AN EVALUATION OF THE BANGLADESH SUSTAINABILITY COMPACT
MARCH 2015 UPDATE

On 24 April 2015, the world will mark the two year anniversary of the Rana Plaza building collapse – one of the worst industrial disasters in history. The global unions acknowledge that some progress has been made in the nearly two years since then, particularly as to the registration of new trade unions in the RMG sector and fire and building safety inspections. However, the latter was almost entirely the result of private initiatives, not the government. Much remains to be done by the Government of Bangladesh (GOB) and the garment industry, not only as to fire and building safety but basic respect for the law – both national and international labour standards. It remains extremely difficult for workers to exercise their fundamental labour rights in Bangladesh. The inability of many workers to organize and form unions without retaliation and to bargain collectively over the terms and conditions of work means that gains today in building and fire safety and other conditions of work will not be sustainable, leading to certain future tragedies. The brutal attack of garment union leaders at Azim Group factories in late 2014 (discussed below), which was directed by company managers, is only the latest such example.

In our view, a severe climate of anti-union violence and impunity prevails in Bangladesh's garment industry. The violence is frequently directed by factory management. The GOB has made no serious effort to bring anyone involved to account for these crimes.

On 8 July, 2014, the EU issued its Technical Progress Report of the Bangladesh Sustainability Compact.[1] On 20 October 2014, the ILO and several governments issued an Outcome Document, which serves as an assessment of progress to date on the Sustainability Compact.[2] While we were pleased to see that the Outcome Document reflected many of our observations and criticisms, it was overly generous as to the "progress" made to date by the GOB and employers. **In particular, we believe that the EU is not doing nearly enough to ensure compliance with the terms of the Sustainability Compact.** The EU has considerable trade leverage under the GSP which it is failing to use. While we are not now advocating that the EU withdraw the trade preferences (in whole or in part), it **must** apply more pressure on the government urgently to address the very serious violations which are occurring in Bangladesh, and which are in clear breach of the ILO standards incorporated into the EU GSP scheme.

We are also deeply concerned by the attitude towards workers exhibited by government representatives when they are away from the spotlight of international conferences. For example, at a December 2014 Dhaka Apparel Summit, organized by BGMEA, Prime Minister Sheikh Hasina warned that domestic and foreign critics of the working conditions in Bangladesh were engaged in "conspiracy" against the RMG sector. Unions and other labour activists understood the remarks as directed at them. This follows the June 2014 remarks of Commerce Minister Tofail Ahmed who lashed out at trade unions for allegedly having provided information

[1] Available at http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152657.pdf
[2] Available at http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152853.pdf

critical of the labour situation in Bangladesh to foreign governments. He warned that, "We should contemplate steps against them (the complainants)."[3] The GOB would do better in actually addressing the problems than threatening those who bring the many serious violations of workers' rights to light.

This revised document provides our updated assessment of what the GOB still needs to do to comply with the Sustainability Compact. As explained below, the GOB has failed in many respects to comply with the terms of that Compact, despite the substantial financial and technical support of a number of foreign governments and the ILO. In our view, a combination of a serious lack of political will, failure of intra-governmental coordination, high levels of corruption and the extraordinary dominance of the garment industry (and others) in government institutions have meant that the hoped-for responses to the catastrophes of 2012-13 have been limited.

There are also several issues that fall outside the formal scope of the Sustainability Compact, but which are deeply troubling and again raise question as to the government's and employers' commitment to progress. We outline those concerns following the evaluation of the Sustainability Compact in Annex 1.

The most notable is the failure to fully fund the Rana Plaza Compensation Fund. In 2013, the Rana Plaza Arrangement was established to compensate victims of the disaster and their families and was signed by representatives of the government, local garment manufacturers and international garment brands, local and international trade unions and international NGOs. The Arrangement's compensation scheme is based on ILO standards and the fund is chaired by the ILO. OECD member states have also endorsed the Arrangement.[4] The amount determined to cover the total costs of all claims was US$ 30 million. As of February 2015, the total amount raised by voluntary contributions is only $21 million, leaving $9 million outstanding.

As of 16 January 2015, all victims received their first 40% compensation payment. There is currently enough money in the Trust Fund to make the second 40% payment. Without the missing $9 million, however, the Trust Fund will not be able to meet the costs of the remaining 20%, meaning that victims will receive only 80% of what they are due. Furthermore, it will not be possible to pay the medical costs of those victims requiring long-term medical care, nor the supplementary payments ear-marked for deceased and injured workers whose compensation award fell below a minimum threshold.

Brands sourcing from Rana Plaza or having significant ties to Bangladesh, as well as the GOB and BGMEA, urgently need to ensure that the estimated $30 million is in the trust fund in the next few months in time to pay out agreed compensation by the second anniversary. Furthermore, failure to implement the Rana Plaza Arrangement will undermine the long-term goal of providing a permanent and sustainable system for compensating as described under the National Tripartite Plan of Action. In this plan, the GOB committed to setting up a permanent national workplace accident insurance scheme, effectively changing the landscape for future occupational health and safety issues in Bangladesh.

---

[3] BDNews24, *AL, BNP leaders working against RMG sector: Tofail*, 22 June 2014, available at http://bdnews24.com/bangladesh/2014/06/22/al-bnp-leaders-working-against-rmg-sector-tofail.

[4] http://www.government.nl/news/2014/06/30/oecd-ministers-victims-of-factory-collapse-in-bangladesh should-be-compensated.html

Pillar 1: Respect for Labour Rights

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.

Some amendments to the law were adopted in 2013. However, the revised Bangladesh Labour Act of 2013, while including some positive reforms, continues to fall well short of international standards with regard to freedom of association and collective bargaining, among others**.** As the ILO Committee of Experts stated in its 2014 annual report, "*A number of restrictions to workers' freedom of association rights which have been the subject of ILO concerns were not addressed by the amendments.*" In 2015, the Committee of Experts "*regret[ed] that no further amendments have been made to the BLA on certain fundamental matters.*" The Committee underscored "*the critical importance which it gives to freedom of association as a fundamental human and enabling right" and urged "that significant progress [] be made in the very near future to bring the legislation and practice into conformity with the Convention on all of the abovementioned points*."

Annex II of this document sets forth an ITUC assessment of the 2013 BLA amendments in light of ILO Committee of Experts' comments on Conventions 87 and 98. Indeed, the lack of ambition in the July 2013 amendments prompted the signatories to the Sustainability Compact to insist on another round of amendments to the BLA. See Section "c" below. This demand was restated on p. 5 of the 20 October Outcome Document. Unfortunately, there is no indication that the GOB has any intention to enact additional reforms.

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.

The GOB has yet to issue the implementing rules and regulations for the BLA 2013 despite repeated promises to do so, including at the October 2014 Summit. Failure to issue these rules has put the transition to a sustainable garment industry in jeopardy. Key initiatives to foster a more mature industrial relations system, including the Better Work Programme and the training programme under the Bangladesh Accord, depend on the issuing of these rules and regulations. Further, the absence of the regulations is forestalling the establishment of factory-level safety committees - as much touted achievement under the 2013 law. Bizarrely, the GOB is proactively preventing workers and employers who want to establish their own safety committees, as required by the Bangladesh Accord, to do so, citing the absence of the regulations. The GOB has given absolutely no indication as to when these regulations may be finally promulgated. Further, the government has made no clear commitment that workers will be able to freely elect their representatives without interference under these rules.

c. 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).

As note in Section "a" above, the reforms passed in 2013 were limited (and in some cases worsened the law), as confirmed by the ILO Committee of Experts. Dozens of ILO observations were left wholly or partially unaddressed. These include the high minimum membership requirement, the limitations on the right to elect representatives in full freedom, numerous

limitations on the right to strike and broad administrative powers to cancel a union's registration, among others.

The reform most touted by the GOB concerns a previous requirement that the Labour Ministry turn over to the employer the list of the founders of the trade union submitted with the registration application. This is no longer required. However, we remain deeply concerned that employers will nevertheless get a copy of the list under the table and dismiss the founders. Indeed, anti-union discrimination remains a very serious and rapidly growing problem. As employers are no longer given the list by law, they are now able to fire union activists while feigning no knowledge that the workers filed an application to form a union.

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 Export Processing Zones (EPZs) employ roughly 400,000 workers who produce garments and footwear as well as a variety of other manufactured goods. In the EPZs, trade unions are banned and only worker welfare associations (WWAs) may be established. The WWAs do not have the same rights and privileges as trade unions. While the EPZ authorities claim that collective bargaining is permitted, it does not exist in practice. There are also numerous cases in which leaders of WWAs have been fired with impunity in retaliation for the exercise of their limited labour rights.

In July 2014, a new EPZ Labour Act was passed by the cabinet but has yet to be enacted by Parliament. However, Chapter IX of the proposed EPZ Labour Act continues to prohibit workers to form unions in the EPZs. As before, they may only form WWA as a means to engage in industrial relations. Further, the proposed law maintains the ban (at Section 179) on WWAs contacting any non-governmental organizations, isolating the workers from outside assistance.

The administration of EPZs remains vested with the General Manager the Bangladesh Export Processing Zones Authority (BEPZA), including labour inspection and enforcement. In June 2014, the ILO Committee on the Application of Standards, in its supervision of Bangladesh under ILO Convention 81 (Labour Inspection) made clear that, "The Government should prioritize the amendments to the legislation governing EPZs, so as to bring the EPZs within the purview of the labour inspectorate." Under the draft EPZ Labour Act, labour inspectors will continue to have no authority within the EPZs.

The proposed EPZ Labour Act would establish EPZ Labour Courts and an EPZ Labour Appellate Tribunal. However, the powers and functions of the EPZ Labour Courts and EPZ Labour Appellate Tribunal are severely restricted compared to the general Labour Courts and Labour Appellate Tribunal constituted under the Bangladesh Labour Act. Our initial concerns include:

1. In an individual case, the draft EPZ Labour Act does not permit an appeal to the EPZ Labour Appellate Tribunal. This is available under the BLA 2013.
2. A worker who is separated employment is not entitled to file a case in the EPZ Labour Court for reinstatement. This is available under BLA.
3. A worker cannot file a criminal case against an employer under the draft EPZ Labour Act without the permission of the BEPZA Executive Chairman, who will likely never authorize

such cases. This will prevent aggrieved workers from filing cases against the employers, particularly unfair labour practice, which are punishable under the draft Act. No such permission is required under the BLA.

BEPZA, with the previous approval of the government, is empowered to make regulations for the implementation of the EPZ Act. Enforcement of a number of provisions will depend on the details of the rules and regulations that the government and BEPZA is expected to prepare. We are deeply concerned that workers will have no means to contribute to the elaboration of these rules and regulations. At the same time, we note that the government and BEPZA had failed to promulgate any rules or regulations under the EPZ laws of 2004 and 2010. As a result, key provisions of those laws, including the ability of WWAs to form federations in their respective zones, never entered into force.

Finally, we note that under the draft EPZ Labour Law, workers will receive no compensation for dismissal from service and no severance pay on resignation. Further, workers in the EPZs are excluded from the profit participation legislation, which requires a company to distribute 5% of its yearly net profits amongst its employees every year (or the government-constituted central fund funded by contributions from employers and buyers in the export oriented sector). Workers outside of the EPZs are entitled to both of these forms of compensation as well as the profit participation schemes.

In 2015, the Committee of Experts urged the government "*to carry out full consultations with the workers' and employers' organizations in the country with a view to elaborating new legislation for the EPZs which is fully in conformity with the provisions of the Convention*."

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.

As explained above, this process is jeopardized because of the failure of the GOB to issue the rules and regulations underpinning the BLA 2013.

f. Achieving eligibility for the Better Work Programme… in order to improve compliance with labour standards and to promote competitiveness in global supply chains in the RMG and knitwear industry... 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.

Eligibility for Better Work rests largely on passing the 2013 reforms to the Labour Act, enacting the implementing regulations, registering unions in the RMG sector and addressing the rampant anti-union discrimination. As yet, Better Work has been unable to commence as the GOB has failed to comply with the pre-requisites.

Labour Law: As mentioned in Section "a" above, the 2013 reforms were passed, but were very limited.

Regulations: See Section "b" above. The government has not yet promulgated new rules and regulations.

Union Registrations: This is one area of progress. Many new, independent unions have been registered in Bangladesh - 275 since 2013. This is welcome news, as its signals a reversal of the long-held policy of the GOB to reject out of hand the registration of unions in the RMG sector. However, there is still much room to grow, as the newly-registered unions only represent a small fraction of a workforce of over 4 million, mostly women, in the RMG sector. Further, roughly 30 of those 275 unions have been busted and another 30 have been dissolved due factory closures.

Despite the positive trends on registration, many applications are being rejected. According to the Solidarity Centre, the rejection rate has in fact increased. In 2014, 66 applications (26% of all applications filed) were rejected, while 25 (18% of all applications) were rejected in 2013 (based on information provided by garment unions). A substantial number or registration applications remain pending well past the 60 day limit. Unfortunately, the GOB has made little progress on creating a database to track the status and final outcome of union registrations, hampering access to complete information.

The approval of a union's application remains at the JDL's absolute discretion, allowing the JDL to reject legitimate union registration applications. In several cases, the JDL has rejected applications even after unions have corrected applications per JDL's instructions. In other cases, the JDL has refused registrations for reasons that are wholly outside the scope of the regulations. Too often, rejections are based on shoddy inspections. We have also learned that the JDL is being ordered to reject all future applications of NGWF, BGIWF and BIGUF, three independent garment federations, because of their links with international organizations.

There is also growing concern that employers are encouraging the formation of company unions in order to prevent being organized by worker-led trade unions. While most of the newly registered unions are legitimate and democratic, there is no question that yellow unions have been registered.

Union registration certificates are of little value if the there is no possibility to bargain collectively over wages and conditions of work. Without an agreement, such unions will lose the support of their members. There has been very little movement by RMG employers to bargain collectively when approached by trade unions with demands. At the same time, we have seen little action by the government to encourage bargaining – or to enforce the law when employers refuse to negotiate. Currently, only a handful of unions have collective bargaining agreements with factory management.

Anti-Union Discrimination: There is a continuing lack of commitment to the rule of law, particularly with regard to anti-union discrimination. At all levels, law enforcement is almost nowhere in evidence. The leaders of many of these newly registered unions have suffered retaliation, sometimes violent, by management or their agents. Some union leaders have been brutally beaten and hospitalized as a result. Entire executive boards have been sacked. The response by the labour inspectorate has been very slow to date, and most union leaders or members illegally fired for trade union activity have not yet been reinstated, nor have the employers been punished for these egregious violations. **We are aware of serious acts of anti-union in over 45 factories where new trade unions have been registered.**

As reported by the New York Times[5], union activists at some Azim Group (with 24 factories and roughly 27,000 workers) have been subject to brutal acts of anti-union violence at the hands of company thugs. On 10 November 2014, at Global Garments Factory Ltd, a closed-circuit camera recorded a female union leader being beaten while a male union leader was punched and chased off. Another female leader was pushed out of a factory door and attacked out of the range of the camera. The beating occurred after management fired 15 union leaders and activists. Azim initially refused to meet with BIGUF, the federation to which the unions were affiliated. In a later meeting with government and industry officials, rather than committing to investigate the matter, the officials yelled at BIGUF representatives and accused them of attempting to destroy the industry. Investigations by the Workers' Rights Consortium and the VF Corporation both found that the attacks had been ordered by factory management. The union was pressured into a settlement after being harassed by the National Security Intelligence and the notorious Rapid Action Battalion – which has been linked to grave human rights abuses. In the end, an agreement was reached including the reinstatement of leaders, medical expenses paid to injured workers and for the company to follow the law.

It is important to understand that this settlement was not the result of the legal process at work but because the case made the headlines of the New York Times and the subsequent pressure of foreign buyers who are client to the Azim Group. Absent global pressure, this case would not have been resolved.

Earlier, on 26 August, the acting union president at Global Trousers Ltd. (also of Azim Group) in Chittagong and her husband were beaten as they waited for the bus to take them home after work. They were assaulted by several men armed with iron rods and whose faces were hidden by handkerchiefs. She was knocked unconscious following a blow to the head, and her husband, who rushed to help her, also suffered a beating. After the attack, the president was rushed to a local hospital in critical condition. The couple report that a low-level manager pointed out to the union president to their attackers, and that the men shouted throughout the assault that they would kill the pair unless they resigned from the trade union and left the factory. Days earlier, workers said a group of men with knives were waiting for the union president outside the factory gates, though a change in her routine kept them from carrying out their plan.

Of course, workers outside of Azim Group factories are also targets of anti-union violence. More than 60 workers at the Raaj RMG Washing Plant had been fired since late April and at least one union leader has been physically assaulted. The union, which was officially registered in January, says that the retaliation escalated once the union made a request to management in March for collective bargaining. At the East West Industrial Park, which operates 11 factories in a large manufacturing complex outside Dhaka, more than a dozen garment union leaders were physically attacked or threatened with violence and even death in May 2014. These leaders, fearing for their safety, left their homes and could not return to work.

In yet another case, Munirizzaman Shikder Monir, President of Valuka Sub-District Committee of the NGWF was kidnapped and tortured on 21 May 2014 in broad daylight by armed thugs, who were agents of garment factory owners. They also ransacked the local office of NGWF and burglarized Monir's residence.

[5] Steven Greenhouse, *Union Leaders Attacked at Bangladesh Garment Factories, Investigations Show*, NY Times, Dec 22, 2014.

The Solidarity Centre has tracked 25 cases where workers filed complaints concerning anti-union discrimination with the JDL. Of those 25 cases, the JDL has responded to **only three** of them – filing two unfair labour practice charges and one criminal charge. It is unclear whether any sanctions were ever imposed for any of these violations.

Further, we note that it has been nearly three years since the murder of Aminul Islam on 4 April 2012. Strong evidence indicates that Aminul Islam was targeted for his work as a labour organizer and human rights advocate and that the perpetrators of this crime include members of the government security apparatus. We are extremely disappointed that, two years later, so little progress has been made and no one has yet been held accountable. The GOB must reopen the investigation and ensure that all of the perpetrators are identified, charged and brought to justice.

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.

While new inspectors have been recruited, the government failed to reach its goal of 200 by the end of 2013 and indeed still has yet to reach by the end of 2014. We also note that there were already numerous vacancies in existing posts that needed to be backfilled. We understand that there is a plan to hire the remainder of the newly authorized inspectors this year. The need for additional inspectors is extremely critical and the numerous delays call into question the government's sense of urgency, and ultimately their commitment to build up a proper labour inspection service. Indeed, even with the additional 200 labour inspectors, the cadre of inspectors will still be far below what is necessary to supervise an industry of 4 million workers (let alone outside of the RMG sector where the majority of Bangladeshi workers are employed).

Adding to the deficit of inspectors is the fact that labour inspectors don't have power to penalize labour law violators but can only report the violation to the courts. The fines available under the BLA remain negligible. Under the 2013 amendments, fines for obstructing a labour inspector from carrying out his or her duties rose from 5,000 to 25,000 taka - a mere $325 dollars. Penal sanctions are available in some cases, up to 6 months. However, fines for violations generally still remain far too low to be dissuasive and are not enforced due to lengthy and corrupt legal processes. Transportation for inspectors is limited or non-existent. Many inspectors rely on public transportation to get to factories in the absence of dedicated agency vehicles. This may prevent the timely inspection of a factory and opens the door for employers to corrupt the inspectors.

Neither the Directorate of Labour nor the DIFE has legal staff. The Ministry of Labour appears alone among government agencies in this regard. Factories often hire experienced lawyers to fight charges, quickly overwhelming the under-resourced inspectors and investigators and causing violations not to be enforced.

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.

Reporting on labour inspection is infrequent and incomplete. In the RMG sector, where factories are being inspected by a combination of public and private initiatives, transparency on factory inspections leaves much to be desired. The Department of Inspection for Factories and Establishment (DIFE) has established an RMG Sector Database which includes factory names, addresses, owner name, number of workers, and the number of inspections completed by initiative. The Bangladesh University of Engineering and Technology has started uploading inspection reports on the small portion of factories already inspected under the national effort. However, the database includes no more other substantive content, such as violations identified, fines and sanctions administered, factories closed or relocated or violations remediated. Only the private initiatives have published any factory reports, and so far only the Accord has published them in English and Bangla together with photos on its website, whereas the Alliance and BUET omit such details. The translation in Bangla and the photos are crucial for workers to understand the otherwise highly technical reports.

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.

The ILO has developed a technical assistance project to support 5 activities from the National Tripartite Plan of Action on Fire Safety and Structural Integrity. Item "I" under the Compact is the 4th component of the ILO RMG project. To date, over 1,500 persons have visited the Coordination Cell on Rehabilitation of Victims of Rana Plaza, which has been operational in Savar since 7 November 2013. A helpline has been operational since 25 November 2013. A needs assessment among 1,509 victims of Rana Plaza, of whom 546 persons were considered permanently or temporarily disabled, was completed by November 2013. The assessment showed that 92% of the respondents were not working and did not have a regular income. 63% cited physical weakness as the reason for not working. In the last quarter of 2013, the first group 50 of injured workers received skills training and support for re-employment and self-employment through a joint initiative between the ILO and BRAC. A further 250 disabled workers have started receiving similar assistance since May through ActionAid.

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 ILO has undertaken a diagnostic study of the Labour Inspection System and is now implementing an action plan based on that diagnosis.

Pillar 2: Structural Integrity of Buildings and Occupational Safety and Health

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.

Implementation of the National Tripartite Plan of Action (NAP) is proceeding very slowly. As of January 2015, most, if not all, milestones in the plan remain missed or substantially delayed, with little to show or prospects to achieve this in the near future. The absence of consolidated public and transparent reporting of progress under the NAP contributes to the lack of accountability on progress. Some notable problems include:

Inspections: As noted in 1.g, the government has missed the deadline to recruit factory inspectors. Further, even when factories are inspected, we do not see evidence that inspectors have regularly undertaken the necessary corrective follow-up inspections in fire and building safety and labour rights (including publishing inspections in the DIFE database as mentioned see also 1.h and 2.c). This is crucial in order to obtain tangible and sustainable improvements.

Law: While the Labour Act introduced a new, factory-level institution, namely OHS committees, the effective establishment of these institutions are dependent on agreed rules and regulations and the guidelines on how these can function. As noted in 1.b, these rules have not yet been adopted. As these rules, regulations and guidelines are crucial for the effective implementation of the Accord, their continued absence poses significant problems.

Compensation: Finally, the NAP calls for the development of effective compensation schemes for those who were killed or injured. The Rana Plaza Arrangement, described below in 3.b, provides a single, agreed form of remedy which includes all stakeholders, including the government of Bangladesh, the BGMEA and local unions (overlapping with the signatories of the NAP). However, the Rana Plaza trust fund has at this point received an off-set of the payments made to victims by the Prime Minister Relief and Welfare Fund. However, the fund has not received any direct contribution from the Bangladesh government or the BGMEA. Whereas the NAP only makes reference to a protocol on compensation, there has not been any other tri-partite instrument developed other than the Arrangement. It is crucial that both the government and the BGMEA commit financially and/or integrate past efforts under the single scheme involving the tri-partite constituents. Given that the Arrangement is based on ILO Convention 121, it does constitute a prototype for the establishment of a national workplace accident insurance scheme. Failure to undertake the necessary fundraising limits its credibility to national actors and hence reduces significantly as well future efforts to build a national workplace accident insurance scheme based on ILO Convention 121.

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.

The inspection of export-oriented RMG and knitwear factories has been divided among 2 private initiatives (Accord and Alliance) and the national effort under the NAP as agreed among the initiatives. Whereas both private initiatives have respectively inspected all factories under their remit (the Accord finding a staggering 52.000 safety issues), the national effort is reported to have inspected only 380 out of the remaining factories not covered by either private initiatives. Assuming that the "active factories" amount to 3500 (in contrast to the 5000 export licenses) and controlling for the overlap between both initiatives, this represents fewer than 20% of the factories covered under the national effort. Hence national effort has by far missed its 2014 goal as described within the Compact, and clearly additional capacity is needed.

Following the inspections, the most visible and controversial form of remediation is the temporary closure of so-called critical cases. A "critical findings" inspection is one where the engineers deem the factory unsafe for production and occupancy in its current state. For a factory to be closed, a review panel needs to be convened. While these closures are unpopular, they are aimed at preventing another Rana Plaza and are integral part of remediation of the factories with the highest risk. With only 2 submissions made under the national effort, it is uncertain many critically unsafe buildings remain.

Whereas the Accord has published its Quarterly Report, which indicates 700+ identified issues have been corrected and verified, there is very little evidence that other equally crucial remediation efforts are in process. Especially the financing of the remediation of the factories under the national effort (and to a lesser extent under the Alliance) is unclear. Given the resistance on these few critical closure cases, and the absence of a more comprehensive monitoring strategy on remediation under the national effort, it is assumed that few factories under the national effort will end up being brought up to code.

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.**

As mentioned under paragraph 1.h, the database is formally established and contains only inspection reports. The inspection reports by the two private initiatives are available on their respective websites, albeit in different forms. The Accord is the only one to publish these reports both in English and in Bangla together with photos.

Despite several reported cases of union busting and reprisal actions against workers identifying safety issues, no reports of labour rights violations or corrective actions (both fire and building safety as labour rights) are listed despite numerous documented cases as described under 1.f.

Pillar 3: Responsible Business Conduct

Pillar 3 of the Compact does not establish any obligations but rather takes note of various initiatives and encourages their further development. We comment here on two of the four points under Pillar 3.

b. **[The parties] welcome the fact that over 70 major fashion and retail brands sourcing RMG from Bangladesh have signed the Accord on Fire and Building Safety to coordinate their efforts to help improve safety in Bangladesh's factories which supply them. In this context, [the parties] encourage other companies, including SME's, 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.**

At present almost 200 fashion and retail brands have signed up to the Accord, a legally binding agreement which reflects genuine cooperation between labour and management and includes a

central role for independent worker representatives in its implementation. Binding arbitration, backed up by the courts of the home country of the company in question, is used to resolve disputes and enforce company commitments. While this number is unprecedented and contains a majority of European companies, a large number of brands and retailers based in Europe have still not signed up to the Accord. Many brands (mostly from the United States) created and joined the Alliance for Bangladesh Workers Safety, which is a unilateral corporate initiative, designed and governed by corporations with no involvement by independent worker representatives.

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.**

While the Accord and Alliance share a common standard on fire and building safety, normative standards for factory audits or other inspection regimes in Bangladesh are not yet unified. We understand, however, that the ILO is taking initial steps to facilitate this process.

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.

We take note of the fact that the EU is working to update the Code of Conduct for the textile sector. While we favour the EU adopting a framework to ensure that EU-based companies ensure that fundamental labour rights are respected in supply chains, we strongly caution against a label or code of conduct. Such initiatives, as the Rana Plaza disaster clearly illustrates, have proven ineffective at ensuring that rights are in fact respected. Rather, we need to look towards new mechanisms that provide stronger, legally binding tools that will ensure that rights are protected in law and respected in practice.

Annex I: Additional Concerns

1. **Regulating Unions out of the Telecom Sector**

Employees at Grameenphone, owned by Norwegian company Telenor, have spent the past two years struggling to gain recognition of a union to represent their interests. The Government has repeatedly denied the application on technicalities, frequently claiming information that had been included in the application was absent. After prolonged court proceedings, the Labour Appellate Court ordered the Director of Labour to register to union. However, the Government refused to issue formal recognition for the union. In that time, the company reneged on its promises and filed a writ with the High Court to stay the decision, which has since been granted. Now the government is seeking to include into the labour act regulations provisions that would frustrate Grameenphone union from being recognized, including a redefinition of the term worker to prohibit workers with any supervisory function to be eligible to join a union. Further, the proposed rules would declare mobile phones an essential public utility service, which would allow the GOB to intervene to limit or prevent strikes and demonstrations.

2. **Worst Forms of Child Labour in the Hazaribagh Leather Tanneries**

Toxic Tanneries documented that workers in many leather tanneries in Hazaribagh, including children as young as 11, become ill from exposure to hazardous chemicals and are injured in horrific workplace accidents. Despite legal requirements that tanneries treat their waste to prevent pollution, Bangladesh officials and others confirmed that not a single Hazaribagh tannery has an effluent treatment plant. As a result, the tanneries spew harmful chemicals into the air, water and soil. Local residents complain of various illnesses, such as fevers, skin diseases, respiratory problems, and diarrhoea that they link to tannery pollution. Much of the leather exported from Hazaribagh goes to EU countries. In the 2011-2012 financial year, Bangladesh exported $81 million worth of leather and leather goods (including footwear) to Italy, $52 million to Germany, and $22 million to Spain. The Hazaribagh tanneries provide 90-95 percent of Bangladesh's leather production, so it's beyond doubt that some of the leather from this enforcement-free zone is being sold in Europe as designer fashion items, shoes, or belts.

3. **Promises in Shrimp Sector Yet to Materialize**

In 2013, a Memorandum of Agreement was signed on “Promotion of ILO Core Labour Standards and the BLA 2006 in the Bangladesh Shrimp and Fish Processing Plants.” This agreement set forth steps to ensure freedom of association in the shrimp processing sector. However, there remain significant barriers to implementation - most critically the complete lack of progress in enforcing the labour reforms with respect to contract workers, who make up the majority of workers in the sector. Further, no steps have been taken to comply with the requirement of public reporting. This includes information on anti-union activities or other unfair labour practice complaints, labour inspections completed, factory information and locations, status of investigations, violations identified, fines and sanctions levied, remediation of violations, or the names of the lead inspectors. This lack of transparency makes it incredibly difficult to assess whether any progress has been made in implementation. The EU remains an important market for Bangladesh shrimp exports.

ANNEX II

Below is a chart comparing what the CEACR called for in 2013, and what was included in the Labour Act.

ILO EXPERTS' REPORT	**2013 LEGISLATION**
Repealing the provision requiring the Director of Labour to send the list of officers of a trade union to the employer (section 178(3))	**Done**
The law provides that a person may not be a member or officer of a union if not employed in the establishment (section 180(b). This is a problem in that leaders dismissed by the employer are unable to continue to lead the union, making it easy for the employer to eliminate union leadership. Also, trade unions should be able to elect their leaders in full freedom, including those not employed in the enterprise. The government initially offered the possibility of unions electing up to 20 per cent of the executive committee from "outside" the enterprise.	**Minimal,** the law provides only that in the case of the state owned industrial sector, unions may elect up to 10% who are not employed in the establishment. This would exclude the private sector, including the vast RMG. Section 202(KA) provides that the union (or employer), for the purposes of collective bargaining, may contact a specialist to assist in bargaining, though the qualifications remain troubling and could exclude highly qualified experts (though other problematic qualifications in prior drafts were removed). Further, if there is a dispute over the specialist, the parties can request the director of labour to resolve the dispute. It is not clear on what basis the union's choice of specialist can be challenged. Further, this provision doesn't overcome the issue actually raised by the CEACR with regard to Article 180(b).
– the need to repeal provisions excluding managerial and administrative employees from the right to establish workers' organizations (section 2(49) and (65) of the Labour Act) as well as new restrictions of the right to organize of firefighting staff, telex operators, fax operators and cipher assistants (exclusion from the provisions of the Act based on section 175). The Committee notes that the Government indicates that telex and fax operators are allowed to exercise their trade union rights.	**No action taken** on Article 2(49)(definition of employer). Article 2(65)(definition of worker) was changed from "*but does not include a person employed mainly in administrative or managerial capacity*" to "*but does not include <u>administrative, supervisory officer</u> or a person employed mainly in a managerial capacity*". This amendment **does not address** the ILO's concerns. Indeed, the exclusion of supervisory officers from the definition of worker means that a significant number of workers will be removed from the ambit of the Labour Act. **No action taken on Section 175**
– the need to either amend section 1(4) or adopt new legislation so as to ensure that the workers excluded in relation to trade union rights from Chapters XIII and XIV of the Labour Act enjoy the right to organize. The Committee notes the Government's indication that sectors which have	**Minimal.** Section 1(4) contains a long list of sectors excluded from the law. The few changes include excluding only non-profit educational, training and research institutions from the law, whereas non-profit and for profit institutions were excluded. However, non-profit hospitals,

been excluded from the operation of the Act have been excluded in the interests of security, public administration and smooth environment and that the country is not in a position to amend section 1(4) considering the socio-economic, cultural and environment situation and practices;	clinics and diagnostic centres are newly excluded from the law. Farms of less than 5 workers remain excluded from the law, down from farms of less than 10. The problem remains that a significant number of workers are not covered by the Act.
– the need to repeal or amend new provisions which define as an unfair labour practice on the part of a worker or trade union an act aimed at "intimidating" any person to become, continue to be or cease to be a trade union member or officer, or "inducing" any person to cease to be a member or officer of a trade union by conferring or offering to confer any advantage, and the consequent penalty of imprisonment for such acts (sections 196(2)(a) and (b) and 291).	**No action taken**
– the need to repeal provisions which restrict membership in trade unions and participation in trade union elections of those workers who are currently employed in an establishment or group of establishments, including seafarers engaged in merchant shipping (sections 2(65), 175 and 185(2));	**No action taken**
– the need to repeal provisions which prevent workers from running for trade union office if they were previously convicted for compelling or attempting to compel the employer to sign a memorandum of settlement or to agree to any demand by using intimidation, pressure, threats, etc. (sections 196(2)(d) and 180(1)(a));	**No action taken**
the need to lower the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments for initial and continued union registration, as well as the possibility of deregistration if the membership falls below this number (sections 179(2) and 190(f));	**No action taken**
the need to repeal provisions which provide that no more than three trade unions shall be registered in any establishment or group of establishments (section 179(5))	**No action taken**
and that only one trade union of seafarers shall be registered (section 185(3));	**No action taken**
and the need to repeal provisions prohibiting workers from joining more than one trade union and the consequent penalty of imprisonment in case of violation of this prohibition (sections 193 and 300);	**No action taken**

– the need to modify section 179(1) which lists excessive requirements that must appear in the content of the constitution of a trade union in order for it to be entitled for registration;	**No action taken**
– the need to amend section 190(e) and (g) which provides that the registration of a trade union may be cancelled by the Director of Labour if the trade union committed any unfair labour practice or contravened any of the provisions of Chapter XIII of the Rules. The Committee considers that, while the decision of the Director of Labour can be appealed before the tribunal (section 191) which will have to apply the legislation in force, the criteria for dissolution are too broad and involve serious risks of interference by the authorities in the existence of trade unions;	**No action taken**
– the need to amend section 202(22) which provides that if any contesting trade union receives less than 10 per cent of the votes for the election of the collective bargaining agent, the registration of that union should be cancelled. The Committee considers that, while the 10 per cent requirement may not be deemed excessive for the certification of a collective bargaining agent, trade unions which do not gather 10 per cent of workers should not be deregistered and should be able to continue to represent their members (for instance, making representations on their behalf, including representing them in case of individual grievances);	**No action taken**
– the need to amend section 317(d), which empowers the Director of Labour to supervise the election of trade union executives, so as to allow organizations to freely elect their representatives;	**No action taken**
– the need to repeal provisions denying the right of unregistered unions to collect funds (section 192) upon penalty of imprisonment (section 299);	**No action taken**
– the need to modify section 184(1), which provides that workers engaged in any specialized and skilled trade, occupation or service in the field of civil aviation may form a trade union if such union is necessary for affiliation with an international organization in the same field, and section 184(4) which provides that the registration should be cancelled within six months if the trade union is not affiliated to the international organization concerned;	**No action taken**
– the need to amend sections 202(24)(c) and (e)	**No Action Taken**

and 204 which provide the collective bargaining agent in an establishment with some preferential rights (such as the right to declare a strike, to conduct cases on behalf of any individual worker or group of workers, and the right to check-off facilities), so that the distinction between a collective bargaining agent and other trade unions is limited to the recognition of certain preferential rights (for example, for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations), in order for the distinction not to have the effect of depriving those trade unions that are not recognized as being amongst the most representative of the essential means for defending the occupational interests of their members for organizing their administration and activities, and formulating their programmes;	
the need to lift several restrictions on the right to strike concerning --- the majority required to consent to a strike (sections 211(1) and 227 (c)); -- the prohibition of strikes which last more than 30 days (sections 211(3) and 227(c)); --- the possibility of prohibiting strikes at any time if a strike is considered prejudicial to the national interest (sections 211(3) and 227(c)) --- or if it involves certain services (sections 211(4) and 227(c)); --- the prohibition of strikes for a period of three years in certain establishments (sections 211(8) and 227(c)); --- the penalties (sections 196(2)(e), 291 and 294–296); --- and interference in trade union matters (section 229)); --- in the framework of settlement of industrial disputes;	**Issue unresolved.** The new law lowers threshold support on a vote to authorize a strike from 3/4 of all members to 2/3 of all members – which still violates C87 **No action taken** **No action taken** **No action taken** **No action taken** **No action taken** **No action taken**
– the need to amend section 183(1), which provides that in a group of establishments no more than one trade union can be formed, so as to allow workers in any establishment or group of establishments to form organizations of their own choosing;	**No action taken**

and the need to amend section 184(2) which provides that only one trade union can be formed in each trade, occupation or service in a civil aviation establishment and if at least half of the total number of workers concerned apply in writing for registration. The Committee considers that the existence of an organization in a specific enterprise, trade, establishment, economic category or occupation should not constitute an obstacle for the establishment of another organization; and	**No action taken**
– concerning the draft amendment, the need to modify section 200(1) of the draft amendments which provides that any five or more trade unions, registered in more than one administrative division and formed in establishments engaged, or carrying on, in a similar or identical industry may constitute a federation, so that: (1) the requirement of an excessively high minimum number of trade unions to establish a federation does not infringe the right of trade unions to establish and join federations of their own choosing; (2) workers have the right to establish federations of a broader occupational or inter-occupational coverage; and (3) trade unions should not need to belong to more than one administrative division in order to federate.	**No action taken.** The law actually increased the number of unions to form a federation, from 2 to 5, and required the constituent unions to be from more than one administrative division. Note that there are 7 administrative divisions. This would bar, for example, a federation of unions in Dhaka (where roughly a third of the population of 150 million Bangladeshi persons live). The law still prohibits federations with broader coverage than one occupation. The law was changed from: Registration of federation of trade unions: (1) Any two or more registered trade unions formed in establishments engaged, or carrying on, similar or identical industry may, if their respective general bodies so resolved, constitute a federation by executing an instrument of federation and apply for the registration of the federation: to Registration of federation of trade unions: (1) Any <u>five or more registered trade unions and trade union organization in more than one administrative division</u>, formed in establishments engaged, or carrying on, similar or identical industry may, if their respective general bodies so resolved, constitute a federation by executing an instrument of federation and apply for the registration of the federation:
The Committee noted that the Government stated, in this regard, that rule 10 of the IRR remains valid, and that – as its purpose was to maintain discipline in trade union administrations – it was not in favour of repealing the said provision. The Committee once again requests the Government to take the necessary measures to repeal rule 10 of the IRR	**No action taken**

or amend it so as to ensure that this provision granting the Registrar authority to supervise trade union internal affairs is in line with the principles mentioned above.	
The Committee had previously noted that the Labour Act 2006 did not contain a prohibition of acts of interference designed to promote the establishment of workers 'organizations under the domination of employers or their organizations, or to support workers' organizations by financial or other means with the object of placing them under the control of employers or their organizations, and had requested the Government to indicate the measures taken to adopt such a prohibition. The Committee noted the Government's indication that protective measures are laid down in the Labour Act, particularly in sections 195 and 196 concerning "unfair labour practice on the part of the employer", and that such act by the employer is an offence punishable under section 291 of the Labour Act, which provides for a prison term which may extend to two years or with a fine of up to 10,000 Bangladeshi taka (BDT), or both. The Committee notes that amendments to the Labour Act have been submitted to the Tripartite Consultative Council (TCC) on 9 February 2012. It notes that the proposed amendments do not seem to contain comprehensive prohibition that covers acts of financial control of trade unions or trade union leaders, as well as acts of interference in internal trade union affairs. *The Committee hopes that such a prohibition will be included in the amendments and once again requests the Government to send the latest draft amendments and to provide information on developments in this regard, including on the enactment of the proposed provisions and any complaints filed under them.*	**No action taken**
The Committee once again requests the Government to amend sections 202 and 203 of the Labour Act, 2006, in order to provide clearly that collective bargaining is possible at the industry, sector and national levels. The Committee once again requests the Government to provide statistics on the number of collective agreements concluded at the industry, sector and national levels respectively in its next report.	**No Action Taken**