

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)
INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS
REPORT FOR THE WORLD TRADE ORGANIZATION (WTO) GENERAL
COUNCIL REVIEW OF THE TRADE POLICIES OF BANGLADESH
(Geneva, 3 and 5 April 2019)

EXECUTIVE SUMMARY

The Government of Bangladesh (GoB) has failed to observe internationally recognised core labour standards, contrary to the commitment expressed by the WTO Members in the Ministerial Declarations signed in Singapore and in Doha. The GoB has failed to take adequate measures to guarantee freedom of association and collective bargaining, freedom from forced or compulsory labour and freedom from discrimination in employment and occupation.

The ITUC represents 207 million workers in 163 countries. The primary mission of the ITUC and its affiliates is the promotion and protection of workers' rights and interests.

This report exposes that Bangladesh has committed serious and systematic violations of fundamental rights at work. Conditions of work are unsafe for millions of workers in Bangladesh. Labour laws create significant obstacles to the exercise of the right to freedom of association and the right to bargain collectively. Furthermore, the government has not effectively enforced its legislation, and workers' complaints to authorities are routinely ignored. The situation is exacerbated by the lack of sufficient legal protection against forced or compulsory labour and against discrimination in recruitment and employment, and the absence of any specific policy measures targeting these fundamental labour abuses.

Since the last Trade Policy Review in 2012, Bangladesh's relevant laws and practice have been under the recurring scrutiny of the supervisory bodies of the ILO. The GoB has been given ample opportunity and significant support to enable it to improve the situation as regards compliance with international labour standards. As this document illustrates, progress remains elusive and, especially with regard to freedom of association and collective bargaining, the situation has deteriorated in the last years. We request that during Trade Policy Review in April 2019, Bangladesh be called upon to bring its laws and practices in line with its international obligations.

Introduction

The Singapore Ministerial Declaration and the Doha Ministerial Declaration¹ committed all WTO Member governments, including the GoB, to observe the internationally recognised core labour standards, adopted by the International Labour Organization (ILO).² The countries under review are bound to respect and promote fundamental principles and rights at work³ – regardless of their ratification of the relevant ILO Conventions.⁴

Bangladesh is member of the International Labour Organization (since 1972), and it has ratified seven out of eight core ILO Conventions. To this day, Bangladesh has not ratified the Minimum Age Convention, 1973 (No. 138) and the Protocol of 2014 to ILO Forced Labour Convention No. 29.

For the last 20 years, the workers' rights situation has been under near continuous review by the Committee of Experts on the Application of Conventions and Recommendations (CEACR). Since the last Trade Policy Review in 2012, Bangladesh's relevant laws and practice have been the subject of discussion by the Conference Committee on Application of Standards (CAS) in 2017, 2016, 2015 and 2013. These committees have all expressed concern regarding the serious and systematic violations of the right to freedom of association, to organise and to bargain collectively. In April 2016, an ILO high-level tripartite mission visited Bangladesh for several days and confirmed that the right to freedom of association and to bargain collectively is regularly violated in Bangladesh.⁵ In June 2016, the CAS took the extraordinary measure of including its conclusions on Bangladesh (under Convention 87) in a special paragraph of its report to the ILC.⁶ The ILO CEACR has also systematically requested the GoB to address violations in law and in practice with regard to the prohibition of forced labour and employment discrimination.

Section I of this submission analyses the failure to guarantee the right to freedom of association and collective bargaining. Section II addresses gaps in protection against forced or compulsory labour and labour trafficking. Section III reviews gaps in protection against discrimination in

¹ The 1996 Singapore Ministerial Declaration, para 4, and the 2001 Doha Ministerial Declaration, para 8.

² The eight ILO Fundamental Conventions are the following: the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); the Right to Organize and Collective Bargaining Convention, 1949 (No. 98); the Forced Labour Convention, 1930 (No. 29) supplemented by the Protocol of 2014; the Abolition of Forced Labour Convention, 1957 (No. 105); the [Equal Remuneration Convention, 1951 \(No. 100\)](#); the [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#); the [Minimum Age Convention, 1973 \(No. 138\)](#); and the [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#).

³ The fundamental principles and rights at work are the following: the freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

⁴ The [ILO Declaration on Fundamental Principles and Rights at Work](#), adopted in 1998 and the ILO Declaration on Social Justice for a Fair Globalization, adopted in 2008.

⁵ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_488339.pdf

⁶ http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3284577

employment and occupation and in guaranteeing gender equality. Section IV identifies key recommendations.

I. Freedom of association and collective bargaining

In February 2018, the ILO CEACR once again expressed its concern over serious violations of ILO Convention No. 87 on Freedom of Association and ILO Convention No. 98 on the Right to Organise and Collective Bargaining in both law and in practice.⁷ There has been no progress at all on cases of anti-union violence. The adoption of standard operating procedures (SOPs) for union registration and investigation of unfair labour practices has had no meaningful impact; indeed, the majority of union registration applications are still denied. The amendments to the Bangladesh Labour Act (BLA) and the EPZ Labour Act (ELA) still fail to address dozens of critical issues and remain very far out of compliance with international law and of little utility for Bangladeshi workers. In April 2018, the UN Committee on Economic, Social and Cultural Rights also stated its concern at the continuing discrimination, harassment and intimidation of trade unionists for their activities as well as the overly restrictive provisions of the BLA. The GoB was requested to review the BLA and other labour laws and regulations with a view to rationalising the procedures and requirements for trade union registration, particularly the minimum membership requirement, and removing overly restrictive provisions on trade union rights, including the right to strike.

1. Violations in law

Bangladesh' Labour Act (BLA)

The BLA contains a large number of provisions that are not in conformity with the ILO Conventions Nos. 87 and 98, including restrictions on organising, interference in trade union activities, interference in union elections, excessive restrictions on the right to strike, the need to promote collective bargaining above the enterprise level, among many others.

On 24 October 2018, the GoB passed amendments to the BLA but failed to address the vast majority of concerns related to freedom of association and collective bargaining. The vast majority of legal issues raised by the ILO Committee of Experts remain unaddressed (in whole or in part) and thus continue to violate the conventions.

The one amendment that the government has heralded as evidence of progress on freedom of association is the reduction of the minimum number of workers to establish a union at a factory from 30 per cent to 20 per cent of the workforce. However, as amended this still violates Convention 87. As a practical matter, particularly in large factories, it is difficult to imagine how several hundreds of workers could be organised and convened for a founding meeting as required by law in order to apply for and obtain registration. The BLA also reduces sanctions against workers, including for illegal strikes. While a step in the right direction, the fact that penal sanctions of up to six months (down from one year) remain in the law violates Convention 87. Penal sanctions are not to be imposed for illegal strikes unless violent. At the same time,

⁷ Observation (CEACR) - adopted 2017, published 107th ILC session (2018) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Bangladesh, available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3343756:NO

the BLA punishes workers by eliminating overtime pay for piece-rate workers, which will affect thousands of workers and significantly reduce their wages.

Export Processing Zones

The BLA does not apply to workers employed in EPZs, and labour inspectors are not permitted to conduct labour inspections in the zones. Under the EPZ Workers Welfare Association and Industrial Relations Act (EWWAIRA), the labour law, which applies in the zones, EPZ workers are prohibited from forming unions but instead may only form Workers Welfare Associations (WWAs). WWAs do not have the rights of trade unions, and, the ILO Committee of Experts has identified numerous provisions which violate Conventions 87 and 98. The terms and conditions of service for EPZ workers are regulated by the Instructions of the Bangladesh Export Processing Zones Authority (BEPZA), essentially eliminating any room for collective bargaining. EPZ workers also have little access to justice for labour violations due to ambiguities in the law. An amendment to the EPZ Labour law was passed in early 2019.

Despite the repeated observations of the ILO and the demands of trade unions, the new EPZ Law failed to address the vast majority of these concerns. Importantly, the new law continues to deny EPZ workers the right to form or join a union. As mentioned above, workers may only form Worker Welfare Associations (WWAs). The WWAs do not have the same rights of trade unions, including with regard to collective bargaining. WWAs are also still prohibited from maintaining any linkage with any NGOs or federations/unions outside of the EPZs. Unlike workers under the BLA, a worker in an EPZ does not have the legal right to file a case challenging illegal termination. The effective functioning of the new law is also heavily dependent on the framing of rules and regulations by the GoB and BEPZA respectively. It may be recalled that the GoB failed for 15 years to frame any rules under previous EPZ laws. Perhaps the one most significant change is that jurisdiction for labour inspection will transfer from BEPZA to the Department of Inspection for Factories and Establishment-DIFE (under BLA). However, the DIFE may only carry out inspection with the prior permission of the Executive Chairman of BEPZA – which could severely limit the ability of DIFE to conduct inspections in a timely and credible way. Further, without the hiring of additional inspectors, it is unclear how DIFE will be able to inspect a new sector with nearly half a million workers. Therefore, the amended law has made no progress in extending ILO fundamental labour rights to workers in EPZs.

2. Violations in practice

In addition to a wide range of legislative concerns, the ILO supervisory bodies as well as trade unions have specifically expressed alarm over serious and systematic violations of the right to freedom of association and to organise in practice.

Union registration procedures remain flawed

It remains challenging for independent unions to register with the Joint Director of Labour (JDL), especially in Narayanganj and Chittagong. Over the last eight years, roughly 45 per cent of all union registration applications have been denied. Little to no meaningful improvement has been observed since the GoB's adoption of standard operating procedures (SOPs) for union registration in 2017. The JDL still has significant discretion to register unions, and has rejected applications for specious reasons, or sometimes for no reason at all. Further,

the JDL does not usually respond according to the strict deadlines set forth in the law and the SOPs. When a reason is provided, the government has claimed, for example:

- applicants did not meet the minimum membership requirement of 30 per cent of the workplace to register a union, despite applications showing they met or exceeded the threshold (employers also manipulate the number of workers on wage sheets in order to thwart the union);
- signatures on union membership forms did not match those on salary sheets and other documents, despite the fact that variations in signatures is not evidence that the person is not a worker in the relevant workplace (indeed, many workers will switch between full signatures and initials, not realising that the variations will be used against them during the union application process);
- workers are not workers but supervisors, relying entirely on the employer's claim rather than on the reality of the employment relationship (a tactic used in the telecoms industry)

The JDL relies exclusively on the information provided by the employer and makes no effort to ascertain their accuracy or provide the union an opportunity to challenge the employer's claims.

Failure to enforce the law and provide workers a remedy

Lack of adequate government enforcement of labour laws and protection of workers' rights routinely results in violence against worker leaders and limited access to justice. In one Chittagong factory, management associates extorted, temporarily kidnapped and beat trade union leaders over the course of July, August and September for acting on behalf of their majority-membership independent union. (Specifically, the workers questioned management's automatic dues deduction from the wages of all workers paid to a minority employer-favoured union.) On 25 September, hundreds of workers took to the streets to protest the last brutal attack on several leaders of the independent trade union. Then, at a Dhaka factory in November, company security responded to theft allegations by severely beating one worker and kidnapping him for two days. His disappearance and false rumours of his death sparked a work stoppage of thousands of workers in his and neighbouring factories in Konabari district. In both cases, management negotiated temporary resolutions with the workers involved only after factory-wide worker protests occurred. Also, in both cases police failed to formally investigate or record complaints against the assailants and companies. The government has also reinstated criminal charges against eight labour activists for their alleged role in the Ashulia wage demonstrations in December 2016 in spite of assurances that the erroneous charges would be dropped.

Violence was reported in Gazipur where workers and industrial police interacted at one factory and limited vandalism was reported at another factory. In the public meetings and in direct communications with union leaders, the industrial police, local police authorities and Bangladesh Garment Manufacturers' and Exporters Association (BGMEA) leadership threatened trade union organisers and leaders with arrest, and in some cases physical disappearance, if factory workers continued unrest.

II. Forced labour and labour trafficking

Bangladesh does not meet the minimum standards for the elimination of trafficking. According to the 2018 US Trafficking in Persons Report, the judicial system convicted only one trafficker in 2017. Official complicity in trafficking crimes remained a serious problem, and the government did not report taking action against some credible allegations. While the GoB maintained labour export agreements with several countries intended to regulate recruitment fees, in practice workers continued to be subjected to excessive recruitment fees given the systematic failure to prosecute illegally operating recruitment sub-agents.⁸

Section 9 of the Human Trafficking Deterrence and Suppression Act, 2012, criminalises the use of forced or bonded labour with five to 12 years' imprisonment. However, the government has been unable to provide any credible information on the effective application of this provision in practice.

In 2017, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families expressed its concern over the living and working conditions of undocumented nationals of Myanmar working in Bangladesh, including their exposure to sexual and labour exploitation and forced labour.⁹ The government has not investigated any of these cases, or any other cases concerning forced labour.¹⁰

Moreover, the ILO has been urging the government to amend legislation punishing workers employed by the central government and in essential services with imprisonment for terminating their employment relation.¹¹ Statutory provisions preventing the termination of employment of indefinite duration are not compatible with ILO Convention No. 29 on Forced Labour as pointed out by the ILO Committee of Experts.

III. Non-discrimination

While section 345 of the BLA and rule 14 of the Minimum Wage Rules provide for the protection of the principle of equal remuneration for work of equal value between women and men, there remain serious gaps in legislation.¹² Constitutional provisions on non-discrimination are problematically not applicable in the private sector. Furthermore, the only explicit grounds for discrimination recognised in the legislation concern those based on sex but do not on other grounds protected by ILO Convention No. 111, i.e. race, colour, religion, political opinion, national extraction and social origin. In addition, large parts of the workforce, including agricultural and domestic workers, remain excluded from the little protection afforded under the BLA.

⁸ 2018 US Trafficking in Persons Report: Bangladesh, available at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282609.htm>

⁹ CMW/C/BGD/CO/1, paragraph 31, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CMW/C/BGD/CO/1&Lang=En

¹⁰ Observation (CEACR) - adopted 2017, published 107th ILC session (2018) [Forced Labour Convention, 1930 \(No. 29\)](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3338550:NO) - Bangladesh (Ratification: 1972), available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3338550:NO

¹¹ Ibidem.

¹² General Survey on the fundamental Conventions, 2012, paragraph 851.

While the government claims that labour inspectors are trained on non-discrimination related issues, the ILO Committee of Experts worryingly expressed its regret over the reduction of the number of labour inspectors recruited.

The average earnings of women in Bangladesh are estimated at around 64 per cent of those of men for the same amount of work.¹³ Even though the government has acknowledged that the gender pay gap is prevalent in the small and “irregular” economies, it is refusing to take any meaningful action to improve labour law enforcement, which it considers a threat to such jobs.¹⁴ This is deeply concerning given that around 92.3 per cent of women are employed in the informal economy.

¹³ Action Aid (2015) Close the Gap! The cost of inequality in women’s work”, available at: http://www.actionaid.org/sites/files/actionaid/close_the_gap_final_21.01.2015_0.pdf. Also: World Bank (2014) Gender at Work: A companion to the World Development Report on Jobs, and the World Bank Gender Data Portal. Both the 2008 ILO study “The gender wage gap in Bangladesh” and the findings of the 2007 wage survey carried out by the Bangladesh Bureau of Statistics show a wide and persistent gender pay gap.

¹⁴ Observation (CEACR) - adopted 2015, published 105th ILC session (2016) [Equal Remuneration Convention, 1951 \(No. 100\)](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3256250:NO) - Bangladesh (Ratification: 1998), available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3256250:NO

IV. Recommendations

The TPRM provides a tool for the WTO Member States to ensure economic development does not hamper respect for human rights and does not leave workers behind. Therefore, we request that during Trade Policy Review in April 2019, Bangladesh be called upon to take the following actions:

Freedom of association and collective bargaining:

- Bring the BLA, the BLR and the draft EPZ Labour Act in conformity with ILO Conventions Nos. 87 and 98 in line with the recommendations of the ILO supervisory bodies;
- Ensure the expeditious registration of trade unions by reducing the minimum threshold for registration and eliminating arbitrary discretions afforded to the Registrar;
- Investigate as a matter of urgency all acts of anti-union discrimination and violence;
- Ensure the reinstatement of those illegally dismissed, and impose dissuasive sanctions against those found responsible.

Forced or compulsory labour and labour trafficking:

- Ratify the Minimum Age Convention, 1973 (No. 138) and the Protocol of 2014 to ILO Forced Labour Convention No. 29;
- Effectively prevent and prosecute cases of forced labour and labour trafficking and provide protection and compensation to victims;
- Prohibit high recruitment fees and consistently address illegally operating recruitment sub-agents;
- Repeal legal provisions restricting freedom of workers to terminate employment.

Non-discrimination in employment and occupation and gender equality:

- Amend the BLA and BLR to include a prohibition of direct and indirect discrimination, on at least all the grounds enumerated in Article 1(1)(a) of the ILO Convention No. 111, with respect to all aspects of employment and occupation as defined in Article 1(3), and covering all categories of workers, including domestic workers;
- Enhance the capacity of labour inspectors to identify and address discrimination in employment and occupation and support workers in bringing complaints;
- Adopt specific legislation on sexual harassment combined with the national policy and action plan and provide workers with specific procedures and remedies;
- Adopt measures to address the gender pay gap in the formal and informal sector, including in small enterprises.