AN EVALUATION OF THE BANGLADESH SUSTAINABILITY COMPACT

July 2014

A little over one year ago, the Rana Plaza building collapse claimed the lives of roughly 1,200 people, most of who were producing for some of the world's best known garment brands. That tragedy, as well the Tazreen factory fire the previous year, shocked the world and motivated long-overdue action. The most significant initiative to follow was the Bangladesh Accord on Building and Fire Safety, a legally binding agreement between nearly 200 apparel companies and global unions. The additional actions taken by the EU, the US and the ILO, including the negotiation and monitoring of a Sustainability Compact,[1] have also created opportunities for progress. Despite these measures, however, it remains difficult for workers to exercise their fundamental labour rights in Bangladesh. In particular, the inability of workers to organize and bargain collectively over the terms and conditions of work means that gains in building and fire safety will not be sustainable, leading to certain future tragedies.

This document provides an assessment of government of Bangladesh's (GoB) compliance with the Sustainability Compact. As explained below, the GoB has largely failed to comply with the terms of that Compact, despite the substantial financial and technical support of a number of foreign governments and the ILO. While it is important to recognize progress where it exists, it is equally important to recognize the shortcomings and the reasons therefore. In our view, a combination of lack of political will, failure of intra-governmental coordination, high levels of corruption and the extraordinary dominance of the garment sector in government have meant that the hoped-for responses to the catastrophes of 2012-23 have been limited.

Before the section-by-section analysis, we wish to highlight the fact that Commerce Minister Tofail Ahmed recently lashed out at trade unions for allegedly having provided information critical of the labour situation in Bangladesh to foreign governments. Indeed, the Commerce Minister warned "We should contemplate steps against them (the complainants)."[2] The following day, when asked whether the government would take steps against the unions accused of having sent information to the US, Minister Ahmed again threatened possible action, stating, "Of course, it has to be taken into consideration."[3] The ILO Committee on Freedom of Association has made clear that, "The right to express opinions through the press or otherwise is an essential aspect of trade union rights."[4] The Committee further explained that, "The freedom of expression which should be enjoyed by trade unions and their leaders should also be guaranteed when they wish to criticize the government's economic and social policy."[5] The

[1] Available at http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf.
[2] 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.
[3] The Daily Star, *IndustriALL draws ire from Tofail*, 23 June, 2104, available at http://www.thedailystar.net/business/industriall-draws-ire-from-tofail-29869.
[4] ILO CFA Digest ¶ 155.
[5] ILO CFA Digest ¶ 157.

threat of retaliation by a cabinet minister is shocking behaviour, particularly in the current context in Bangladesh where violent acts of retaliation against trade unionists is on the rise.

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.

Amendments to the law were adopted in 2013. However, the revised 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**.** Indeed, at the time the ILO expressed concern, stating "A number of restrictions to workers' freedom of association rights which have been the subject of ILO concerns were not addressed by the amendments." Recently, the ILO Committee of Experts stated that it "**deeply regrets** that the Government did not take this opportunity to address most of its previous requests for amendments" and "trusts that significant progress will 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 I of this document sets forth an ITUC assessment of the 2013 amendments in light of ILO Experts' comments on Conventions 87 and 98.

The lack of ambition in these reforms led the EU to insist on another round of amendments. See Section "c" below.

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 is currently working on implementing regulations but they still have yet to be issued. We have not seen the draft regulations and are thus unable to comment upon their contents. However, it is our understanding that key ILO comments on the drafts have not been fully incorporated. For example, we understand that the regulations do not expressly state that there will be an election for OSH committee worker representatives. The proposed system appears to be employer dominated. Enforcement of the law remains a serious challenge, as noted in the subsequent sections of this memo.

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).

In June 2014, the ITUC met with an official delegation from the Ministry of Labour of Bangladesh at the International Labour Conference in Geneva. The officials explained that there were no plans to make any further reforms to the Labour Act. This is deeply troubling, as the reforms passed in 2013 were extremely 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. In 2013, the government attempted to assuage the concerns of the international community who were

upset by the lack of ambition in the proposed reforms by insisting that a new round of amendments was imminent. Not only are they not imminent, they are simply not existent.

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 rights. Of particular concern, as the EPZs are not covered by the Labour Act, labour inspectors have no mandate to conduct inspections. Instead, "counsellors" undertake limited grievance handling, but in no sense is there any labour inspection in the EPZs.

The GoB claims it is drafting new legislation for the EPZs. However, the ITUC has been in contact with several trade unions and NGOs in Bangladesh, none of whom have been consulted on the draft law. Further, when the ITUC recently asked government officials whether it was their ambition to allow workers in the EPZs to have the right to form or join a trade union, the officials refused to answer in the affirmative and instead deflected and offered excuses about the need to keep the zones attractive for investment.

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.

This is being undertaken.

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 rested largely on passing the 2013 reforms to the Labour Act, enacting implementing regulations, registering unions in the RMG sector and addressing rampant anti-union discrimination. Better Work is being established this year. However, the GOB has in our view only partially complied with the pre-requisites.

Labour Law: As mentioned in Section "a" above, the 2013 reforms were passed, but were limited. 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 problem. As employers are no longer given the list by law, they are now able to fire union activists while feigning no knowledge that they filed an application to form a union.

Regulations: See Section "b" above.

Registrations: This is one area of real progress. There is no question that there have been many new, independent unions registered in Bangladesh. This is welcome news indeed, 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. There are a large number of registration applications that have yet to be acted upon, and dozens have been rejected even though they conform to the requirements of the law. In 2013, 25 applications were rejected, and so far this year at least 24 applications have been rejected. The approval of a union's application remains at the JDL's absolute discretion, allowing the JDL to reject legitimate union registration applications.

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.

Importantly, union registration certificates are of little value if the there is no possibility to bargain collectively over wages and conditions of work. We have seen very little movement by RMG employers to bargain collectively when approached by trade unions with demands. The few collective agreements now in place are essentially restatements of the existing rights under the Labour Act. 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.

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.

For example, more than 60 workers at the Raaj RMG Washing Plant have 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. The union reports that replacement workers are being hired on the condition that they not join the union. False criminal charges have been filed against the union's general secretary. A letter was sent to the Ministry of Labour on April 23 requesting the government to remedy the dismissals. The union also filed formal labour complaints. As of mid-June, the government had failed to respond.

In another case, at the East West Industrial Park, which operates 11 factories in a large manufacturing complex outside Dhaka, workers have been subject to violent anti-union retaliation. 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, have left their homes and could not return to work. Union officials have met with East West managers who promised to provide security outside the factory gates where the attacks have occurred but have failed to do so. Workers at five East West factories, who began to form unions in March 2014 and sought to register their unions with the government, received notification in May that their applications were rejected. The grounds for the rejections appear to be specious. After they filed for registration, East West management attempted to form their own company unions. The union tried to file an official complaint with police, but they refused to accept the report.

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.

Adding to the problem is the fact that labour inspectors don't have power to penalize violators but can only report the violation to the courts. The fines available under the Labour Act 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. Outside of the Rana Plaza case, we are unaware of any criminal proceedings pending for any violation of the Labour Act. As the data is not available, we are indeed unaware of the extent to which any fines or penalties are imposed and collected.

Finally, we note that it has been over two 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 government of Bangladesh 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 it. 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).

Apart from the numbers, there are several limitations that threaten the functioning of even a well-staffed inspectorate. For example, transportation for inspectors is extremely limited or non-existent. Most 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, who are in fact paying for transportation and other costs. Additionally, 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. To date, the Bangladesh University of Engineering and Technology, under the supervision of the National Tripartite Committee, has failed to publicly disclose any inspection reports. 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. However, the database includes no more 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 on its website.

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 at that time 92% of the respondents were not working and did not have a regular income, with 63% citing 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. Most, if not all milestones in the plan have been missed or substantially delayed, with little to show. 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 and raise concerns about employer domination of these committees. 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 not received any direct contribution or indirect off-set 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.

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. This activity is far behind the government schedule of both December 2013 and June 2014. Whereas both private initiatives have respectively inspected around 800 out of 1600 (Accord) and 500 out of 680 (Alliance) factories, the national effort is reported to have inspected only 250 out of the remaining factories not covered by either private initiatives. Assuming that the "active factories" amount up to 3500 (in contrast to the 5000 export licenses) and controlling for the overlap between both initiatives, this represents little over 15% of the factories covered under the national effort. It is reasonable to believe that without any additional measures, this assessment target for the national effort under the Compact will not have been met in 2014.

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. Under the Accord, 17 buildings went to a review panel totalling at least 22 factories. Under the Alliance, 5 buildings were submitted while no documented submissions have been made under the national effort. 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. Nevertheless, the government of Bangladesh has increased pressure on the initiatives and delayed the convening of the Review Panel. Furthermore, the government envisages modifying the terms of reference of the same Review Panel mandated to temporary close factories.

There is very little evidence that other equally crucial remediation efforts are in process, and 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 but without any substance at this point. 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. However, the database does not contain a single structural, electrical and fire and building safety inspection report despite the readily availability of those inspections carried out under these initiatives. At this point, no information sharing protocols have been established between the private initiatives and DIFE, which manages the database. As a consequence, there are no public reports available of the inspections carried out under the national effort to date. Similarly, 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 over 180 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. This is despite the Accord's commitment to take into account the respective capacities of the signatories. Despite the clear endorsement for the Accord by the EU and the United States, 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, no process has been initiated to unify normative standards for factory audits or other inspection regimes in Bangladesh.

On 24 April 2013, the Rana Plaza Arrangement to compensate victims of the disaster and their families was signed by representatives of the government of Bangladesh, 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 recently endorsed the Arrangement. The amount determined to cover the costs of all claims is US$ 40 million (€ 29.4 million). As of June 2014, the total amount raised by voluntary corporate contributions is only $17 million, leaving $23 million (67.5%) outstanding. Brands sourcing from Rana Plaza or having significant ties to Bangladesh, as well as the government of Bangladesh and BGMEA, urgently need to ensure that the estimated $40 million is in the trust fund in the next few months in time to pay out agreed compensation. Additionally, the government needs to set up a permanent national accident insurance scheme, effectively changing the landscape for future occupational health and safety issues in Bangladesh.

d) Bangladesh and the EU take note of the work by European social partners in the textile and clothing sector started on 26 April 2013 to update their 1997 and 2008 Codes of Conduct on

fundamental rights, in the framework of the European Sectoral Social Dialogue Committee for Textile and Clothing.

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

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**