



ILO COMMITTEE OF EXPERTS' 2018 REPORT CONFIRMS - NO REAL PROGRESS IN BANGLADESH

In February 2018, the ILO Committee of Experts (the “Committee”) released its annual report on member states’ compliance with ratified conventions.¹ This includes much-anticipated observations with regard to the Government of Bangladesh’s (GOB) compliance with ILO Conventions 87 (freedom of association) and 98 (collective bargaining). As in several previous reports, the Committee expressed its concern over serious violations of the conventions in both law and in practice. As the report indicated, 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 have had *no meaningful impact*; indeed, the majority of union registration applications are still denied. The *proposals* to amend the Bangladesh Labour Act (BLA) and EPZ Labour Act *still fail to address* dozens of critical issues, meaning that even if the proposals adopted the laws would remain very far out of compliance with international law and of little utility for Bangladeshi workers. And despite the GOB’s simply incredible claims to the contrary, unfair labour practices continue apace without resolution.

Simply put, the GOB has failed its workers and the international community once again.

This intolerable situation continues despite the GOB’s long-overdue commitments under the Sustainability Compact of July 2013 and after firm warnings communicated by the European Commission to the GOB in 2017.² Indeed, in May 2017, the Commission set a firm deadline of August 2017, explaining:

¹ <http://www.ilo.org/ilc/ILCSessions/107/reports/reports-to-the-conference/lang--en/index.htm>

² See, Jeffrey S. Vogt, *The Bangladesh Sustainability Compact: An Effective Tool for Promoting Workers’ Rights?*, Politics and Governance, 2017, Volume 5, Issue 4, December 2017, online at <https://www.cogitatiopress.com/politicsandgovernance/article/view/1093/1093>

With regard to the preferences granted to Bangladesh under the EU's GSP Regulation, we would like to recall that Bangladesh needs demonstrate as a matter of urgency concrete and lasting measures are taken to ensure respect of fundamental human and labour rights. This will be essential for Bangladesh to remain eligible for the Everything but Arms regime.

However, the GOB has taken no meaningful progress to establish "concrete and lasting measures... to ensure respect of fundamental human and labour rights." This simply will not occur unless the GOB appreciates the *threat* of commercial losses resulting from its atrocious labour rights record. A formal investigation under the EU GSP programme is the most likely measure to motivate the GOB to undertake at long last the reforms the ILO has identified. If the EU does not commence an investigation under GSP, in the face of the mountain of evidence, it will be in our view as complicit in these serious violations as the GOB and garment manufacturers themselves.

Below is a summary of the key findings from the ILO Committee's 2018 report:

I. Trade Union Registration

With the exception of a very brief window of time after the Rana Plaza collapse, the GOB has rejected union registration applications at alarming rates, and often targeting the most active unions. Data compiled by NGOs have shown that in recent years a majority of registration applications filed by workers in the RMG sector were rejected for no valid reason. The GOB made much fanfare about the adoption of Standard Operating Procedures (SOPs) in early 2017, which were meant to eliminate abuses of discretion in the registration process. However, as the Committee notes, in 2017, with the adoption of the SOPs, **only 36% of registration applications submitted online were accepted** - an extraordinarily low number. This is an even lower approval rate than recorded by NGOs according to the information available to them. The proposed BLA amendments and the SOPs will do nothing to reduce the arbitrary power of the GOB to reject the registration application of unions, nor will they remove key obstacles that unions face in organizing (30% minimum) and submitting the registration application. We recall that the registration should not amount to previous authorization but rather be a simple, administrative process.

As the ILO stated, "[T]he Committee observes from the information provided by the Government that a mere 36 per cent of applications for registration submitted through the online registration system (291 out of 801) were accepted, whereas the status of the remaining 64 per cent is unclear, and that more than a third of the applications for registration available in the database on registration (62 out of 191) are marked as rejected without a clear indication as to the reasons."

The Committee also referred to the 2017 observations of the Committee on Freedom of Association, which noted *"the severe implications that the alleged recurrent*

practice of factory management to seek injunctive relief from the courts to stay union registrations that have been properly granted, thus freezing union activities for prolonged periods of time[.]” The Committee’s report does not indicate that the GOB is taking any measures to address this serious, and legally unfounded, interference in trade union activity.

The Committee concluded by calling on the GOB *“to continue to take all necessary measures to ensure that registration is a simple, objective and transparent process, which does not restrict the right of workers to establish organizations without previous authorization.”*

II. Anti-Union Discrimination

A. Anti-Union Violence

For years, the global labour movement has called attention to the numerous acts of violence aimed at workers and trade unionists, including murder, in response to union activity. The criminal acts are often committed by factory managers, hired thugs and police. However, the authorities have done nothing to investigate or prosecute those responsible. Indeed, even the high-profile murder of Aminul Islam remains unsolved. The Committee observed that the GOB failed to provide any information to indicate that it has investigated these crimes, much less hold anyone accountable. It is no surprise then that the Committee *“expresses deep concern at the continued violence and intimidation of workers and emphasizes in this regard that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations.”*

B. Anti-Union Dismissal

The Committee reported on statistics on anti-union discrimination received by the GOB, all of which strain credulity. The GOB reports that of a workforce of 58 million workers, and over 4 million just in the garment sector, there were only 112 complaints (civil and criminal) lodged from 2013 to 2017 concerning anti-union discrimination. Further, the GOB claims that all but 9 of them have been settled, including all cases in 2016. This is simply untrue; indeed, we are aware of dozens of cases from the same time period where the workers’ claims were never resolved.

As just one example, in 2013 three union leaders and 16 members of a union at Eagle Eyes Design Ltd. were terminated by management. The ILO raised this matter with the GOB for proper redress. The Dhaka JDL, after conducting an inquiry, filed an unfair labour practice case (BLA (Criminal) Case No. 231/2013) against the owner of the company in the Second Labour Court at Dhaka. The court during the hearing found that the JDL failed to disclose the date, time, place, mode and manner of occurrence of offence. The case was argued by an officer of the JDL office. Due to these defects in the case, which were the fault of the JDL, the court discharged the accused

employers from the case. The JDL did not file an appeal. Does the GOB count this case as one of its successes? Unfortunately, this is not an aberration. It instead points to the fact that the DOL/JDL and GOB do not seriously prosecute the offenders in the ULP cases.

Furthermore, many of the settlements are either the result of coercion by employers or the government where workers are forced to accept unfavourable terms. They do so, given that the legal process in Bangladesh is so lengthy and uncertain that it is best to take a bad settlement than endure years of litigation. It is thus unlikely that is “settled” cases, workers are getting anywhere near what is required as a remedy under law.

Finally, we note that the ULP database contains only partial information on less than half of the cases identified by the government. Indeed, the Committee explained that *“the Government did not indicate the particulars previously requested by the Committee in relation to the handling of complaints of anti-union discrimination and their follow-up in the labour inspectorate (time taken to resolve the disputes, remedies imposed, including the number of cases of reinstatement, the number of remedies accepted by the employers versus appealed to judicial proceedings, time taken for judicial proceedings and the percentage of cases where employers’ appeals succeeded, and sanctions ultimately imposed following full proceedings)... [even though] these elements are explicitly enumerated in the SOPs and should, according to the Government, form part of the online database.”* Without more data, we are simply asked to accept the GOB’s assertions - which is something we simply cannot do.

We also note that the cases concerning the crackdown on protestors in Ashulia in December 2016 are not resolved. Criminal charges are still pending against several union leaders, though it is clear that these charges are on their face wholly without merit. We also note that a communication from four UN special mandates was sent to the GOB concerning this case in 2017. The GOB has so far refused to respond to the UN’s letter on this and several other cases. With regard to the factories in Chittagong, it is important to note that the unions which signed off on the RMG TCC report are government-dominated unions which would have supported any conclusion reached by the employer and government. As such, the findings of the report are hardly credible.

Finally, we note the absurd claim by the GOB that there has never been a case of anti-union discrimination in the EPZs. As reported in the ITUC Survey on Violations of Trade Union Rights, in 2012, three garment factories locked out more than 6,600 employees in the Dhaka Export Processing Zone in Ashulia after they protested over unpaid wages and to demand a pay increase. Further, in 2016, the major Korean newspaper Hankyoreh published a lengthy expose (in English) on the widespread labour rights abuses in the Korea EPZ in Chittagong. It included an extensive report on a minimum

wage pay dispute, during which police fired on a crowd of protesting workers, killing one and injuring 10 others.³

III. Legislation and Regulation

A. Bangladesh Labour Act (BLA)

The Committee reported that *no amendments* to the BLA have yet been made, though the GOB has drafted a small number of proposals. Unfortunately, most of these proposed amendments either: 1) fail to address the concerns of the Committee, 2) fail to address those concerns adequately, or 3) make the law even worse.

1. *No Reform*

While noting the proposed amendments, the Committee enumerated a list related to dozens of articles of the BLA that still need revision. These include exclusions from the scope of the BLA, restrictions on organizing, 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, many others. The Committee concluded that, *“many of the changes it has been requesting for a number of years have either not been addressed or addressed only partially. In this regard, the Committee emphasizes once again the need to further review the BLA to ensure its conformity with the Convention[.]”*

2. *Inadequate Reform*

The BLA requires a minimum membership of 30% of the total workforce to form a union and to maintain its registration. The Committee has repeatedly called on the GOB to reduce that number. However, the GOB’s proposed amendment would reduce the minimum threshold by such a miniscule degree that it will make no practical difference, meaning that hundreds if not thousands of workers would still be necessary to form a union in large enterprises, including in the garment industry.⁴ The Committee stated that it, *“regrets that the proposed amendments do not respond to its longstanding concerns and notes with concern that the minor reduction in the minimum membership requirements proposed by the Government is not likely to have an impact on a large number of enterprises and thus would not, in any meaningful manner, contribute to the free establishment of workers’ organizations.”* Also, while the proposed amendments would reduce the prison sentence which may be imposed on a worker, including for an illegal strike, go-slow protest or participating in an unregistered trade union, **no penal sanctions** should be imposed

³ <http://www.hani.co.kr/interactive/bangla/english.html>

⁴ If there are less than 2,000 workers in an establishment, the requirement would remain 30 per cent; for enterprises with 2,001 to 5,000 workers it would be 27 per cent; 5,001 to 7,500 workers - 24 per cent; and 7,501 workers or more - 20 per cent.

for such activity. The Committee also noted that several classes of workers remain excluded from the scope of the BLA.

3. Worsening Reform

The Committee noted that one of the proposed amendments, to section 210(10)-(12), would enable a Conciliator to refer an industrial dispute to an arbitrator even if the parties do not agree. Compulsory arbitration is in general contrary to the Convention except in limited circumstances, such as the case of essential public services.

B. Bangladesh Labour Rules (BLR)

The Committee has identified numerous articles of the BLR that violate Conventions 87 and 98. However, the GOB has **failed to make any amendments** to the BLR. As such, the Committee explained that, *“In the absence of any changes made to the mentioned provisions and recalling that the Conference Committee called upon the Government to ensure that the Bangladesh Labour Rules are brought into conformity with the Convention, the Committee reiterates its previous request and expects that during the revision process of the BLR, which should involve the social partners, its comments will be duly taken into account.”*

C. Export Processing Zones Labour Act

The GOB has proposed a new EPZ Labour Act. As with the BLA, the proposal would still leave the law very far out of compliance with Conventions 87 and 98. The GOB excuses some of these flaws on workers, claiming that they do not want some of the rights to which they are entitled. However, this runs contrary to the information obtained by NGOs through surveys of workers in the EPZs. Indeed, we have serious doubts as to whether the alleged consultations were genuine and based on informed discussions with WWA leaders on the legal options available. The GOB also explains that foreign investors had discouraged some reforms, which is deeply troubling.

The Committee enumerated **over 30 issues** that would need to be revised even if the GOB's new draft were adopted. These key issues concern the exclusion of specific categories of workers from the law, excessive minimum membership requirement to create a WWA, the imposition of association monopoly at enterprise and industrial unit levels, interference in internal affairs by prohibiting expulsion of certain workers from a WWA, broad powers and interference of the Zone Authority in internal union affairs, broad definition of unfair labour practices, which also include participation in any WWA activities without permission from the employer and imposition of penal sanctions; excessive requirement to issue a strike notice; power of the Conciliator appointed by the Zone Authority to determine the validity of a strike notice; the possibility to prohibit strike or lockout after 30 days; lack of measures to remedy unfair labour practices, insufficiently dissuasive fines for unfair labour practices, a prohibition on WWAs maintaining linkages with NGOs, and many others.

Oddly, the GOB also claims that the EPZ Labour Act has been brought into line with the BLA, which is obviously untrue. Even if it were, the ILO has severely criticized the BLA as restricting the fundamental rights of workers. The claim also that workers have affirmatively stated a preference for the zone authorities to conduct inspections instead of labour authorities is an absurd and self-serving statement. Indeed, in interviews with EPZ workers they have indicated that the zone authorities are primarily interested in protecting investment - not addressing workers' rights violations. EPZ workers have told us that they want their rights, and that there be no discrimination between workers inside and outside of the zones.

In conclusion, the Committee *“regretted”* that *“many changes requested by the Committee are still not addressed by the proposed amendments”* and stated further that *“Observing that a very large number of provisions would need to be repealed or substantially amended to ensure the compatibility of the draft EPZ Labour Act with the Convention and recalling the conclusions of the Conference Committee, the Committee requests the Government to continue to review the draft EPZ Labour Act, in consultation with the social partners, to address all the issues highlighted above and to bring the EPZs within the purview of the Ministry of Labour and the Labour Inspectorate.”*

IV. Collective Bargaining

Even according to the GOB's claims, there are a mere 41 collective agreements negotiated between 2013 and 2016, which is astonishing given the vast number of enterprises just in the RMG sector alone. Taking the GOB's statistics at face value, which indicates a total of 7,779 unions (and 470 new unions between 2013 and 2017), this would indicate an **extremely low level** of collective bargaining activity. This problem is even more acute given the fact that the law does not clearly support bargaining above the enterprise level. This would confirm what we have been observed for years, that while there has been a temporary increase in the number of unions after Rana Plaza, collective bargaining remains rare.

In EPZs, the GOB claims that there are WWAs in 74% of the enterprises and that 411 charters of demands were submitted, all of which were settled amicably. However, these statistics are intentionally deceiving. First, many of the elections of the WWAs were conducted at the initiative of the Zone authorities - not at the initiative of the workers. Thus, in many cases workers were told to vote for a WWA without full knowledge of what they were voting for. Similarly, elections for WWA leadership in many cases were employer-dominated. It is incorrect to assert therefore that the high density of WWAs in the EPZs is a reflection of the free exercise of freedom of association.

Similarly, the zone authorities have for years limited the subjects of bargaining, including on wages. BEPZA, the zone authority, has explained that BEPZA stated that it considers as “legitimate demands” only those which are consistent with existing laws/instructions/notifications of BEPZA. WWAs are not entitled to submit any

demands which seek more benefits than what is provided in the instructions/ notifications of BEPZA. If the WWA is not able to bargain above the minimum standards dictated by BEPZA, it can hardly be said that there is collective bargaining of any kind. As such, the agreements reached are not reflective of the full exercise of the right to collective bargaining.

V. Conclusion

Nearly five years have elapsed since the tragic collapse of the Rana Plaza building. In that time, the GOB has been given one chance after another to prove that it is finally willing to respect workers' fundamental rights. It has failed again, and it would be foolish to think it has any intention to do so. The evidence against the GOB is clear and compelling. It is still 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 any gains in building and fire safety will not be sustainable, leading to certain future tragedies. Registration The registrar arbitrarily rejects the applications from the most active and independent trade union federations. A severe climate of anti-union violence prevails, including violence, frequently directed by factory management. The GOB has made no serious effort to bring anyone involved in these crimes to account thus creating a climate of near total impunity. The time to act is long overdue.