworkersafety.org/who-we-are/about-the-alliance>>

<sup>672</sup> Alliance for Bangladesh Worker Safety, ‘Alliance Progress: September 2016’ <<http://www.bangladeshworkersafety.org/progress-impact/alliance-statistics>>

<sup>673</sup> Alliance for Bangladesh Worker Safety, ‘Protecting and Empowering Bangladesh’s Garment Workers’ (Second Annual Report, September 2015) 1

<<http://www.bangladeshworkersafety.org/files/Alliance%20Second%20Annual%20Report,%20Sept,%202015.pdf>>

<sup>674</sup> *ibid.* 2.

<sup>675</sup> *ibid.* 18.

are there many factories with access to this helpline, but it has been extensively used, with 21,010 calls recorded by September 2015.<sup>676</sup> Worker training is also high on the agenda, and 597 factories now have some form of worker training in progress.<sup>677</sup>

On the other hand, the Alliance has not been so outstanding. Inspections of the factories are one step, but actually instigating factory remediation, similar to the Accord, is another. As a result, the Alliance has had to pilot an escalation process with warning letters that have been filed to some of its factories.<sup>678</sup> The main problems with inadequate remediation are that there is a lack of engineering expertise and fire protection equipment within Bangladesh,<sup>679</sup> and external financing is needed for the factories to be able to make necessary safety improvements.<sup>680</sup> Fortunately, the Alliance has developed financing facilities and finance initiatives such as providing technical support to the banks and forming financing partnerships.<sup>681</sup>

Overall, it would be beneficial if the Accord, Alliance and NTPA exchanged elements of ‘best practice’ in regard to the initiatives so as to ensure more consistency in the quality of factory inspection and remediation and also worker empowerment. It may be that the public sector can learn from the private sector. The EU-ILO led Bangladesh Sustainability Compact, as an overarching mechanism, would appear to be the most suitable vehicle to share these experiences and plan for a more coordinated approach.

#### (4) The Better Work Programme

On an international level, the Better Work Bangladesh (BWB) initiative was put in place as a partnership between the ILO and the International Finance Corporation (IFC), an investment arm of the World Bank, and became fully operational in 2015.<sup>682</sup> It is part of the ILO’s broader Better Work programme aimed at improving working conditions in developing countries and is linked to collaboration with the EU under the Decent Work Agenda discussed in II.D.2 above. BWB aims at improving conditions for workers across the RMG sector and also to promote competitiveness.<sup>683</sup> Its main project, entitled ‘Improving Working Conditions in the Ready-Made Garment Sector’, is designed to support the NTPA in Bangladesh.<sup>684</sup> The programme aims to improve garment workers’ lives by providing safe, clean and equitable working environments in adherence with national labour law and ILO core labour standards.<sup>685</sup> Additionally, it has the objective of facilitating improvements in workplace relations between workers and employers, and encourages factories to take ownership of

<sup>676</sup> Alliance for Bangladesh Worker Safety, ‘Protecting and Empowering Bangladesh’s Garment Workers’ (Second Annual Report, September 2015) 2  
<<http://www.bangladeshworkersafety.org/files/Alliance%20Second%20Annual%20Report,%20Sept,%202015.pdf>>

<sup>677</sup> *ibid.* 3.

<sup>678</sup> *ibid.* 9.

<sup>679</sup> *ibid.* 10.

<sup>680</sup> *ibid.* 14.

<sup>681</sup> *ibid.* 14-15.

<sup>682</sup> ILO, ‘Improving working conditions in the ready made garment industry: Progress and achievements’ (September 2016) <[http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS\\_240343/lang--en/index.htm](http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_240343/lang--en/index.htm)>

<sup>683</sup> European Commission, ‘Bangladesh Sustainability Compact: Technical Status Report’ (July 2016) 7

<[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>684</sup> ILO, ‘Better Work’ <[http://betterwork.org/global/?page\\_id=5581](http://betterwork.org/global/?page_id=5581)>

<sup>685</sup> *ibid.*



compliance concerns through self-evaluation of their working conditions and by examining their worker participation committees in relation to their ability to resolve compliance issues.<sup>686</sup>

On the whole, it seems that Better Work Bangladesh has been a positive initiative that has instigated much-needed change. One of the first companies to have registered with the programme notes that there have been changes in the mind set and awareness of employees about health and safety issues,<sup>687</sup> particularly noting the benefit of guidance and cooperation from the advisors on board with the programme with whom they have been able to create personal action plans when issues arise.<sup>688</sup> By July 2016, 96 factories were participating in the programme, covering 197,912 workers, 54% of whom were women.<sup>689</sup> By the end of March 2016, 68 factory assessments had been completed, 42 of which were available for review by external stakeholders.<sup>690</sup>

This programme forms more of a close relationship with the managers and workers in the factories under its scope,<sup>691</sup> and understandably this may lead to a more in-depth and long-term improvement in factory safety, as opposed to the relatively speedier, relatively short-term, actions under the Alliance and the Accord. This forms, therefore 'deep engagement', and feeds into technical review process under the Sustainability Compact. However, BWB has a small sphere of influence, particularly in comparison to the Accord and Alliance. This means the programme has not been undertaken on a large scale. Yet like the other initiatives, the programme helps to promote 'socially responsible' export strategies.<sup>692</sup>

#### **b) European Sectoral Social dialogue in the textile and clothing sector**

European social dialogue provides a useful reference point for considering the effectiveness of the various initiatives in Bangladesh in promoting the involvement of factory owners, employers' and workers' organisations at a sectoral level, such as in the RMG sector. As outlined in II.D.3a)(2) above, the Accord is modelled in part on European social dialogue. Social dialogue was assessed in FRAME Deliverable 7.3.<sup>693</sup> It is provided for in the EU Treaties, which legally recognise that social partners can play an important role in the improvement of working conditions. Article 154 TFEU formally entitles the European social partners to engage in consultations with the European Commission, and Article 155 TFEU goes as far as endowing social partners with the possibility of negotiating agreements that may be given legislative effect by the Council of the EU on a proposal from the Commission. This process gives the European social partners a significant amount of influence.<sup>694</sup> The Sectoral Social Dialogue Committees (SSDCs) provide space for discussions on how to improve

<sup>686</sup> ILO, 'Strengthening Workplace Safety and Labour Rights in the Bangladesh Ready-Made Garment Sector' (September 2016) 20.

<sup>687</sup> *ibid.* 21.

<sup>688</sup> *ibid.*

<sup>689</sup> *ibid.* 20.

<sup>690</sup> *ibid.*

<sup>691</sup> *ibid.*

<sup>692</sup> ILO, 'Improving working conditions in the ready made garment industry: Progress and achievements' (September 2016) <[http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS\\_240343/lang--en/index.htm](http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_240343/lang--en/index.htm)>

<sup>693</sup> Jeffrey Kenner, Pierre Schmitt, Katrina Sissins and Stuart Wallace, 'Structures and Mechanisms to Strengthen Engagement with Non-State Actors in the Protection and Promotion of Human Rights' (FRAME Work Package No. 7, Deliverable No. 3, 30 April 2016) 120-132.

<sup>694</sup> Berndt Keller and Bernd Sörries, 'The New European Social Dialogue: Old Wine in New Bottles?' (1999) 9(2) *Journal of European Social Policy* 111, 112.

working conditions and industrial relations within specific sectors.<sup>695</sup> The social partners involved are major employer and employee organisations that are considered ‘representative’ on a European level.<sup>696</sup> They have a significant scope of influence due to the plethora of tools available to them, including declarations or opinions, joint texts, such as guidelines and codes of conduct and negotiated agreements.<sup>697</sup> Notwithstanding the choice of instruments available, the majority of adopted instruments lack the legally binding nature of autonomous or negotiated agreements.<sup>698</sup>

An increasing number of SSDCs are dealing with questions of sustainable development, including EU trade policy, hence showing that social dialogue is becoming not only about its internal impact, but also its external impact.<sup>699</sup> Indeed, the committee on textiles and clothing are, welcomingly, discussing the GSP+ in their agenda for meetings, yet this does not go far enough and the SSDC on textiles and clothing is not effectively exploring potential possibilities for impacting labour rights in third countries such as Bangladesh.

The EU’s textiles and clothing sector is the second largest in the world,<sup>700</sup> and there is an SSDC on textiles and clothing. The social partners forming this committee are IndustriAll as the employee organisation, also highly active in the initiatives in Bangladesh, and ‘The European Apparel and Trade Organisation’ as the employer organisation.<sup>701</sup> In spite of widespread criticism of the representativeness of social partner organisations on the whole, in this sector these organisations have been hailed as sufficiently representative.<sup>702</sup> Therefore, it provides an important mechanism for addressing the issue of responsible supply chain management in the textiles and clothing sector.

The Bangladesh Sustainability Compact refers to this SSDC,<sup>703</sup> acknowledging its potential for global influence. The Compact illustrates the attention that has been placed by the ILO and the EU on the work of the European social partners in this committee, in particular the work started on 26 April 2013, coincidentally just two days after Rana Plaza, to update the 1997 and 2008 Codes of Conduct on fundamental rights.<sup>704</sup> This point was made under the heading of ‘responsible business conduct’ in the Compact as a way of showing that the EU remains engaged to support and promote socially responsible supply chains.<sup>705</sup> The meeting minutes of the 28 April 2013 of the SSDC noted the

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<sup>695</sup> European Commission, ‘Staff Working Document on the Functioning and Potential of European Sectoral Social Dialogue’ SEC(2010) 964 final 6.

<sup>696</sup> European Commission, ‘European Sectoral Social Dialogue – recent developments’ (2010 edition, June 2010) 7 <<http://ec.europa.eu/social/BlobServlet?docId=6008&langId=en>>

<sup>697</sup> *ibid.* 9.

<sup>698</sup> See Philippe Pochet, ‘Sectoral Social Dialogue? A Quantitative Analysis’ (2005) 11(3) *European Review of Labour and Research* 313.

<sup>699</sup> European Commission, ‘European Sectoral Social Dialogue – recent developments’ (2010 edition, June 2010) 10 <<http://ec.europa.eu/social/BlobServlet?docId=6008&langId=en>> accessed 22 January 2016.

<sup>700</sup> *ibid.* 84.

<sup>701</sup> See European Commission, ‘Sectoral social dialogue – Textile and clothing’ <<http://ec.europa.eu/social/main.jsp?catId=480&langId=en&intPageId=1858>>

<sup>702</sup> European Foundation for the Improvement of Living and Working Conditions, ‘Representativeness of the European Social Partner Organisations: Textiles and Clothing Sector’ (EurWork 15 September 2013) <<http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/representativeness-of-the-european-social-partner-organisations-textiles-and-clothing-sector>>

<sup>703</sup> European Commission, ‘Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh’ (Joint Statement) 8 <[http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151601.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf)>

<sup>704</sup> *ibid.*

<sup>705</sup> *ibid.* 7.

importance of following up these Codes of Conduct given the changed context following the Rana Plaza disaster.<sup>706</sup> There was also mention in 2014 of a proposed EU joint textile and clothing Code of Conduct to promote CSR.<sup>707</sup> Despite this, there has been a deficiency of discussions on the topic in recent meetings of the SSDC and the efforts to update the Codes of Conduct are somewhat lacking, showing that this goal may no longer hold the weight it previously did.<sup>708</sup> This demise of the importance of updating the Codes of Conduct reflects a certain loss of momentum as the SSDC shifts its perspective to other issues.

The technical status report by the European Commission highlights recent moves by the SSDC towards updating its codes of conduct. It asserts that there has been finalisation of a project to develop a CSR risk assessment tool, and the European social partners of the textile and clothing sector have started working on a follow-up project on 'CSR risk assessment model development, implementation and dissemination'.<sup>709</sup> This 'aims at fine-tuning and finalising the tool developed during the first project for increased use and dissemination amongst SMEs and other various stakeholders'.<sup>710</sup>

Yet, it must be assessed whether what is really needed is implementing and applying the Codes of Conduct rather than updating them. The social partners' landmark 1997 Code of Conduct (or 'Charter')<sup>711</sup> is particularly important in this regard as it is described as the main outcome of the textiles and clothing SSDC.<sup>712</sup> It provides a reference point for the social partners to initiate actions to improve working conditions throughout the GVCs. The Code is pivotal for incorporating human rights, specifically labour rights, into the agenda of the Committee. It affirms the importance of respect for labour rights in the textiles and clothing sector. The preamble draws upon the concept of 'fair' trade, and a productive and internationally competitive European textile and clothing industry. Article 1 of the Code reiterates the need for members to encourage companies and workers to comply with ILO Conventions including those relating to freedom of association and collective bargaining, Conventions 87 and 98.<sup>713</sup> These Conventions are particularly relevant to the labour rights violations within Bangladesh due to the difficulties organising and forming trade unions. Article 2 of the Code commits the social partners to circulation and promotion of the Code and Article 3 to follow up and assessment. From the outset, and in relation to Bangladesh, it reiterates the value of

<sup>706</sup> European Commission, 'Sectoral Social Dialogue Committee for Textiles and Clothing' (Working Group Meeting Minutes, 28 April 2013) <[https://circabc.europa.eu/sd/a/b93432ec-b780-4c0c-8979-956eb7507844/tex\\_20130426\\_wg\\_min.pdf](https://circabc.europa.eu/sd/a/b93432ec-b780-4c0c-8979-956eb7507844/tex_20130426_wg_min.pdf)>

<sup>707</sup> EURATEX and IndustriAll, 'Social Dialogue Committee Meeting: Textile/Clothing Joint Action Programme 2014' (2014) <<https://circabc.europa.eu/sd/a/d09bce3b-3ee4-435e-bd41-55b64a54e262/Textile-2014-WP.pdf>>

<sup>708</sup> See Sectoral Social Dialogue Textile-Clothing, 'Work Programme for 2015' (2015) <<https://circabc.europa.eu/sd/a/34943d6a-c4d2-4407-9e67-38f269bf8514/Textile-2015-WP.pdf>>

<sup>709</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 32 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>710</sup> *ibid.*

<sup>711</sup> European Commission, 'A Charter by the Social Partners in the European Textile and Clothing Sector: Code of Conduct' (10 July 1997) <<http://ec.europa.eu/social/BlobServlet?mode=dsw&docId=10221&langId=en>>

<sup>712</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 32 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>713</sup> European Commission, 'A Charter by the Social Partners in the European Textile and Clothing Sector: Code of Conduct' (10 July 1997) <<http://ec.europa.eu/social/BlobServlet?mode=dsw&docId=10221&langId=en>>

human rights as already affirmed by the GSP Regulation and the Cooperation Agreement between the EU and Bangladesh.<sup>714</sup>

On the one hand, it is unsurprising that there have been efforts to reform the Code. Despite being *prima facie* a tool with great potential to improve labour rights, it is rather lacking in scope when compared to other codes of conduct that cover issues such as pay, working conditions, health and safety and subcontracting.<sup>715</sup> Due to the importance of all these issues within any labour market, particularly in developing countries, it is disappointing that the Code of Conduct is silent in this regard. Yet its nature seems more internationally focused with the incorporation of ILO standards. This is because the social partners in question opted for a global approach, providing coverage for the majority of companies in the textiles and clothing sector, as opposed to a national approach.<sup>716</sup> Clearly, although the Code or Charter may appear too general, in fact it shows strong support for international promotion of labour rights, and as it has been negotiated and adopted with the support of the Commission, it holds an element of legitimacy.<sup>717</sup> This could mean that reform of the Code is not needed, but rather a renewed commitment to its implementation is required.

The Charter is said to have two aims for the Code: first, to become an EU instrument with legal force and, second, to serve as a standard voluntary code for companies.<sup>718</sup> The former aim has been met in many Member States as, instead of remaining non-binding, 14 of 15 sets of national social partners have implemented the Code into their collective agreements ensuring that it has gained legal status and binding force.<sup>719</sup> The Code has been described by the OECD as an ‘interesting example’ of how problems relating to implementation and monitoring of codes of conduct can be tackled.<sup>720</sup> The latter aim, serving as a standard voluntary code for companies, is more difficult to assess. The link between the Code and corporate social responsibility is particularly significant here. This is the only method by which the Code can have an external dimension and direct impact on labour standards in third countries, such as Bangladesh. Indeed, it is stressed that the majority of the codes of conduct have a global dimension, in light of their impact on improving social standards operating at different points in production and supply chains.<sup>721</sup>

As the Code has been implemented by collective agreements in many Member States, it is only within the relevant Member State that it has legal force. However, an EU company covered by the Code does not have to respect the collective agreement when it procures or subcontracts in a third country such as Bangladesh.<sup>722</sup> This makes it more difficult to justify the reasoning behind the

<sup>714</sup> See, respectively, II.D.1 and II.D.2 above.

<sup>715</sup> Malene Nordestgaard and Judith Kirton-Darling, ‘Corporate Social Responsibility within the European Sectoral Social Dialogue’ (2004) 10(3) *European Review of Labour and Research* 433, 442.

<sup>716</sup> Stéphanie Faure, ‘The Role of Joint Voluntary Initiatives in the Promotion and Momentum of Social Dialogue in the Textile, Clothing and Footwear Industries’ (ILO June 2001) 14  
<[http://www.ilo.org/public/libdoc/ilo/2001/101B09\\_215\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/2001/101B09_215_engl.pdf)> accessed 22 August 2016.

<sup>717</sup> *ibid.* 16.

<sup>718</sup> *ibid.*

<sup>719</sup> Malene Nordestgaard and Judith Kirton-Darling, ‘Corporate Social Responsibility within the European Sectoral Social Dialogue’ (2004) 10(3) *European Review of Labour and Research* 433, 446.

<sup>720</sup> OECD, ‘International Trade and Core Labour Standards’ (OECD 2000) 74.

<sup>721</sup> Malene Nordestgaard and Judith Kirton-Darling, ‘Corporate Social Responsibility within the European Sectoral Social Dialogue’ (2004) 10(3) *European Review of Labour and Research* 433, 447.

<sup>722</sup> Stéphanie Faure, ‘The Role of Joint Voluntary Initiatives in the Promotion and Momentum of Social Dialogue in the Textile, Clothing and Footwear Industries’ (International Labour Office June 2001) 17-18  
<[http://www.ilo.org/public/libdoc/ilo/2001/101B09\\_215\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/2001/101B09_215_engl.pdf)>

reference to the Code of Conduct in the Sustainability Compact. It suggest that companies operating in the RMG GVC are being exhorted to apply the Code in their business relations with overseas subsidiaries, subcontractors and suppliers.<sup>723</sup>

The dissemination of the Code of Conduct in Bangladesh will not be easy,<sup>724</sup> as it remains a voluntary measure with a non-binding nature.<sup>725</sup> The Code has been disseminated but only within the EU which suggests that it is unlikely that there will be awareness of it in the supply chain. This is particularly problematic given the proliferation of subcontracting within the textiles and clothing sector.

Clearly, there is room for improvement with the Code, and this should be addressed if it is ever reformed as the Compact suggests. Several steps can be taken in this regard. Firstly, international verification bodies such as the ILO can be involved in overseeing the implementation of the Code; secondly, there should be naming and shaming of companies that violate the Code; thirdly, there should be a degree of leadership by major market players to apply peer pressure to other companies to adopt the Code,<sup>726</sup> and finally, international organisations must be under an obligation of some form to provide necessary and timely information about compliance.<sup>727</sup>

All of these steps are similar to the work of the Accord, in particular, and the Alliance, leading to a degree of overlap with these initiatives, which could increase complexity and confusion regarding standards to be met by companies. It is unlikely companies will be willing to adopt a further commitment to labour standards beyond those initiatives. From this perspective, the reference to the Code in the Compact becomes little more than a 'normative dressing over a free trade agenda'.<sup>728</sup> Indeed, the European trade union organisations do not consider a label or Code of Conduct an appropriate method to address labour issues in textile and clothing GVCs.<sup>729</sup> In their view, soft measures often proven ineffective. Instead, the trade unions are promoting 'new mechanisms that provide stronger, legally binding tools that will ensure that rights are protected in law and respected in practice'.<sup>730</sup> Legislation is far more attractive in that it enables the possibility of sanctions in cases of inappropriate implementation and a more centralised system of governance involving the social partners.<sup>731</sup> However, if a legally binding instrument were to be adopted, arising from an agreement between the social partners under Article 155 TFEU, it remains difficult to see how this could have third country impact. Legislation in the field of labour rights and CSR with an external dimension is far more controversial than legislation adopted at EU level and it is questionable whether the social dialogue provisions in the TFEU create extraterritorial obligations.

In the meantime, the third country impact of the Code, even if reformed, is likely to remain weak. This is because even if the Code is sufficiently transposed and implemented by companies in third

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<sup>723</sup> *ibid.*

<sup>724</sup> Malene Nordestgaard and Judith Kirton-Darling, 'Corporate Social Responsibility within the European Sectoral Social Dialogue' (2004) 10(3) *European Review of Labour and Research* 433, 446.

<sup>725</sup> *ibid.*

<sup>726</sup> *ibid.* 447.

<sup>727</sup> *ibid.*

<sup>728</sup> Jan Orbie, *Europe's Global Role: External Policies of the European Union* (Ashgate 2008) 62.

<sup>729</sup> ITUC, 'An Evaluation of the Bangladesh Sustainability Compact' (March 2015 update) 12 <[http://www.ituc-csi.org/IMG/pdf/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact\\_march\\_final.pdf](http://www.ituc-csi.org/IMG/pdf/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_march_final.pdf)>

<sup>730</sup> *ibid.*

<sup>731</sup> Berndt Keller and Sabrina Weber, 'Sectoral Social Dialogue at EU Level: Problems and Prospects of Implementation' (2011) 17(3) *European Journal of Industrial Relations* 227, 235.

countries, transnational corporations only engage with specific groups of the working population in the different countries involved in their value chains.<sup>732</sup> The code of conduct represents a commitment only to this group of workers so long as production continues in the location in question.<sup>733</sup> Therefore, if viewed in the context of the Bangladesh RMG sector, the Code, would only have a marginal impact on the labour rights situation in the textiles and clothing sector.

### *c) Adoption and implementation of the Bangladesh Sustainability Compact*

The EU's Bangladesh Sustainability Compact (the Compact)<sup>734</sup> is the overarching global initiative in response to the Rana Plaza and Tazreen Fashions disasters. It is a cross-cutting coordinating mechanism that, through a process of regular review, assesses technical progress towards the fulfilment of human rights objectives on the ground in Bangladesh's RMG sector.<sup>735</sup> The EU issued the Compact in July 2013, in partnership with the ILO and the Government of Bangladesh, with the aim of fostering 'continuous improvements' in labour rights and factory safety in the RMG and knitwear industry in Bangladesh.<sup>736</sup> The EU's approach to improving labour rights and factory safety by means of the Compact, which it remains fully committed to, represents a choice to reject, at least for the time being, the option of withdrawal or sanctions against Bangladesh for violating its rules on trade conditionality, and instead to embark on a 'period of deep engagement for all actors involved in the global value chain' including global buyers, brands, governments, employers' and workers' organisations and consumers.<sup>737</sup> Although the U.S. withdrew its GSP post Rana Plaza, it too joined later in 2013 and Canada is a Compact Partner from 2016.<sup>738</sup> Together, the EU, U.S. and Canada account for almost 85% of Bangladesh's global exports.<sup>739</sup> Deep engagement is best understood as a major investment of resources by the EU in a rigorous process of ongoing review, supervised by the ILO, in which the EU seeks to maximise its leverage in trade and development to secure progress towards attaining comprehensive improvements in human rights' protection in Bangladesh's RMG factories.

<sup>732</sup> Stéphanie Faure, 'The Role of Joint Voluntary Initiatives in the Promotion and Momentum of Social Dialogue in the Textile, Clothing and Footwear Industries' (ILO June 2001) 66  
<[http://www.ilo.org/public/libdoc/ilo/2001/101B09\\_215\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/2001/101B09_215_engl.pdf)>

<sup>733</sup> *ibid.* 67.

<sup>734</sup> European Commission, 'Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh' (Joint Statement) 3  
<[http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151601.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf)>

<sup>735</sup> ILO, 'Strengthening Workplace Safety and Labour Rights in the Bangladesh Ready-Made Garment Sector' (September 2016) 6 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_474048.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_474048.pdf)>

<sup>736</sup> European Commission, 'Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh' (Joint Statement) 3  
<[http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151601.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf)>

<sup>737</sup> European Commission, 'Joint Statement by EU Trade Commissioner Karel De Gucht and Bangladesh Foreign Minister Dr Dipu Moni following recent disasters in the Bangladeshi garment industry' (Press Release, 28 May 2013) <[http://europa.eu/rapid/press-release\\_MEMO-13-469\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-469_en.htm)>

<sup>738</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 2  
<[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>739</sup> *ibid.* 5.

Corresponding to the NTPA, the Compact covers three specific areas, each of which has a strong human rights dimension:<sup>740</sup>

- respect for labour rights, in particular freedom of association and the right to collective bargaining
- structural integrity of the buildings and occupational health and safety, and
- responsible business conduct by all stakeholders engaged in the RMG and knitwear industry

Within each of these areas, a number of commitments have been made by Bangladesh and all partners, which are both short and long term, and are discussed below.<sup>741</sup> Commitments were also made by the EU in relation to maintaining trade links and boosting development cooperation. As a result, it can be asserted that the EU, using the Compact as its flagship policy, ‘talks the talk’ but the question is whether it can ‘walk the walk’.

Cooperation between the main actors of the Compact and the other initiatives is a determining factor of its success. Indeed, good cooperation determines deep engagement. As recognised in the Compact, it is important to ensure a ‘comprehensive, balanced and complementary approach’ and consolidation of the initiatives that have been undertaken in response to Rana Plaza.<sup>742</sup> The Compact takes the form of an overarching partnership initiative led by the EU, with ILO support, that monitors progress across the board by the Accord and the Alliance, in improving factory safety, by the national tripartite partners in the NTPA, and supports the Better Work Programme. It ties in with the EU’s trade and development policy and enhances the influence of the ILO, with its mandate to ensure that globalised industry has a social dimension to ensure fulfilment of international labour standards.<sup>743</sup>

To date, the umbrella nature of the Compact, and positive cooperation between the partners and other actors involved in it has facilitated its work. Annual technical status reports have been published by the Commission. Regular meetings and videoconferences have been held to allow regular technical review of the Compact’s progress.<sup>744</sup> In particular, a ‘3+5+1 group’ has been established between the three Bangladesh secretaries (Commerce, Labour and Employment, and Foreign Affairs), five ambassadors (EU, U.S., Canada, Netherlands and one other EU Member State on a rotating basis) and the ILO.<sup>745</sup> This group meets two or three times a year to discuss the progress with the RMG sector in Bangladesh, specifically tying in work on the Compact with the NTPA.<sup>746</sup> Engagement of this sort is vital as it allows for information exchange and learning on best

<sup>740</sup> European Commission, ‘Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh’ (Joint Statement) <[http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151601.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf)>

<sup>741</sup> *ibid.* 3-8 <[http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151601.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf)>

<sup>742</sup> *Ibid.* 3.

<sup>743</sup> See ILO, ‘The EU Sustainability Compact’

<[http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS\\_396191/lang--en/index.htm](http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_396191/lang--en/index.htm)>; and, generally, Francis Maupain, ‘The Future of the International Labour Organization in the Global Economy (Hart Publishing 2013).

<sup>744</sup> European Commission, ‘Bangladesh Sustainability Compact: Technical Status Report’ (July 2016) <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>745</sup> ILO, ‘Strengthening Workplace Safety and Labour Rights in the Bangladesh Ready-Made Garment Sector’ (September 2016) 6 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_474048.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_474048.pdf)>

<sup>746</sup> *ibid.*

practices and lessons learned at factory level.<sup>747</sup> This cooperation must persist, and it may also be useful to engage in further conferences that gather together members of the different initiatives.

The EU's follow up of the Compact's pledges, with regular statements and technical progress reports, has been vigilant, enhancing the transparency of the initiative and showing the EU's continued commitment to change in the RMG sector in Bangladesh. As time progresses and international attention loses focus, it is important that the Compact does not diminish in influence or importance. Regular follow up is the only method by which the effectiveness of the Compact can be assessed. It is also important that the EU listens to its critics, notably the three global unions, the ITUC, Uni and IndustriALL, who have issued regular evaluations of progress under the Compact.<sup>748</sup> The most recent technical status report, adopted in July 2016, highlights the current achievements and pending actions of the Compact.<sup>749</sup>

### (1) Labour Rights

Substantial progress in improving labour rights is a central element to fostering change in the RMG sector in Bangladesh. The immediate challenge after Rana Plaza was to improve the legislative environment by ensuring that new labour laws were adopted consistent with the requirements of international labour standards. It is implicit that GSP conditionality alone has not led to progress in the past. It also recognises that the growth and economic success of the RMG industry has not been accompanied by sufficient improvements in social development, and more attention must be paid to decent work, living wages, working hours, gender equality and independent representation of the interests of workers.<sup>750</sup>

The labour rights 'pillar' of the Compact involves a number of commitments. The impetus here is very much on the actions of the Government of Bangladesh to fulfil its commitment to adopt legislation and implement it. The commitments laid down in the Compact are wide-ranging under this pillar.<sup>751</sup> They include the adoption of amendments to the Bangladesh labour law to provide for improved protection, in law and practice, of the right to freedom of association and the right to collective bargaining, conforming to ILO rules, procedure and practices in implementation and enforcement of the revised labour law. They also incorporate the pledges that Bangladesh must consult with the ILO to develop and adopt additional legislative proposals with regard to ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organise) and Convention No. 98 (Right to Organise and Collective Bargaining) and improve labour rights within the lightly regulated Export Processing Zones (EPZs).

<sup>747</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (24 April 2015) 4 <[http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc\\_153390.pdf](http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc_153390.pdf)>

<sup>748</sup> For the latest update, see ITUC, Uni Global Union and IndustriALL, 'An Evaluation of the Bangladesh Sustainability Compact: January 2016 Update' (January 2016) <[http://www.industrialunion.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact\\_january\\_2016\\_final.pdf](http://www.industrialunion.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_january_2016_final.pdf)>

<sup>749</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)> accessed 14 September 2016.

<sup>750</sup> Mohd Raisul Islam Kahn and Christa Wichterich, 'Safety and Labour Conditions: the Accord and the National Tripartite Plan of Action for the Garment Industry of Bangladesh' (ILO, Global Labour University, September 2015) Working Paper No. 38, 10 <[http://www.global-labour-university.org/fileadmin/GLU\\_Working\\_Papers/GLU\\_WP\\_No.38.pdf](http://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.38.pdf)>

<sup>751</sup> European Commission, 'Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh' (Joint Statement) 3-6 <[http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151601.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf)>



The Compact is not only focused on the Government's actions, however, but also it recognises that the EU, as the main export market for garments from Bangladesh, and the granter of unilateral trade preferences, has to take responsibility for improving labour rights on the ground for RMG workers. As such, using development cooperation resources, the Commission is committed to providing assistance to support the rehabilitation of those permanently disabled by Rana Plaza, focus on skills' development and work with the ILO, Bangladesh, and the other Compact Partners to support the ILO's ongoing programme on improving working conditions.<sup>752</sup> It is interesting that although there are clearly both EU and Bangladeshi commitments in the Compact, the technical status reports focus primarily on the progress made by the Government of Bangladesh.

In the July 2016 Technical Status Report, the Commission notes that progress relating to workers' rights has been 'challenging'.<sup>753</sup> It calls on the GoB to 'conform *more closely*' to core international labour standards.<sup>754</sup> The global trade unions have been less diplomatic. In their evaluation, slow progress can be explained by a combination of a lack of political will, failure of intra-governmental coordination, high levels of corruption and the dominance of the garment industry in Government institutions.<sup>755</sup>

Initially, there was an improved legislative environment. The Bangladesh Labour Act of 2006 was revised in 2013, bringing some improvements in relation to freedom of association, collective bargaining and workplace safety.<sup>756</sup> The implementing rules for the Act were issued in 2015, providing guidance on central elements of the law. This was a goal that was also referred to within the NTPA. However, the Bangladesh Labour Act, as amended, and its implementing rules, fall short of ILO standards, as noted by the ILO Committee of Experts.<sup>757</sup> In addition, the implementing rules have failed to give full effect to the fundamental rights of workers.<sup>758</sup>

Trade union registration in Bangladesh is also notoriously difficult. There was an initial increase in trade union registrations in the first year of the Compact. 351 new garment industry trade unions have been registered since 2012, totalling 483 unions by the end of March 2016.<sup>759</sup> There has been a marked increase in rejections of registration requests and a decrease in registration of trade unions over the last months.<sup>760</sup> As of July 2016, only 10 new trade unions were registered in the year to date. Nevertheless, despite the impressive overall total of registrations, this is only a surface success. The 2013 labour legislation does not rein in the discretion the GoB has to decide which trade unions

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<sup>752</sup> *ibid.* 6.

<sup>753</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>754</sup> *ibid.* 6.

<sup>755</sup> ITUC, UNI global union and IndustriALL, 'An Evaluation of the Bangladesh Sustainability Compact' (January 2016) 2 <[http://admin.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact\\_january\\_2016\\_final.pdf](http://admin.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_january_2016_final.pdf)>

<sup>756</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>757</sup> ITUC, UNI global union and IndustriALL, 'An Evaluation of the Bangladesh Sustainability Compact: March 2015 Update' (July 2014) 2 <[http://www.ituc-csi.org/IMG/pdf/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact.pdf](http://www.ituc-csi.org/IMG/pdf/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact.pdf)>

<sup>758</sup> *ibid.*

<sup>759</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 15 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>760</sup> *ibid.*

are registered, raising concerns that most unions are less than independent.<sup>761</sup> Global trade unions note that the Registrar of Trade Unions worsens the problem by 'arbitrarily rejecting the registration applications of the most active and independent trade union federations'.<sup>762</sup> In addition, it is asserted that many unions have in fact been 'busted or are now inactive' and factories that did have strong unions have closed.<sup>763</sup>

Union registration is only the start of the problem, as even if a union is registered there is little chance of it leading to collective bargaining and the GoB does not encourage this.<sup>764</sup> In addition, as factory employers no longer have a list of the union members owing to legal changes, it means they can fire union activists without doing so on the basis of 'knowledge' that the worker belonged to a union.<sup>765</sup> The EU, on the recommendation of the ILO supervisory bodies, urged the Bangladesh authorities to speed up registrations and end arbitrary non-registration of trade unions.<sup>766</sup> Other commitments in the Compact focus on skills and training, which will educate workers as to their rights in the long-term but more needs to be done now to keep the pressure on. For example, the GoB's education and training programmes on fundamental principles and rights at work was delayed for over two years and there have been no significant efforts in this regard.<sup>767</sup> The EU needs to engage more widely on labour rights with CSOs who can more effectively support trade unions.<sup>768</sup> The ILO has recommended that outreach activities like radio talk shows, drama and song performances, posters, brochures and other materials aimed at workers in the RMG industry may help raise awareness of their rights and responsibilities.<sup>769</sup> The EU must undergo more thoroughgoing engagement with grassroots trade unions if it is meaningful about its mantra of 'deep engagement'.<sup>770</sup>

Of utmost concern are violations of freedom of association and collective bargaining rights under ILO Conventions 87 and 98 on Freedom of Association and Collective Bargaining.<sup>771</sup> The global unions have reported that a 'severe climate of anti-union violence prevails' often directed by factory

<sup>761</sup> ITUC, UNI global union and IndustriALL, 'An Evaluation of the Bangladesh Sustainability Compact' (January 2016) 3 <[http://admin.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact\\_january\\_2016\\_final.pdf](http://admin.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_january_2016_final.pdf)>

<sup>762</sup> *ibid.* 1.

<sup>763</sup> *ibid.* 6.

<sup>764</sup> *ibid.* 7.

<sup>765</sup> *ibid.* 8.

<sup>766</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 4 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>767</sup> ITUC, UNI Global Union and IndustriALL, 'An Evaluation of the Bangladesh Sustainability Compact' (January 2016) 5 <[http://admin.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact\\_january\\_2016\\_final.pdf](http://admin.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_january_2016_final.pdf)> accessed 14 September 2016.

<sup>768</sup> Jeffrey Kenner, Pierre Schmitt, Katrina Sissins and Stuart Wallace, 'Structures and Mechanisms to Strengthen Engagement with Non-State Actors in the Protection and Promotion of Human Rights' (FRAME Work Package No. 7, Deliverable No. 3, 30 April 2016) 89-115.

<sup>769</sup> ILO, 'Strengthening Workplace Safety and Labour Rights in the Bangladesh Ready-Made Garment Sector' (September 2016) 19 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_474048.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_474048.pdf)>

<sup>770</sup> Joint Statement by EU Trade Commissioner Karel De Gucht and Bangladesh Foreign Minister Dr. Dipu Moni following recent disasters in the Bangladeshi garment industry (European Commission, Press Release) <[http://europa.eu/rapid/press-release\\_MEMO-13-469\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-469_en.htm)>

<sup>771</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 9-11 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

managers and rarely investigated.<sup>772</sup> Leaders of unions suffer particular risk of being attacked or killed, and the police are alleged to have intimidated and harassed trade unionists.<sup>773</sup> The unions conclude that there is a climate of ‘near total impunity’ for those responsible.<sup>774</sup> Although the EU recognises this issue in its most recent progress report, in calling for ‘effective investigation and prosecution of alleged anti-union discrimination and unfair labour practices’, including more transparency and upgrading of staffing,<sup>775</sup> it steers away from addressing the systemic issues of corruption and political influence highlighted in II.B.1 of this case study.

Unsurprisingly, it is not only the EU that has taken note of the slow progress under the labour rights pillar, but also the ILO is also placing increasing pressure on Bangladesh. In June 2015, at the International Labour Conference, the Committee on the Application of Standards adopted a decision that comprehensively covered the outstanding issues. It urged the Government to:<sup>776</sup>

- undertake amendments to the 2013 Labour Act to address the issues relating to freedom of association and collective bargaining identified by the ILO Committee of Experts, paying particular attention to the priorities identified by the social partners;
- ensure that the law governing the EPZs allows for full freedom of association, including to form trade unions and to associate with trade unions outside of the EPZs;
- investigate as a matter of urgency all acts of anti-union discrimination, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions (particularly in cases of violence against trade unionists) according to the law; and finally – ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law.

The Committee urged the Government to accept a High-Level Tripartite Mission to ensure compliance with its recommendations. The mission was postponed but eventually took place in April 2016. In its report, the ILO Mission observed that the procedure for trade union registration was ‘heavily bureaucratic’ and there was a clear lack of transparency in giving reasons for rejecting trade union applications.<sup>777</sup> The ILO Mission recommended, inter alia, that there be a standard operating procedure to render the registration process of unions a formal requirement, and a public database including information such as reasons for rejecting trade union applications.<sup>778</sup>

<sup>772</sup> ITUC, UNI Global Union and IndustriALL, ‘An Evaluation of the Bangladesh Sustainability Compact’ (January 2016) 1 <[http://admin.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact\\_january\\_2016\\_final.pdf](http://admin.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_january_2016_final.pdf)>

<sup>773</sup> *ibid.* 7.

<sup>774</sup> *ibid.* 1.

<sup>775</sup> European Commission, ‘Bangladesh Sustainability Compact: Technical Status Report’ (July 2016) 3 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>776</sup> See ILO, ‘Report of the High-Level Tripartite Mission to Bangladesh (Dhaka, 17-20 April 2016)’ 1 <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_488339.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_488339.pdf)>

<sup>777</sup> ILO, ‘Report of the High-Level Tripartite Mission to Bangladesh (Dhaka, 17-20 April 2016)’ 14 <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_488339.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_488339.pdf)>

<sup>778</sup> *ibid.*

In part C of this case study the problem of the EPZ's is highlighted. There are eight such zones in Bangladesh, covering around 400,000 workers.<sup>779</sup> The longstanding position of the Ministry of Commerce is that the EPZs date back to the 1980s when it was agreed between the Government and investors that trade unions would not be permitted 'in order to protect the investments'.<sup>780</sup> According to the Ministry, the factories in the EPZs are well maintained and workers have no complaints about them.<sup>781</sup> There has been a slow movement towards 'unionisation' but only on the form of 'Workers' Welfare Associations' which have some collective bargaining capacities but, according to the global unions, these rights do not exist in practice and members of WWAs have been 'fired with impunity' when exercising their labour rights.<sup>782</sup> In 2014, the 'Bangladesh EPZ Labour Act' was approved to regulate all aspects of industrial relations between individual employers and worker representatives.<sup>783</sup> Yet this needs to be revised as the protection that it gives does not even meet the standards of the already deficient Bangladesh Labour Act.<sup>784</sup> The ILO Mission concluded by recommending that legislation in EPZs 'must allow for full freedom of association, including the right to form free and independent trade unions and to associate with organisations of their own choosing'.<sup>785</sup> In July 2016 a new EPZ law was approved by the Cabinet but it is still considered deficient by local trade unions and CSOs.<sup>786</sup>

As demonstrated in II.C.3, gender issues are particularly prevalent in the RMG industry in Bangladesh. They are central to labour rights concerns as women make up the overwhelming majority of the workforce in the sector. Gender issues include low and unequal pay, refusal of maternity leave, and the need to combat sexual exploitation and violence. Notwithstanding their centrality, and the obvious concerns that human rights violations against women brings, the Sustainability Compact is relatively silent in this regard. Under it, the participants of the Compact have acknowledged the role that the empowerment of women within the RMG industry has played in the achievement of some of Bangladesh's MDGs, but it has failed to acknowledge the particular abuses women face in the industry in the Compact. Understandably the immediate priority has been on factory safety and basic labour laws but the need for gender equality must be fully addressed through the review process.

Greater pressure by the EU will be needed to ensure that labour rights are fully respected in the RMG sector in Bangladesh. The ITUC lodged a Freedom of Association complaint to the ILO in April

<sup>779</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 12 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>780</sup> *ibid.* 3.

<sup>781</sup> ILO, 'Report of the High-Level Tripartite Mission to Bangladesh (Dhaka, 17-20 April 2016)' 14 <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_488339.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_488339.pdf)>

<sup>782</sup> ITUC, UNI global union and IndustriaALL, 'An Evaluation of the Bangladesh Sustainability Compact: March 2015 Update' (July 2014) 2 <[http://www.ituc-csi.org/IMG/pdf/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact.pdf](http://www.ituc-csi.org/IMG/pdf/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact.pdf)>

<sup>783</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 12 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>784</sup> *ibid.*

<sup>785</sup> ILO, 'Report of the High-Level Tripartite Mission to Bangladesh (Dhaka, 17-20 April 2016)' 14 <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_488339.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_488339.pdf)>

<sup>786</sup> 'EPZ workers to get rights to union', *The Daily Star* (Dhaka, 8 July 2014); and 'The EPZ Labour Law 2016', *The Independent* (Dhaka, 19 February 2016).

2016 citing the rejection of 75% of applications to register trade unions in 2015. As a follow up to this complaint and the High-Level Tripartite Mission the ILO supervisory bodies can be expected to take further action in the near future. In turn, the EU will need to consider afresh how it uses its leverage under the GSP EPA whilst continuing to stay engaged through the Compact.

## (2) Health and Safety

Following the Rana Plaza and Tazreen Fashions disasters, the structural integrity of buildings and safety from fires was in the immediate spotlight for action to inspect factories, draw up Corrective Action Plans (CAPs) and carry out remediation. Responsibility was placed on both the national actors, through the NTPA, and the brands and retailers in the Accord and Alliance, as discussed in II.D.3a) above. The Compact therefore operates as a vehicle for oversight of progress across each of these initiatives, and through the Better Work Programme, and coordination with the ILO, the U.S., Canada and the Member States.

The ILO acts as the coordinator of the programme of inspection and remediation undertaken under the responsible business conduct initiatives of the Accord and the Alliance and also the national initiative under the NTPA. The EU is able to exert additional pressure using the tool of continuous engagement under the Compact and in support of the ILO. In the case of the Accord and Alliance this helps with the transparency of their work and provides a degree of accountability. In the July 2016 Technical Status Report it is noted that there has been a ‘sustained contribution’ from these initiatives which are deemed to have made a ‘positive difference’ for RMG workers.<sup>787</sup> The EU has more direct influence, however, over the NTPA because Bangladesh is a partner in the Compact. Under the Compact, Bangladesh has committed to implement the NTPA with the support of the ILO, assess the structural safety and fire safety of all active ‘export-oriented’ RMG and knitwear factories in Bangladesh by June 2014, and initiate remedial actions and develop the publicly accessible database to record, inter alia, factory inspections and information on worker training activities.<sup>788</sup> The EU, therefore, has a direct role in supporting this work and ensuring that the GoB fulfils the requirements of the Plan of Action. The Commission is committed to extending the social compliance component in its Better Work and Standards (BEST) programme to improve working conditions and to extend future technical assistance, including Aid for Trade, to address labour standards, including health and safety at work.<sup>789</sup>

Overall the 2016 Technical Status Report notes ‘tangible improvements’ in enhancing building and workplace safety.<sup>790</sup> 100% of factories identified as ‘export-orientated’ have been inspected under the Accord, Alliance and NTPA with follow up action now being undertaken.<sup>791</sup> One important innovation has been a publicly accessible database created as a platform for reporting on factory inspections.<sup>792</sup> Furthermore, with funding from the U.S. in particular,<sup>793</sup> Bangladesh has strengthened

<sup>787</sup> European Commission, ‘Bangladesh Sustainability Compact: Technical Status Report’ (July 2016) 3 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>788</sup> European Commission, ‘Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh’ (Joint Statement) 6-7 <[http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151601.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf)>

<sup>789</sup> *ibid.* 7.

<sup>790</sup> European Commission, ‘Bangladesh Sustainability Compact: Technical Status Report’ (July 2016) 2 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>791</sup> *ibid.* 24.

<sup>792</sup> See DIFE, ‘Status of Building Safety Assessments’ <<http://database.dife.gov.bd/>>

its capacity to inspect factories through an increase of the number of inspectors, providing them with transport, improving training and reforming the management of the Department of the Chief Inspectorate of Factories and Establishment. It has also received support to recruit more firefighters and train them to deal more quickly and effectively with factory fires. Fire Service staff now assist with inspections, develop emergency action plans and carry out evacuation drills.<sup>794</sup>

Notwithstanding the progress made, the 'second pillar' of the Compact is not complete. There are still only 993 inspectors for an industry with over 4 million workers. Concerns have also been expressed by the global unions that sanctions for obstructing inspectors or committed violence acts against them are too weak and the Department does not have strong enough legal powers.<sup>795</sup> Implementation of the NTPA is slow and the majority of the actions listed are missed or delayed, with a lack of transparency in reporting on progress.<sup>796</sup> Even where factories have been inspected, the claim that the majority of the factories inspected are considered safe has attracted criticism regarding the rigour of inspections.<sup>797</sup>

As the ILO have noted the completion of the factory inspections is an 'important step' towards improving safety in the RMG sector but 'no factory can be considered safe until it has successfully undergone a remediate process'.<sup>798</sup> It is in securing this essential objective that the Compact has a particular role, through engagement, in urging the follow-through, including resources, to fix the faults in RMG factories that have been identified by factory inspections.<sup>799</sup> To date there has been insufficient progress with the CAPs.<sup>800</sup> The recent technical status report notes that remediation measures of fire, electrical and structural hazards must be carried out without delay, and, reinforcing the language used by the ILO, no factory will be considered safe until all actions highlighted in the inspection reports have been carried out.<sup>801</sup> The major barrier here is the cost to remediation. Again the EU has a role, as the lead development partner alongside the Member States, working also with the U.S. and Canada, to assist. In total US\$200 million has been pledged but more will be needed.<sup>802</sup> The next period of remediation will be the true test because without it, many workers will be at risk of injury or death on a daily basis, with the risk of fire remaining particularly acute.

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<sup>793</sup> ILO, 'Improving working conditions in the ready made garment industry: Progress and achievements (September 2016) <[http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS\\_240343/lang--en/index.htm](http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_240343/lang--en/index.htm)>. The ILO reports that the U.S. has provided US\$5 million of funding for the recruitment of inspectors between 2013 and 2016.

<sup>794</sup> *ibid.*

<sup>795</sup> ITUC, UNI Global Union and IndustriALL, 'An Evaluation of the Bangladesh Sustainability Compact' (January 2016) 11 <[http://admin.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact\\_january\\_2016\\_final.pdf](http://admin.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_january_2016_final.pdf)>

<sup>796</sup> *ibid.*

<sup>797</sup> *ibid.*

<sup>798</sup> ILO, 'Improving working conditions in the ready made garment industry: Progress and achievements (September 2016) <[http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS\\_240343/lang--en/index.htm](http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_240343/lang--en/index.htm)>.

<sup>799</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 22 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>800</sup> *ibid.* 25-26.

<sup>801</sup> *ibid.* 22.

<sup>802</sup> ILO, 'Strengthening Workplace Safety and Labour Rights in the Bangladesh Ready-Made Garment Sector' (September 2016) 10 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_474048.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_474048.pdf)>

### (3) Responsible Business Conduct

In contrast to the above two pillars, the pillar of responsible business conduct (RBC) within the Compact does not establish any commitments upon Bangladesh or the EU. It merely takes note of the private sector response to Rana Plaza and encourages its progression.<sup>803</sup> Therefore, this pillar is key to placing emphasis on the EU's support of the Accord, the Alliance and further initiatives through RBC. The essence of this pillar is that Bangladesh and the EU remain 'engaged to support and promote socially responsible supply chains'.<sup>804</sup> It is not about the EU regulating these supply chains, but about supporting RBC. Yet what does the EU 'remaining engaged' truly mean in this context? Does engagement here indicate a mere supporting role, and what could deep engagement look like in this context?

There are several points that are made within this pillar. First, Bangladesh, the EU and the ILO welcome the efforts by major fashion and retail brands to improve safety in Bangladesh's factories. Second, they welcome the Alliance, to a certain extent, but particularly the Accord and encourage other companies to join it as the Accord is the optimum private initiative in partnership with global unions, national unions and other stakeholders.<sup>805</sup> Third, the EU and Bangladesh recognise the need for transnational enterprises/brands/retailers to deepen discussion on RBC and encourage retailers and brands to adopt and follow a unified code of conduct for factory audit in Bangladesh. Fourth, they take note of the work done by European social partners in the textile and clothing sector to update the 1997 and 2008 codes of conduct on fundamental rights, as assessed above.

### (4) Overview

Overall, it seems clear that much has been achieved under the Compact in helping to galvanise change horizontally across all the various initiatives and amongst all engaged partners both domestic and global, public and private. The nature of the EU's governance through the Compact, however, is innovative and 'experimentalist',<sup>806</sup> in the sense that it is an open and relatively transparent method of coordinating all the stakeholders on an ongoing, and highly technical, long term process. Unlike other initiatives, like the Accord and Alliance, it is not time limited although how long the EU will or should stay deeply engaged is a moot point. The EU has invested a great deal and its work has benefited greatly from strong institutional collaboration with the ILO. It is fair to say that 'far too much remains to be done' not only to ensure health and safety but even to guarantee basic labour rights.<sup>807</sup>

One particular achievement of the Compact has been its international impact. Not only has the ILO been directly involved as a partner representing the global labour rights' interest, but also the

<sup>803</sup> ITUC, UNI global union and IndustriALL, 'An Evaluation of the Bangladesh Sustainability Compact' (January 2016) 13 <[http://admin.industrial-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact\\_january\\_2016\\_final.pdf](http://admin.industrial-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_january_2016_final.pdf)>

<sup>804</sup> European Commission, 'Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh' (Joint Statement) 7 <[http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151601.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf)>

<sup>805</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 30 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>806</sup> See further, Charles F Sabel and Jonathan Zeitlin, 'Learning from Difference: The New Architecture of Experimentalist Governance in the EU' (2008) 14(3) *European Law Journal* 271.

<sup>807</sup> ITUC, UNI Global Union and IndustriALL, 'An Evaluation of the Bangladesh Sustainability Compact' (January 2016) 1 <[http://admin.industrial-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact\\_january\\_2016\\_final.pdf](http://admin.industrial-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_january_2016_final.pdf)>

Member States have been actively engaged alongside the U.S., Canada and other important players such as Norway all to provide support in the implementation of the Compact. Their technical cooperation has also strengthened regulatory bodies through institutional reforms. In addition to its development cooperation programmes within Bangladesh, the EU and Member States have provided funding to a specific projects with the ILO to monitor the Compact.<sup>808</sup> This is essential not only to the success of the Compact, but also owing to the need to intervene effectively to mitigate the adverse impacts of trade policy and facilitate progress towards the SDGs in Bangladesh. Perhaps deep engagement comes, therefore, through these enhanced development cooperation commitments and cooperation with different actors.

Above all, more must be done through the Compact's to hold the GoB to account for its commitments.<sup>809</sup> As global trade unions put it, 'the EU has both the responsibility and the capacity to influence the situation in Bangladesh through its trade preferences and that it should more fully use its power and leverage to secure meaningful and immediate improvements'.<sup>810</sup> Violations of the ILO Conventions regarding collective bargaining and freedom of association are incorporated into the EU GSP scheme as reasons for withdrawal, and ultimately, if more progress is not made on labour rights, including in EPZs, this ultimate sanction may have to be considered.

## E. Concluding Remarks

FRAME Work Package 9 (WP9) is a study of how human rights are integrated into EU policies on development and trade and to what extent this is translated into concrete policy instruments and tools, with a particular emphasis on vulnerable groups in developing countries. It is also aimed at studying the contribution the EU can make as part of its development and trade policies to counter the erosion of basic rights in lower income countries. This case study, as part of D9.4, has explored the practical implementation of EU trade and development policies targeted at addressing human rights challenges in Bangladesh as a lower income country.

A number of research questions were identified in this case study:

- i. To what extent is export diversification needed to widen opportunities for skilled employment and promote more sustainable development?
- ii. Is the EU's development partnership with Bangladesh sufficiently focused to meet the development needs of the country, specifically those of RMG workers and their families?
- iii. How effective is the EU's strong partnership with the ILO in development cooperation and in the implementation of the Sustainability Compact?
- iv. Is the EU correct in deciding to 'stay engaged' in Bangladesh notwithstanding slow progress in realising the objectives of the Sustainability Compact?
- v. Should the EU go into reverse gear and threaten to suspend the GSP EBA as a response to the worsening human rights situation?

<sup>808</sup> European Commission, 'Bangladesh Sustainability Compact: Technical Status Report' (July 2016) 6 <[http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154841.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154841.pdf)>

<sup>809</sup> ITUC, UNI Global Union and IndustriALL, 'An Evaluation of the Bangladesh Sustainability Compact' (January 2016) 2 <[http://admin.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni\\_evaluation\\_of\\_the\\_bangladesh\\_sustainability\\_compact\\_january\\_2016\\_final.pdf](http://admin.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_january_2016_final.pdf)>

<sup>810</sup> *ibid.*



The political context within Bangladesh and its brutal civil war leading to independence has bequeathed the country with a rocky political foundation. The issue of monopolisation in its political structure and the lack of space for opposition parties to operate within a shrinking democratic environment has led to violent protests. The economic and social context of the country places a further impediment to change. Informal employment is a significant problem, and Bangladesh remains one of the world's LDCs.<sup>811</sup> Relying on export-driven growth through its RMG industry it seeks to become a MIC by 2021,<sup>812</sup> something that may be an unrealistic development objective without economic diversification. This country context sets out a rocky road to ensuring sustainable development. It is clear that the EU must be imaginative in its engagement with Bangladesh whether this be through its trade or development policies.

Our first research question pertains to diversification of Bangladesh's export base and whether this would reduce reliance on the RMG sector, widen opportunities for skilled employment and promote more sustainable development. Our case study demonstrates that diversification is essential to achieve these objectives but this must be balanced with real improvements for RMG workers. As illustrated, international experience has shown countries do not reach MIC status without diversification in exports and/or an increase in export sophistication.<sup>813</sup> This would either involve diversification or product upgrading. Neither of these routes are without difficulty, and they both come with their own entry barriers. However, as the degree of RMG exports has increased, and as the world's attention has focused on responding to the industrial disasters, the issue of export diversification or upgrading has been to an extent pushed to the side but its importance has only increased. Without diversification and a corresponding reduced reliance on the RMG sector, Bangladesh may soon hit a stalemate in development progression, and thus labour rights and working conditions.

The domestic strategic framework for development places export diversification high on its agenda, yet it is not alluded to in the Sustainability Compact nor is it a sufficient priority for the EU's development cooperation programmes. The possibilities within Bangladesh for such diversification are endless, which may be the problem. Potential routes for Bangladesh to take include expanding in jute goods, footwear and leather products, electrical and electronic goods and investment in the services industry.<sup>814</sup> A danger with some of these routes is that they do not offer skilled employment, such as in footwear and leather products, so if taken Bangladesh may merely stay at the low end of the GVC. New opportunities for employment in industries such as services and electrical and

<sup>811</sup> *ibid.* See the UN list of LDCs as of May 2016

<[www.un.org/en/development/desa/policy/cdp/ldc/ldc\\_list.pdf](http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf)>. Bangladesh has been on the UN list of LDCs since 1975. The UN Committee for Development Policy defines LDCs as 'low-income countries confronting severe structural impediments to sustainable development'

<[http://www.un.org/en/development/desa/policy/cdp/ldc\\_info.shtml](http://www.un.org/en/development/desa/policy/cdp/ldc_info.shtml)>

<sup>812</sup> Government of Bangladesh, General Economics Division, 'Perspective Plan of Bangladesh 2010-2021: Making Vision 2021 A Reality' (Planning Commission, Government of the People's Republic of Bangladesh, April 2012)

<[http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a\\_9857\\_4656\\_bce6\\_139584b7f160/Perspective-Plan-of-Bangladesh.pdf](http://bangladesh.gov.bd/sites/default/files/files/bangladesh.gov.bd/page/6dca6a2a_9857_4656_bce6_139584b7f160/Perspective-Plan-of-Bangladesh.pdf)>

<sup>813</sup> Elisa Muzzini and Gabriela Aparicio, *Bangladesh: The Path to Middle-Income Status from an Urban Perspective* (World Bank 2013) 15.

<sup>814</sup> Government of Bangladesh, General Economics Division, 'Seventh Five Year Plan FY2016-2020: Accelerating Growth, Empowering Citizens' (December 2015) 184 <[http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th\\_FYP\\_18\\_02\\_2016.pdf](http://www.plancomm.gov.bd/wp-content/uploads/2015/10/7th_FYP_18_02_2016.pdf)>

electronic goods, however, would ensure skilled employment, which should be coupled with higher standards in labour rights and working conditions. This is an area in which it is difficult to see where to 'get started', but perhaps the recommendation here is that there needs to be a clear focus on diversification. The EU could provide greater support for SMEs that have diversified, fostering industry from the 'bottom up' much like civil society.

The second research question asks whether the EU's development partnership with Bangladesh is sufficiently focused to meet the development needs of the country, specifically of RMG workers and their families. There is no clear answer here, as this depends very much on the workers' experiences themselves. The EU does tackle many development needs of Bangladesh and its assistance in enabling Bangladesh to meet many of the MDGs should not be forgotten. The development needs of the country are concentrated on building a skilled workforce through education and skills development. This focus is adopted by both the domestic strategic framework and the EU. Yet what is noted is that skilled workers need skilled jobs available, without them they have to take up low-skilled jobs regardless. High quality education is indispensable in ensuring an educated workforce.

The EU has certainly been a robust development actor in this regard and its funding for education has been, and will be, advantageous to building a skilled workforce. Yet there is a need for a particular focus on women's education beyond primary level. Women's education at tertiary level or through technical and vocational education and skills training is an area of need in this regard. Education is raised in the Compact but there should also be a greater emphasis on this need.

Education is not the only development need, and governance and human rights are also areas that are supported by the EU. This again forms the link between trade, development and human rights. More could be done in this regard with respect to civil society, in particular supporting the work of trade unions and human rights defenders. The recommendations made within the FRAME D7.3 will be key to ensuring effective civil society engagement. A continuation of projects funded under the thematic programmes the EIDHR, the project on Civil Society Organisations and Local Authorities, and the further grant for civil society participation in, inter alia, decision making will be essential to maintaining the EU's support of the democratic environment in Bangladesh. A special focus on grassroots trade unions is also needed to ensure that the EU is part of facilitating the CSO policy environment in Bangladesh.

The third research question relates to the effectiveness of the EU's partnership with the ILO in development cooperation and the implementation of the SC. Partnership with the ILO is imperative to fostering the labour rights situation and labour conditions within the RMG sector in Bangladesh as the ILO is the world's leading organisation setting labour standards and engaging in development policies with a focus on labour rights. Engagement with the ILO lends legitimacy to the EU's actions, and ensures that they are not simply unilateral (as withdrawal of the EBA would be). It also adheres to the calls within the Treaties and the Cooperation Agreement to engagement with international organisations.

Bangladesh is certainly not an 'ILO compliant' country as the recent Report of the High-Level Tripartite Mission has highlighted. Indeed, few of the ILO Conventions have been ratified and its implementation of ILO standards is deficient. The EU engaged with the ILO in its Decent Work programme, and similarly supports the Better Work programme. The ILO instruments are also referred to in both the EU's GSP Regulation and the EU-Bangladesh Cooperation Agreement. The

ILO's Better Work Bangladesh has been identified as a project of 'deep engagement' as it focuses particularly on making significant improvements a small amount of factories. The EU's support of this project, and its potential increase in scale or replication, is vital to the EU's partnership with the ILO and fostering an improvement in labour rights and working conditions. A further potential project the EU could support is one recommended by the ILO in terms of outreach activities such as through the radio, to ensure workers are aware of their rights and responsibilities.<sup>815</sup> This is, again, part of civil society engagement.

The fourth research question asks whether the EU is correct in deciding to 'stay engaged' in Bangladesh notwithstanding the slow progress on the Compact. From the outset, the answer to this should be positive. The Sustainability Compact is not merely an EU project. As already identified, it is an overarching plan that plays a coordinating, supporting and promoting role in relation to the health and safety initiatives, specifically the national tripartite NTPA, the ILO Better Work Programme, the trade union and private sector Accord, the brand-only Alliance. Progression with the Compact has been mixed but the process is transparent and lessons have been learned. It has been made clear, for example, that more needs to be done by the Government of Bangladesh to improve labour laws and working conditions, particularly in EPZs where trade unions are not recognised, and stop anti-union discrimination.

Experience to date shows that some engagement worked well but change is not a swift particularly within a country facing inherent political and societal challenges, including responding to an increase in terrorist outrages. This is, after all, the first initiative of its kind that brings together such a variety of actors across the globe to focus their attention on labour rights, factory safety and the need for responsible business conduct in one sector of a developing country's economy. It is also the first initiative that targets to a great extent upon labour rights and working conditions within the RMG GVC. Thus it has become a form of 'mega-mission' to improve labour rights and working conditions. From this perspective, it is certainly too soon to suggest that it has been unsuccessful.

Yet what would better engagement look like? For a start, the EU could make improved use of its position as lead partner in the Compact. Monitoring is undertaken well, but the Compact would benefit from reports or further meetings that draw upon best practices learnt from the Accord, Alliance, Better Work Bangladesh and NTPA and facilitate engagement between these initiatives. There should also be greater attention on the commitments made within the Compact by the EU, the U.S. and Canada and what can be done by the EU Member States using their development resources and soft power. Staying engaged should additionally entail greater attempts to pressurise the GoB to change its policies, for example in EPZs, and continue cooperation with the ILO as a follow up to its recent Mission.

Furthermore, there could even be greater links made between international RBC frameworks such as the UN Global Compact and the Sustainability Compact in promoting responsible supply chain management in the RMG sector. Likewise, there is a further need to ensure that the social partners in the SSDC for textiles and clothing engage in a discussion over sustainable development in the context of the GSP, not simply the GSP+. One of the suggestions that has been made in the context of RBC is to 'make standards binding globally for all transnational companies', and add a Dispute

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<sup>815</sup> International Labour Organization, 'Strengthening Workplace Safety and Labour Rights in the Bangladesh Ready-Made Garment Sector' (September 2016) 19 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_474048.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_474048.pdf)> accessed 16 September 2016.

Settlement Body to the ILO to make its standards binding.<sup>816</sup> Without this its impact may be limited, for example, after Accord expires in the next two years.

The fifth research question examined whether the EU should go ‘into reverse gear’ and consider suspending its GSP EBA in response to the human rights situation if there are systematic violations of ILO Conventions listed in the GSP Regulation. Such a move would entail a complete turnaround from the current policy of continuous engagement. The GSP EBA aims at fostering sustainable development, and has undoubtedly contributed towards achieving some of the UN MDGs by boosting mainly RMG-driven export growth, but widespread labour rights and health and safety violations, and inequalities, must be addressed. It is clear, however, that the mere existence of the tariff preferences has not been enough in bringing about sustainable development and this is where the nexus between trade, development and human rights plays an essential role.

GSP EBA withdrawal, or even contemplating it out loud, may show that the EU is not willing to always put trade first, but this is balanced by the harmful impact it would have on workers within the RMG sector, particularly women, who would lose jobs and independence as demand fell because of tariffs. Thus, it may worsen the human rights situation as opposed to the opposite. In addition, it would negatively impact on the businesses that have committed to improving labour rights through the Accord and the Alliance: this is not merely an issue with the GoB but also MNCs. Even the international trade unions are not prepared to recommend this step yet. It is suggested that withdrawal, therefore, is not desirable in the short to medium-term. Yet if the labour rights violations continue, and the ILO’s recommendations are not met, it is a route that might have to be taken. In the meantime, ‘deep engagement’ is an experiment that has produced fruitful collaboration and some positive outcomes. It must be followed through with vigour.

## Annexes: Bangladesh Case Study

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<sup>816</sup> Arnaud Zacharie, ‘Afterword: Linking Trade to Social and Environmental Standards: An Answer to the Challenges of Globalization’ in Olivier De Schutter (eds) *Trade in the Service of Sustainable Development* (Hart Publishing 2015) 182.

Annex 1. Map of Bangladesh



Map No. 3711 Rev.2 UNITED NATIONS  
January 2004

Department of Peacekeeping Operations  
Cartographic Section

Source: United Nations, 'Map of Bangladesh'



## Annex 2. ILO Conventions ratified by Bangladesh

Conv. No.	Subjects	Date of Ratification	
*29.	<b>Forced Labour Convention, 1930</b>	22.06.1972	Core Convention:
* 105.	Abolition of Forced Labour Convention , 1957	22.06.1972	
* 87.	Freedom of Association & Protection of the Right to Organize Convention , 1948	22.06.1972	
* 98.	Right to Organize & Collective Bargaining Convention, 1949.	22.06.1972	
*100.	Equal Remuneration Convention , 1951	28.01.1998	
*111.	Discrimination (Employment & Occupation) Convention , 1958	22.06.1972	
*182.	Worst Forms of Child Labour Convention , 1999	12.03.2001	
1.	Hours of works (Industry) Convention , 1919	22.06.1972	
4.	Night Work(Women) Convention, 1919	22.06.1972	
6.	Night work of Young Persons (Industry) Convention, 1919	22.06.1972	
11.	Right of Association (Agriculture) Convention, 1921	22.06.1972	
14.	Weekly Rest (Industry) Convention, 1919	22.06.1972	
15.	Minimum Age (Trimmers & Stokers) Convention, 1921	22.06.1972	
16.	Medical Exam. of Young Persons (sea) Convention, 1921	22.06.1972	
18.	Workmen's Compensation (Occupational Diseases) Convention, 1925	22.06.1972	
19.	Equality of Treatment (Accident Compensation) Convention, 1925	22.06.1972	
21.	Inspection of Emigrants Convention, 1926	22.06.1972	
22.	Seamen's Articles of Agreement Convention, 1926	22.06.1972	
27.	Marking of Weight (Packages Transported by vessels) Convention, 1929	22.06.1972	
32.	Protection Against Accident (Dockers) (revised) Convention, 1932	22.06.1972	
45.	Underground work (women) Convention, 1935	22.06.1972	
59.	Minimum Age(Industry) (revised) Convention, 1937	22.06.1972	
80.	Final Articles Revision Convention, 1946.	22.06.1972	
81.	Labour Inspection Convention, 1947.	22.06.1972	
89.	Night Work(Women) convention (revised) 1948.	22.06.1972	
90.	Night Work of Young Persons (Industry) (revised) Convention, 1948.	22.06.1972	
96.	Fee-charging Employment Agencies Convention (revised) 1949	22.06.1972	
106.	Weekly Rest (commerce & offices) Convention, 1957.	22.06.1972	
107.	Indigenous & Tribal Population Convention, 1957.	22.06.1972	
116.	Final Articles Revision Convention, 61	22.06.1972	
118.	Equality of Treatment (Social Security) Convention , 1962	22.06.1972	
144.	Tripartite Consultation (International Labour Standards) Convention, 1976.	17.04.1979	
149.	Nursing Personnel Convention, 1977.	17.04.1979	
185	Seafarer's Identify Document Convention (revised), 2003	24.03.2014	
	Maritime Labour Convention 2006	24.03.2014	

\*\* Bangladesh is yet to ratify one core convention which is the Minimum Age Convention, 1973 (No. 138).

Source: Ministry of Labour and Employment, 'ILO Related Activities'

<[http://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/page/a4e3595b\\_284f\\_44e1\\_8c62\\_f0fb170214c4/ILO%20Related%20Activities.pdf](http://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/page/a4e3595b_284f_44e1_8c62_f0fb170214c4/ILO%20Related%20Activities.pdf)>

## Annex 3. World Bank Data




Source: World Bank, 'Bangladesh' <<http://data.worldbank.org/country/bangladesh>>.

## Annex 4. Transparency International Statistics

### CORRUPTION MEASUREMENT TOOLS

**CORRUPTION PERCEPTIONS INDEX (2015)** ?

RANK: **139** /168    SCORE: **25** /100



**OECD ANTI-BRIBERY CONVENTION (2011)** ?

**BRIBE PAYERS INDEX (2011)** ?

**CONTROL OF CORRUPTION (2010)** ?

PERCENTILE RANK: **16%**

SCORE: **-0.990909859**

### MEASURING TRANSPARENCY

**FINANCIAL SECRECY INDEX (2011)** ?

**OPEN BUDGET INDEX (2010)** ?

BUDGET OPENNESS: **SOME**

SCORE: **48**

### BANGLADESH



### FACTS & FIGURES

- \* POPULATION (2010): **148.7 MILLION**
- \* GDP (2010): **\$100.36 BILLION**
- \* INFANT MORTALITY RATE (PER 1,000 LIVE BIRTHS - 2010): **38**
- \* LIFE EXPECTANCY (2009): **68.33 YEARS**
- \* LITERACY RATE (2009): **55.9%**

(\* World Bank data)

Source: Transparency International, 'Bangladesh' <<http://www.transparency.org/country#BGD>>.



## Annex 5. Sustainability Compact

### Joint Statement

#### **Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh**

The representatives of the Government of Bangladesh, the European Union (EU) represented by the European Commission and the International Labour Organization (ILO) met in Geneva on 8 July 2013 to promote improved labour standards and responsible business conduct in the Ready-Made Garment (RMG) and knitwear industry in Bangladesh. Representatives from industry (including brands, retailers and SMEs), employers, trade unions and other key stakeholders participated in the meeting and provided valuable input.

The participants acknowledge the positive impact of the RMG and knitwear sector in Bangladesh over the past three decades and its contribution to economic development, employment, higher income level and skills in Bangladesh, as well as its positive impact on eradication of poverty, empowerment of women and progress on the timely attainment of some of the Millennium Development Goals (MDGs). This also enhances trade amongst countries and creates global wealth. As the RMG and knitwear industry holds further growth potential in Bangladesh, participants emphasise the importance of a balanced development of the sector, with safe and secure work places for further expansion of trade.

Bangladesh and the EU welcome and encourage the continued efforts of the ILO to bring together the various relevant stakeholders to work together to address the challenges of labour standards and factory safety in Bangladesh. The National Tripartite Plan of Action on Fire Safety and Structural Integrity in the Ready Made Garment Sector in Bangladesh and the Joint Statement by Tripartite Partners (government, employers, workers) with the ILO constitute key references for intensifying efforts to improve labour standards, including freedom of association and occupational safety and health, in Bangladesh's RMG and knitwear sector. Adoption and effective implementation of a Bangladesh Labour Law reform, consistent with international core labour standards, would form another important step in that direction. In this regard, the EU intends to support Bangladesh's work on the

implementation of the Labour Law to help Bangladesh create the framework for a successful launch of the Better Work Programme.

Bangladesh reiterates its continuing efforts to effectively implement in law and practice the international labour standards embodied in the fundamental ILO Conventions and other ILO Conventions that it has ratified. The EU will continue to assist Bangladesh to meet its obligations in this respect. Bangladesh is committed to continue to work with the ILO and other relevant national institutions to improve the overall framework in the area of occupational safety and health, including the ratification of other relevant ILO Conventions.

Companies, including brands and retailers, should ensure respect of ILO core labour standards as well as national laws across their value chains. Bangladesh and the EU expect them to act consistently with the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy as appropriate, as well as to expand dialogue with workers' organisations and representatives.

Bangladesh and the EU welcome the fact that major fashion and retail brands sourcing RMG from Bangladesh are coordinating their efforts to help improve safety in the Bangladeshi factories which supply them. In this respect, the progress made in developing implementation plans is recognised and the importance of engaging with national stakeholders to ensure consistency between various initiatives is underlined. We call upon other brands and retailers doing business in Bangladesh to initiate similar measures.

The present Compact covers the following areas:

1. Respect for labour rights, in particular freedom of association and the right to collective bargaining,
2. Structural integrity of the buildings and occupational safety and health, and
3. Responsible business conduct by all stakeholders engaged in the RMG and knitwear industry in Bangladesh.

Progress on the implementation of actions in these areas will be followed up by Bangladesh and the EU with the support of the ILO, as appropriate. Bangladesh, the EU and the ILO will maintain close cooperation to ensure a comprehensive, balanced and complementary approach and consolidate the initiatives. The importance of providing expertise and technical assistance to Bangladesh to support the implementation of the agreed actions is recognised. They commit to a follow-up meeting in 2014 to take stock of progress made on the actions outlined in this Compact.

### 1. Respect for labour rights

Building on commitments already made, Bangladesh commits to pursue its efforts to improve of labour standards and factory safety through:

- a) Adoption in July 2013 of the amendments to the Bangladesh Labour Law aimed at improving the fundamental rights of workers, and thereafter ensuring entry into force of the amended Labour Law by the end of 2013. The amended Labour Law will provide improved protection, in law and practice, for the fundamental rights to freedom of association and the rights to collective bargaining, as well as Joint Committees for the improvement of occupational safety and health.
- b) Conforming to all the existing ILO rules, procedure and practices in appraising the actions taken with respect to the implementation and enforcement of the revised Labour Law. Effective implementation and enforcement of the Labour Law will be monitored through regular reports by the Government of Bangladesh to the ILO Committee of Experts and social partners' observations submitted to the same Committee, in compliance with the conclusions of the ILO Committee on Application of Standards. Effective implementation includes the rapid issuance and implementation of all rules required by law, including for the free election of workers' representatives and the functioning of participation committees, as committed by the Government of Bangladesh at the ILO Conference Committee on the Application of Standards in June 2013. In this respect, the ILO commits to provide technical assistance to Bangladesh towards implementation and follow-up concerning freedom of association and the right to collective bargaining, including for the effective application of the law regarding union registrations, union discrimination cases, and unfair labour practice claims.

- c) Consulting closely with the ILO to develop and adopt additional legislative proposals to address conclusions and recommendations of the ILO supervisory monitoring bodies, in particular with reference to ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organise) and Convention No. 98 (Right to Organise and Collective Bargaining). The ILO will assist Bangladesh in reviewing the adequacy of the reforms in meeting ILO requirements.
- d) Taking all necessary steps, with support from the ILO, to further improve exercise of freedom of association, ensure collective bargaining and the application of the national Labour Law to Export Processing Zones (EPZ), including ensuring that the Ministry of Labour inspectors and other regulatory agencies have full authority and responsibility to conduct inspections. The Government of Bangladesh will form an intra-governmental working group for these purposes. The Government of Bangladesh reaffirms its commitment to the enforcement of national law and review of legislation where appropriate to ensure the protection of EPZ workers' freedom of association and collective bargaining rights, including the prohibition of blacklisting and ensuring the establishment of the right to strike by Workers' welfare associations from 1 January 2014 in the EPZs for exercising these rights. The Government of Bangladesh will engage with the ILO to work towards building capacity and raising awareness on freedom of association and rights and their impact on development, productivity and adaptation at the workplace.
- e) Continuing, in coordination with ILO, the education and training programmes on fundamental principles and rights at work and on occupational safety and health designed for workers, trade union representatives and employers and their organisations, representatives on participation committees and safety committees and other relevant stakeholders, as early as possible in 2013.
- f) Achieving eligibility for the Better Work Programme, a partnership between the ILO and the International Finance Corporation (IFC), in order to improve compliance with labour

standards and to promote competitiveness in global supply chains in the RMG and knitwear industry. To this end the Government of Bangladesh commits to do all within its power to enable the Better Works Programme in Bangladesh to start as soon as possible following the adoption of amendments to the labour law under consideration in the Parliament of Bangladesh. The Government of Bangladesh will act expeditiously to register independent trade unions and to ensure protection of unions and their members from anti-union discrimination and reprisals. Once initiated, the Better Work Programme will include capacity building for social partners and support in development of social dialogue at the enterprise level. This should be done in coordination with the ILO and the IFC, and in cooperation with social partners, as defined by the ILO, as well as industry and worker representatives.

- g) Completing the upgrading of the Department of the Chief Inspector of Factories and Establishments to a Directorate with a strength of 800 inspectors, having adequate annual budget allocation, and the development of the infrastructure required for its proper functioning. The Government of Bangladesh will move to recruit 200 additional inspectors by the end of 2013. The Directorate will regularly visit and assess industrial establishments to enforce national labour laws, including on working conditions in factories, freedom of association and collective bargaining. Inspections should be conducted in a fully transparent and accountable manner.
- h) Creating, with the support of ILO and other development partners, a publicly accessible database listing all RMG and knitwear factories, as a platform for reporting labour, fire and building safety inspections, which would include information on the factories and their locations, their owners, the results of inspections regarding complaints of anti-union discrimination and unfair labour practices, fines and sanctions administered, as well as remedial actions taken, if any, subject to relevant national legislation.
- i) Launching, by 31 December 2013, with the support of the ILO, skills and training programme for workers who sustained serious injuries in the recent tragic events and redeploying the RMG and knitwear workers that were rendered unemployed as well as rehabilitated workers.

- j) Conducting, by 31 December 2013, with the support of the ILO, a diagnostic study of the Labour Inspection System and develop and implement a resulting action plan, including appropriate measures.

The European Commission in the context of EU development assistance will:

- k) Provide assistance to rehabilitate those permanently disabled by the Rana Plaza collapse, including through: (i) exploring the possibility of reallocating funds under the current EU-funded Technical and Vocational Education and Training (TVET) project implemented by the ILO; and (ii) the existing EU-funded Better Work and Standard (BEST) cooperation programme with Bangladesh.
- l) Promote a focus on skills development in future EU assistance to Bangladesh.
- m) Consult with the ILO, the Government of Bangladesh and other donors to see which of the actions from the ILO Programme Outline 2013-2016 'Improving Working Conditions in the RMG Sector in Bangladesh', including those in relation to the Better Work Programme for Bangladesh, could be supported technically or financially by the EU under the next programming cycle (2014-2020).
- n) Explore further funding possibilities within the upcoming programming period 2014-2020, including through the Thematic Programme Global Public Goods and Challenges, which specifically includes a component in support of the implementation of EU commitments on decent work.

## *2. Structural integrity of buildings and occupational safety and*

*health:* Bangladesh commits to:

- a) Implement the National Tripartite Plan of Action on Fire Safety and Structural Integrity in the RMG industry in Bangladesh with the support of ILO, in accordance with the established milestones and timelines, as stipulated in the Programme of Action. This will be coordinated and monitored by the Bangladesh National Tripartite Committee with the support of the ILO.

- b) Assess the structural building safety and fire safety of all active export-oriented RMG and knitwear factories in Bangladesh by June 2014 – with the most populated factories assessed by the end of 2013 – and initiate remedial actions, including relocation of unsafe factories. ILO will play a coordinating role, including assisting in mobilisation of technical resources required to undertake the assessment.
- c) Develop, with the assistance from the ILO and other development partners, the publicly accessible database described in paragraph 1.h), to record: the dates of labour, fire and building safety inspections; identification of inspectors, violations identified, fines and sanctions administered; factories ordered closed and actually closed; factories ordered relocated and actually relocated; violations remediated; and information on management and worker fire and building safety training activities subject to relevant national legislation.

The European Commission, in the context of EU development assistance, will:

- d) Extend the social compliance component in the EU's on-going BEST programme with Bangladesh. This specific component aims to improve working conditions and to strengthen overall competitiveness in the textiles and RMG and knitwear sector. This extension will allow the programme to provide more training on social compliance and occupational safety and health.
- e) Extend future technical assistance, including Aid for Trade, to address labour standards, including health and safety at work and adequate levels of social dialogue and collective bargaining in Bangladesh and in other countries in the region facing similar problems.

### *3. Responsible business conduct*

Bangladesh and the EU as represented by the European Commission remain engaged to support and promote socially responsible supply chains:

- a) Bangladesh, the EU and also the ILO welcome the fact that major fashion and retail brands sourcing garments from Bangladesh are coordinating their efforts to help improve safety in the Bangladeshi factories which supply them. They recognise the progress made

in developing implementation plans and underline the importance of engaging with stakeholders to ensure effective implementation of and consistency amongst the various initiatives.

- b) They welcome the fact that over 70 major fashion and retail brands sourcing RMG from Bangladesh have signed an Accord on Fire and Building Safety to coordinate their efforts to help improve safety in Bangladesh's factories which supply them. In this context, they encourage other companies, including SMEs, to join the Accord expeditiously within their respective capacities. They recognise the need for appropriate involvement of all stakeholders for an effective implementation of the Accord.
- c) The EU and Bangladesh recognise the need for multi-national enterprises (MNEs)/brands/retailers to deepen discussion on responsible business conduct with a view to addressing issues along the supply chain. We encourage retailers and brands to adopt and follow a unified code of conduct for factory audit in Bangladesh.
- d) Bangladesh and the EU take note of the work by European social partners in the textile and clothing sector started on 26 April 2013 to update their 1997 and 2008 Codes of Conduct on fundamental rights, in the framework of the European Sectoral Social Dialogue Committee for Textile and Clothing.

Bangladesh and the EU, along with the ILO, welcome the support of representatives from industry, employers, trade unions and other key stakeholders to the Compact, as well as their continued commitment to improved labour standards and responsible business conduct in the RMG and knitwear industry in Bangladesh.

Geneva, on 8 July 2013

Source, 'European Commission, ILO and the Government of Bangladesh, Joint Statement, 'Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh' (8 July 2013) <[http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151601.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf)>



### III. Mozambique Case Study

#### A. Introduction

FRAME Work Package 9 (WP9) analysis how human rights are integrated into EU policies on trade and development, and to what extent this is consistently and coherently translated throughout the various policy tools and instruments the EU has at hand. Among other objectives, it aims to assess to what extent the EU, through its trade and development cooperation, can contribute to countering the erosion of basic human rights in lower income countries. Previous deliverables under WP 9 have mapped out the EU's policy toolbox for human rights promotion in trade and development (D 9.1) and have assessed to what extent the EU system of ex-ante impact assessments take into account human rights concerns (D9.2).

The present report offers a case study on the integration of EU development, trade and human rights policies in a given country and sectoral context. As a case study, we focus on extractive resource management and the developmental and human rights challenges this raises for donors trying to balance normative and economic interests. Concretely, the aim of this report to provide a comprehensive analysis of how EU policy, encompassing both the EU's trade and development cooperation, deals with human rights concerns arising from extractive riches in a rapidly changing country context. What are the channels used to discuss human rights concerns, how does the EU experience (if any) changes in its engagement with the government at hand and how does the EU balance its multifaceted, multi-layered interests in this regard?

Extractive resources represent a large and growing share of the economy of many less developed countries and from a governmental perspective, they usually feature high on long-term development strategies. In the absence of domestic capacity and resources, attracting foreign direct investment (FDI) is one of the key requirements to unlock that potential.<sup>817</sup> In order to do so, national legislation and policy making are often geared toward favouring such investment, e.g. through granting concessions or beneficial tax regimes, though often such policies impinge upon the livelihoods and rights of local people.<sup>818</sup> While significant progress has been made toward curbing such negative effects, there is still no multilateral, legally binding framework in place that obliges extractive corporations to take into account the human rights impact of their operations. Moreover, history shows that resource-riches in poorly developed countries can have devastating results if they are not well managed. Rent seeking elites, a lack of transparency, political competition and economic mismanagement have often rendered resource riches into resource curse. The paradox of plenty includes poorly diversified economic structures, Dutch disease and the subsequent stagnation of local economies, the disruption of local communities and environmental hazards in resource-rich

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<sup>817</sup> Sustainable Development Solutions Network, 'Harnessing Natural Resources for Sustainable Development: Challenges and Solutions' (2013), Technical Report for the Post-2015 Development Agenda, available online: <http://unsdsn.org/wp-content/uploads/2014/02/TG10-Final-Report.pdf>, 4-5.

<sup>818</sup> Lawson Remer, T. and J. Greenstein, 'Beating the resource curse in Africa: a global effort', August 2012, available online: <http://www.cfr.org/africa-sub-saharan/beating-resource-curse-africa-global-effort/p28780>.

areas, as well as weakened accountability of the state to society and even the risk of violent conflict.<sup>819</sup>

As a country-context, the author chose to focus on Mozambique given its particular political economy and the prospect of recent gas findings that could potentially transform the country's economic outlook. Indeed, long-time donor darling Mozambique, once hailed as an example of (neoliberal) reform-driven development, finds itself in a period of economic and political turmoil. The combination of a newly elected president and recent gas discoveries are believed to impinge significantly on the country's economic and political outlook. Given Mozambique's political economy however (see section II.C.), the question is whether the opportunity of a resource boom will enable a national process of industrialization, or whether it will prove to be an amplifier for already high levels of inequality.<sup>820</sup> At this point, the country's future can go either way, though changes in its relations vis-à-vis the donor-community are already noticeable. As is often the case, extractive industries are believed to eclipse other economic sectors in terms of government revenue and political significance. Unless donors rethink their ways of engaging with the Mozambican government, the decreasing need for aid money may translate in a reduction of their influence, most notably on so-called 'soft interests' like human rights protection.<sup>821</sup>

Mozambique thus provides an interesting case-study for an analysis of how the EU's trade and development policies engage with human rights issues arising from a partner country's emerging economic potential. Not only in light of rising human rights concerns, but also against the context of a gradually changing policy environment. Such change may require donors with a normative agenda to reassess and potentially rebalance their strategic priorities in view of decreasing aid leverage and emerging commercial opportunities.

The research presented here is based on desk research of primary and secondary sources, as well as an array of 30 interviews conducted in Brussels and Maputo.<sup>822</sup> Primary sources include both EU, multilateral and Mozambican policy and legislative documents as well as multiple sets of governance and economic indicators. Secondary sources include a variety of academic, policy and political economy literature. Interviewees in Brussels included officials from the Directorate-General for International Cooperation and Development (DG DEVCO), the Directorate-General for Trade (DG Trade) and the European External Action Service (EEAS). In Maputo, the stakeholders consulted include representatives of the main Maputo-based NGOs and research centres, EU and non-EU MSs' representatives and donor officials, members of the EU Delegation to Mozambique, human rights lawyers, members of the private sector, World Bank officials, academics and international experts

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<sup>819</sup> Barma, N.H., Kaiser, K., Minh Le, L. and L. Viñuela, 'Rents to Richness? The political economy of natural resource-led development' (2012), World Bank, available: ix)

<sup>820</sup> A.A. Santos, L.M. Roffarello, and M. Felipe, 'Mozambique 2015' (2015), African Development Bank African Economic Outlook series, available online: [http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2015/CN\\_data/CN\\_Long\\_EN/Mozambique\\_GB\\_2015.pdf](http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2015/CN_data/CN_Long_EN/Mozambique_GB_2015.pdf), 3.

<sup>821</sup> Dietsche, E., Dodd, S., Haglund, D. Henstridge, M., Jakobson, M., Sindou E. and C. Slaven, 'Topic Guide: Extractive industries, development and the role of donors' (2013), Oxford Policy Management EPS-PEAKS, available online: <http://r4d.dfid.gov.uk/pdf/outputs/EPS/Extractive-industries-development-and-the-role-of-donors.pdf>, 8.

<sup>822</sup> While most interviews were conducted in English, a number of interviews with local stakeholders based in Maputo were conducted in Portuguese by Mr. Eduardo Kapapelo, Academic Associate at the Centre for Human Rights at the University of Pretoria and a member of the FRAME Consortium.

familiar with the political economy of the country. Unfortunately, the authors were not able to arrange any interviews with representatives of the Mozambican government, which undeniably limits the representativeness of the findings.<sup>823</sup> In order to protect the anonymity of our interviewees, statements from the interviews will not be attributed to any particular person or, where deemed necessary, their affiliation.

This case study starts by providing an analysis of the legal and regulatory framework currently in place to hold extractive operations accountable against internationally agreed human rights obligations. Then follows a comprehensive discussion of Mozambique's political economy and how elite capture, party politics and a looming debt crisis will affect how the country handles its recent gas boom. Chapter three discusses Mozambique's experience with natural resource extraction and the human rights concerns this raises in view of the planned resettlement programs in the North of the country. Chapter four aims to analyse the EU's engagement vis-à-vis these concerns, in a gradually changing donor environment. Finally, Chapter five offers a number of concluding remarks.

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<sup>823</sup> The author repeatedly tried to arrange an interview with the Mozambican Embassy in Brussels but these efforts eventually did not result in an appointment.

## B. The regulatory context for extractive industries and human rights

Extractive operations have been criticised for a lack of transparency and accountability, and for producing few or no benefits for local communities. Moreover, large scale oil, gas and mining projects have raised various human rights and governance concerns, ranging from abuses by private security forces, the relocation of local and indigenous people, to contributing to governmental corruption and power abuse, effectively undermining the developmental potential they could generate for many resource-rich developing countries. Natural resources are therefore both a driver of conflict and inequality, as well as of resilience and socioeconomic development – much depends on how they are managed.<sup>824</sup>

In view of such concerns, the international legal and regulatory environment in which extractive companies operate has changed significantly over the past two decades. While still no legally binding rules are in place, transnational as well as private regulatory initiatives have been put in place to curb corporate behaviour alongside internationally agreed human rights obligations.

### 1. Transnational regulatory instruments

At the end of 1999, United Nations Secretary General Kofi Annan announced the Global Compact initiative (UNGC). The Compact's main objective was for businesses to subscribe to a set of shared values in the areas of human rights, labour, the environment and, since 2004, anti-corruption. Specifically, the Compact aims to align business strategies and operations with 10 universal principles derived from the Universal Declaration on Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, the 2004 United Nations Convention Against Corruption and the 2015 Sustainable Development Goals (SDGs).<sup>825</sup> The Global Compact currently counts some 8000 participating businesses, including over 560 companies in the petroleum and gas industry and 300 in the mining sector.<sup>826</sup>

Companies who wish to accede to the Compact are required to report annually on the initiatives they undertake to incorporate the Compact's 10 principles into their operations. In turn, participating companies are rewarded for their good practices by being publicized by the UNGC as examples for mutual learning among businesses. Initially however, the Global Compact did not provide any mechanism to adequately verify compliance by the participating companies, which led to criticism about the risks of 'blue washing', companies using the UNGC to polish up their corporate image without actually enforcing the Compact's stipulations in terms of human rights and labour standards.<sup>827</sup>

<sup>824</sup> African Development Bank, 'From Fragility to Resilience. Managing Natural Resources in Fragile Situations in Africa' (2016), available online:

<[http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/From\\_Fragility\\_to\\_Resilience\\_-\\_Managing\\_Natural\\_Resources\\_in\\_Fragile\\_Situations\\_in\\_Africa.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/From_Fragility_to_Resilience_-_Managing_Natural_Resources_in_Fragile_Situations_in_Africa.pdf)>, 1-3

<sup>825</sup> UNGC, 'The ten principles of the UN Global Compact', last accessed on 15 March 2016

<https://www.unglobalcompact.org/what-is-gc>

<sup>826</sup> UNGC, 'What is the UNGC – Our participants', last accessed on 15 March 2016,

<https://www.unglobalcompact.org/what-is-gc/participants>

<sup>827</sup> Global Policy Forum, 'NGOs Criticize "Blue Washing" by the Global Compact', accessed on 19 May 2019,

<https://www.globalpolicy.org/global-taxes/32267-ngos-criticize-qblue-washingq-by-the-global-compact.html>

Indeed, ten years after its creation, the UN's Joint Inspection Unit found that the lack of a clear mandate for the Compact had resulted in a 'blurred focus and impact' and 'the absence of adequate entry criteria and an effective monitoring system to measure actual implementation of the principles by participants [had] drawn some criticism and reputational risk for the Organization, (...). Ten years after its creation, and despite the activity of the Office of the Global Compacts, and the increasing resources received, 'results are mixed and risks unmitigated'.<sup>828</sup> Since the Inspection report, the design and operationalization of the Compact has been strengthened, notably with regard to compliance and reporting requirements. Companies who do not report on their progress for two successive years for instance, are expelled from the scheme and can suffer reputational costs. Similarly, when the Global Compact receives allegations of misconduct by participating companies, it can investigate the complaints and, if necessary, remove the enterprise from the Compact.<sup>829</sup>

Another early UN initiative aimed at promoting human rights in the world of business was led by an independent expert body, the Sub-Commission on the Promotion and Protection of Human Rights, a subsidiary of the then Commission on Human Rights. In 2003, the Sub-Commission approved so-called Norms on Transnational Corporations and Other Business enterprises, aimed at imposing the same human rights duties and international legislation applicable to states on companies.<sup>830</sup>

Subject to various critiques, the Commission on Human Rights finally refused to endorse the Sub-Commission's proposals. While the Norms proved to be highly divisive, they did manage to put the question of business and human rights 'squarely on the agenda of the UN human rights community'. In the wake of its refusal to endorse the Norms, the Commission on Human Rights requested the appointment of a Special Representative of the UN Secretary-General to identify ways to improve the accountability of transnational corporations for human rights violations. Harvard Professor John Ruggie who had also been closely involved with the Global Compact, was eventually appointed as Special Representative for Business and Human Rights on 28 July 2005. After six years of multi-stakeholder consultations with NGOs, businesses and governments, Ruggie managed to consolidate a set of Guiding Principles on Business and Human Rights (UNGP or Guiding Principles), which were adopted by the UN Human Rights Council (UNHRC) in 2011.<sup>831</sup>

The 'Guiding Principles on Business and Human Rights' constitute the first universally accepted, global framework addressing corporate human rights problems. The UNGPs contain 31 principles, structured around three interrelated conceptual categories based on the UN's Protect, Respect and Remedy Framework. In brief, the UNGPs stipulate the following requirements. First, states are expected to fulfil their existing obligations to respect, protect and fulfil human rights and fundamental freedoms, including their duty to protect human rights violations by third parties, such

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<sup>828</sup> P.L. Fall and M.M. Zahran, 'United Nations Corporate Partnerships: The Role and Functioning of the Global Compact' (2010), Joint Inspection Unit, JIU/REP/2010/9, available online: [https://www.unjiu.org/en/reports-notes/archive/United Nations corporate partnerships -The role and functioning of the Global Compact.pdf](https://www.unjiu.org/en/reports-notes/archive/United%20Nations%20corporate%20partnerships%20-%20The%20role%20and%20functioning%20of%20the%20Global%20Compact.pdf), 5.

<sup>829</sup> UN Global Compact, 'Integrity Measures' 2011, available online: [https://www.unglobalcompact.org/docs/about\\_the\\_gc/Integrity\\_measures/Integrity\\_Measures\\_Note\\_EN.PDF](https://www.unglobalcompact.org/docs/about_the_gc/Integrity_measures/Integrity_Measures_Note_EN.PDF), 2-4.

<sup>830</sup> 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights', UN doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003), available online: <http://www1.umn.edu/humanrts/business/norms-Aug2003.html>.

<sup>831</sup> O. De Schutter, 'Towards a Legally Binding Instrument on Business and Human Rights' (2015), CRIDHO Working Paper 2015/2, available online: <http://cridho.uclouvain.be/documents/Working.Papers/CRIDHO-WP-2015-2-TNCs14July2015-revODS-1.pdf>, 12-13.

as businesses, through the use of appropriate policies, regulation and adjudication. Second, the UNGPs define the role of business enterprises to comply with the applicable laws to respect human rights, essentially to exercise due diligence to avoid infringing upon the rights of others. Third, the UNGPs identify the rights and obligations to be matched to appropriate and effective remedies when breached.<sup>832</sup> In sum, the UNGPs require states to clearly formulate and protect human rights through their domestic legislations, while companies failing to exercise due diligence in preventing human rights violations could be in breach of these domestic laws.

Compared to the Global Compact, the UNGPs are far more explicit in identifying the respective responsibilities - and the operational means to uphold them - of governments and private companies to protect international human rights standards. However, like the Global Compact, the UNGPs are neither legally binding, nor do they introduce any new international legislation on business conduct. Professor Ruggie described the UNGPs contribution to the existing regulatory framework as follows:

The Guiding Principles' normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved. They do so under each of the Framework's three pillars: Protect, Respect and Remedy.<sup>833</sup>

While the UNGPs are broadly recognised as useful instruments to govern corporate behaviour, it remains worth stressing that, to a number of UN MSs and a large segment of civil society, the UNGPs are perceived as but a first step in a process toward a more ambitious international framework. On 26 June 2014, Ecuador and South Africa successfully tabled a resolution adopted by the UNHRC. Resolution 26/9 was co-sponsored by Bolivia, Cuba and Venezuela and called for the establishment of an Intergovernmental Working Group (IGWG) to 'elaborate an international, legally binding, instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises'.<sup>834</sup> The resolution was adopted by the Human Rights Council, yet proved highly divisive. Within the 47 members of the UNHRC, it was supported by 20 MSs, while 13 abstained and 14 opposed, the latter included *inter alia* the US and the MSs of the EU.<sup>835</sup>

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<sup>832</sup> UN Office of the High Commissioner for Human Rights, 'Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework' (2011), available online: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf), 3.

<sup>833</sup> J. Ruggie, 'Presentation of Report to United Nations Human Rights Council', Special Representative of the Secretary-General for Business and Human Rights, 30 May 2011, Geneva, available online: [http://www.ohchr.org/Documents/Issues/TransCorporations/HRC\\_2011\\_Remarks\\_Final\\_JR.pdf](http://www.ohchr.org/Documents/Issues/TransCorporations/HRC_2011_Remarks_Final_JR.pdf), 2.

<sup>834</sup> UN Human Rights Council, 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights', HRC Res. 26/9, 14 July 2015, 2.

<sup>835</sup> De Schutter, above n.831, 1.

## 2. Private regulatory instruments<sup>836</sup>

Besides multilateral regulatory initiatives, the industry itself has launched various accountability frameworks to mitigate the human rights impact of extractive companies. First and foremost, there is the 2003 Extractive Industries Transparency Initiative (EITI), which aims to promote the open and accountable management of natural resources by i) making both governmental and company systems more transparent, as well as by ii) informing the public debate on how countries use and manage their natural resources. When countries sign up to the EITI, a multi-stakeholder group is set up, bringing together government officials, extractive companies and civil society organisations (CSO) to monitor the implementation of a national work plan aimed at strengthening resource revenue transparency. EITI thus focusses on countries and requires them, and the companies operating on their territory, to disclose revenues and payments. This to enhance governmental accountability in terms of benefit-sharing arrangements and national spending, notably on socio-economic development. When a country is deemed to meet all EITI requirements, it is designated as EITI Compliant.<sup>837</sup> Currently, some 51 countries worldwide are implementing the EITI, of which 31 are deemed compliant – including, since 2012, Mozambique.<sup>838839</sup>

The International Council on Mining and Metals (ICMM) includes 23 of the world's leading mining and metal companies, as well as 35 national and regional mining and global commodity associations. Member organisations are required to implement and measure their performance against 10 Sustainable Development Principles and need to set up transparent and accountable reporting practices. Annual assessments conducted by ICMM monitor members' compliance and progress against this framework for sustainable development, including 'Principle 3', which requires member organisations to uphold fundamental human rights and respect cultures, customs and values in their dealings with both employees and affected communities. The latter implies, *inter alia*, to 'minimize involuntary resettlement, and compensate fairly for adverse effects on the community where they cannot be avoided'.<sup>840</sup>

Finally, it is worth noting the Voluntary Principles for Security and Human Rights, launched in 2000 by a group of NGOs, extractive companies and the governments of the United States (U.S.) and the United Kingdom (UK). The Voluntary Principles aim to offer a 'guide to companies on maintaining the safety and security of their operations within an operating framework that encourages respect for human rights'. They require the 30 participating companies to carry out risk assessments that include conflict analysis and appraisals of security risks.<sup>841</sup>

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<sup>836</sup> Given the limited scope of this case study, the author could not include other key initiatives that aim to better regulate extractive industries. Other relevant instruments include: ISO26000, PDAC e3 Plus, A framework for responsible exploration, the Global Reporting Initiative (GRI), the Voluntary Principles on Security and Human Rights, AA1000 series, the ICMM Sustainable Development Framework, the IFC Performance Standards on Social and Environmental Sustainability and the Towards Sustainable Mining (TSM) initiative.

<sup>837</sup> See Extractive Industries Transparency Initiative, 'The EITI Standard 2016' (2016), available online: [https://eiti.org/sites/default/files/documents/english-eiti-standard\\_0.pdf](https://eiti.org/sites/default/files/documents/english-eiti-standard_0.pdf).

<sup>838</sup> See the EITI country page on Mozambique, last consulted on 15 March 2016, <https://eiti.org/Mozambique>

<sup>839</sup> For a critical analysis on the dynamics of the EITI, we refer to Aaronson (2011).

<sup>840</sup> See the ICMM website on the ten principles of the ICMM Sustainability Framework, last consulted on 15 March 2016, <http://www.icmm.com/our-work/sustainable-development-framework/10-principles - 03>

<sup>841</sup> See the Voluntary Principles' website, last consulted on 15 February 2016, <http://www.voluntaryprinciples.org/>.

### 3. Regional and continental frameworks:

#### a) African Union

In 1981, the African Union (AU, Organization of African Unity at the time) adopted the African Charter on Human and Peoples' Rights. The Charter states in Article 21 (1) that '[a]ll peoples shall freely dispose of their wealth and natural resources' and that '[t]his right shall be exercised in the exclusive interest of the people (...)'. In case of exploitation, the same article continues that 'dispossessed people shall have the right to the lawful recovery of [their] property as well as to an adequate compensation'. Finally, it concludes that:

State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

Article 14 of the Charter, on the right to property, and Article 24, on the right to a general satisfactory environment 'favorable to their development', further establish the rights of local citizens and indigenous communities vis-à-vis their government and extractive companies.<sup>842</sup>

In 2006, the AU established the African Court on Human and Peoples' Rights to handle any cases or disputes concerning the interpretation and application of the Charter. While the Charter is ratified by all AU MSs, *sauf* South Sudan, the Protocol establishing the Court is ratified by less than half of the AU Member States (MSs) which significantly hampers its relevance, and therefore that of the Charter itself.<sup>843</sup>

Established under the Charter on Human and Peoples' Rights (Part II), the African Commission on Human and Peoples' Rights (ACHPR) is charged with the protection and promotion of Human and Peoples Rights as defined under the Charter. In 2009, the Commission established a Working Group on Extractive Industries, Environment and human Rights Violations. The Working Group is mandated to assess the impact of extractive industries in Africa, notably within the context of the Charter on Human and Peoples' Rights. They are expected to look into specific issues pertaining to violations of human rights by non-state actors (NSA) and to inform the African Commission on the latter's potential liability. Based on this mandate, the Working Group is further required to formulate recommendations on how to prevent and address human rights violations by extractive companies.<sup>844</sup> Established in 2009, its inaugural meeting was delayed due to 'unforeseen circumstances', and took place in 2011. In November 2015, the mandate of the Working Group was extended by another two years.<sup>845</sup>

<sup>842</sup> Organisation of African Unity, 'African (Banjul) Charter of Human and Peoples' Rights' (1981), OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986, available online: [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf), 5-7, Arts. 14, 21 and 24

<sup>843</sup> 24 out of a total of 54 MSs have currently signed and ratified the Protocol, 25 others have signed but not ratified and 5 have not signed nor ratified. See African Commission on Human and Peoples' Rights, 16 March 2016, <http://www.achpr.org/instruments/court-establishment/> - 3

<sup>844</sup> For an overview of the Working Group's tasks, see African Commission on Human and Peoples' Rights, 'Working Group on Extractive Industries, Environment and Human Rights Violations, last accessed on 16 March 2016, <http://www.achpr.org/mechanisms/extractive-industries/>

<sup>845</sup> African Commission on Human and Peoples' Rights, 'Inaugural Meeting of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa', last accessed on 16 March 2016, <http://www.achpr.org/news/2011/11/d59>



### b) *The European Union*<sup>846</sup>

Following the adoption of the UN Guiding Principles on Business and Human Rights, the EU promoted them to its MS and companies through its renewed Strategy for Corporate Social Responsibility (CSR). In a 2011 Communication on the topic, the European Commission (EC) defines CSR as the ‘responsibility of enterprises for their impacts on society’ and identifies human rights as one of the critical requirements for companies to address in order to meet that responsibility. Concerning the UNGPs, the CSR strategy emphasized that a better implementation of the UNGPs would automatically contribute to attaining a number of EU human rights objectives anchored in the Treaties, including core labour standards such as the right to freedom of Assembly and collective bargaining.<sup>847</sup>

Business and human rights also featured prominently in the EU’s 2011 Strategic Framework and Action Plan on Human Rights and Democracy (2011-2014). Reinforcing the implementation of the UNGPs is one of the key action points of the 2015-2019 Action Plan. Specifically, action point 17 on ‘[a]dvancing on Business and Human Rights’ stipulates that the EU will ‘develop capacity and knowledge on the implementation of Business and Human Rights guidelines, in particular with regard to the implementation of the UN Guiding Principles (UNGPs) and other tools/initiatives that contribute to the implementation of the UNGPs’.<sup>848</sup>

The 2015-2019 Action Plan also reiterated the need for EU MSs to develop and implement national action plans on the implementation of the UNGPs. Already under the first Action Plan (2011-2014), MSs had agreed to adopt national business and human rights action plans. In order to monitor and assist MSs in producing such national action plans, a CSR peer review system was set up. To date however, only 6 out of 28 EU MSs have published their plans, the United Kingdom (UK), the Netherlands, Italy, Denmark, Finland and Lithuania.<sup>849</sup> Reportedly, 7 others are in the process of preparing theirs. With regard to CSR at large however, over half of the MSs have national CSR plans, which incorporate human rights issues.<sup>850</sup> With regard to the private sector, the 2011 CSR strategy stipulates that the Commission ‘[e]xpects all European enterprises to meet the corporate responsibility to respect human rights, as defined in the UN Guiding Principles’. According to the

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<sup>846</sup> For a more comprehensive analysis of EU strategic and policy instruments on business and human rights, including CSR, we refer to FRAME deliverable 7.2. “Report on enhancing the contribution of EU institutions and Member States, NGOs, IFIs and Human Rights Defenders, to more effective engagement with, and monitoring of, the activities of Non-State Actors” (2015), available online: <http://www.fp7-frame.eu/wp-content/materiale/reports/14-Deliverable-7.2.pdf>

<sup>847</sup> European Commission, ‘A renewed EU Strategy (2011-2014) for Corporate Social Responsibility’, Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, 25 October 2011, COM (2011) 681 final.

<sup>848</sup> European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, ‘Joint Communication to the European Parliament and the Council – Action Plan on Human Rights and Democracy (2015-2019): Keeping human rights at the heart of the EU agenda’, 28 April 2015, JOIN (2015) 16 final, 13.

<sup>849</sup> For the national Action Plans on Business and Human Rights of EU MSs, see: European Commission website, DG GROWTH, ‘Corporate Social Responsibility in Practice’, last accessed on 16 March 2016, [http://ec.europa.eu/growth/industry/corporate-social-responsibility/in-practice/index\\_en.htm](http://ec.europa.eu/growth/industry/corporate-social-responsibility/in-practice/index_en.htm)

<sup>850</sup> European Commission, ‘Commission Staff Working Document on Implementing the UN Guiding Principles on Business and Human Rights – State of Play’ (2015a), 14 July 2015, SWD (2015) 144 final, 6-7.

interpretation of CSR as presented in the Communication, this implies that companies should integrate human rights into their business operations and strategy.<sup>851</sup>

With regard to extractive industries specifically, the Commission has issued an oil and gas sector guide in 2013, on the implementation of the UNGPs. The development of such sector-specific guidance was one of the action points under the Commission's 2011 policy on CSR. The guide, which is not a legally binding document, is intended for companies, both directly and indirectly involved in the oil and gas industry and is intended to help them translate the UNGPs into their systems and company cultures. In doing so, it builds on the Interpretive Guide developed by the Office of the High Commissioner for Human Rights.<sup>852</sup> While focusing on corporate human rights responsibilities, the sector guide also takes into account the role of states and their responsibility to protect human rights through effective policy and lawmaking. Over the different stages of the project lifecycle - from feasibility studies, over implementation, to closure - the guide identifies checks and balances for companies to take into account in order to ensure an optimal consideration of human rights issues. Stakeholder consultations and transparency constitute a recurring concern in this regard. The guide further includes specific references to the principle of free, prior and informed consent in dealing with local communities. This is particularly emphasized with regard to indigenous peoples, notably when projects involve 'land territory and other resources that they traditionally own, use or occupy'.<sup>853</sup>

One of the practical tools for the EU to implement its human rights policy is the European Instrument for Democracy and Human Rights (EIDHR), a financial instrument aimed at strengthening the protection, promotion and monitoring of human rights, mainly through support to relevant CSOs or human rights defenders. As such, the EIDHR will encourage CSR, in particular through implementing the UNGPs and by supporting national action plans in third countries to implement the UNGPs. Generally speaking, one of the innovative elements in the current EIDHR strategy for 2014-2017, compared to the program for 2007-2013, is its stronger emphasis on economic, social and cultural rights (ESCR), and on general principles of participation, accountability, non-discrimination, transparency, empowerment and redress. The EIDHR's 2014-2017 multiannual indicative program (MIP) notes in this regard that '[s]pecial attention will be given to the extractive industries' impact on socio-economic rights.<sup>854</sup> With regard to extractive industries, the strategy notes that '[t]he latter is a particularly complex issue as it involves not only governments but also non-state actors such as companies, armed groups, land owners, radical groups, etc'. Projects covered by the EIDHR to protect HRDs 'will therefore include advocacy, lobbying and developing strategies to counter restrictions and sanctions imposed by States on HRDs, including laws on defamation and foreign funding, and criminalization of HRDs'.<sup>855</sup>

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<sup>851</sup> European Commission, above n. 847, 13.

<sup>852</sup> UN Office of the High Commissioner for Human Rights, 'The Corporate Responsibility to Respect Human Rights – An Interpretative Guide' (2012), available online: [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf).

<sup>853</sup> Institute for Human Rights and Business and Shift, 'Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights' (2013), available online: [http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/oil\\_and\\_gas.pdf](http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/oil_and_gas.pdf), 38.

<sup>854</sup> European Commission – Republic of Mozambique, 'Instrument for Democracy and Human Rights Worldwide - Multiannual Indicative Programme (2014-2017)', 2014, 15.

<sup>855</sup> *Id.*, 9.

Practically, the EIDHR awards grants through competitive calls for proposals from national and international NGOs or CSOs at large. Such calls can be launched and managed by the EU Delegation on the ground, notably for ‘Country-Based Support Schemes’, which focus on local projects designed to reinforce the role of civil society in promoting human rights and democratic reform, or in facilitating peaceful reconciliation of different interest groups.<sup>856</sup> Calls can also be launched by the Commission’s headquarters in Brussels. While such ‘Global calls’ used to focus on 1 objective per annum in order to allocate a maximum of the available funds, the 2016 Call covers 5 objectives, notably i) Impunity and transitional justice; ii) discrimination (focusing specifically on the rights of migrants, refugees and minorities); iii) women’s rights; iv) human dignity (fighting torture and ill-treatment) and finally iv) business and human rights. For the latter, the EIDHR will reserve an allocation of five million Euro, which will go to supporting the implementation of the UNGPs. Guidelines on the specifics for the Call on business and human rights are expected to be made public in June 2016.<sup>857</sup>

In addition to the policy framework on CSR and human rights, it is worth mentioning the Accounting and Transparency Directives. Adopted by the Commission in 2013, the Accounting Directive introduced new disclosure requirements for extractive industries, including for logging firms, to report their payments to governments.<sup>858</sup> Such country by country reporting (CBCR) requires listed and large non-listed extractive and logging companies registered in the European Economic Area (EEA) to report, per country and project, on all their payments to governments. This includes production entitlements, taxes levied on income, royalties, dividends, different types of (signature, discovery, production) bonuses, different types of (license and rental) fees and payments for infrastructure improvements. The information disclosed is made publicly available to any interested stakeholders, either through the stock market information repository or through the business registry in the country at hand. Such disclosure of payments improves the transparency of payments made to governments all over the world, thus providing local CSOs in resource-rich countries with the necessary information to effectively hold their governments accountable on incoming funds and outgoing expenditure. Moreover, the Accounting Directive promotes resource-rich countries to take part in the EITI process described above.<sup>859</sup> Finally, in order to ensure a level playing field among companies operating on the EU market, a revision of the 2004 Transparency Directive introduced the same disclosure requirements to all companies listed on EU regulated markets, even when they are not registered in the EEA and/or are incorporated in a non-EU country.<sup>860</sup>

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<sup>856</sup> EEAS, ‘Instrument for Democracy and Human Rights Worldwide – Multiannual Indicative Programme (2014-2017)’, available online: [http://eeas.europa.eu/human\\_rights/docs/eidhr-mip-2014-2017\\_en.pdf](http://eeas.europa.eu/human_rights/docs/eidhr-mip-2014-2017_en.pdf)

<sup>857</sup> Interview with European Commission officials, Brussels, 11 February 2016.

<sup>858</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, *OJ L* 182, 29 June 2013, 19–76.

<sup>859</sup> *Ibid.*

<sup>860</sup> Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC, *OJ L* 294, 6 November 2013, 13–27.

## C. Mozambique country context

### 1. Historical background

Mozambique has an estimated population of 27.2 million people and is located on Africa's East coast, bordered by Tanzania to the North, Malawi, Zambia and Zimbabwe to the West and South Africa and Swaziland to the South (For a map of Mozambique, please see Annex 1).<sup>861</sup> After almost 500 years of colonisation by Portugal, the country gained independence in 1975. Shortly after, Mozambique entered a 16-year-long (1976-1992), devastating civil war between the liberation-movement-turned-communist-state-party Frelimo (Frente de Libertação de Moçambique), and the militia forces of the anti-Communist Mozambican National Resistance (Renamo, Resistência Nacional Moçambicana). Civil war, severe droughts and active sabotage by neighbouring countries Rhodesia (now Zimbabwe) and South Africa's apartheid regime, resulted in the country's economic collapse and mass migration of Mozambican refugees to neighbouring countries. By the mid-1980s, Mozambique was one of the poorest, most aid-dependent and debt-ridden countries in the world.<sup>862</sup>

In the face of severe food shortages and a broken socioeconomic infrastructure, the Frelimo government agreed to join the World Bank (WB) and the International Monetary Fund (IMF) in 1984, and to pursue a Structural Adjustment Programme (SAP) in return for international aid. Aid flows to Mozambique increased dramatically, from US \$ 360 million in 1985 to US \$ 1 billion in 1990. By allowing donors and especially International Financial Institutions (IFI) to weigh in heavily on domestic policy making, Mozambique became the largest aid recipient in sub-Saharan Africa (SSA). With Apartheid crumbling in South Africa, the end of the cold war and the subsequent waning of western support for Renamo, the first peace talks between Renamo and Frelimo started in 1990 and a new constitution was adopted in November later that year. In October 1992, the 'Rome General Peace Accords' were signed between President Joaquim Chissano and Renamo leader Afonso Dhlakama. UNOMOZ, the UN peace keeping mission which oversaw the transition, left early 1995, paving the way for comprehensive political and economic reforms based on neoliberal principles and heavily influenced by the Bretton Woods institutions.<sup>863</sup>

While during the civil war, the political conflict between Renamo and Frelimo was mainly ideological, political rivalry between the former belligerents continued over the political and economic marginalization of certain provinces. While Frelimo was created in 1962 as a national liberation movement by exiled Mozambicans in Tanzania, Renamo was initially formed by white Rhodesians in 1976, as a means to keep newly independent Mozambique from supporting the decolonisation movement in Rhodesia. With support from South Africa's apartheid regime, Renamo managed to wage a guerrilla war against Frelimo, using sabotage and raids to destabilise the country's political and economic infrastructure. Renamo's rebellion left the country in debris, but the 1992 peace agreement allowed the movement to take part in multi-party elections as of 1994. Renamo managed

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<sup>861</sup> World Bank, 'World Development Indicators', 2016, <http://data.worldbank.org/country/mozambique>

<sup>862</sup> J. Hanlon and T. Smart, *Do bicycles equal development in Mozambique?* (Oxford: 2008).

<sup>863</sup> African Peer Review Mechanism, 'Republic of Mozambique', APRM Country Review Report No. 11, July 2011, available online: Economist Intelligence Unit, Country Report Mozambique, October 2012, 57-69.

to be politically relevant as part of a coalition of opposition parties, and to seriously challenge Frelimo's rule over the country.<sup>864</sup>

Renamo initially drew support from social and political breaches within Frelimo and after the war, 'these war-induced cleavages became a driving force behind the development of Mozambique's two-party system, manifesting as south versus center, the ethnic Shangaan versus the Ndau, and the centralized socialist state versus traditional rural authorities'.<sup>865</sup> While these cleavages effectively shaped the party-system, they were never institutionalized in the post-war political structure. When Mozambique embarked on its economic growth process, and Frelimo appointed a president from the North<sup>866</sup>, regional disparities gave way to more socioeconomically defined fractions within society. A modest decentralization process, and the inclusion of traditional authorities in official governance structures further bridged the gap between centre and periphery.<sup>867</sup>

After the landslide elections of 2009, Renamo marginalized politically and Dhlakama decided to retreat from national political activity, including from his seat at the State Council that advises the president. In October 2012, he and a small group of Renamo ex-combatants set up camp in the remote Gorongosa mountains (a national park in the central province of Sofala) from where they prompted sporadic violence. Dhlakama has since accused Frelimo of excluding Renamo, as well as the central and northern provinces at large, from participating in the political and economic governance of the country, demanding i) for Renamo to be better represented in state institutions, in particular in the national security forces currently dominated by Frelimo cadres; ii) to reform the electoral system, including the heavily politicized National Election Commission (CNE); and iii) to grant Renamo more access to the country's natural resource revenues. President Guebuza's refusal to enter into any type of dialogue with Renamo added to the further marginalisation of opposition parties and eventually led to politically motivated violence and a renewed impetus on regionalism, driven by perceptions of cultural, ethnic and economic inequalities. Political tensions further intensified in October 2013, when Mozambican government forces attacked Dhlakama's base. The latter in turn revoked the 1992 General Peace Agreement (GPA).<sup>868</sup>

The fighting between Renamo fighters and government troops continued throughout 2014, and clashes spilled from the central Sofala and Manica provinces into the more touristic, Southern province of Inhambane. Guebuza and Dhlakama managed to come to a new peace agreement in September, just in time for the country's general elections in October, in which Dhlakama stood as Renamo's presidential candidate. After Felipe Nyusi won the elections however, Dhlakama disputed the electoral results, even as Renamo experienced a massive political revival, after 18 months in the

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<sup>864</sup> Buchanan, E., 'Mozambique: towards a new war between the Frelimo government and Renamo Rebels?', *International Business Times*, 1 March 2016, available online: <https://uk.news.yahoo.com/mozambique-towards-war-between-frelimo-182422221.html>

<sup>865</sup> Bertelsmann Stiftung, 'BTI 2016 – Mozambique Country Report' (2016), available online: [http://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI\\_2016\\_Mozambique.pdf](http://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Mozambique.pdf), 37.

<sup>866</sup> Guebuza was born in Murrupula, in Nampula Province.

<sup>867</sup> Bertelsmann Stiftung, above n. 865, 37-38.

<sup>868</sup> A. G. Dzenisa and D. Motsamai, 'Renamo's war talk and Mozambique's peace prospects' (2013), Institute for security Studies: Policy Brief 50, December 2013, available online: <https://www.issafrica.org/uploads/PolBrief50.pdf>, 2.

bush, and increased its number of seats in parliament.<sup>869</sup> So far, the growing political tensions and Renamo's call for increased political decentralization remained unaddressed, while violent clashes have risen to new heights in what has been called 'an undeclared war'. In Tete province especially (see map of Mozambique in Annex 1), fighting between Renamo and government troops, with blatant human rights abuses reported on the side of the government's security forces, have forced at least 6000 Mozambicans to seek refuge in Southern Malawi.<sup>870</sup>

## 2. Socio-economic development

Throughout the 1990s, Mozambique went through a sequence of stabilisation reforms based on monetary restraint, fiscal adjustments and a devaluation of the exchange rate. Other radical economic reforms included a drastic decline in government expenditure and the phasing out of protective tariff setting. At the core of these reforms was a large privatisation programme. The first SAP was introduced by the World Bank in the late 1980s and included a large privatisation program. Post-war economic reforms continued on this path as the IMF came to dominate economic policy in the early 1990s.<sup>871</sup> It imposed a harsh new SAP which included limits on post-war recovery, even on spending for the health and education sector. At one point, the IMF even capped the amount of foreign aid that Mozambique could receive. Yet, because of its turn to capitalism, the country had become a donor darling and the international donor community soon challenged the IMF to lift the aid cap. During the second half of the 1990s the WB regained its dominance over economic policy, though the Bank also deemed Mozambique to be too poor to provide public health coverage or universal primary education. With the Mozambican state effectively pushed out of the economy, as well as large parts of public service delivery, the first decade after the civil war has been dubbed as an era of 'savage capitalism'.<sup>872</sup>

Altogether, Mozambique's privatisation programme saw some 1400 enterprises sold off by the state, ranging from large industries to small firms. The pattern of Mozambique's privatisation wave, moreover, resembles similar evolutions in other SSA countries. Smaller enterprises, e.g. retail outlets, were sold off first, generally to members of the Frelimo elite. Larger corporations, usually of more strategic concern (e.g. national airline, rail and port networks) were later sold, mostly to foreign companies. As one of the largest privatisation programs on the African continent, Mozambique's economic reform since the end of the war has been hailed as one of the most successful programs of its kind, though with mixed results for its economy and little to no positive effects on inequality or poverty reduction.<sup>873</sup>

<sup>869</sup> Africa Confidential, 'New cabinet brooms' (2015), Vol. 56 No. 2, 23 January 2015, available online: [http://www.africa-confidential.com/article/id/5956/New\\_cabinet\\_brooms](http://www.africa-confidential.com/article/id/5956/New_cabinet_brooms).

<sup>870</sup> Human Rights Watch, 'Mozambique: Mass Flight Over Reported Army Abuses', 22 February 2-16, <https://www.hrw.org/news/2016/02/22/mozambique-mass-flight-over-reported-army-abuses>.

<sup>871</sup> A.S. Cruz, D. Guambe, and C.P. Marrengula., 'Learning to compete: Mozambique's industrialization' (2014), Brookings, African Development Bank and UNU-WIDER, Working Paper 10, available online: [http://www.brookings.edu/~media/Research/Files/Papers/2014/11/learning-to-compete/L2C\\_WP10\\_Cruz-et-al.pdf?la=en](http://www.brookings.edu/~media/Research/Files/Papers/2014/11/learning-to-compete/L2C_WP10_Cruz-et-al.pdf?la=en), 12-20.

<sup>872</sup> J. Hanlon and M. Mosse, 'Mozambique's elite – finding its way in a globalized world and returning to old development models' (2010), UNU-WIDER Working Paper No. 2010/105, available online: <https://www.wider.unu.edu/sites/default/files/wp2010-105.pdf>, 3-7.

<sup>873</sup> Cramer, C., 'Privatisation and Adjustment in Mozambique: a "Hospital Pass"' [2001] 27 (1) Journal of Southern African Studies, 79-80.

Ever since the end of the civil war in 1992, Mozambique has been among the fastest -growing economies in the world. Annual GDP growth rates have averaged around 8% between 2001-2011 and are predicted to continue at a rate of 7.5% annually until 2017.<sup>874</sup> Such sustained growth was made possible through macroeconomic management, a number of large-scale foreign investment projects, relative political stability and large, stable inflows of official development assistance (ODA). Trade-wise, Mozambican exports rose significantly at the turn of the century, making it one of the few SSA countries to gain world market share. That said, Mozambique's economic gains were almost exclusively based on a limited number of mega projects in the aluminium, extractives and energy sectors, while other sector grew only slightly. Moreover, the companies involved in these mega-projects were typically foreign-owned, export-oriented and benefitted from fiscal exemptions. As such, they did not contribute significantly to tax revenue for the government, nor did they contribute greatly to job creation or any general capacity enhancement of Mozambique's labour market.<sup>875</sup>

Despite massive privatisation, and an impressive economic recovery, the Mozambican economy remains fragile. Economic growth and macroeconomic stability have not been based on structural reforms but remains dependent on large inflows of FDI and ODA. Arguably, the structure of the colonial economy inherited from Portugal has persisted throughout the years.<sup>876</sup> Agriculture remains the most important economic sector by far. It employs roughly 80% of the population but constitutes only a quarter of the national GDP, suggesting low labour productivity.<sup>877</sup> While growth in agricultural productivity would arguably contribute to pro-poor growth, the sector suffers from a lack of investment and limited technology transfer, which has resulted in declining levels of productivity and contributes to stagnant rural poverty levels.<sup>878</sup> Volatile world market prices in both basic agricultural commodities and aluminium (the latter represents almost half of the country's export earnings) further make for a fragile economic basis, vulnerable to external price shocks.<sup>879</sup>

Related to the disappointingly small impact on the labour market, Mozambique's success story of rapid GDP growth has not translated into significant socioeconomic development. Mozambique today is still one of the poorest countries in the world, classified as a Low Income Country (LIC)<sup>880</sup>, with an average life expectancy of 55 years (in 2013).<sup>881</sup> While the national poverty headcount fell

<sup>874</sup> German Development Institute, 'Mozambique's economic Transformation – Are efforts to streamline the fragmented aid landscape undermined for good?', DIE Discussion Paper 12/2013, available online: [http://www.die-gdi.de/uploads/media/DP\\_12.2013.pdf](http://www.die-gdi.de/uploads/media/DP_12.2013.pdf), 3. The GDP growth rate for 2014 was 7.4%. Source: The World Bank, World Development Indicators 2015, <http://data.worldbank.org/data-catalog/world-development-indicators>

<sup>875</sup> World Bank, 'Mozambique – Reshaping Growth and Creating Jobs through Trade and Regional Integration – Country Economic Memorandum' (2012), WB Report No. 59356-MZ, available online: [worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/08/21/000333037\\_20120822000023/Rendered/PDF/593560ESW0MZ0P0C0disclosed080200120.pdf](http://www.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/08/21/000333037_20120822000023/Rendered/PDF/593560ESW0MZ0P0C0disclosed080200120.pdf), 28-31

<sup>876</sup> African Peer Review Mechanism, above n. 863, 76-77.

<sup>877</sup> Santos *et al.* above n. 820, 4-12.

<sup>878</sup> B. Cunguara and J. Hanlon, 'Whose wealth is it anyway? Mozambique's outstanding economic growth with worsening rural poverty' [2012] 43 (3) *Development and Change*, 623-647, 624.

<sup>879</sup> Santos *et al.*, above n. 820, 4-12.

<sup>880</sup> Low Income Countries, as defined by the WB, have a GNI per capita, of \$1,045 or less. See: World Bank, 'Country and lending groups' (2016), [http://data.worldbank.org/about/country-and-lending-groups-Low\\_income](http://data.worldbank.org/about/country-and-lending-groups-Low_income)

<sup>881</sup> World Bank, 'World Development Indicators', 2016, <http://data.worldbank.org/country/mozambique>

from 69.4% to 54.1% in the period between 1997 and 2003, poverty levels remained roughly the same and even slightly increased in the subsequent period 2003-2009, from 54.1% to 54.7%.<sup>882</sup> The World Bank explains this weakening relationship between economic growth and poverty reduction by Mozambique's fragile and dependent economic base. During the past decades, economic growth has been entirely driven by capital-intensive, import-dependent sectors, with little to no impact on domestic job creation. The latter is reflected in the composition of Mozambique's labour market, which continues to be dominated by low-skilled labour working in agriculture, and offers insufficient economic capacity to absorb the 300 000 new workers entering the labour market each year.<sup>883</sup> As a result, some 22% of Mozambique's labour force is unemployed, while over 87% are under-employed. Add to that a stagnating manufacturing sector, and it becomes clear that the vast majority of the country's workforce is engaged in the informal economy and/or work in subsistence farming (Santos et al., 2015: 12).

Overall, the 2015 Human Development Index ranks Mozambique 180<sup>th</sup>, out of 185 countries, with an HDI index of 0.416. The latter is a composite statistic based on indicators on life expectancy, education and income per capita (UNDP, 2015:210). According to the UN's World Food Programme (WFP), one third of the Mozambican population is chronically food insecure, while 43% of children under the age of five are chronically malnourished.<sup>884</sup>

Education was identified by almost all interviewees as one of the key challenges for Mozambique to reap the full potential of its resource riches. Close to 50.4% of the Mozambican population is illiterate and in the North of the country that percentage is even higher. The province of Cabo Delgado, where large scale on- and off-shore LNG developments are underway, and home province of president Nyusi, has the highest percentage of illiterate people, at over 66%.<sup>885</sup> While (primary) education has increasingly become a development priority for the Mozambican government, focus has been almost exclusively on increasing enrolment, mainly through the abolishment of school fees and by providing free learning materials.<sup>886</sup> Between 2003 and 2010, the number of children enrolled in primary schools increased from 3.3 million to 5.3 million, with an annual average growth rate of 8%. Improved access to schooling however, has not been paired with educational quality, as nearly two thirds of primary school graduates leave the system without basic reading, writing and math

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<sup>882</sup> B. Van den Boom, 'Analysis of Poverty in Mozambique - Household poverty status, child malnutrition and other indicators 1997, 2003, 2009' (2011), UNDP, available online:

[http://www.sow.vu.nl/pdf/Mozambique/Analysis of Poverty in Moz March 2011 ENG.pdf](http://www.sow.vu.nl/pdf/Mozambique/Analysis%20of%20Poverty%20in%20Moz%20March%202011%20ENG.pdf), 5-6. The national poverty headcount ratio is the percentage of the population living below the national poverty lines. National estimates are based on population-weighted subgroup estimates from household surveys. The percentage points mentioned above are believed to be the most recent poverty figures for Mozambique, as are all other data figures referred to in this text. See: World Bank, 'Poverty headcount ratio at national poverty lines (% of population) (2016)', <http://data.worldbank.org/country/mozambique>

<sup>883</sup> World Bank, 'International Development Association Program Document for the Tenth Poverty Reduction Support Development Policy Financing' (2014), Report No. 90299 – MZ. [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/11/13/000470435\\_20141113101213/Rendered/PDF/902990PGD0P146010Box385366B00UO090.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/11/13/000470435_20141113101213/Rendered/PDF/902990PGD0P146010Box385366B00UO090.pdf), 2-3.

<sup>884</sup> WFP, 'Mozambique: current issues and what the World Food Programme is doing' (2016), available online: <https://www.wfp.org/countries/mozambique>

<sup>885</sup> National Statistics Institute, '2007 Population Census'.

<sup>886</sup> Bertelsmann Stiftung, above n. 865, 29.



skills. Without adequate resources to facilitate the rapid expansion of enrolment has also put intense pressure on school management and teaching personal.<sup>887</sup>

It is important to note that the geographical distribution of poverty has led to regional disparities within the country. While nation-wide, rural poverty is pervasive and widespread, the Southern region tends to be less poor and the little rural poverty reduction that has occurred has been concentrated in the South of the country, reflecting spill-over effects of the rapid urban growth there.<sup>888</sup> Linked to poverty, income inequality constitutes an equally challenging issue. The inequality adjusted human development index (IHDI), which measures the distribution of human development achievements across the population, ranks Mozambique at 180 out of 188 countries.<sup>889</sup> Another indicator of inequality, the GINI coefficient, focusses on income distribution and shows that inequality at the nation level has hardly changed between 2002-2003 and 2008-2009, from 0.42 to 0.41 (IMF, 2011). Here as well, regional differences dating back to the Portuguese colonial administration play out persistently, with higher indices of service provision (e.g. banking and ICT) in the Southern region compared to the central and northern regions.<sup>890</sup> It is worth noting at this point, that a resource-based model of economic growth, as adopted by the Mozambican government, is likely to increase economic inequalities and (therefore) intensify existing regional disparities.

### 3. Contemporary political economy

As current political tensions demonstrate, regional disparities, inequality and economic redistribution remain pivotal elements in contemporary Mozambican politics. The sub-sections below first describe the current political context in Mozambique, before assessing the role of civil society and overall state-society relations. A third sub-section then analysis how Mozambican politics play out in the country's economic system, paving the way for Chapter III on Mozambique's extractive resource boom.

#### a) Party politics in times of crisis

Following the approval of the constitution in 1990, Mozambique changed from a Marxist-Leninist single-party state to a multiparty state with periodic elections and guaranteed democratic oversight.<sup>891</sup> Mozambique's transition process, like that of many SSA developing countries, was however a heavily top-down undertaking. Led from above, Mozambique underwent a political democratization process in which neither civil society, nor the opposition were involved.

In the first general elections in 1994, ruling party Frelimo secured 44% of the votes and president Chissanno remained in place with 53% of the vote. Frelimo has managed to stay in power, throughout all subsequent elections, in 1994, 1999, 2004 and 2014, albeit not without being seriously challenged by Renamo. The 1999 elections were particularly tense in this regard, when Chissanno (52.2%) barely outperformed Renamo leader Afonso Dhlakama and Renamo, as well as international observers, claimed wide-spread electoral fraud. Increased political competition during

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<sup>887</sup> USAID, 'Impact Evaluation for the USAID/Aprender A Ler Project in Mozambique – Baseline Report' (2013), available online: [http://pdf.usaid.gov/pdf\\_docs/PA00JDZT.pdf](http://pdf.usaid.gov/pdf_docs/PA00JDZT.pdf).

<sup>888</sup> World Bank, above n. 883, 3.

<sup>889</sup> UN Development Programme, 'Human Development Report 2015 – Work for Human Development' (2015), available online: [http://hdr.undp.org/sites/default/files/2015\\_human\\_development\\_report\\_1.pdf](http://hdr.undp.org/sites/default/files/2015_human_development_report_1.pdf), 2019.

<sup>890</sup> African Peer Review Mechanism, above n. 863, 77.

<sup>891</sup> P. Fauvet, 'Mozambique: from Marxism to Market', BBC News, 25 March 2013, available online: <http://www.bbc.com/news/world-africa-21655680>.

the 1990s waned significantly, resulting in the electoral dominance of Frelimo, capturing over 75% of the parliamentary vote in the 2009 elections.<sup>892</sup> Currently, three parties are represented in parliament: Frelimo, Renamo and the Mozambique Democratic Movement (MDM) - a break away party from Renamo. General elections in October 2014 identified FRELIMO candidate Filipe Nyusi as president while Frelimo retained a parliamentary majority of 56%.

Newly elected president, Felipe Nyusi, does not have the kind of political power base within the party as his predecessor did and it was not until October 2015 that Guebuza stepped down as leader of Frelimo. While many interviewees expressed a hopeful perception of the new government, particularly since Nyusi's cabinet signalled a break with the past, many now doubt whether Nyusi will have the political capital within Frelimo to i) address the corruption and impunity of the party's old guard; and to ii) facilitate a peaceful deal with Renamo.<sup>893</sup> Indeed, in the medium to long term, political accountability may improve, as a new generation of political leaders enters stage and the liberation legitimacy of the former generation wanes<sup>894</sup>. Many of them have been 'socialized within the existing system', which narrows the scope for reform.<sup>895</sup> Much of Mozambique's future will thus depend on the extent to which Nyusi manages to build a power base strong enough to challenge the networks and incentive structures created by his predecessors.

Inter-party conflicts, which reportedly sped up Guebuza's resignation as party leader, have recently come to centre around President Nyusi's stance on how to deal with main opposition party Renamo, as tensions between the two former belligerents flare to new heights in what has been called 'an undeclared war'. Early attempts by Nyusi to negotiate with Dhlakama were sabotaged by hardliners within Frelimo (AC, 2016b). Likewise, Nyusi at some point proposed for Dhlakama to submit a list of potential Renamo governors to rule the six provinces Renamo claims, yet this idea as well was swept of the table by Frelimo hardliners, raising further doubts about Nyusi's position within the party. With the old guard apparently steering for a confrontation with Renamo, Nyusi increasingly finds himself in a corner, forced to take a more aggressive stance against Dhlakama. While Dhlakama has a track record of failing to deliver on his threats, and both Renamo and the government arguably lack the resources to fight a full-blown war, prolonged low-level attacks, particularly along the N1, the North South axis of the country, could effectively derange the economy, cause public unrest, and in the medium- to long-term destabilise national politics and jeopardize Nyusi's position. As such, the latter now seems increasingly in favour of a military solution, weakening Dhlakama's bargaining position by using overwhelming military force.<sup>896</sup>

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<sup>892</sup> Institute for Security Studies, 'Mozambique – History and Politics', consulted on 1 April 2016, <https://www.issafrica.org/af/profiles/Mozambique/Politics.html>

<sup>893</sup> Africa Confidential, above n. 869.

<sup>894</sup> Frelimo's credentials as the movement that overthrew colonial rule and delivered Mozambique its independence has long been used to justify the party's (exclusive) right to govern. Some observers however identify two reasons why this 'regime legitimacy' is increasingly under pressure: i) an ageing 'old guard' of Frelimo leaders who took part in the liberation struggle; ii) the fact that most Mozambicans were born after independence will slowly decrease the relevance of Frelimo's liberation narrative. Source: Interviews in Maputo, 15-20 February, 2016.

<sup>895</sup> Bertelsmann Stiftung, above n. 865, 41.

<sup>896</sup> Africa Confidential, 'Nyusi's resolve in doubt. The President may yet impose his authority on Frelimo, but many are wondering if the new broom is now back in the cupboard' (2016c), Vol. 57, No. 6, 18 March 2016, available online: [http://www.africa-confidential.com/article/id/11597/Nyusi%27s\\_resolve\\_in\\_doubt](http://www.africa-confidential.com/article/id/11597/Nyusi%27s_resolve_in_doubt).

### b) *State-society relations and civil society participation*

Interviewees regularly stressed that Frelimo's electoral dominance throughout the years should not be mistaken as a sign of popular support, nor as a justification of the party's track record in policy-making. Rather, many argued, it is a result of Frelimo's skilled capacity to 'manage' electoral processes and to mobilise a well-organised grass-root level network of party members and co-opted institutions.<sup>897</sup>

Despite a member base of roughly 3.8 million people, a significant number of interviewees in Maputo argued that Frelimo has never managed to firmly root its policies in society. Instead, the party instrumentalized and controls the state to the benefit of its own interests. From independence onward, throughout the 1980s, the revolutionary ideal of reforming Mozambique into a modern, Marxist-Leninist state, implied an authoritarian leadership that proved unwilling to put its own role at risk in the transformation it wished to set in motion.<sup>898</sup> After the civil war, the liberalization process was launched and multi-party elections seriously challenged Frelimo's power. As described above, Frelimo managed to stay in control, though its dominance became increasingly dependent on the executive power vested in the various strands of the state and its bureaucracy. President Armando Emilio Guebuza (2002-2015) in particular introduced regressive tendencies toward the opposition and free speech in general, and intensified the centralisation of power, both at state-level, with increasing executive dominance of the president's office - as well as within Frelimo, where Guebuza managed to centralise power around his office, despite internal discontent.<sup>899</sup>

While studies on local politics show that family ties and social relations are more important for social promotion than party affiliation, Frelimo maintains almost complete control over the executive branch, the parliament, the judiciary and the economy.<sup>900</sup> Such control is exercised through various aspects of society, including through an elaborate security apparatus, and by gatekeeping the access, not only to commercial opportunities or jobs in the public administration and the judiciary, but also to more basic needs like housing, loans, licencing and other bureaucratic processes.<sup>901</sup> Indeed, personal relationships and membership of Frelimo, are perceived to be more important to get ahead in Mozambique, than merit or capacity are – with all due consequences for the country's economy and for the quality of the public administration.<sup>902</sup> This type of rampant elite capture, where politics are used as a means to self-enrichment, means that politicians and state officials at various levels of governance –central, provincial, municipal and district- prioritise 'accountability to the party over

<sup>897</sup> National and international observers have repeatedly criticised electoral processes. Regarding the 2014 elections for instance, the EU Electoral Observation Mission noted that there had been an 'uneven playing field' since Frelimo uses state resources (human and financial) to sponsor its campaigns and state-owned press is clearly biased in favour of Frelimo. See European Union Election Observation Mission, 'Mozambique Final Report General Elections 15 October 2014', available online:

[http://www.eueom.eu/files/pressreleases/english/eueom\\_mozambique\\_2014\\_finalreport\\_en.pdf](http://www.eueom.eu/files/pressreleases/english/eueom_mozambique_2014_finalreport_en.pdf), 24.

<sup>898</sup> G. Harrison, 'Corruption as "Boundary Politics": The State, Democratization, and Mozambique's Unstable Liberalisation' [1999] 20 (3) *Third World Quarterly* – The New Politics of Corruption, 537-550, 538-540.

<sup>899</sup> International Law and Policy Institute, 'Political economy analysis of the petroleum sector in Mozambique' (2013), available online: <https://www.norad.no/globalassets/import-2162015-80434-am/www.norad.no-ny/filarkiv/ofd/pea-mozambique-2013-ilpi.pdf>, 6.

<sup>900</sup> *Id.*, 12 fn.36

<sup>901</sup> For a specific example of elite capture and corruption in Mozambique, please see: A. Brooks, 'Networks of power and corruption: the trade of Japanese used cars to Mozambique' [2012] 178 (1) *The Geographical Journal*, 80-92.

<sup>902</sup> Interviews in Maputo, 15-20 February 2016.

accountability to the country'. Indeed, the pervasiveness of the party means that, often, constitutional checks and balances are neglected in favour of party discipline and loyalty to the president. Surprisingly, the perception that 'Frelimo exploits the country as its private property' was wide spread among interviewees, who identified this as one of the basic impediments to translating Mozambique's natural riches into inclusive socioeconomic development.<sup>903</sup>

While Frelimo's longstanding control over the country has led to the popular perception that 'Frelimo is the state and the state is Frelimo', the 2012 Afrobarometer noted a growing sense of disconnection between the party-state and the society it aims to govern. In 2012, 25% of the 2400 respondents to the Afrobarometer survey in Mozambique stated that they did not care about the political system or did not know which system to prefer. Moreover, 64% indicated that they did not feel free to criticize the government openly. Interestingly however, 57% in 2012 rejected a one-party system, compared to 50% in 2008, and 58% rejected a presidential autocracy, compared to only 42% in 2008.<sup>904</sup> Increased public distrust is further evidenced by a decline in voter turnout since 1994, when 88% of eligible voters turn up. This number dropped dramatically during subsequent elections, in 1999 (68%), to an all-time low of 36% in 2004 when Guebuza was elected. In the meanwhile, voter turnout has only slightly increased in 2009 (44%) and 2014 (49%).<sup>905</sup>

Civil society organisations (CSO) can play a mediating role and help mend state-society relations, yet their participation in Mozambique was historically limited and the current capacity of CSOs to weigh in on the public debate is still limited. Until the early 1990s, organised civil society was an integral part of the Frelimo family. Frelimo's workers, youth and women's movements in particular, served as 'social arms' of the party, rather than as a representative voice for the relevant societal segments.<sup>906</sup> Given Frelimo's continued omnipresence, the current CSO landscape still counts few genuinely independent and socially rooted CSOs. Many still descent from socialist mass movements or are still satellites of the party.<sup>907</sup> In addition, many reportedly suffer from limited technical capacity, an agenda set by funding opportunities, a lack of representativeness and weak institutional organisation. Some pockets of strength exist however, mainly in the form of Maputo-based knowledge institutes like the Centre for Public Integrity (CIP), the Centro Terra Viva (CTV) and the Institute for Economic and Social Studies (IESE). Highly reliant on donor funding however, and with limited rooting in society, concerns have been raised about their representativeness. Besides Maputo-based knowledge hubs, there are many, often smaller, community- or issue-based organisations and regional associations. These often facilitate the community-level research and advocacy work of some of the aforementioned CSOs in Maputo, and/or offer basic services, substituting for failing public service delivery.<sup>908</sup>

According to international observers, the quality of civil society involvement has decreased significantly in recent years. While regular dialogue between policy makers and civil society does exist, the Bertelsmann Foundation's Transformation Index (BTI) found that 'it cannot be considered

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<sup>903</sup> Interviews in Maputo, 15-20 February 2016.

<sup>904</sup> Afrobarometer, 'Mozambique Round 5 Data', available online: <http://www.afrobarometer.org/data/mozambique-round-5-data-updated-july-2015>

<sup>905</sup> IDEA, 'Voter turnout data for Mozambique', last consulted on 6 April 2016, <http://www.idea.int/vt/countryview.cfm?id=159>

<sup>906</sup> International Law and Policy Institute, above n. 899, 9.

<sup>907</sup> Bertelsmann Stiftung, above n. 865, 32.

<sup>908</sup> Interviews in Maputo, 15-20 February 2016.

strong, frank or open’, and that ‘the role of civil society has been reduced to the position of a passive observer’.<sup>909</sup> This is not to say that critical analysis does not exist. On the contrary, NGOs and knowledge institutes are often vocal in their criticism of the government. However, the relationship between CSOs and government is generally adversarial and NGOs often fail to balance their criticism by presenting constructive alternatives or policy recommendations.<sup>910</sup>

Finally, a number of CSO and donor representatives noted that, over the past five years, the space for civil society has narrowed significantly. A mapping study of CSOs in Mozambique for the EU Delegation in Maputo notes in this regard that ‘the space for political discussion became inhospitable’, and that ‘the level of political tolerance and of discussion of ideas declined’.<sup>911</sup> Notable examples characterizing the current working environment for CSOs include the arrest of CTV Director Alda Salmao in August 2013 for her involvement with the Quitupo community in Palma, Cabo Delgado, where human rights concerns have been raised in view of large onshore LNG developments. Other CSOs as well regularly receive threats in response to their work. Both the CIP and the IESE were forced to move from their offices when their leases were cancelled and IESE was only given two weeks’ notice by the state property agency.<sup>912</sup> The assassination of constitutional lawyer and activist Gilles Cistac, who argued that there were no legal-constitutional impediments for further decentralization of governmental power, is also to be seen in this context of decreasing space for free speech and criticism of the state.<sup>913</sup>

### c) *The protection and promotion of human rights*

The human rights situation in Mozambique is intrinsically linked to the governance challenges and the political economy of the country described above. In addition to the violence related to the flaring conflict between Frelimo and Renamo. Below we highlight the key human rights issues in Mozambique identified by international human rights observers like Amnesty International and Human Rights Watch.

Despite constitutional protection, Police forces continue to violate fundamental rights and freedoms. This includes deaths in detention, extrajudicial executions of suspected criminals and exercise use of force<sup>914</sup> The government hardly communicates about the mechanisms (if any) to investigate police and security force abuses, and there is very little concrete communication or follow-up of cases of human rights violations by the police. Police corruption is widespread and the most common reasons for disciplinary sanctions against police and security forces are, reportedly, theft of state funds, corruption, drunkenness and the abandonment of post.<sup>915</sup> Police reportedly also discriminate against minorities, notably Zimbabwean, Somali, and Chinese immigrants. Overall, there

<sup>909</sup> Bertelsmann Stiftung, above n. 865, 37-38.

<sup>910</sup> International Law and Policy Institute, above n. 899, 9.

<sup>911</sup> Altair, ‘Mapping Study of Civil Society Organizations in Mozambique’ (2015), available online: [http://eeas.europa.eu/delegations/mozambique/documents/news/mappingsco/20151020\\_mappingstudy\\_onineversion.pdf](http://eeas.europa.eu/delegations/mozambique/documents/news/mappingsco/20151020_mappingstudy_onineversion.pdf), 36. Such a decline in space for civil society is confirmed in the governance indicators of the WB and the Mo Ibrahim Foundation (See Annexes 2 and 3).

<sup>912</sup> Interviews in Maputo, 15-20 February, 2016.

<sup>913</sup> J. Hanlon, ‘Mozambique’, in Mehler, A., Melber, H. and van Walraven, K. (eds.) (2015), *Africa yearbook. Vol. 11 Politics, economy and society south of the Sahara in 2014*.

<sup>914</sup> Amnesty International, ‘International Report 2015/16: The State of the World’s Human Rights’, available online: <https://www.amnesty.org/en/documents/pol10/2552/2016/en/>, 260-261.

<sup>915</sup> US Department of State, ‘Mozambique 2015 Human Rights Report – Executive Summary’, available online: <http://www.state.gov/documents/organization/252921.pdf>, 5-6.

is widespread public scepticism toward the police and rumours of police members to be involved with criminal activities, including kidnappings of rich business men, were voiced recurrently throughout the interviews in Maputo.<sup>916</sup>

Limited access to justice by victims and their families, and a lack of judicial transparency and independence, constitute another major area of human rights concerns. Although the Mozambican constitution provides for an independent judiciary, civil society groups claim that the government's executive branch and the Frelimo elite heavily influence an understaffed and inadequately trained judicial system.<sup>917</sup> Political interference and a lack of capacity have hampered the judiciary to promote and protect human rights. Politically motivated, illegal, interference by the judiciary and security apparatus with the privacy of suspects, mostly members of the opposition, is a continued problem as well. This includes the unwarranted monitoring of telephone calls and e-mails, following of opposition members, the use of informants and disruption of party activities and electoral campaigns in certain districts. There is a notion of fear for being monitored among some members of the intelligentsia and CSOs.<sup>918</sup>

While press freedom and freedom of speech are legally protected, reporters are often pressurised and censored and media are firmly embedded in the Frelimo party-state, causing self-censorship and blatant des-information. While there are no official restrictions on internet usage, members of the opposition have claimed that their online activity is monitored by government intelligence services. In addition, public voices critical of the government and/or the Frelimo elite, including prominent academics, have a tendency of being muzzled. Economist Carlos nuño Castel-Branco for instance, was arrested in November 2013 after a post on Facebook in which he criticized former president Guebuza's governance track record.<sup>919</sup> The murder of legal expert Gilles Cistac was repeatedly mentioned as another example in this regard.<sup>920</sup>

Particular attention in recent years has gone to LGBTI and gender-related human rights issues. While there is no legislation which prohibits or criminalizes consensual same sex sexual activity, there are reports of discrimination based on sexual orientation and gender identity. Furthermore, the Mozambican government does not track or report instances of discrimination or even crimes against LGBTI people, neither does the media, although some cases were reported on social media.<sup>921</sup>

#### *d) Elite capture, a missing middle and public debt*

##### *(1) Elite capture*

Rent seeking occurs when individuals or groups use resources to bring about an uncompensated transfer of goods or services from a third entity, as a result of 'favourable' decision-making in public policy.<sup>922</sup> Expropriating the state for private enrichment is at the heart of Mozambique's economic

<sup>916</sup> Interviews in Maputo, 15-20 February 2016.

<sup>917</sup> Interviews in Maputo, 15-20 February 2016.

<sup>918</sup> USDS, 2015: 7-10.

<sup>919</sup> Freedom House, 'Freedom in the World: Mozambique' (2015), last accessed 20 May 2016, <https://freedomhouse.org/report/freedom-world/2015/mozambique>

<sup>920</sup> Interviews in Maputo, 15-20 February 2016.

<sup>921</sup> USDS, 2015: 28; See also: Good Governance Africa, 'Rape and Law in Mozambique' (2015), last accessed 20 May 2016, <http://gga.org/stories/editions/aif-35-balancing-justice/rape-and-justice>;

<sup>922</sup> P. Johnson, 'Rent seeking behaviour', A Glossary of Political Economy Terms, 1994-2005, [https://www.auburn.edu/~johnspm/gloss/rent-seeking\\_behavior](https://www.auburn.edu/~johnspm/gloss/rent-seeking_behavior)

model, and elite capture was regularly identified by stakeholders as one of the key impediments to inclusive, broad based, economic development.

According to Castel-Branco, Mozambique's inability to translate economic growth into poverty reduction is the result of 'economic prosperity', the loss of 'uncommitted surplus revenues that could be used for the reproduction of the economy as a whole'.<sup>923</sup> In the case of Mozambique, porosity not only manifests itself in a loss of revenue from foreign companies and investors (e.g. through favourable tax regimes, capital flight or low rates of reinvestment), but also contributes to the development of a small domestic elite.<sup>924</sup> The development of such a capitalist elite started relatively late in Mozambique. It was not before the SAPs of the 1990s that a series of large-scale privatization programs presented the opportunity for Frelimo leaders to buy, at low and subsidized cost, state-owned companies and/or state-shares in private companies. In the absence of adequate support measures to rehabilitate and develop these firms, 40% of them went bankrupt within five years after privatization, while the remaining were traded for cash or shares, or transformed into warehouses. As such, privatization did not generate the expected state revenue, rather it served the strategic purpose of appeasing the aspirations of 'a national bourgeoisie closely tied to state power'.<sup>925</sup> A second wave of state expropriation was aimed at attracting FDI, initially mainly from South Africa, and making sure that domestic elites were able to share in the inflow of investments and the profits they generated. As such, the Mozambican government accelerated the allocation of mineral and energy reserves to large corporations, and introduced fiscal and other favourable policies to attract large foreign corporations, typically in exchange for shares, board seats or opportunities for consulting and sub-contracting.<sup>926</sup>

In contemporary Mozambique, rent seeking has arguably become the *Leitmotiv* for the domestic elite's economic policy and usually occurs in a legally grey zone surrounding conflicts of interest. Frelimo leaders and a close group of business associates and family members over time managed to establish a network of businesses that function as industry gatekeepers toward foreign investors - a practice which intensified dramatically under the rule of former president Guebuza.<sup>927</sup> Earning rents of foreign investment typically involves gearing the political or administrative decision-making toward private or party interests, e.g. via licensing, land titles, project approvals, fiscal regimes, etc. Another way for Frelimo elites to access private gains from FDI is by setting up joint ventures, or lining up their own companies as subcontractors, to benefit directly or indirectly from the profits and the economic activity generated by foreign investment.<sup>928</sup> From an investor's point of view, it is understandable, and sometimes even informally required, to hire politically connected subcontractors or cooperate with politically affiliated companies who can act as 'brokers'. Particularly in capital-intensive sectors involving a lot of red tape, like extractive industries, it is known that strong relationships with key domestic 'influencers' can mitigate investment risks and help 'overcome' bureaucratic bottlenecks. The Frelimo leadership, and particularly Guebuza, have over the years established a dense network of such companies, including holdings that function as entry points for

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<sup>923</sup> C.N. Castel-Branco, 'Growth, capital accumulation and economic porosity in Mozambique: social losses, private gains' [2014] 41 (1) Review of African Political Economy, 26-48.

<sup>924</sup> *Id.*

<sup>925</sup> Cramer, above n.873, 95-98.

<sup>926</sup> Castel-Branco, above n. 923, 29-30.

<sup>927</sup> Interviews in Maputo, 15-20 February, 2016.

<sup>928</sup> Interviews in Maputo, 15-20 February, 2016.

broader FDI projects, as well as companies aimed at targeting public tenders or obtaining certain licenses to lure in foreign partners.<sup>929</sup>

Rent seeking implies that public resources and policy making are geared toward serving, directly or indirectly, personal and/or party interests, rather than public needs. When the state and its resources are put at the service of the Frelimo elite, it comes at a cost because it influences the strategic decision-making at all levels of governance. Moreover, rent-induced policy-making is usually aimed at achieving short term, exclusive gains. As such, the kind of elite capture visible in Mozambique's economy, affects the composition of the country's economic structure, as well as the overall scope for short- to medium-term development.

## (2) The missing middle

As described above, Mozambique's economy is of a narrow, extractive nature. Positive and sustained economic growth has been based on a very limited set of export products, making the economy vulnerable to external price shocks, e.g. for oil and food commodities. As for domestic consumption, Mozambique is highly dependent on imports of manufactured goods and services. Economic growth at large, and the domestic accumulation of capital is thus not based on production, but rather on the rents of services, aid and extractive economies. This in turn creates structural inequalities in the development of the different regions of the country, not to mention rising inequality between urban elites and rural households.<sup>930</sup>

At the core of these structural constraints is a 'missing middle' of Small and Medium Enterprises (SME). Indeed, Mozambique's narrow, extractive-based, economic structure is made up of, on the one hand, a limited number of mega corporations, owned by foreign investors, the Frelimo elite and/or the state. On the other end of the spectrum, are thousands of largely informal, often 1-person, micro-enterprises, who mostly engage in commerce, retail, catering and accommodation.<sup>931</sup> In between the mega- and micro enterprises, interviewees - mostly donor officials and international experts – argued that there is a missing middle of SMEs. The absence of a domestic production base, and in particular the lack of SMEs severely limits the scope for mega-investments in natural resources to create employment opportunities and 'local content'. The latter refers to how foreign producers can procure goods and services from local markets, thus contributing to the economic development of the host country.<sup>932</sup> Given the harsh competition from informal businesses and foreign imports, mostly from South Africa, the space for the few formal SMEs operating in Mozambique to become effective and competitive sub-contractors to large-scale extractive operations is extremely limited.<sup>933</sup>

Respondents noted that, despite relatively elaborate policy and institutional support from the Mozambican government to enhance SME development, very little has actually been achieved with

<sup>929</sup> International Law and Policy Institute, above n. 899, 13-14 and interviews in Maputo, 15-20 February 2016.

<sup>930</sup> C. Castel-Branco and R. Ossemane, 'Crises Cíclicas e Desafios do Padro de Crescimento Economico em Moçambique', in, de Brito, L., Castel-Branco, C. and A. Franciso (eds.) (2010), *Desafios para Moçambique*, IESE, Maputo, 143

<sup>931</sup> Cruz *et al.*, above n. 871.

<sup>932</sup> Hansen, M., Buur, L., Kjaer, A. M., and O. Therkildsen, 'The Economics and Politics of Local Content in African Extractives: Lessons from Tanzania, Uganda and Mozambique', [2016] 43 (2) *Forum for Development Studies*, 213-215.

<sup>933</sup> Buur, 2014: 12-13.



regard to ensuring that mega projects contribute to generating local content. For many years, donors and IFIs have urged the Mozambican government to improve the business climate for SMEs, resulting in a series of strategy documents and funding tools. The 2011-2014 Action Plan for the Reduction of Absolute Poverty (PARPA II), for example, evokes a development model based on gearing further investments in extractives in favor of creating more domestic employment opportunities. A new procurement law further consolidates this commitment with the stated objective that large investment projects should multiply linkages with the local economy, and as such contribute to domestic job and wealth creation.<sup>934</sup>

Contrary to the official rhetoric from the government, state institutions aimed at supporting SMEs (e.g. the Confederation of Economic Associations of Mozambique - CTA) are often bypassed or co-opted by the political leadership.<sup>935</sup> Some, more critical interviewees, argued that, from a political economy perspective, a dynamic and diverse SME sector would go against the Frelimo elites' interests to control the economy. Indeed, diversifying the economy would mean leaving space for others to access economic benefits and social promotion, which in turn could pave the way for more political competition and a loss of vested interests.<sup>936</sup> Byiers argues in this regard that, in return for its lack of commitment to creating an enabling environment for a competitive and dynamic SME network, Frelimo de facto condones a large informal economy without taking substantial measures to enforce formalization measures.<sup>937</sup>

### (3) Secret debt accumulation

As a financing tool to manage and reduce the heavy debt burden accumulated by some of the world's poorest countries, the IMF and the WB in 1996 launched the Heavily Indebted Poor Countries initiative (HIPC). In return for a number of policy reforms, the HIPC allowed eligible developing countries to write off, or at least reschedule, billions of dollars in loans. Mozambique was the sixth country to benefit from the HIPC and joined in April 1998. Over the years, the country received some USD 4.3 billion (including 1.06 from the WB).<sup>938</sup> As was the case for many SSA countries under the HIPC however, debt relief resulted in somewhat perverse effects and the Mozambique took on additional lending and witnessed a skyrocketing of government-backed, high-yielding bonds.<sup>939</sup>

As detailed above, Mozambique's narrow, extractive economic base is highly dependent on imports and fragile to external price shocks. In late 2014, decreasing energy prices, a drop in international commodity prices and delays in investment in large natural resource projects, hit the Mozambican economy hard. Uncertain elections, outstanding debts and 'excessively expansionary policies' further aggravated the blow and Mozambique recorded a 55.4% government debt to GDP ratio in

<sup>934</sup> OECD, 'OECD Investment Policy Reviews: Mozambique. Executive Summary and Recommendations', 2013, available online: <https://www.oecd.org/daf/inv/investment-policy/IPR-Mozambique-Oct2013-Summary.pdf>

<sup>935</sup> Interviews in Maputo, 15-20 February, 2016.

<sup>936</sup> Interviews in Maputo, 15-20 February, 2016.

<sup>937</sup> B. Byiers, 'Informality in Mozambique: Characteristics, Performance and Policy Issues, USAID memo, available online: <http://www.speed-program.com/wp-content/uploads/2012/09/Informal-Sector-Study.pdf>.

<sup>938</sup> World Bank, 'Heavily Indebted Poor Countries (HIPC) Initiative in Mozambique

<sup>939</sup> Often, such government backed bonds are used by leaders in developing countries to fund pet projects, then to cash in on corrupt benefits, leaving the consequences, essentially the pay back, to the future leadership. This is exactly what happened under president Guebuza in 2013, see box 1 on the Ematum corruption scandal.

2014, a relative high since the record low of 37.5 % in 2011.<sup>940</sup> Moreover, Mozambique's net international reserves (NIR) declined by 600 million Metical.<sup>941</sup> After Zambia's Kwacha, the Mozambican currency became the worst performing African currency in 2015, after losing 29% of its value against the US dollar in 2015.<sup>942</sup> By late October 2015, the Mozambican government saw itself forced to turn to the IMF for a \$ 286 million emergency loan to help soften the blow on the country's economy. The IMF loan comes with an 18-month stabilization program aimed at raising interest rates, improving the foreign-exchange market system and curbing the budget deficit.<sup>943</sup>

Recently however, as of mid-April 2016, the IMF has cut off its emergency loan flows in light of an ever-expanding corruption-scandal and a series of secret loans under Guebuza's presidency (The so-called EMATUM scandal, see box 1). The IMF's decision to cut its loans and ongoing revelations of more secret debts and government corruption have recently led the Group of 14 remaining donors providing budget support to Mozambique, including the EU, to temporarily cut their contribution (estimated at \$265 million this year) to the state budget.<sup>944</sup>

#### Box 1. Ematum corruption-scandal and secret loans

In 2013, Credit Suisse and the Russian Bank VTB raised \$500 and \$350 million respectively in state-backed bonds to fund a state-owned Empresa Mocamicana de Atum (Ematum), a newly created, tuna-fishing company.<sup>1</sup> Given the promise of state guarantee and high yield at 8.5%, both banks easily sold the debt bonds to big investment managers. The loan is guaranteed by the government, so should Ematum be unable to repay the 850 million loan, it is up to the Mozambican taxpayers to repay it. Initially presented as a tuna fishing fleet, it became apparent late 2013 that Ematum was largely a fig-leaf to hide a massive maritime military security deal from which senior members of the Frelimo elite would stand to benefit. Also, the price of some of the vessels acquired with the loan

<sup>940</sup> Government debt as a percentage of the national GDP is reported by the National Bank and is used by investors to measure to what extent a country is able to make future payments on its debts, thus affecting its borrowing costs and government bond yields. See: Trading Economics, 'Mozambique Government Debt to GDP (1996-2016)', <http://www.tradingeconomics.com/mozambique/government-debt-to-gdp>

<sup>941</sup> International Monetary Fund, 'Republic of Mozambique – Staff report for the 2015 Article IV Consultation, Fifth review under the policy support instrument, request for modification of assessment criteria, and request for an 18-Month arrangement under the standby credit facility' (2016), IMF Country Report No. 16/9, available online: <https://www.imf.org/external/pubs/ft/scr/2016/cr1609.pdf>, 5. A country's international reserves are external assets, in the form of (existing, not potential) foreign currency assets 'that are readily available to and controlled by monetary authorities for meeting balance of payments financing needs, for intervention in exchange markets to affect the currency exchange rate, and for other related purposes (such as maintaining confidence in the currency and the economy, and serving as a basis for foreign borrowing). Reserve assets must be foreign currency assets and assets that actually exist'. International Monetary Fund, 'Balance of Payments and International Investment Position Manual – Sixth edition (BPM6)' (2009), available online: <https://www.imf.org/external/pubs/ft/bop/2007/pdf/bpm6.pdf>, 111.

<sup>942</sup> Quartz, 'Mozambique has suffered a brutal drop in its currency', 30 October 2015, <http://qz.com/537510/mozambique-has-suffered-a-brutal-drop-in-its-currency/>

<sup>943</sup> T. Bowker, 'Mozambique turns to IMF for emergency loan as currency falls' (2015), Bloomberg, 30 October 2015, available online: <http://www.bloomberg.com/news/articles/2015-10-30/mozambique-turns-to-imf-for-286-million-loan-as-currency-slumps>; Africa Confidential, 'Nyusi's nightmare. The new president is still struggling for mastery of the state, while a legacy of chronic corruption hangs over the latest IMF deal' (2015), Vol. 56.

<sup>944</sup> Euractiv, 'EU among donor groups suspending aid to Mozambique over hidden debt', 4 May 2016, last accessed 27 May 2016, <http://www.euractiv.com/section/development-policy/news/eu-among-donor-groups-suspending-aid-to-mozambique-over-hidden-debt/>

was so high that experts believed that, at least part of the money, may have been used to finance Frelimo's victory in the 2014 general elections, as well as for secret purchases of other military equipment and/or for bribes and kickbacks for party members. Former president Guebuza is believed to have orchestrated the deal, with an exceptional role for former Minister of Finance, Manual Chang, who personally signed off on the deal, without going through the proper procedures in his Ministry, nor parliament. The fact that Ematum spent all of the \$850 million in one go, instead of using scheduled, conditional payments, further adds to the suspicion surrounding the deal.<sup>945</sup>

Without any serious prospects of a tuna fleet to repay the loans, Mozambique's annual foreign debt obligations doubled from \$200 million to \$400 million per year. In total, the debt bond, including interests, is estimated at roughly \$980 million and is due by 2020.<sup>946</sup> In order to restore public financial stability, Mozambique thus needed to renegotiated the structure of the loan in order to postpone its repayments. In March 2016, Mozambique successfully offered shareholders to swap the outstanding \$697 million in bonds issued by Ematum for more traditional governments. Under the new deal, investors would have to keep the bonds until January 2013, but with much higher interest.<sup>947</sup>

What investors did not know at the time however, was that the same banks, Credit Suisse and VTB, had lent another \$900 to another Mozambican, state-owned company called Proindicus SA, to fund more maritime military equipment. Neither Mozambique, nor the banks disclosed these extra loans, which – safe restructuring – are to be repaid in full by 2021. As a result, Mozambique is yet deeper in debt than was initially believed, and now has to pay higher interest on the restructured Ematum bonds while Standards & Poor, as well as Moody's, already downgraded its credit rating.<sup>948</sup> Later that same month, in April 2016, Africa Confidential reported that it had learned of yet more state-backed loans were to be disclosed, a claim confirmed by the IMF (after meeting with the Mozambican government). Secret loans taken in 2013 are now believed to be worth at least \$1.53 billion (on top of the 850 million Ematum loan that is). As punishment for being left in the dark, and appalled about the size of the additional loans, the IMF decided not to disburse the second tranche of its 286 million emergency loan.<sup>949</sup>

<sup>945</sup> Africa Confidential, 'The fishing deal got fishier. Politicians, generals and bankers are in the frame as more details emerge of the country's worst-ever corruption scandal and the new debt mountain' (2015c), Vol. 56 No. 14, available online: <http://www.africa-confidential.com/index.aspx?pageid=7&articleid=11148>; The Economist, 'A tuna scandal strikes. A flagship investment in Mozambique is starting to stink', 7 August 2015, available online: <http://www.economist.com/news/middle-east-and-africa/21660729-flagship-investment-mozambique-starting-stink-tuna-scandal-strikes>.

<sup>946</sup> Africa Confidential, above n. 943 and 945.

<sup>947</sup> For more details on the restructuring of the Ematum bonds, see: Thompson Reuters, 'Investors find Mozambique "tuna bond" debt swap offer fair', 18 March 2016, <http://www.reuters.com/article/mozambique-bond-idUSL5N16P5VI>

<sup>948</sup> M. Wirz and J. Wernau, Tuna and Gunships: How \$850 Million in Bonds Went Bad in Mozambique. Debt deal highlights the hazards for investors looking for yield in some of the world's riskiest markets, 3 April 2016, available online: <http://www.wsj.com/articles/tuna-and-gunships-how-850-million-in-bonds-went-bad-in-mozambique-1459675803?mg=id-wsj&mg=id-wsj> and Africa Confidential, above n. 943 and 945.

<sup>949</sup> Africa Confidential, 'IMF cut-off follows secret debt shock. The Fund has stopped flows to Maputo after secret debts came to light. Even more massive obligations remain hidden, we can reveal' (2016d), 15 April 2016, available online: [http://www.africa-confidential.com/article/id/11633/IMF\\_cut-off\\_follows\\_secret\\_debt\\_shock](http://www.africa-confidential.com/article/id/11633/IMF_cut-off_follows_secret_debt_shock).

In sum, it is clear that rent seeking, corruption and patronage are key characteristics of Mozambique's economy, and that Frelimo's elite interest groups function as gatekeepers to public procurement and FDI opportunities. No matter how Mozambique's economic potential plays out, the development of recent natural gas discoveries will likely be a heavily politicized process. In the midst of financial difficulties and political turmoil, the challenges for the Mozambican government to deliver on the prospects generated by resource wealth are numerous and complicated.

#### **D. Natural resource extraction and human rights in Mozambique**

While natural resource extraction is nothing new in Mozambique, recently discovered gas reserves in the North have introduced a new era of intensified exploration and export, and –if managed well – could have a transformational impact on the national economy. There is little question that gas discoveries will fuel the Mozambican economy, the question however is, who will benefit?

##### **1. Blessing or curse?**

Although Mozambique has a relatively young history of natural resource extraction, it is home to an abundance of minerals and natural resources (including gas, coal, gold, titanium, ilmenite, zircon, rutile, marble and various precious stones) and FDI inflows in extractives generated up to \$8.4 billion between 1997 and 2009.<sup>950</sup> Mega extractive operations include the Mozal Aluminium Smelter just outside Maputo, the Sasol gas plant in Inhambane, heavy sands mining and the Moma Titanium site in Nampula, as well as several large coal mining sites in the central Tete province.<sup>951</sup>

Natural gas was first discovered in the 1960s in the Pande and Temane fields, though due to the volatile security situation in the country, it took almost 40 more years before Sasol in 1998 began developing the sites for extraction. As such, it was not before 2004 that the first gas production began and exports started flowing, mostly to South Africa. While recent years have seen an increase in production in the Pande and Temane sites, as of 2010 most interest has shifted to the offshore gas reserves discovered in the Rovuma basin, of the coast of Cabo Delgado.<sup>952</sup>

It was the American petroleum company Anadarko and the Italian energy company ENI, who announced in 2010-2011 the discovery of, at first modest, then larger, deep-water natural gas basins. In December 2012, ENI and Anadarko signed a Heads of Agreement to govern the joint development and operation of LNG liquefaction and of export terminal facilities in Cabo Delgado, effectively putting them in power of the major gas fields. At first, the Mozambican government expressed a desire for ENI and Anadarko to share one LNG plant, though when both companies refused, the Council of Ministers in November 2015 approved plans for separate LNG plants, a floating offshore site for ENI and an onshore plant for Anadarko, each estimated at a total cost of \$15 billion. In order to raise this money, the companies had to establish contracts with future buyers, mostly in Asian markets, who wanted an assured supply. Also, both companies sold off parts of their respective sites to a series of smaller companies in order to cover the exploration phase. ENI retained a 50% share of its plot, and now heads a consortium with other partners, including a number of Chinese companies and the Mozambican national oil company *Empresa Nacional de Hidrocarbonetos de Moçambique* (ENH) bought the remaining shares of the area. Anadarko reduced

<sup>950</sup> USAID, Mozambique Business Linkages Review. An overview of key experience, issues and lessons. October 2012, vii.

<sup>951</sup> Symons, K. 'Transnational spaces, hybrid governance and civil society contestation in Mozambique's gas boom' [2016] 3 (1) *The Extractive Industries and Society*, 153.

<sup>952</sup> International Law and Policy Institute, above n. 899, 21-22.

its stake to 26.5% of its previous area, which is now co-owned with ENH, a Japanese, Thai and three Indian companies. These sales were subject to a 32% capital gains tax, generating \$1.3 billion in 2014, with more transactions to come later.<sup>953</sup>

The total amount of the gas reserves is estimated at at least 180 trillion cubic feet of gas, enough, according to the IMF, to make Mozambique the third largest LNG exporter in the world after Qatar and Australia. If the projects materialize as planned, exports of LNG should commence by the mid-2020's, making gas the country's single largest exporting sector, good for roughly one third of its total fiscal revenue.<sup>954</sup> In terms of revenue generation, the World Bank predicts that government revenue from hydrocarbon activity – 90% gas, 10% coal- could be as high as \$9 billion per year by 2032. The latter would represent 7% of the national GDP and 21% of the total government revenue.<sup>955</sup>

In light of these estimates, and keeping in mind Mozambique's peculiar political economy, questions have been raised about how the country will manage such an unprecedented boom in revenues (Armas, 2014). According to many of the interviewees consulted, Mozambique faces a real threat of getting caught up in a resource curse, often referring to that other former Portuguese colony Angola.<sup>956</sup> Generally speaking, the concept of the resource curse involves two basic economic phenomena: Dutch Disease and revenue volatility. Dutch disease refers to a steep appreciation of the exchange rate, due to a sharp increase in natural resource exports. Such a rise in the exchange rate can in turn cause economic destabilization by reducing the international competitiveness of the country's other export products. Dutch disease is known to affect the labor markets of developing countries, because it shifts the labor force from traditionally low-skilled, but decreasingly competitive sectors, like agriculture, to more knowledge intensive and service-oriented industries. Revenue volatility is another part of the resource course that can significantly undermine the potential benefits of natural resources. It is generally typical for developing countries with a resource-based economy, to borrow against the (potential) value of newfound resources, and to spend windfalls on immediate consumption, rather than long-term investments. When natural resource prices drop, such lack of savings can have a disruptive effect on the financial and economic outlook of countries that are overly dependent on the immediate gains of extraction.<sup>957</sup>

A resource curse is more likely to occur in countries with a centralized political leadership, weak institutional capacity and overlapping interests across politics and economic gains. Needless to say at this point that Mozambique checks both those boxes, moreover the Natural Resource Governance Institute (NRI) ranks Mozambique as one of the worst performers on the continent in terms of its management of natural resources (Annex 4). Observers have raised concerns about the need to take a number of critical decisions regarding the phasing and prioritization of projects in order to make sure that gas revenues work for development. Essentially, there are two ways for gas to contribute

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<sup>953</sup> Hanlon, above n. 913.

<sup>954</sup> IMF, 'Republic of Mozambique', IMF Country Report No 16/10, available online: <https://www.imf.org/external/pubs/ft/scr/2016/cr1610.pdf>, 3.

<sup>955</sup> World Bank, above n. 883, 8.

<sup>956</sup> Interviews in Maputo and Brussels, February 2016.

<sup>957</sup> Radon, J., Abrahamson, D, Herb, E., Lin, J., Khan, L., La Bua, A., Meisenheimer, J., Newson, M., Ocampo-Mayo, C., Gonzalez, P., Strickler, B. and W. Wei, 'Mozambique – mobilizing extractive resources for development, Colombia School of International and Public Affairs (SIPA), May 2013, available online: [https://sipa.columbia.edu/sites/default/files/AY13\\_Mozambique\\_FinalReport.pdf](https://sipa.columbia.edu/sites/default/files/AY13_Mozambique_FinalReport.pdf)

to broader-based socio-economic development. One way is to use the government revenues from gas exports to invest in industrialization and a diversification of Mozambique's narrow economic base. Another way is to use the gas in-kind to promote a domestic manufacturing and processing economy that can create added value and local employment, creating broader benefits across the whole country, rather than the type of enclave economic hotspots typical to natural resource extraction.<sup>958</sup>

Hanlon and Nuvunga argue that Mozambique should focus on the latter and divert more of the gas for local fuel.<sup>959</sup> That would reduce the initial government revenue, and would enable the promotion of longer term investment in a more diversified domestic economy. Indeed, previous experiences with mega-projects like the Mozal smelter, or Tete coal for that matter, all show a tendency to maximize fast revenue and minimize national development since all generated less money than promised, created few jobs and overall did not contribute much to inclusive development. The original Exploration and Production Concession Contract (EPCC), signed with ENI and Anadarko in 2006, provide for a range of payments to the Mozambican government, though they did not specify how these are to be paid – in kind, or in gas. Mozambique later opted to be paid at least partly in kind, and the 2014 decree-law authorizing the first LNG plants requires both companies to submit development plans including provisions for the allocation of natural gas for the domestic market. However, the development plans mentioned above are subject to ongoing negotiations, and in lack of specifications about 'domestic gas' under the EPCC, so is the share of the in-kind gas payments. Decisions are bound to be taken soon and involve negotiations between the two producers, possible gas users and ENH. ENH, the government-owned company who would receive all of the domestic gas, would have to negotiate on how much domestic gas will be delivered by ENI and Anadarko, as well as negotiate with potential users demanding domestic gas. While ENH's core priority is to generate revenues for the government, its mandate is also to promote employment and to develop a domestic industry and infrastructure.<sup>960</sup>

The outcome of the negotiations on the development plans will to a large extent define to what degree Mozambique's gas finds can be geared toward a broader, more holistic plan for national industrialization and socio-economic development. The government, and ENH in particular, now have to decide on how to balance the urgent need for government revenue to pay of public debt, longer term investments to enable development, and finally, personal and/or party interests of the Frelimo elite. With regard to the latter, interviewees – both from civil society, knowledge hubs and international experts- noted that in recent years, Guebuza and a number of his close allies have positioned themselves strategically in the gas sector, determined to seize any opportunities arising from the country's resource boom.<sup>961</sup> While new president Nyusi has tried to stay away from such practices, many think he cannot afford resisting demands to reward some of his loyalists within

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<sup>958</sup> Besides receiving money through taxes and profit shares, Mozambique also receives a share of the gas. World Bank, 'The Future of Natural Gas in Mozambique: Towards a Gas Master Plan – Executive Summary', ICF International, available online: <http://documents.worldbank.org/curated/en/324191468054279630/pdf/806830WP0Mozam0Box0379812B00PUBLIC0.pdf>

<sup>959</sup> J. Hanlon and A. Nuvunga, 'Gas for development or just for money', Center for Public Integrity, Good Governance, Transparency and Integrity, Discussion Paper 08/2015, available online: [http://www.cip.org.mz/cipdoc/373\\_domestic\\_gas.pdf](http://www.cip.org.mz/cipdoc/373_domestic_gas.pdf).

<sup>960</sup> *Id.*

<sup>961</sup> Buur, 2014: 23.

Frelimo. Revelations about one of Nyusi's most influential allies, General Alberto Joaquim Chipande, having a stake in a \$6 billion gas pipeline proposal - connecting Cabo Delgado to South Africa - seem to confirm concerns in that direction.<sup>962</sup>

## 2. The human rights impact of extractive-induced resettlements

Besides concerns over a potential resource curse that could suffocate the non-gas economy and stir corruption and violence, observers have also warned about human rights violations, particularly in relation to the ongoing resettlement programs in the Afungi Peninsula area in Cabo Delgado. Previous experiences with resettlements, in the Tete region especially, raised major concerns about their human rights impact on local communities. Similar concerns about the legitimacy of ongoing resettlement programs run by Anadarko are now increasingly the subject of CSO scrutiny.

Spurred by extractive mega projects, over 400 large land transfers have been approved between 2004 and 2009, resulting in the transfer of some 2.5 million hectares of land, from informal users to major international corporations. While there is no clear data on the exact number of current land transfers, at least another 53 sites are under consideration where extractive operations overlap with the livelihoods of local communities who are dependent on the land or coast for food. As is the case for many of these land transfers across SSA, many of these deals are conducted in a questionable manner when it comes to their transparency or overall legitimacy. While Mozambican law arguably provides for a solid regulatory framework in terms of land rights and resettlement, practice on the ground has raised well-documented cases of controversy.<sup>963</sup>

Mozambique's land law stipulates that land can only be owned by the state. Land usage rights have to be granted by the government (either to companies, collectives, organizations or individuals) by way of awarding a DUAT (*Direito de Uso e Aproveitamento da Terra*), which essentially gives the owners the right to use and benefit from the land at hand. Under the land law, Informal communities -who use land without a DUAT- gain legal land rights once they have occupied the land for more than 10 years.<sup>964</sup> Special conditions apply when it concerns land intended for mining however, and a 2014 revision of the Mining Law provides that commercial or economic activities, including gas extraction, are to be prioritized over informal land rights. As such, extractive companies can legally obtain the land of informal communities, yet in exchange they are obliged under the same Mining Law to provide an adequate compensation for resettlement. The latter has to be agreed upon in negotiation with the affected communities, if necessary through court.<sup>965</sup> Further regarding the legal concept of compensation, a 2012 Resettlement Decree specifies the requirements for consultation, compensation and restoration of living standards, including the possibility to benefit from the proposed extractive activities.

While the Mozambican legal framework for land transfer and involuntary resettlement provides for ample regulation to ensure that affected communities benefit from the extractive operations

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<sup>962</sup> Africa Confidential, above n. 896.

<sup>963</sup> Symons, 2016; H. Twomey, 'Displacement and dispossession through land grabbing in Mozambique The limits of international and national legal instruments' (2014), Refugee Studies Centre, Oxford University, Working Paper Series No. 101, available online: <http://www.rsc.ox.ac.uk/files/publications/working-paper-series/wp101-displacement-dispossession-land-grabbing-mozambique-2014.pdf>

<sup>964</sup> Land Law No. 19/97, Articles 10 and 12, available online: <http://faolex.fao.org/docs/pdf/moz15369E.pdf>

<sup>965</sup> Mining Law No. 20/2014, Articles 2 and 12, available online: <http://www.eisourcebook.org/cms/February 2016/Mozambique Mining Law 2014.pdf>



conducted on their lands, past experiences on the ground tell a different story. Reports by Human Rights Watch<sup>966</sup> and Oxfam<sup>967</sup> each documented cases of human rights violations following large resettlement programs organized by Vale, Rio Tinto and a string of other multinational mining companies in the coal-rich Tete Province.

In Tete alone, the government approved at least 245 mining concessions and exploration licenses up to 2012, covering roughly 3.4 million hectares. When factoring in the pending applications, the total area rises to some 6 million hectares, or 60% of the Tete province surface area. As such, the high density of coal mining activity has seriously limited the space for available and appropriate resettlement sites. Starting from 2009, the development of coal mining sites, access roads and related infrastructure, led to the resettlement of thousands of people, many of which experienced a thorough disruption of their livelihoods along with a mix of human rights violations. The latter included food and water insecurity, loss of economic opportunities or non-farming livelihoods, inadequate housing and access to electricity, the fracturing of communities and households (often with multiple wives), uncertainty and limited access to information both before, during and after the moving process.<sup>968</sup> Vale and the Mozambican government saw themselves forced to address these issues after some 500 residents of the Vale resettlement village Cateme blocked the railroad to the port of Beira in January 2012 and police violence brought the matter under national scrutiny. While improvements were made, notably in terms of housing and reimbursements for various losses, interviewees (donor officials, CSOs, knowledge hubs) stressed that issues of loss of livelihood, community and household fractures, and a lack of self-sufficiency remain and have significantly impacted the affected communities.<sup>969</sup>

Since the resettlement plans for local communities on the Afungi Peninsula are still under development, contestation about the impact of gas extraction in Cabo Delgado has mostly centred around issues of land rights and consultation procedures. While ENI has decided to use offshore floating processing plants, Anadarko will use an onshore plant which will require the resettlement of some 1500 people. Anadarko's land agreement for the LNG plant were initially somewhat obscure. On 12 December 2012, a company owned by Anadarko obtained a DUAT for 7000 acres, and one week later that company awarded the right to develop that land under the DUAT to Anadarko. The communities at hand however had been living in the area for over ten years and therefore they were entitled to prior consultation under the 2012 Resettlement decree.

According to Symons (2016), Anadarko and two, three individuals in power in the Mozambican government expedited decisions, bypassing the legislative procedures provided under the Land and Mining Laws, as had been common practice with previous mega-projects by Vale and others. As such, there had been no genuine and substantive public consultations prior to the decision, though there were conflicting reports over the extent to which Anadarko had held public consultation

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<sup>966</sup> Human Rights Watch, 'What is a House without Food?' (2013), available online: <https://www.hrw.org/report/2013/05/23/what-house-without-food/mozambiques-coal-mining-boom-and-resettlements>

<sup>967</sup> S. Lillywhite, D. Kemp, and K. Sturman, 'Mining, Resettlement and Lost Livelihoods: Listening to the Voices of Resettled Communities in Mualadzi, Mozambique' (2015), OXFAM-CSR: Melbourne, available online: [https://www.oxfam.org.au/wp-content/uploads/2015/04/mining-resettlement-and-lost-livelihoods\\_eng\\_web.pdf](https://www.oxfam.org.au/wp-content/uploads/2015/04/mining-resettlement-and-lost-livelihoods_eng_web.pdf)

<sup>968</sup> Human Rights Watch, above n. 966, 7-22; Lillywhite *et al.* above n. 966, i-iv.

<sup>969</sup> Interviews in Maputo, 15-20 February 2016.



throughout 2012 and 2013. Moreover, a full, obligatory Environmental Impact Assessment (EIA) had not been conducted prior to the admission of the DUAT. Finally, CTV, one of the leading NGOs on the matter, accused Anadarko of falsifying official community representatives' signatures of which Anadarko claimed proved community consent for its proposals. Eventually, CTV took these complaints to the national court in June 2015, in which it elaborated a human rights based approach about both procedural claims (community voices being heard) and justice in terms of reimbursement for their resettlement. The latter includes benefits in terms of jobs, services, health facilities and education. While the court eventually found Anadarko's land rights to be legitimate, the company has since made significant concessions to the local communities, including intensified public consultations, a clarification of its commitments to improve local employment opportunities and a joint memorandum promising \$170 million in compensations and another \$90 million for social infrastructure such as homes, schools, access roads and hospitals.<sup>970</sup>

While some have described Anadarko's response to vocal public scrutiny and CSO action as a promising sign of more political and corporate accountability in Mozambique, others have noted that the consultation process remains hampered. Irregularities include unrealistic promises of 'jobs for all', claims that the compensation figure has been imposed rather than negotiated, and a questionable passiveness of local governmental officials.<sup>971</sup> More fundamentally perhaps, the consultation documents do not allow for an overall rejection of resettlement. Consultations are indeed limited to a discussion about the circumstances, 'the how' of the resettlement program. Such an approach raises questions about the extent to which consultations are seen as a genuine involvement of local communities, rather than as a means to manufacture consent and resolve objections.<sup>972</sup>

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<sup>970</sup> Symons, 2016: 156.

<sup>971</sup> F. Mimbire and B. Nhamirre, 'Public consultations LNG Project: without transparency, misinformed community, apathetic government' (2015), Center for Public Integrity, September 2015, available online: [http://www.cip.org.mz/cipdoc/398\\_CIP-a\\_transparencia\\_28\\_en.pdf](http://www.cip.org.mz/cipdoc/398_CIP-a_transparencia_28_en.pdf), 2-7.

<sup>972</sup> Symons, 2016: 156.

## E. The EU in a changing local environment

Cooperation between the EU and Mozambique started in 1984. Throughout the 30+ years that followed, the EU has invested over €3 billion in the country and contributed to its transformation from a war-torn revolutionary Marxist state to a one of Africa's major new FDI destinations. Prospects of gas revenues have not only led to a diversification of the country's external relations, they have also impacted on the type of international cooperation and on the way development aid is delivered. For the EU and its MSs in Mozambique, the coming years will be crucial, as they seek to balance between on the one hand, contributing to much needed development assistance, and on the other hand, taking a stake in Mozambique's economic growth process.

### 1. A changing donor-landscape

Mozambique currently hosts three types of international partners, traditional (western) donors, including bi- and multilateral development agencies and IFIs, so-called 'new' donors like China and Brazil promoting South-South Cooperation, and private sector actors wishing to invest in the country's extractive potential. For long, Mozambique was a heavily aid dependent country, receiving huge amounts of ODA and host to one of the largest joint donor programs in SSA, both in terms of total volume and the number of donor agencies involved. Long-time donor-darling Mozambique has not only been a major aid recipient, against the context of OECD-DAC debates on increased aid effectiveness, the country also became a model and a testing ground for new aid modalities such as sector and General Budget Support (GBS)<sup>973</sup>. This included an innovative monitoring mechanism to track donor performance on harmonization and alignment, called the Program Aid Partners' Performance Assessment Framework (PAP's PAF).<sup>974</sup>

Mozambique's experience with GBS has not been without difficulties however, and the aid modality has become increasingly questioned in recent years, notably as managerial challenges, budgetary constraints in donor-capitals, and a series of governance scandals have brought the development partnership between PAP - and the government of Mozambique to a turning point. Banking scandals and increasing concerns over governance issues led to suspensions of GBS in 2001 and 2010. In 2004, a first Memorandum of Understanding (MoU) was signed between the PAPs and the Government, establishing the principles, conditions and operating of the GBS provision. In 2009, a second MoU was signed between the Mozambican government and the Group of 19 donors providing GBS, the G19.<sup>975</sup> The G19 meets regularly at various levels (technical, Heads of Cooperation or Heads of Mission), while vis-à-vis Mozambique, a system of Troika+ represents the G19 in dialogue with the government. Troika+ is constituted out of 5 donor agencies, with a new incoming member chosen every year, while the EU and the WB function as permanent members. As stipulated under the MoU, the provision of GBS hinges upon the understanding that the

<sup>973</sup> Mozambique has received GBS in its modern form since 2000 (EU-RoM, 2015: 13).

<sup>974</sup> P. de Renzio and J. Hanlon, 'Contested Sovereignty in Mozambique: the Dilemmas of Aid Dependence' (2007), Overseas Development Institute Working Paper, available online: <https://www.odi.org/publications/4199-mozambique-aid-donor-ngo>  
For more information on the PAP, please see: <http://pap.org.mz/>

<sup>975</sup> Bruschi, F., 'Mozambique at a turning point: From aid dependence to development effectiveness?' (2012), GREAT Insights 1 (10), available online: <http://ecdpm.org/great-insights/africa-turning-point-mozambique-case/mozambique-turning-point-aid-dependence-to-development-effectiveness/>. The G19 includes the African Development Bank (AfDB), Austria, Belgium, Canada, Denmark, the European Commission, Finland, France, Germany, the Netherlands, Ireland, Italy, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the World Bank. The UN and the United States are associate members.

Government of Mozambique demonstrates a commitment to the following essential principles: i) safeguarding peace and promoting an open political system and credible democratic political processes; independence of the judiciary, the rule of law, respect for human rights, good governance and probity in public life, including the fight against corruption; ii) prioritizing fighting poverty through its policies and plans and in its patterns of public expenditure; and iii) pursuing sound macro-economic policies and public financial management (PFM) systems<sup>976</sup>.

Disappointing results in terms of poverty and inequality reduction, as well as occasional mishaps of financial mismanagement and organizational inefficiencies have all contributed to a sense of donor fatigue. Former GBS-providers, like Belgium, the Netherlands, Spain and Norway have left the G19 in protest against the declining democratic accountability under former president Guebuza, while Germany and Britain are half in half out of the Group, and Denmark is planning to leave the country altogether.<sup>977</sup>

With a slimmed down G19 (now G15), progressive reductions of aid flows and the emergence of 'new' donors and commercial partners, the donor-landscape in Mozambique has changed considerably in recent years. Moreover, prospects of a resource-based economic transformation and decreasing levels of aid-dependency (from 75% of the budget 20 years ago to 25% in 2014) have rendered the Government of Mozambique significantly more autonomy in its strategic decision making. As a result, the window of opportunity for DAC donors and the EU to promote a value-based development narrative could become increasingly narrow over the coming years. This could affect the promotion of soft sectors like health care, education and food security, but would also have implications for Mozambique's good governance and democratization process.<sup>978</sup> Mozambique's imminent resource boom has furthermore already impacted on efforts to render development assistance more effective by harmonizing the aid system. Essentially, the anticipated economic growth is perceived as a disincentive for aid harmonization. The Mozambican government feels no longer the need to push for a better streamlining of its aid inflows since it reckons independence from aid is in sight anyway. Meanwhile, donors are taking up more commercial approaches, gradually moving away from traditional development aid and its managerial *besoignes*.<sup>979</sup>

In view of recent discoveries of large secret debt, the IMF loan cut and the Ematum corruption scandals, chances are that more donors will withdraw from GBS or the country altogether. Donor agencies and multinational lenders however have a logic of their own and follow a spending-based business model. Joseph Hanlon, professor at LSE and long-time Mozambique expert, therefore believes that 'despite war and scandal, Mozambique is seen as a country they [donors] can work with and which largely follows donor policies; Maputo is a pleasant place to work'. As a result, and

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<sup>976</sup> EU-Republic of Mozambique, 'National Indicative Program 2014-2020', available online: [https://eeas.europa.eu/sites/eeas/files/20151130\\_uemozambiquenipeng.pdf](https://eeas.europa.eu/sites/eeas/files/20151130_uemozambiquenipeng.pdf) 8 & 13.

<sup>977</sup> Bruschi, above n. 975; Africa Confidential, 'Frelimo wins, Renamo revives: persistent reports of fraud will not prevent wide acceptance of Nyusi's victory, amid hopes of a more inclusive government' (2014), Vol. 55 No. 21, available online: <http://www.africa-confidential.com/index.aspx?pageid=7&articleid=5816>. Arguably, Denmark's decision to leave Mozambique has more to do with political and budgetary decisions in Copenhagen, rather than with the situation in Mozambique. Source: interviews in Maputo, 15-20 February 2016.

<sup>978</sup> Bertelsmann Stiftung, above n. 865, 38-39.

<sup>979</sup> F. Volmer, 'Mozambique's Economic Transformation: Are efforts to streamline the fragmented aid landscape undermined for good?' (2013), German Development Institute, Discussion Paper 12/2013, available online: [http://www.die-gdi.de/uploads/media/DP\\_12.2013.pdf](http://www.die-gdi.de/uploads/media/DP_12.2013.pdf).

judging from scandal experiences in the past, donors will most likely try to curb the most flagrant excesses, yet, beyond that, the consequences of Frelimo's crimes are likely to go unpunished.<sup>980</sup> Moreover, in view of future commercial and geostrategic interests, most traditional donors, even with stagnating or declining aid shares have no intention of leaving Mozambique as a (potentially) emerging economy. This logic goes both ways though, if donors want to remain relevant and weigh in on Mozambique's governance decisions, they better make sure they have the economic leverage to do that.<sup>981</sup>

Finally, from a political economy perspective it is worth noting that, through the use of GBS as an aid modality, international donors have financed and capacitated the Frelimo elite to establish its all-encompassing control over politics and the economy. Renzio and Hanlon have described this relationship between the Mozambican government and the international donor community as a 'pathological equilibrium', which allowed Frelimo to use the state to secure its dominance, including through electoral manipulation, as long as political stability was maintained.<sup>982</sup> Indeed, donors have never required Frelimo to publicly identify (senior) members of the party who enriched themselves through corruption, or allegedly even ordered murders and kidnappings. This has allowed Frelimo to settle matters within the party, ensuring the party remains united. Hanlon points out that a split party would imply uncertain elections at best, and violence at worst. Therefore, most donors prefer a united, strong Frelimo, all while maintaining vocal advocacy for good governance and democratic accountability. Frelimo is aware of this split-position, which gives the party's elite substantial negotiation power.<sup>983</sup>

## 2. EU Development Cooperation with Mozambique

While overall donor dependence has dropped to 25% of the national budget in 2014, the EU and the 13 EU MSs active in the country remain the largest donor group, contributing almost 80% of the total ODA to Mozambique.<sup>984</sup> For 2014-2020, the EU National Indicative Programme (NIP) for Mozambique made available €734 million, some €13 million less than under the previous NIP (2007-2013). As indicated in the chapter above, the EU also remains an important economic and commercial partner in terms of exports, imports and FDI. EU investments will also continue to play an influential role in the extractives, agriculture, energy, fishing, tourism and energy sectors. With emerging partners increasing their presence however, and the decreasing relevance of ODA altogether, the NIP states that the next 5-8 years will be crucial for the EU to establish itself as a broker for broad-based, inclusive development.<sup>985</sup>

### a) Budget support

Approximately half of EU aid to Mozambique is channelled through GBS, and complements a number of other geographic and thematic aid modalities (funded outside of the NIP), including the

<sup>980</sup> Hanlon, J., 'Secret loans: What happens now?', Mozambique News Reports and Clippings, Vol. 316, 24 April 2016, available online: <http://southafrica.shafaqna.com/EN/ZA/556245>.

<sup>981</sup> Interviews in Maputo, 15-20 February 2016.

<sup>982</sup> Renzio and Hanlon, above n. 974.

<sup>983</sup> Hanlon, above n. 980.

<sup>984</sup> The 13 EU MSs contributing development assistance to Mozambique are Austria, Belgium, Denmark (phasing out), Finland, France, Germany, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden and the UK.

<sup>985</sup> EU-RoM, 2015: 7-8.

European Instrument for Democracy and Human Rights (EIDHR).<sup>986</sup> An independent evaluation of EU budget support to Mozambique under EDF11, covering the period 2005-2012, found that overall, GBS had been fundamentally successful in the sense that it enabled the government of Mozambique to significantly expand its investment in education and contributed to economic growth, macroeconomic stability, public financial management and, to a lesser extent, governance. The evaluation further remarked that the period covered had been a challenging one for GBS. First, it had been a period of increasing donor-fatigue and scepticism over GBS from the side of the development partners. Second, the period covered was one of increased power concentration around then president Guebuza, 'which ha[d] distanced government from citizens and reduced the need (and perhaps the willingness) to listen to criticism and to alternative policy voices'. With regard to future prospects for EU GBS, the evaluators identified Mozambique's resource boom to 'the biggest threat', notably since it opened up possibilities for unsustainable foreign borrowing and could lead to a less accountable and less transparent government. Despite the overall positive evaluation of GBS, the evaluators also recognized that the main failing of GBS had been the failure to reduce income poverty, and that poverty levels had remained roughly the same and even increased somewhat throughout the last decade.<sup>987</sup>

As such, the current National Indicative Programme (NIP) covering 2014-2020 has taken as its 'starting point for EU support to Mozambique', the realization that, so far, GDP growth has not translated into lower levels of poverty or inequality, particularly not outside the country's urban centres. In recognition of a potential resource curse, the central objective of the EU's current country strategy for Mozambique is thus to ensure that the benefits of natural resource extraction are spread in an equitable manner. In order to avoid the effects of Dutch disease on an already poorly diversified economy, and to minimize the risk of social unrest and adverse environmental impacts, the EU's development support to Mozambique aims to promote i) poverty reduction through sustainable and inclusive growth; ii) a deepening of the democratization process, including mechanisms for enhanced transparency and accountability; and iii) a conducive business environment for both local and EU companies. The latter point refers to the promotion of national, international and EU investments in line with international standards for responsible business. Notably, the new country strategy aims to develop synergies between trade promotion, the business environment and good governance. The new NIP further states that 'innovative ways to create win-win outcomes between the development actions and the EU private sector should also be explored'.<sup>988</sup>

The increasing links of EU and MSs' commercial interests to development assistance was a recurrent observation during our interviews in Maputo and many donor officials admitted, to varying degrees of explicitness, that Mozambique's anticipated economic transformation presented opportunities for a more commercially oriented development agenda, often linked to economic diplomacy. EU officials noted in this regard that such a mix of interests has obvious consequences on how MSs engage with the Mozambican government and how they wish to prioritize the EU's political dialogue

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<sup>986</sup> European Commission, 'EU announces new support for Mozambique' (2015b), Press release, 25 November 2015, available online: [www.europa.eu/rapid/press-release\\_IP-15-6174\\_en.htm](http://www.europa.eu/rapid/press-release_IP-15-6174_en.htm).

<sup>987</sup> ITAD, Fiscus and MB Consulting, 'Independent Evaluation of Budget Support in Mozambique – Executive Summary' (2014), available online: [https://ec.europa.eu/europeaid/sites/devco/files/evaluation-budget-support-mozambique-1330-summary-2014\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/evaluation-budget-support-mozambique-1330-summary-2014_en.pdf).

<sup>988</sup> EU-RoM, 2015: 7-8.

vis-à-vis the latter. Contrary to many MSs however, the EU is often in a more comfortable position to discuss human rights issues vis-à-vis the Mozambican government, notably since it has fewer direct commercial interests to reconcile. Companies safeguard their interests abroad via the respective MSs, before turning to the EU. MSs' delegations such as the Netherlands (Schell), Italy (ENI) and Portugal therefore represent, *inter alia*, significant commercial stakes. Some interviewees on the donor side noted in this regard that, while maintaining caution about the 'commercialization' of aid, economic interests and investments are one way, like development cooperation, to remain politically relevant in Mozambique, especially in view of the increasing influence of emerging economies like China, India and Indonesia.<sup>989</sup>

In order to reduce overall aid fragmentation, the EU has limited its focus – in coordination with the EU MSs- to two focal sectors, notably i) rural development and ii) good governance and development. The former sector receives 44% of the overall indicative amount (€325 million) and takes a two-pronged approach, focusing on food security and nutrient status on the one hand, and on rural competitiveness on the other. The second focal sector, good governance and development, receives half (50%) of the funds provided under the 2014-2020 NIP and funds are allocated as GBS under a Good Governance and Development Contract (GGDC), as well as a number of complementary measures for capacity building. The aim of the GGDC is to improve the financial capability of the state to implement its poverty reduction strategy, focusing on PFM reforms and consolidating the democracy process in Mozambique. The GGDC further includes provisions for an enhanced dialogue on (fiscal) transparency, accountability over the use of natural resource revenues, pro-poor and social budgeting measures, all 'whilst underpinning progress regarding compliance with fundamental values, including respect to human rights and fundamental freedoms'. As such, the GGDC takes a more political approach to strengthen some of the core government systems, this in order to address outstanding governance challenges in areas like the rule of law and democratization.<sup>990</sup>

#### **b) Support to civil society**

Parallel to its budget support, the EU also funds CSO projects, both via the EIDHR and under the NIP (€22mIn, or 3% of the total NIP's budget for Mozambique). The EU does so in order to strengthen domestic accountability mechanisms and to support a capable and efficient domestic voice to feed the public debate, e.g. on extractive resources, development and human rights. As such, support to CSOs is envisaged to complement the GBS to the focal sector on good governance and development by enabling local CSOs to monitor and scrutinize the entire policy cycle, including the tracking of public revenues.<sup>991</sup> The EU Country Roadmap for Engagement with Civil Society (2016-2019) provides a common strategic framework for the EU Delegation and the present EU MSs in their engagement with civil society at country level. The CSO Roadmap for Mozambique reiterates the objectives mentioned above by identifying three general priorities for EU and EU MS support to CSOs in Mozambique: i) to support an enabling environment conducive for the development of a strong, diversified and sustainable civil society in Mozambique; ii) to support a more effective CSO participation in dialogues on governance systems and development policies; and iii) to support a more effective policy monitoring and service delivery by civil society at the local level (EU et al.,

<sup>989</sup> Interviews in Maputo, 15-20 February 2015.

<sup>990</sup> EU-RoM, 2015: 9-12.

<sup>991</sup> Ibid: 17-18.

2015:1-3). Foreign donors supporting domestic CSOs can lead to governmental resistance and a dismantling of foreign-backed CSOs and NGOs. As discussed in part II.2, Mozambique has witnessed a gradual decline in the space for civil society participation and the EU as well has experienced difficulties in defending its CSO support to the Mozambican government, as the latter did not always like the projects supported by the EU. In response, the EU has clarified that EU cooperation with Mozambique includes both the national level, mostly through GBS and capacity building, as well as at the level of civil society.<sup>992</sup>

Funding for CSO support and human rights projects under the EIDHR is entirely allocated and managed by the EU Delegation (EUD) in Maputo. DG DEVCO headquarters release funds to the EUD through a Country-based Support Scheme (€900 000 for 2014-2015, and another €900 000 for 2017-2018), who then issues a call for proposals along the lines of the Country Human Rights Strategy (not public). In March 2015, a new call for proposals was released on two topics, one on access to information and freedom of expression, and a second one on gender equality and the fight against gender based violence.<sup>993</sup> The winning bids are currently being carried out, respectively by JOINT, a national CSO forum in Mozambique, and the NGO Women and Law in Southern Africa (WLSA). The project on access to information especially, is intended to open up the public debate on extractive resources, notably by raising awareness, e.g. via community radio stations, on the 2014 law on Access to Information and by clarifying how this relates to issues of transparency and consultation procedures, inter alia, with regard to mining and gas concessions.<sup>994</sup>

### *c) EU-Mozambique dialogue on human rights*

The EU and the EU MSs have a number of mechanisms for political dialogue at their disposal to discuss human rights issues with the Mozambican government. Some of which are part of the general framework for donor coordination and policy dialogue, other fora are specific to the EU's partnership approach or the EU-ACP Cotonou Partnership Agreement (CPA).

A first forum for policy dialogue is provided under the G19 GBS-mechanism which foresees two opportunities, the Annual Review (March-May) and the Planning Meeting (September-October). Respectively, these meetings assess government performance on the agreed measures under the Performance Assessment Framework (PAF), and discuss budgetary planning for the following year. Both processes are informed by sectoral dialogues, while specific technical PFM and Governance groups also provide inputs to the GBS dialogue.<sup>995</sup> The EU is particularly active in these dialogues and EU officials found them to be fundamentally useful. Rather than dealing with extractive industries or human rights directly though, GBS dialogues deal with broader, more systemic issues that affect the sector, e.g. PFM, transparency, development funding and corruption. According to the 2014 GBS-evaluation, '[t]he fact that PFM reform and improvements in governance, especially the fight against corruption, were systematically discussed and reviewed on an annual basis through the Budget Support dialogue is likely to have been moderately important to the continued progress made in these areas' (ITAD, 2014: 3). Another example, mentioned in interviews with DG DEVCO officials in

<sup>992</sup> Interviews in Maputo, 15-20 February, 2016.

<sup>993</sup> EIDHR, 'Call for Proposals – European Instrument for Democracy and Human Rights (EIDHR) –Open, EuropeAid/136-792/DD/ACT/MOZ (05/03/2015 > 20/04/2015)', last consulted on 01/05/2016, [http://eeas.europa.eu/delegations/mozambique/press\\_corner/all\\_news/news/2015/20150305\\_en.htm](http://eeas.europa.eu/delegations/mozambique/press_corner/all_news/news/2015/20150305_en.htm)

<sup>994</sup> Interviews in Brussels and Maputo, February 2016.

<sup>995</sup> EU-RoM, 2015: 13.

Brussels, of how GBS-dialogue has been able to contribute to regulatory changes in the extractives sector, is the 2014 Mining Law. Notable, the new Mining Law forces the government to publish all contracts with extractive companies, as well as the revenues from those contracts, and includes a provision under which the Mozambican government is obliged to account for how much of those revenues go back to the local level.<sup>996</sup> Despite its accomplishments, GBS dialogue does not deal with human rights issues directly and only includes those EU MSs involved in the Troika+ or, by extension, the G19. EU MSs who have left the Group, like Belgium, The Netherlands and Spain, therefore no longer have a say in the GBS dialogue. Moreover, GBS gives donors only so much influence in the regulatory decision making on revenue management, PFM and budgetary accountability: 'GBS gives us a foot in the door, but it's a difficult balancing exercise because we cannot simply tell them where to put the money we allocated to them, we can subtly try to influence and monitor them but that's it'.<sup>997</sup>

Apart from GBS dialogue, the EU also maintains an annual Human Rights Dialogue with Mozambique, as well as an annual political dialogue under article 8 of the CPA (2000-2020). With regard to the Human Rights Dialogue, EU officials noted that in recent years, attention for extractive related human rights issues had increased somewhat, though overall they remain relatively new issues and the human rights situation in Mozambique is still of such a nature that security issues, e.g. kidnappings, police violence, electoral tensions and violence by armed groups (on both sides of the political conflict) continue to dominate the Human Rights Dialogue. When extractives do come up in the Dialogue, which is expected to be increasingly the case, human rights concerns on the EU-side mainly revolve around the promotion of land rights and the protection of Human Rights Defenders.<sup>998</sup>

The political dialogue foreseen under article 8 of the so-called Cotonou Agreement between the EU and the Group of African, Caribbean and Pacific countries (ACP) is mandated to cover 'all the aims and objectives laid down in the Agreement', this includes a regular assessment of developments in the area of human rights, the rule of law, democratization and good governance.<sup>999</sup> Political dialogue

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<sup>996</sup> Interviews in Maputo, 15-20 February 2016. Arguably, the progressive stipulations under the new Mining Law are (also) the result of domestic CSO advocacy and the EITI process in Mozambique. Based on the revenue information disclosed in EITI Reports, CSOs argued that the state did not capture sufficient revenues from the growing sector CSOs used this information when lobbying for a revision of the legal and fiscal framework. The revised sector laws were passed in 2014 and require the publication of mining contracts and the main terms of oil and gas contracts. See Extractive Industries Transparency Initiative, '2016 Progress Report: From Reports to Results' (2016), available online: <https://eiti.org/files/progressreport.pdf>, 35.

<sup>997</sup> Interviews in Brussels and Maputo, February 2016. Both PFM and revenue management are key problems in Mozambique. A 2015 Open Budget Survey by the International Budget Partnership concluded that public participation in budgetary processes and budget oversight (by both international auditors and the legal framework) are weak (International Budget Partnership, 'Open Budget Survey 2015: Mozambique. Executive Summary' (2015), available online: <http://www.internationalbudget.org/wp-content/uploads/OBS2015-CS-Mozambique-English.pdf>, 1) (See Annex 5).

<sup>998</sup> Interviews in Brussels and Maputo, February 2016.

<sup>999</sup> For more information on the EU human rights dialogue, please see L. Beke, D. D'Hollander, N. Hachez and B. Pérez de las Heras, 'Report on the integration of human rights in EU development and trade policies' (2014), Frame Working Paper Work Package 9 – Deliverable no. 1, available online: <http://www.fp7-frame.eu/wp-content/materiale/reports/07-Deliverable-9.1.pdf>. For more information on human rights under the article 8 dialogue with ACP countries, please see J. Bossuyt, C. Rocca, and B. Lein, 'Political dialogue on human rights under article 8 of the Cotonou Agreement' (2014) Directorate-General for External Policies of the Union, available online:



with Mozambique started in 2001 and generally takes place every six months. The dialogue is organized on a two-tier track, one on economic governance and one on political governance. In terms of participation, the EU MSs' Heads of Mission and the political attaché's of the EUD represent the EU, while on the Mozambican side, a number of representatives from the ministry of foreign affairs and a representative from the National Authorizing Officer's (NAO) office take part.<sup>1000</sup> If necessary, representatives from the line ministries join as well if there is something on the agenda which specifically concerns their portfolio. In terms of the quality of the dialogue, interviewees at the EUD in Maputo found the discussions to be frank and open, and 'pretty level-playing field' as Mozambican representatives reportedly bring up human rights issues in the EU that could affect Mozambique, e.g. migration and the Eurozone situation.<sup>1001</sup>

While some EU officials were 'positively surprised' by the overall quality of the political dialogue, others, with longer experience in the country, noted that the quality of the discussions had deteriorated significantly over the past few years, and lost much of its traction. The political dialogue on economic governance was found to be slightly better off in this regard, whereas the dialogue on politics and human rights had reportedly been very difficult in recent years. Throughout the years, many found that the EU has been a vocal advocate for inclusive growth and human rights. The Mozambican government, particularly under former president Guebuza, has been 'increasingly fed up' with what they perceive as 'interference in domestic affairs' however. 'They [the Mozambican government, red.] prefer to talk to partners like Indonesia, India and of course China - we have become very careful to talk about politics', one member state official said. Regarding the political dialogue on economic governance, interviewees from both the EUD and EU MSs' delegations confirmed that extractive-related human rights concerns like land rights had become part of the dialogue, yet the overall focus remained on economic diversification and public financial management. Topics of concern in the political dialogue on governance and human rights include police corruption, security and violence of armed forces against the public, kidnappings, migration services, etc. Over the past two years, HR-concerns related to the extractives sector had hardly been discussed and, in the broad scheme of things, they are not considered as a priority. Finally, it was noted by EU officials that setting an agenda for the political dialogues had not always been a straightforward exercise for the EUD, 'there are a lot of backstops about focusing the political dialogue on one thing or another. There are 13 MSs represented in Mozambique and they all have differing interests'.<sup>1002</sup>

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[http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/deve/dv/study\\_political\\_dialogue\\_/study\\_political\\_dialogue\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/deve/dv/study_political_dialogue_/study_political_dialogue_en.pdf).

<sup>1000</sup> The National Authorizing Officer (NAO) is a senior government official appointed by each ACP state to represent it in all the operations financed through the European Development Fund (EDF).

<sup>1001</sup> Interviews in Maputo, 15-20 February 2016.

<sup>1002</sup> Ibid.

### 3. EU-Mozambique trade relations: the SADC EPA

#### a) EU-Mozambique trade profile

In 2014, Mozambique's exports to the EU accounted for 38.1% of the country's total exports worldwide, making the Union Mozambique's primary export market before South Africa (20.1%) and Singapore (10.0%). Mozambique's main export commodities in general are fuels and mining products (62% of total exports) and agricultural products (19.2% of total exports). Exports to the EU in particular are also largely based on the former category, close to 70% of Mozambican exports to the EU are non-ferrous metals (mainly aluminium), while the rest largely consists of fuels and other minerals. As such, a drop in European demand, or declining commodity prices could gravely affect the (currently positive) trade balance.

In terms of imports then, the EU is Mozambique's second largest import market –after South Africa (33.1%)- representing 19.4% of its total imports. Key imports overall include manufactured products (60%) and fuels and mining products.<sup>1003</sup> Imports from the EU in particular involve mainly machinery and transport equipment (47.2%), machinery for the energy sector (30.7%) and agricultural and fishery products (13.6%) (EC, 2016: 4).

While Mozambique's trade balance with the world is in recent years largely negative, its balance with the EU has remained positive throughout the years. This positive trade balance can be attributed to the importance of aluminium exports versus the relatively limited amount of imports from the EU.<sup>1004</sup>

#### b) The EU-SADC Economic Partnership Agreement

As one of the 79 members of the ACP Group, Mozambique's trade relations with the EU have historically been framed within a series of Conventions (Yaoundé I and II; Lomé I-IV bis; Cotonou) that over time established an increasingly comprehensive cooperation framework between the Union and its former colonies in Africa, the Caribbean and the Pacific region. As such, trade relations between 1975 and 2000 were part of a broader post-colonial cooperation framework aimed at socioeconomic development. Based on a system of trade preferences, EU trade policy vis-à-vis ACP countries ensured that manufactured goods and agricultural products, at least those that were not in direct competition with the European products protected under the EU's Common Agricultural Policy (CAP), could enter the Union's market duty free and without quantitative restrictions.<sup>1005</sup>

##### (1) Deadlines and dilemmas: the EPA negotiations

Such a preferential trade regime however, was based on unilateral, non-reciprocal preferences and, although most ACP countries are amongst the poorest and most vulnerable economies in the global trading system, such unilateral access violated the WTO's Most Favoured Nation (MFN) principle since it discriminated between ACP countries and non-ACP developing countries in the WTO. Moreover, the non-reciprocal system of preferences – which was allowed under a (first) WTO waiver

<sup>1003</sup> WTO, 'Country Profile: Mozambique', last accessed on 25 May 2016,

<http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=MZ>

<sup>1004</sup> EES -European Delegation to Mozambique, 'Bilateral Trade', last accessed on 25 May 2016,

[http://eeas.europa.eu/delegations/mozambique/eu\\_mozambique/trade\\_relation/bilateral\\_trade/index\\_en.htm](http://eeas.europa.eu/delegations/mozambique/eu_mozambique/trade_relation/bilateral_trade/index_en.htm)

<sup>1005</sup> D. Frisch, 'The European Union's development policy: A personal view of 50 years of international cooperation (2008), ECDPM Policy Management Report 15, available online: <http://ecdpm.org/publications/european-unions-development-policy/>, 6-7.

on the MFN principle from 1996 to 2000 – did not result in the aspired developmental effects on economic competitiveness and diversification. On the contrary, despite enjoying an exceptionally advantageous EU trade regime, ACP countries generally ranked very low in exports to the EU and the overall share of ACP exports in total EU imports had systematically fallen, from 6.7% in 1976 to 2.8% in 1999. Additionally, approximately 60% of ACP exports to the EU consisted of only nine products, reflecting the narrow economic base of most ACP countries.<sup>1006</sup>

Changes were thus required in order to make EU-ACP trade more effective and, arguably more important at the time, compatible with WTO law. In 2000, the Cotonou Agreement succeeded Lomé IV (bis) and introduced a comprehensive overhaul in ACP-EU cooperation, towards a more equal and political ‘partnership’ between the parties, including provisions for a new trading regime based on reciprocal preferences, all while maintaining a focus on sustainable development and poverty reduction. As such, the Cotonou Agreement consists of three pillars, one on development cooperation, one on political dialogue; and one on trade. While the former two pillars, along with the CPA itself expire in 2020, the trade pillar was set to expire at the end of 2007. This has to do with the fact that, in 2001 - in parallel to the Doha Round and after much discussion - the WTO granted an extension of its MFN waiver until the end of 2007. The waiver could only be granted however on the condition that the discriminatory ACP-EU trade regime would by then be replaced by either a free trade agreements (FTA), a non-discriminatory preferential trade regime for all developing countries (i.e. the Generalised Scheme of Preferences – GSP), or a non-preferential treatment, i.e. a fallback to the WTO’s MFN treatment.<sup>1007</sup>

The EU decided to go for the first option and started negotiating Economic Partnership Agreements (EPA) with the ACP as of September 2002. In order to be completed before the expiration of the WTO waiver, the EPAs were initially foreseen to enter into force on 1 January 2008. EPAs were presented as development-oriented FTAs, based on reciprocal, but asymmetric trade preferences, according to which the EU would still grant ACP countries duty free, quota free (DFQF) access to ACP countries, while the latter would commit to liberalize EU imports on 80% of their tariff lines. The latter requirement has proven a major stumbling block on the ACP side and relates to the WTO’s predecessor, the General Agreement on Tariffs and Trade (GATT), notably Article XXIV, which stipulates that any free trade area (such as EPAs envisioned to establish), should eliminate duties on ‘substantially all the trade’, within a ‘reasonable length of time’. What qualifies as ‘substantially all the trade’ or a reasonable timeframe, is however defined rather loosely in WTO law and practice, leaving ample space for discussion between the parties concerned. The EU’s standard request in this regard has been for ACP countries to cut the tariffs imposed on EU imports on 80% of their tariff lines, over a 15-year liberalization period. ACP market liberalization however, among many other contentious issues (see below), has proven to be an exceptionally thorny demand during the EPA negotiations.<sup>1008</sup>

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<sup>1006</sup> K. Karl, ‘Economic Partnership Agreements – hopes, fears and challenges’ (2002), *The Courier ACP-EU*, available online: [http://ec.europa.eu/development/body/publications/courier/courier195/en/en\\_021.pdf](http://ec.europa.eu/development/body/publications/courier/courier195/en/en_021.pdf), 21.

<sup>1007</sup> S. Bilal and I. Ramdoo, ‘Economic Partnership Agreements: Frequently Asked Questions’ (2014), available online: <http://ecdpm.org/wp-content/uploads/ECDPM-17-10-14-EPA-QA.pdf>, 1.

<sup>1008</sup> E.H.A. Diouf, ‘The ACP Advantage: interpreting GATT Article XXIV and Market Access Implications for EPAs’ [2009] 8 (7) *Trade Negotiation Insights* (ICTSD).

The broad framework for these negotiations was defined under the CPA, which stipulated that ACP countries could negotiate EPAs at the level they considered appropriate, and 'in accordance with the procedures agreed by the ACP Group, taking into account the regional integration process within the ACP.'<sup>1009</sup> Late 2003, after months of consultations at the all-ACP level, it was decided that the EPAs would be negotiated at the regional level, notably in six negotiation groups: i) the 16 countries of the Caribbean Forum (CARIFORUM); ii) the 14 countries of the Pacific Islands Forum (PIF); iii) the 15 members of the Economic Community of West African States (ECOWAS) plus Mauritania in a joint West African negotiation group; iv) the eight countries of the Central African regional group; v) the Eastern and Southern Africa (ESA) region (a sub-group of the Common Market for Eastern and Southern Africa – COMESA), initially included 11 countries, but four left in 2007 to join the Eastern African Community (EAC) EPA Group; vi) The Southern African region then, is a sub-group of the Southern African Development Community (SADC), which includes Botswana, Lesotho, Namibia, Swaziland, Mozambique, Tanzania and Angola. In 2007, Tanzania left the group to join the EAC EPA group. South Africa joined the SADC EPA group while maintaining its bilateral Trade and Development Cooperation Agreement (TDCA) with the EU, which established a free trade area covering 90% of the bilateral trade between the EU and South Africa.<sup>1010</sup> It is worth concluding from the above that the EPA regional negotiation blocks thus not necessarily coincided with the ACP's own regional configurations. This was and continues to be a major impediment to the negotiations since it affects the power dynamics within and among the negotiating blocks. To add to the complexities, some countries have signed an EPA, not with their regional block, but individually or as a member of a smaller group of countries.<sup>1011</sup>

While EPAs were initially presented as development-focused trade regimes that would promote EU-ACP trade, sustainable development, poverty reduction and regional integration, their negotiations have proven to be deeply controversial and, in many regions, continue to drag on. Despite noble objectives, many observers, particularly in the ACP world, have voiced concerns that, rather than contributing to socioeconomic development and regional economic integration, EPAs and their tedious negotiation processes have actually undermined the potential for long-term development in many ACP states and their ambitions for regional integration.<sup>1012</sup> Among the generally most

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<sup>1009</sup> Art. 36 (5) of the Cotonou Agreement (2000).

<sup>1010</sup> Bilal and Ramdoo, above n. 1007, 3. While South Africa is a contracting party to the Cotonou Agreement, it is exempt from its provisions under the trade pillar of the CPA. Since 1999, trade and development cooperation between South Africa and the EU has been governed through the Trade and Development Cooperation Agreement (TDCA). South Africa however joined the SADC EPA negotiations in 2007, which significantly changed the negotiation dynamics within the group. The current SADC EPA, concluded in July 2014, thus includes South Africa and will grant it the same preferential conditions as to the other SADC EPA members. See: DG TRADE, 'Countries and Regions: South Africa', last accessed on 25 May 2016, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/south-africa/>

<sup>1011</sup> A. Kwa, P. Lunenburg and W. Musonge, 'African, Caribbean and Pacific (ACP) countries' position on Economic Partnership Agreements (EPAs)' (2014), EP DG External Policies of the Union, available online: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433843/EXPO-DEVE\\_ET\(2014\)433843\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433843/EXPO-DEVE_ET(2014)433843_EN.pdf), 12.

<sup>1012</sup> S. McDonald, S. Lande, and D. Matanda, 'Why Economic Partnership Agreements Undermine Africa's Regional Integration' (2013), Wilson Centre and Manchester Trade, available online: [https://www.wilsoncenter.org/sites/default/files/EPA Article.pdf](https://www.wilsoncenter.org/sites/default/files/EPA%20Article.pdf), 2-3; S. Bilal and C. Braun-Munzinger, 'EPA negotiations and regional integration in Africa: Building or stumbling Blocs' (2008), Paper prepared for the Trade Policy Centre in Africa (trapca) 3<sup>rd</sup> Annual Conference, Arusha, 13-15 November 2008, available online: <http://ecdpm.org/wp-content/uploads/2013/11/EPA-Negotiations-Regional-Integration-Africa-2008.pdf>.

contentious issues in the EPA negotiations are the degree and timeline for liberalization of tariff lines, export taxes, non-execution and infant industry clauses, EU export subsidies and CAP support programmes, the MFN clause and the provision of development finance.<sup>1013</sup> For African countries in particular, EPAs have presented a dilemma of either losing preferential market access for the limited set of products they export to the EU, or putting their longer-term development prospects at risk by allowing more competition on their, often vulnerable and infantile, domestic economies. EPA-induced threats to ACP economies include losses in tariff revenue, decreasing policy space, increased competitiveness for local industries and the subsequent risk of a rise of unemployment levels, a disruption of planned and existing customs unions and, finally, the disruption or displacement of regional production and trade patterns and capacities.<sup>1014</sup>

As a result of these challenges, negotiations between the EU and the various regional blocks have dragged on beyond the expiration of the WTO waiver at the start of 2008. Yet most ACP countries did not lose their preferential access to the EU market. In fact, 18 African countries and 2 Pacific states initiated interim EPAs (IEPAs) while the CARIFORUM block signed a comprehensive EPA in October 2008. Of the Remaining ACP countries, the LDCs continued to enjoy DFQF access, except for arms and ammunition under the Everything But Arms (EBA) sub-regime while Nigeria, the Republic of the Congo, Gabon and seven Pacific countries fell under the less favourable standard GSP regime.<sup>1015</sup>

In order to allow ACP countries with IEPAs, to maintain DFQF access to the EU market, the EU introduced Market Access Regulation 1528/2007 (MAR 1528). The MAR entered into force in December 2007 and introduced a temporary unilateral scheme to give all countries with an IEPA the time to complete, sign and ratify their EPA without losing DFQF access. In September 2011 however, DG Trade proposed to remove trade preferences from 18 countries, including Mozambique, who had benefitted from the DFQA access provided under the MAR but had not gone on to sign, ratify or implement the EPA.<sup>1016</sup> After heated discussions among the EU institutions, it was decided through Regulation<sup>1017</sup> that as of 1 October 2014, these countries would lose market access and receive either the basic GSP preferences or the EBA regime, depending on their developmental status.<sup>1018</sup> Moreover, it is worth noting in this regard that according to the new EU GSP regulation which entered into force as of 1<sup>st</sup> of January 2014, Upper Middle-Income Countries (UMIC) would no longer comply for trade preferences on the EU market as of 2016.<sup>1019</sup>

As a consequence of EU Regulation 527/2013, countries that did not take the required steps to ratify their interim EPA concluded in 2007, or concluded a new (regional) EPA, before October 2014 would

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<sup>1013</sup> Bilal and Ramdoo, above n. 1010, 9.

<sup>1014</sup> Kwa *et al.*, above n. 1011, 6-14.

<sup>1015</sup> Bilal and Braun-Munzinger, above n. 1012. Meanwhile, South Africa continued to trade with the EU under its bilateral TDCA.

<sup>1016</sup> The countries concerned were: Comoros, Côte d'Ivoire, Cameroon, Rwanda, Ghana, Kenya, Mozambique, Namibia, Lesotho, Haiti, Uganda, Burundi, Tanzania, Botswana, Fiji, Botswana, Swaziland and Zimbabwe.

<sup>1017</sup> Regulation (EU) No 527/2013 of the European Parliament and of the Council of 21 May 2013 amending Council Regulation (EC) No 1528/2007 as regards the exclusion of a number of countries from the list of regions or states which have concluded negotiations, 18 June 2013.

<sup>1018</sup> EC Taxation and Customs Union, 'The Countries of Africa, the Caribbean and the Pacific (ACP)', last accessed on 26 May 2016,

[http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/rules\\_origin/preferential/article\\_785\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/preferential/article_785_en.htm)

<sup>1019</sup> European Commission, 'The EU's Generalised Scheme of Preferences – Highlights of the new GSP' (2012), available online: [http://trade.ec.europa.eu/doclib/docs/2012/december/tradoc\\_150164.pdf](http://trade.ec.europa.eu/doclib/docs/2012/december/tradoc_150164.pdf), 5.

automatically enter into a less favourable GSP-regime (EBA for LDC and basic GSP for Lower Middle Income Countries –LMIC) or fall back to MFN treatment (for UMICs). Given the great variety of development statuses within the different negotiating blocks, the new EPA deadline, in combination with the new GSP regulation, created rather diverging negotiating dynamics. The October 2014 ‘deadline’ however only applies to those 18 countries with IEPAs that showed no progress. Other countries, i.e. those that have not yet concluded an EPA and those that have one containing a rendezvous clause and wish to pursue a more comprehensive agreement, negotiations have continued, and in some cases still continue to go on.<sup>1020</sup> The SADC negotiating block in which Mozambique took part belongs to this latter category of countries who agreed with the EU to pursue a more comprehensive regional EPA, covering services, investment and trade-related issues.

## (2) The SADC EPA

At the end of 2007, SADC EPA group members Botswana, Lesotho, Swaziland, Mozambique (23 November) and Namibia (3 December) signed a regional IEPA with the EU, including a clause to allow South Africa and Angola to join in case they wished to do so later. In the Meantime, Angola (LDC) maintained DFQF access under the EBA regime, while South Africa continued to trade under its TDCA with the EU. In June 2009, Mozambique, along with Lesotho, Botswana and Swaziland signed the interim EPA. Namibia did not sign but continued to benefit from DFQF access under the 2007 MAR. The Group however continued its negotiations with the EU in pursuit of a comprehensive regional EPA. In 2010, the aforementioned IEPA signatories therefore suspended their respective ratification processes in order to negotiate a more inclusive agreement with the SADC EPA block as a whole, including a series of amendments to the IEPA to be integrated into the comprehensive regional EPA.<sup>1021</sup>

From the beginning, the SADC EPA block did not correspond with SADC’s membership configuration. Notably, the SADC EPA Group consists of Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland, while the other six SADC members negotiated EPAs as part of other regional negotiating groups, namely Eastern and Southern Africa (ESA, which includes SADC members Madagascar, Malawi, Mauritius, Zambia and Zimbabwe), Central Africa (including the Democratic Republic of Congo) and the EAC EPA block (including Tanzania).<sup>1022</sup> South Africa played a rather peculiar yet powerful role within the SADC EPA block, first as an observer, and after 2007 as a negotiating member with nothing to lose, and, thus, insensitive to the time-bound pressures other SADC members, particularly UMICs like Namibia and Botswana, were under. Since its trade relations with the EU were governed through the TDCA, South Africa had no immediate need for an EPA. Its main interest to be involved in the EPA is to increase its market access for (processed) agricultural products, as well as to delay some of its market access commitments on its own side under the TDCA.<sup>1023</sup>

Diverging interests and dependencies within the SADC EPA group significantly delayed the negotiation process with the EU and created concerns about their impact on the regional integration process in SADC. Indeed, the impact of a SADC EPA on regional integration has been a major concern

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<sup>1020</sup> Bilal and Ramdoo, above n. 1007, 5.

<sup>1021</sup> European Commission DG Trade, ‘Fact sheet on the Interim Economic Partnership Agreements – SADC EPA Group’, last accessed 26 May 2016, [http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc\\_142189.pdf](http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142189.pdf)

<sup>1022</sup> Bilal and Ramdoo, above n. 1007, 3.

<sup>1023</sup> Interview in Maputo with SADC Trade expert at Eduardo Mondlane University, 15-20 February 2016.

throughout the negotiations since not all SADC EPA members have shared the same level of interest in concluding an EPA, e.g. Angola and Namibia, while for others, like Botswana (beef exports) and Swaziland (sugar preferences), losing preferential EU market access would have caused significant economic distress. While Namibia as well has economic interests at stake (beef and grapes), they, like South Africa, were predominantly concerned about the broader implications of the EPA in terms of its regional competitive advantage. If not all SADC EPA countries were to sign an EPA - and particularly those in the Southern African Customs Union (SACU - the oldest customs union in the world, comprising South Africa, Lesotho, Namibia, Swaziland and Botswana) –this would significantly complicate the SADC’s own regional integration objectives. Because negotiations for long did not adequately manage to accommodate these concerns of individual countries, EPA negotiations with SADC were stalled for some time.<sup>1024</sup>

However, with the expiration of the MAR looming and the new GSP regulation for UMICs entering into force as of 2016, the EU and SADC-EPA block finally concluded a comprehensive EPA on 15 July 2014, after 10 years of negotiating. The EPA will replace the interim EPA signed in June 2009, between the EU and Botswana, Lesotho, Mozambique and Swaziland and now also includes Namibia and South Africa, while Angola may join in the future. At this stage, the SADC EPA has been through translating and legal scrubbing, and is currently being prepared for signature and subsequent ratification. Following an extension of the MAR expiry, granted by the Trade Commissioner Karel De Gucht in 2014, SADC EPA countries, and in particular Botswana, Namibia (UMIC) and Swaziland (LMIC) will have to ratify the agreement by October 2016.<sup>1025</sup>

In terms of content, the EPA concluded in July 2014 offers duty-free and quota-free (DFQF) access to the EU market for Botswana, Lesotho, Mozambique, Namibia and Swaziland, while South Africa will receive enhanced market access beyond the conditions granted in the TDCA. In exchange, the EU will enjoy better access to the SACU market, in particular for agricultural and food products like wheat, barley, cheese, meat products and butter. While market access under the EPA remains asymmetric, and SADC EPA countries maintain some degree of custom duties to protect sensitive products from EU competition, EU access to the SADC market will obviously have an impact on the region's domestic productive capacity. In order to protect these markets from an all too abrupt liberalization, the EPA provides a variety of both permanent and temporary safeguards to provide a buffer against growing EU imports. Additionally, the EPA contains a detailed chapter on development cooperation which outlines trade-related areas that could benefit from EU development aid. With regard to regional integration, the EPA is designed as such to be optimally compatible with the functioning of SACU. As such, EU imports will be subject to one single external tariff and a common system of trade management provisions, including, inter alia, safeguards, common decision-making bodies and flexible rules of origin.<sup>1026</sup>

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<sup>1024</sup> Kwa *et al.*, above n. 1011, 60-61.

<sup>1025</sup> Interviews in Brussels with EU officials, 11 February 2016. European Commission DG TRADE, ‘Southern African Region and the EU complete negotiations for an Economic Partnership Agreement, Press Release 22 July 2014, [http://europa.eu/rapid/press-release\\_IP-14-872\\_en.htm](http://europa.eu/rapid/press-release_IP-14-872_en.htm)

<sup>1026</sup> European Commission, ‘Economic Partnership Agreement (EPA) between the EU and the Southern African Development Community (SADC)’ (2015c), October 2015 Update, available online: [http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc\\_152818.pdf](http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152818.pdf).

For Mozambique individually, the EPA does not change much compared to its previous trade relations with the EU, and as an LDC it could have continued benefitting DFQF access under the EBA scheme like Angola. It was argued by trade experts that Mozambique has always been more open to trade liberalization and market access, particularly in comparison to Angola. Judging from its track record on inter-SADC liberalization as well, Mozambique has shown an understanding that trade liberalization is a necessary prerequisite for its own economic development, e.g. in terms of importing intermediary goods like machinery, car parts and fertilizer. It was also noted by EU trade officials that the EBA is not a sustainable trade regime, so from the point of view of Mozambique they judged it a smart decision to negotiate a favourable agreement now as part of a group. Moreover, in view of Mozambique's natural resource driven economic potential, a clear and stable regional trade regime was deemed beneficial to attract foreign investments.<sup>1027</sup> On the Mozambican side, Kwa et al. report that Mozambique's former Minister of Industry and Trade Armando Inroga believes that the EPA would help the country to diversify its exports to the EU, while maintaining export duties, at least to some degree, e.g. on cashew nuts.<sup>1028</sup>

### (3) Trade and human rights in the EU-SADC EPA

Beyond trade provisions, the EPA with SADC also contains a modest chapter (Chapter II) devoted to Trade & Sustainable Development (T&SD), in which the contracting parties confirm their obligations under the following international conventions:

Agenda 21 on Environment and Development of 1992, the ILO Declaration on Fundamental Principles and Rights at Work of 1998, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the ILO Declaration on Social Justice for a Fair Globalisation of 2008 and the UN Conference on Sustainable Development of 2012 entitled "The Future We Want."<sup>1029</sup>

Beyond reconfirming international commitments, the EPA also commits the parties not to lower, nor 'fail to effectively enforce' domestic levels of labour and environmental protection in order to stimulate trade and investment (Art. 9). The T&SD chapter further stipulates that the objective of 'people-centered' sustainable development in its three dimensions (economic, social and environmental), implies a commitment by the parties involved to 'take into account the human, cultural, economic, social, health and environment best interests of their respective populations and of future generations' (Art 7 (2)). While the chapter does not foresee a dedicated monitoring platform, Article 10 of the T&SD Chapter allows any party to request, through the Trade and Development Committee, to engage in consultations with another Party regarding matters under the T&SD Chapter. Moreover, any dialogue and cooperation on the Chapter, through the Trade and Development Committee, may involve other relevant authorities and stakeholders as well (Art. 10). EU trade officials were generally rather sceptical of the T&SD chapter, in the sense that the Chapter

<sup>1027</sup> Interviews in Brussels and Maputo, February 2016.

<sup>1028</sup> Kwa et al., above n. 1011, 68-69. The idea is that raising export taxes for certain products could incentivise their domestic use, incl. a domestic processing industry. Critics however argue that export taxes harm, rather than benefit, domestic exporters and producers. Under the SADC EPA, Mozambique can to some extent still raise export duties, although EU officials deem it of little benefit to the domestic economy. Interviews in Brussels and Maputo, February 2016.

<sup>1029</sup> EU-SADC EPA, Chapter II, Article 6, (1).



does not add anything substantial to the trade and labour standards (CPA Art. 50) and the environmental commitments (Art. 32) covered under the CPA.<sup>1030</sup>

Whereas the EPA itself does not mention human rights, it was argued by EU trade officials that, as part of the Cotonou Framework, any human rights concern arising from the implementation of the EPA could, in theory, be discussed and or sanctioned under the political dialogue provisions as stipulated under articles 8 and 96-97 of the CPA respectively. Likewise, it was argued that the CPA's essential elements clause applies equally to trade as it does to any other element under the CPA. However, the HR clause has so far never been evoked to suspend trade relations and it was argued that, to shut down on trade in response to human rights concerns would be a very harsh and blunt measure which most likely would not affect the intended people and/or could even lead to unintended effects on (economically) vulnerable population groups. Diplomatic measures, and if necessary perhaps a freeze or redirection of development funds were generally found to be far more effective measures in this regard.<sup>1031</sup>

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<sup>1030</sup> Interview with EU trade official in Brussels, February 2016.

<sup>1031</sup> Interviews with EU officials in Brussels and Maputo, February 2016.

## F. Concluding remarks

Since the end of its devastating civil war in 1992, Mozambique has come a long way as post-war recovery programs and economic reforms, along with substantial foreign aid have enabled sustained economic growth of 7.5%GDP on average throughout the 2000s. Overall, Mozambique's future looks promising and recently discovered gas reserves in the North of the country hold the potential to fundamentally transform the country's economic base while spurring inclusive socioeconomic development.

Rapid economic growth however, has not translated in job creation or significant socioeconomic development. Mozambique remains a Least Developed Country (LDC) and ranked 180<sup>th</sup> out of 185 countries on the Human Development Index in 2015. While the national poverty headcount fell from 69.4% to 54.1% in the period between 1997 and 2003, poverty levels remained roughly the same and even slightly increased in the subsequent period 2003-2009, from 54.1% to 54.7% (Van den Boom, 2011: 5-6). According to the World Bank, the weak relationship between economic growth and poverty reduction can be attributed to Mozambique's weak and dependent economic base. Indeed, economic growth so far has been entirely driven by capital-intensive, import-dependent sectors, with little to no impact on domestic job creation<sup>1032</sup> (WB, 2014: 2-3). The latter is reflected in the composition of Mozambique's labour market, which continues to be dominated by low-skilled labour working in agriculture, and high levels of un-(22%) and under-employment (87%).<sup>1033</sup>

Moreover, while the Mozambican economy may be changing rapidly, the country's political economy seems resistant to change. Mozambican politics are characterized by a high degree of power centralization and an almost complete overlap between the Frelimo party-structures and the state. Essentially, Mozambique maintains a multiparty system in which many of the practices of a one-party continue to play.<sup>1034</sup> Interviews with CSO activists and international experts, as well as for instance the African Peer Review, confirm that public access to information is limited, that space for public scrutiny is circumscribed and that the accountability mechanisms at hand are weak and easy to bypass.<sup>1035</sup> Likewise, the Mozambican economy is characterized by poor diversification, a lack of SMEs and rent-seeking behaviour by the country's elite. Essentially, economic resources are perceived as a means to benefit personal and/or party interests, rather than the socio-economic development of the country, which inevitably hampers the development of a diverse and competitive domestic economy. With regard to extractive industries, including the emerging gas industry in the North, members of the Frelimo elite seem to have positioned themselves strategically to benefit, either directly or indirectly, from the surge in FDI inflows in the sector.<sup>1036</sup>

Meanwhile, in light of the massive gas findings in Cabo Delgado, questions arise about who will benefit from the foreseen revenues? How the country manages its natural resources will arguably define its socioeconomic development trajectory and, in light of Mozambique's contemporary

<sup>1032</sup> World Bank, 'International Development Association Program Document for the Tenth Poverty Reduction Support Development Policy Financing' (2014), Report No. 90299 – MZ [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/11/13/000470435\\_20141113101213/Rendered/PDF/902990PGDOP146010Box385366B00UO090.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/11/13/000470435_20141113101213/Rendered/PDF/902990PGDOP146010Box385366B00UO090.pdf), 2-3.

<sup>1033</sup> Santos *et al.*, above n. 820, 12).

<sup>1034</sup> P. Malin, 'EU Support to Mozambique' (2012), GREAT Insights 1 (10), available online: <http://ecdpm.org/great-insights/africa-turning-point-mozambique-case/eu-support-mozambique/>.

<sup>1035</sup> African Peer Review Mechanism, above n. 863; Bertelsmann Stiftung, above n. 865.

<sup>1036</sup> Buur, 2014.

political economy dynamics, many have warned for a paradox of plenty similar to that of Angola. In addition to risks related to the resource curse, international observers have in the past also warned for human rights violations, particularly in relation to mining-induced resettlements in the Tete region. While Mozambique's legal framework for land transfer and involuntary resettlement provides for ample regulation to ensure that affected communities benefit from the extractive operations conducted on their lands, past experiences on the ground tell a different story. Reports by Human Rights Watch<sup>1037</sup> and Oxfam<sup>1038</sup> have effectively documented cases of human rights violations including the right to food, adequate housing, the loss of livelihoods, lack of access to water and electricity and the fracturing of local communities and livelihoods. In order to avoid a similar scenario under the resettlement programs by Anadarko, one of the gas companies running an onshore gas plant in Cabo Delgado, Mozambican civil society has been, and continues to be, exceptionally vocal about local communities' rights to consultation and adequate compensation.<sup>1039</sup>

Prospects of gas revenues have not only led to a diversification of the country's external relations - with an influx of emerging partners like China, India, Indonesia and Brazil - they have also impacted on the way development assistance is delivered. For the EU and its MSs in Mozambique, the coming years will therefore be crucial in terms of striking a balance between, on the one hand, contributing to the much needed development assistance and inclusive and sustainable economic growth, and, on the other hand, taking a commercial stake in Mozambique's economic growth process. Extractive industries are likely to eclipse other economic sectors in terms of government revenue and political significance, while aid dependence is expected to drop further due to increasing revenues from extractives and shrinking aid budgets in the donor community. As such, donors face the challenge of adapting their ways of engaging with the Mozambican government. If not, declining aid dependency will likely translate in a reduction of donor influence, most notably on so-called 'soft interests' like human rights protection.<sup>1040</sup>

After over 30 years of EU- Mozambique cooperation, the EU can share in the credit for the advances made, e.g. in the education sector and in recent reforms in PFM and economic governance. Like other 'traditional' donors in Mozambique, the EU and its MSs face a challenging period of transition. Besides poverty reduction, the current NIP, covering the EU's development cooperation for the period (2014-2020), includes provisions for a more commercial approach to EU development aid, *inter alia* to develop synergies between trade promotion, the business environment and good governance. The new NIP further promotes innovative ways to create win-win outcomes between the development actions and the EU private sector. Albeit less so compared to MSs' commercial stakes, the EU's commitment to better link commercial and development interests, including a demand from EU headquarters to intensify economic diplomacy, will likely have an impact on how the Union engages with the Mozambican government, and more specifically, how it decides to substantiate its political dialogue vis-à-vis the latter. It remains to be seen however how this plays it out in practice, and both EU and MSs' officials stressed throughout the interviews that the EU

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<sup>1037</sup> Human Rights Watch, above n. 966

<sup>1038</sup> Lillywhites *et al*, above n. 967.

<sup>1039</sup> Symons, 2016: 156.

<sup>1040</sup> E. Dietsche, S. Dodd, D. Haglund, M. Henstridge, M. Jakobson, E. Sindou and C. Slaven, 'Topic Guide: Extractive industries, development and the role of donors' (2013), Oxford Policy Management EPS-PEAKS, available online: <http://r4d.dfid.gov.uk/pdf/outputs/EPS/Extractive-industries-development-and-the-role-of-donors.pdf>, 8.

remains vocal and well placed to raise human rights concerns in the country. Overall, interviewees from donor agencies supported a plea for pragmatism and noted that, while the 'commercialization of aid' comes with a number of question marks, the situation in countries like Mozambique is changing in such a manner that donors would increasingly have to use their economic leverage in terms of FDI and commercial activity in order to remain politically relevant.<sup>1041</sup>

EU support to independent watch dogs and civil society was widely perceived as an increasingly important vehicle to serve the EU's normative agenda on Human Rights, particularly i) amidst rampant corruption with public budgets (and thus EU GBS funds); and moreover ii) since it allows donors to indirectly influence policy making and the public debate, without openly interfering with domestic affairs or contradicting commercial interests. As such, the EU and its MSs are expected to ramp up their support to NGOs and civil society to strengthen a domestic system of checks and balances in order to scrutinize Frelimo policy, particularly in relation to budgetary planning, the generation of natural resource revenues, as well as to promote and protect land rights and adequate consultation procedures for local communities.

Finally, the most direct way for the EU to raise human rights concerns vis-à-vis the Mozambican government is through its various platforms for political dialogue provided respectively under the GBS-framework, the Human Rights Dialogue and the article 8 political dialogue under the Cotonou Agreement. Based on interviews with both MS diplomats and EUD officials, we conclude that these dialogues feature extractive-related human rights concerns only in a very marginal manner, yet this is likely to change as extractive developments pick up steam. Furthermore, similar to the experience in other partner countries (Bossuyt et al., 2014),<sup>1042</sup> human rights concerns continue to be discussed in a predominantly ad hoc, reactive manner, rather than as part of a long-term strategy with clearly identified priority issues. As such, extractive-related human rights issues like land rights and the right to adequate consultation and compensation are relatively new issues of discussion in the respective political dialogues, which tend to focus on more pressing issues of national security like police violence and kidnappings. Finally, it was noted that, in recent years, the overall quality of the political dialogue had decreased significantly, and that, particularly under former president Guebuza, discussions on good governance and respect for human rights had become very difficult. Despite increasing criticism of 'domestic interference' by the Mozambican government however, the EU was valued by interviewees as a particularly vocal advocate for inclusive economic growth and human rights and many observers and CSOs continue to look at the EU to push for a rights-based approach in the country's management of extractive resources.

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<sup>1041</sup> Interviews in Maputo with donor officials, EU MS diplomats and EUD staff, 15-20 February 2016.

<sup>1042</sup> Bossuyt *et al.* above n. 999

#### IV. Overall Concluding Remarks

This report has presented two thought-provoking case studies as to the steps the EU has taken with regard to implementing human rights in its trade and development policies, and the steps that could yet be taken to ensure the strengthening of human rights in developing countries. It has explored the practical implementation of these policies targeted at addressing human rights challenges in particular industries. As assessed in D9.1, the EU has a variety of mechanisms to promote human rights, whether this be through focused development programmes, the prospect of negative conditionality, human rights dialogues or through, as introduced in the Bangladesh case study, the Sustainability Compact. The plethora of tools available to the EU to intensify human rights protection in third countries, in particular in the specific industries studied where it has a significant influence, points to the EU's leverage as a global human rights actor. However, in both case studies it has become evident that the EU remains vocal and well placed to raise human rights concerns but needs to more effectively translate its policies into actions, albeit recognising the complex political situations in both Bangladesh and Mozambique.

The case studies reveal a labyrinth of actors that interact with the EU in various ways in their engagement with the two governments, from grassroots CSOs to international organisations such as the ILO and transnational businesses profiting from low cost supply chains. Owing to the focus of the case studies in particular industries, there has been a delicate balance between commercial interests, which have helped to accelerate economic growth and upon which these countries have come to depend, and protecting human rights. In Bangladesh, it soon became clear that the Sustainability Compact, and the EU's engagement with all the actors involved in responding to the industrial disasters within the RMG industry, to a great extent interfered with the GVC and the way that businesses had operate. Business could no longer continue as usual. It placed an emphasis on sustainable supply chain management and a weight of expectation on the private initiatives such as the Accord. In the Mozambique case study, commercial interests are a prevalent concern. There, it is clear that a balance needs to be struck between, on the one hand, contributing to development assistance and inclusive and sustainable economic growth and, on the other hand, taking a commercial stake in Mozambique's economic growth. Reconciling commercial interests with the trade, development and human rights nexus in both case studies is particularly difficult. A further similarity is that the RMG industry in Bangladesh and the extractive industries in Mozambique eclipse other economic sectors in relation to political significance. Export diversification is, therefore, be needed in both countries.

EU engagement with the government in each case study has presented its own difficulties owing to their challenging political environments. In Bangladesh, engagement with the Government has been problematic due to lack of political will to address labour rights' issues. The role of the ILO, and thus the importance of the EU's relationship with the ILO, holds key importance in this regard. In the Mozambique case study, a major issue is how the EU has linked commercial and development interests and the impact this would have on engagement with the Mozambican government, more specifically, how it decides to substantiate its political dialogue. Overall, interviewees from donor agencies supported a plea for pragmatism, and noted that, while the 'commercialization of aid' comes with a number of question marks, the situation in countries like Mozambique is changing in

such a manner that donors would increasingly have to use their economic leverage in terms of FDI and commercial activity in order to remain politically relevant.<sup>1043</sup>

Further features of similarity between both case studies concern the importance of the EU's support for civil society. This was perceived in both studies as an increasingly important vehicle to serve the EU's normative agenda on human rights. In Bangladesh, support for civil society through thematic programmes is paramount to combating the narrow civil society space, and civil society support is also necessary to provide EU backing to grassroots trade unions, particularly owing to the difficulties trade unions face. This was therefore identified as an area in which the EU must continue to engage and facilitate space for civil society to act. In Mozambique, the EU's support for independent watch dogs and civil society is crucial. As such, the EU and its Member States are expected to ramp up their support to NGOs and civil society to strengthen a domestic system of checks and balances in order to scrutinise Government policy, particularly in relation to budgetary planning, the generation of natural resource revenues, as well as to promote and protect land rights and adequate consultation procedures for local communities.

Policy suggestions were given in the concluding remarks of the Bangladesh case study with regard to ensuring strong continuing EU support for human rights within Bangladesh through engagement but not ultimately ruling out the sanction of withdrawing trade preferences. Within Mozambique, the most direct way for the EU to raise human rights concerns vis-à-vis the Mozambican government is through its various platforms for political dialogue. Based on interviews with both Member State diplomats and EU officials, we conclude that these dialogues have discussed extractive-related human rights concerns in a rather limited manner, yet this is likely to change as extractive developments pick up steam. Despite increasing criticism of 'domestic interference' by the Mozambican government, however, the EU was valued by interviewees as a particularly vocal advocate for inclusive economic growth and human rights and many observers and CSOs continue to look at the EU to push for a rights-based approach in the country's management of extractive resources.

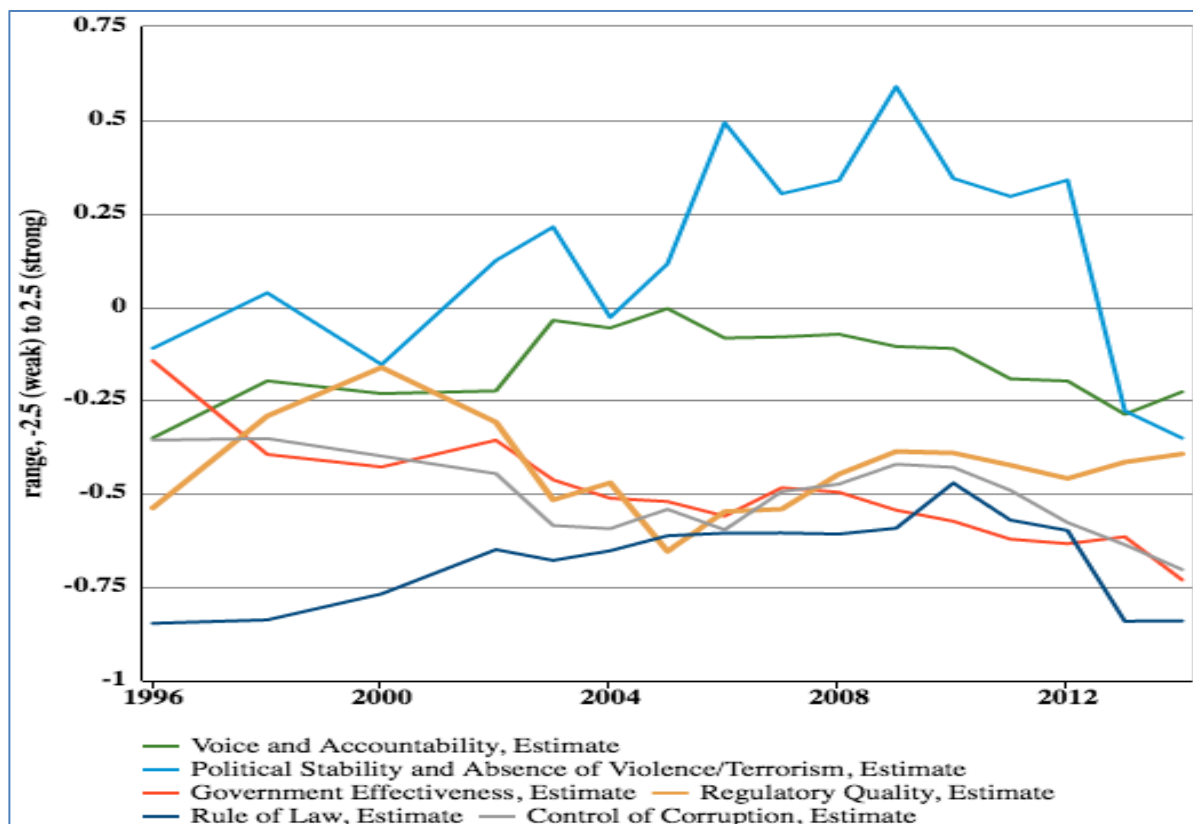
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<sup>1043</sup> Interviews in Maputo with donor officials, EU MS diplomats and EUD staff, 15-20 February 2016.





### Annex 2. World Bank Governance Indicators (1996-2014)



Source: World Bank, 'Worldwide Governance Indicators, 2015' (2015).

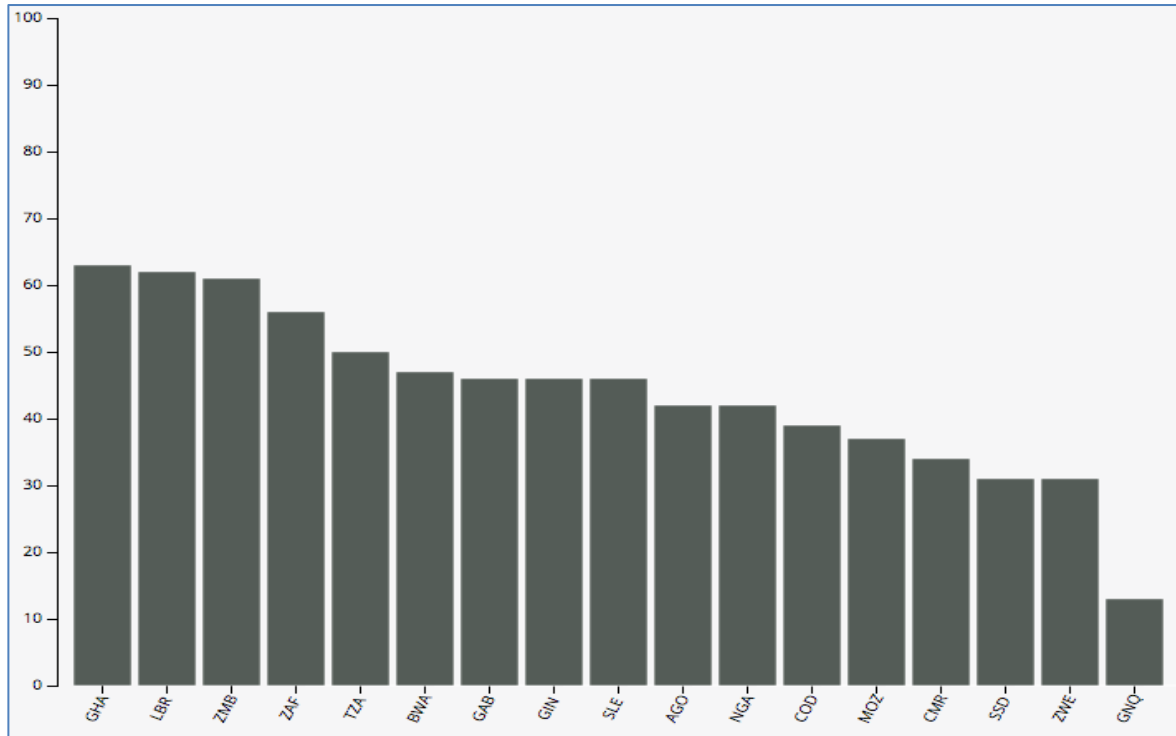
### Annex 3. Ibrahim Index of African Governance

SAFETY & RULE OF LAW				SUSTAINABLE ECONOMIC OPPORTUNITY			
	SCORE/100	AFRICAN AVERAGE	RANK/54		SCORE/100	AFRICAN AVERAGE	RANK/54
RULE OF LAW	50.6	50.8	29	PUBLIC MANAGEMENT	56.6	46.0	12
ACCOUNTABILITY	31.6	35.5	33	BUSINESS ENVIRONMENT	39.4	40.7	30
PERSONAL SAFETY	48.9	44.0	25	INFRASTRUCTURE	28.0	36.5	34
NATIONAL SECURITY	85.0	74.8	20	RURAL SECTOR	57.4	50.5	18
PARTICIPATION & HUMAN RIGHTS				HUMAN DEVELOPMENT			
	SCORE/100	AFRICAN AVERAGE	RANK/54		SCORE/100	AFRICAN AVERAGE	RANK/54
PARTICIPATION	59.2	45.9	21	WELFARE	50.6	50.9	30
RIGHTS	56.1	47.3	19	EDUCATION	32.2	48.8	47
GENDER	64.5	54.8	16	HEALTH	66.6	69.9	34



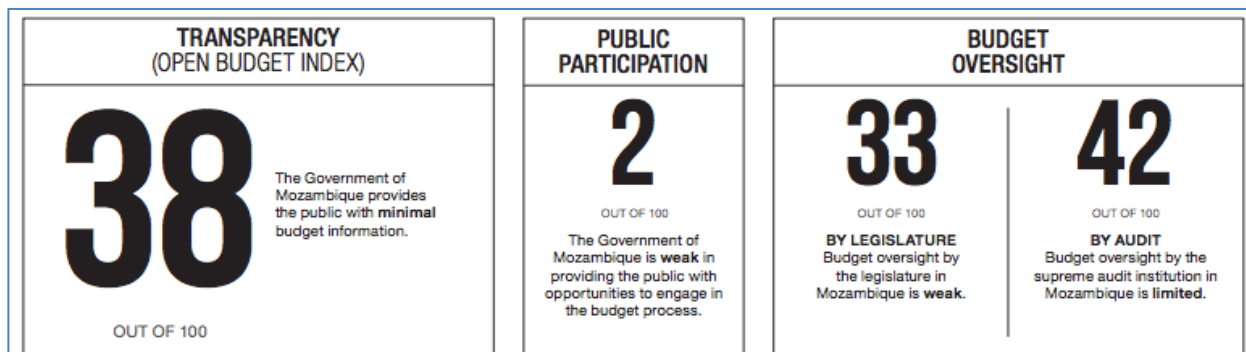
Source: Mo Ibrahim Foundation, 'Ibrahim Index of African Governance. Country Insights: Mozambique' (2015).

**Annex 4. Resource Governance Index**

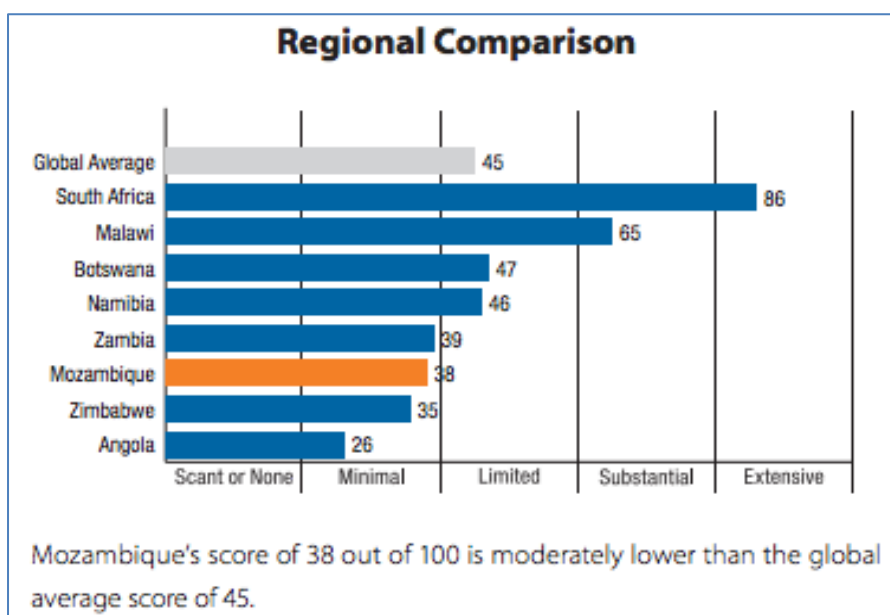


Source: National Resource Governance Institute, 'Resource Governance Index: data tool' (2015).

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Source: International Budget Partnership, ‘Open Budget Survey 2015 – Country Summary’ (2015).



Source: International Budget Partnership, ‘Open Budget Survey 2015 – Country Summary’ (2015).

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