AN EVALUATION OF THE BANGLADESH SUSTAINABILITY COMPACT
JANUARY 2016 UPDATE

Long after the collapse of Rana Plaza, far too much remains to be done by the Government of Bangladesh (GOB) and the garment industry, not only to ensure fire and building safety but to simply guarantee basic respect for the law – including both national and international labour standards. The evidence 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 and other conditions of work will not be sustainable, leading to certain future tragedies. The Registrar of Trade Unions worsens the problem by arbitrarily rejecting the registration applications of the most active and independent trade union federations. A severe climate of anti-union violence prevails, 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 newly approved Implementing Rules (Rules) to the Bangladesh Labour Act (BLA) unfortunately do little to address long-standing problems and in fact increase the likelihood that newly mandated health and safety committees fall under the control of garment manufacturers.

The International Labour Organisation (ILO) has raised serious concerns with regard to the GOB's failures to guarantee the right to freedom of association and to comply with its international obligations on labour inspection. In June 2015, the tripartite ILO Committee on Application of Standards (CAS) reviewed the situation with respect to the right to freedom of association an urged the government to do the following:

- undertake amendments to the 2013 Labour Act to address the issues relating to freedom of association and collective bargaining identified by the ILO Committee of Experts, paying particular attention to the priorities identified by the social partners;
- ensure that the law governing the EPZs allows for full freedom of association, including to form trade unions and to associate with trade unions outside of the EPZs;
- investigate as a matter of urgency all acts of anti-union discrimination, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions (particularly in cases of violence against trade unionists) according to the law; and finally
- ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law.

The government has taken **no steps** to implement these tripartite recommendations. The CAS also urged the GOB to accept a high-level tripartite mission in 2015 to ensure

compliance with these recommendations. The GOB has repeatedly pushed to delay such a mission, and as of this update no date has been scheduled for the mission.

On 22 April 2015, EU Trade Minister Cecilia Malmström explained that "just a continuation of today's poor conditions for workers could also force the European Union to revisit "Everything but Arms", EU's trade scheme covering Bangladesh. On 24 April 2015, the EU issued its second Technical Progress Report of the Bangladesh Sustainability Compact (Compact).[1] While too generous in identifying areas of progress, the report nonetheless identified several areas where the GOB had failed to implement the Compact. The European Parliament also weighed in one week later with a strong resolution signalling its concern with the government's lack of progress on freedom of association and urging a review of the country's eligibility for GSP. And yet, the government continues with business as usual.

All governments involved in this process must do more to hold the GOB accountable to the terms of the Compact. We believe that the EU has both the responsibility and the capacity to influence the situation in Bangladesh through its trade preferences and that it should more fully use its power and leverage to secure meaningful and immediate improvements. There is no question that the GOB is directly or indirectly responsible for very serious violations and which are in clear breach of the ILO standards incorporated into the EU GSP scheme.

We are also deeply concerned by the attitude towards workers exhibited by government representatives when they are away from the spotlight of international conferences. For example, at a December 2014 Dhaka Apparel Summit, organized by BGMEA, Prime Minister Sheikh Hasina warned that domestic and foreign critics of the working conditions in Bangladesh were engaged in "conspiracy" against the RMG sector. Unions and other labour activists understood the remarks as directed at them. This follows the June 2014 remarks of Commerce Minister Tofail Ahmed who lashed out at trade unions for allegedly having provided information critical of the labour situation in Bangladesh to foreign governments. He warned that, "We should contemplate steps against them (the complainants)."[2] The GOB would do better in actually addressing the problems than threatening those who bring the many serious violations of workers' rights to light.

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

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

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[1] Online at http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc_153390.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.

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.

As we previously reported, some amendments to the BLA were adopted in 2013. However, the revised Bangladesh Labour Act of 2013, while including some positive reforms, continues to fall well short of international standards with regard to freedom of association and collective bargaining, among others**.** As the ILO Committee of Experts stated in its 2014 annual report, "*A number of restrictions to workers' freedom of association rights which have been the subject of ILO concerns were not addressed by the amendments.*" In 2015, the Committee of Experts "*regret[ed] that no further amendments have been made to the BLA on certain fundamental matters.*" The Committee underscored "*the critical importance which it gives to freedom of association as a fundamental human and enabling right" and urged "that significant progress [] be made in the very near future to bring the legislation and practice into conformity with the Convention on all of the abovementioned points.*" The ILO CAS similarly urged the government to undertake further reforms to the BLA in2015.

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

b. Conforming to all the existing ILO rules, procedure and practices in appraising the actions taken with respect to the implementation and enforcement of the revised Labour Law.

On 15 September 2015, the GOB issued the Rules for the BLA after a two year delay. Key initiatives to foster a more mature industrial relations system, including the Better Work Programme and the training programmes under the Bangladesh Accord, were delayed for its failure to issue these Rules. Unfortunately, the GOB did not make good use of the time and instead issued Rules that fail to give full effect to the fundamental rights of workers. Among the most troubling aspects are the following:

- The Rules include a broad definition of supervisor which threatens to exclude many workers without managerial authority from the coverage of the BLA. Indeed, this seems to be a specific addition to appease the telecommunications industry, where there has been an ongoing effort to organise a union.
- Employers have a role in the committee for the election of *worker* representatives to the Worker Participation Committees. Workers on temporary contracts are unable to vote in such elections. Where there is no union, which is in the vast majority of workplaces, Worker Participation Committees will determine who is on the Safety Committees. If a worker vacancy opens up on the Safety Committee, employers also have a role into who should replace the worker representative. The probability of management domination of these committees is high and there

does not appear to be a clear and dissuasive sanction for such acts of interference.
- The Rules do nothing to rein in the broad discretion that the GOB has to register trade unions, and which has been abused to deny dozens of unions their rights in 2015.
- The Rules do nothing to address the lack of a credible process to adjudicate unfair labour practices.
- The Rules contain broad prohibitions on worker activities, including the right to strike, which violate international standards.

An assessment of the several flaws with the Rules is attached as Annex III.

c. Develop and adopt additional legislative proposals to address conclusions and recommendations of the ILO supervisory monitoring bodies, in particular with reference to ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organise) and Convention No. 98 (Right to Organise and Collective Bargaining).

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

The reform most touted by the GOB concerns a previous requirement that the Labour Ministry turn over to the employer the list of the founders of the trade union submitted with the registration application. This is no longer required. However, we remain deeply concerned that employers will nevertheless get a copy of the list under the table and dismiss the founders. As employers are no longer given the list by law, they are now able to fire union activists while feigning no knowledge that the workers filed an application to form a union. Further, we are aware of at least 12 cases where workers were interviewed by JDL officials in front of management in their factories during the union application verification process and were subsequently dismissed without recourse (it is certain that has happened in more than these cases)..Anti-union discrimination remains a very serious and rapidly growing problem.

The government has refused to make any further commitments to reform the BLA.

d. Taking all necessary steps, with support from the ILO, to further improve exercise of freedom of association, ensure collective bargaining and the application of the national Labour Law to Export Processing Zones (EPZ), including ensuring that the Ministry of Labour inspectors and other regulatory agencies have full authority and responsibility to conduct inspections.

The Export Processing Zones (EPZs) employ roughly 400,000 workers who produce garments and footwear as well as a variety of other manufactured goods. In the EPZs, trade unions are banned and only worker welfare associations (WWAs) may be established. The WWAs do not have the same rights and privileges as trade unions. While the EPZ authorities claim that collective bargaining is permitted, it does not exist in

practice. There are also numerous cases in which leaders of WWAs have been fired with impunity in retaliation for the exercise of their limited labour rights.

In July 2014, a new EPZ Labour Act was passed by the cabinet but has yet to be enacted by Parliament. However, Chapter IX of the proposed EPZ Labour Act continues to prohibit workers to form unions in the EPZs. As before, they may only form WWA as a means to engage in industrial relations. Further, the proposed law maintains the ban (at Section 179) on WWAs contacting any non-governmental organizations, isolating the workers from outside assistance. The administration of EPZs would remain vested with the General Manager of the Bangladesh Export Processing Zones Authority (BEPZA), including labour inspection and enforcement.

In June 2014, the CAS, in its supervision of Bangladesh under ILO Convention 81 (Labour Inspection) made clear that, "*The Government should prioritize the amendments to the legislation governing EPZs, so as to bring the EPZs within the purview of the labour inspectorate.*" In its 2015 Report, the ILO Committee of Experts urged the government "*to carry out full consultations with the workers' and employers' organizations in the country with a view to elaborating new legislation for the EPZs which is fully in conformity with the provisions of the Convention.*" This was reinforced by the CAS in June 2015. The GOB has taken no action and has not expressed any intent to do so.

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 process was delayed for over two years by the failure of the GOB to issue the Rules underpinning the BLA 2013. Education and training programmes under the auspices of the ILO and in cooperation with development partners are under way. However, there have not been significant efforts to train trade union representatives, participation committee members, safety committee members and other relevant stakeholders.

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 the Rules, registering unions in the RMG sector and addressing the rampant anti-union discrimination. As yet, Better Work has been unable to commence as the GOB has failed to comply with the pre-requisites.

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

Regulations: See Section "b" above. The government has issued the Rules, but they are flawed in key respects.

Union Registration: This was one area of progress in 2013-2014, though this can no longer be said to be the case. Many new, independent unions were registered in Bangladesh following the Rana Plaza collapse; according to the Solidarity Centre data, 327 unions have been registered since 2013. This is welcome news, as it 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.

Behind the positive news are several troubling realities, which the GOB has consistently refused to acknowledge. Increasingly, applications for union registrations are being rejected. According to the Solidarity Centre, the rejection rate has in fact increased each year.

> In 2013, 135 applications were submitted, 84 were approved and 25 were rejected.
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> In 2014, 273 applications were submitted, 182 were approved and 66 were rejected.
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> In 2015, 66 applications were submitted, 61 were approved and 51 were rejected.[3]

As the government has failed to provide information on registrations to the public, the information above is what the Solidarity Centre has been able to track on its own initiative. We understand that the rejection rate in 2015 is actually even higher.

It is clear that the ratio of rejected applications against accepted applications increased each year. The JDL has also singled out applications from NGWF, BGIWF and BIGUF and other independent garment federations because of their links with international unions and organizations. The rejection rate for these unions is far higher than other unions despite complying fully with the BLA requirements.

Further, while the GOB likes to tout the over 300 unions registered since 2012, it fails to mention that 44 unions were busted or are now inactive (due to anti-union retaliation) and that at least 50 factories where unions has been established are now closed. This brings down the total number of registered unions by nearly 100.

Approval of a union's application remains at the JDL's absolute discretion, allowing it to reject legitimate union registration applications. As mentioned above, the new Rules do nothing to rein in the JDL's discretion though they could – and should – have done so. In several cases, the JDL has rejected applications even after unions have corrected applications per JDL's instructions. In many other cases, the JDL has refused registrations for reasons that are wholly outside the scope of the regulations. Too often, rejections are based on shoddy inspections.

The **Dacca Dyeing Garments** Ltd. case illustrates the lack of credibility of the current registration process. On March 8, 2015 the Garment Workers Solidarity Federation (GWSF) filed an application for Dacca Dyeing Garments Ltd. Sromik Union. On May 7, 2015 the JDL rejected the application stating that the union did not have the minimum

[3] Unfortunately, the GOB has made little progress on creating a database to track the status and final outcome of union registrations, hampering access to complete information.

number of members required to form a union though the union's application noted 353 worker members – which exceeded the 30% requirement under the BLA. However, after the rejection the GWSF filed an application for second time on May 25, 2015 with 408 members. On July 22, 2015 the JDL rejected the application for the second time. On August 23, 2015 the union filed the application for the third time, with 535 members - more than half of the workers of the factory. On October 21, 2015 the JDL formally rejected the union application for the third time. The reasons listed in the rejection letter were primarily focused on technical issues with the D forms such as duplicates and missing information. However, even accounting for duplicate and missing information in the D form, the union still by far exceeded the 30% necessary for registration according to the Labour Law. On 3 November 2015, the factory management, in the presence of police, BGMEA representatives, factory inspection officials and a leader of the ruling Awami league fired 152 workers, almost all of whom had previously expressed support for the union.[4] Management has now closed the factory in an apparent effort to eliminate the union once and for all.[5]

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

Anti-Union Discrimination:

There is a continuing lack of commitment to the rule of law, particularly with regard to anti-union discrimination. At all levels, law enforcement is almost nowhere in evidence. The leaders of many of these newly registered unions have suffered retaliation, sometimes violent, by management or their agents. Some union leaders have been brutally beaten and hospitalized as a result. In some cases, the police, at the behest (or apparent behest) of factory management, have intimidated and harassed trade unionists. Entire executive boards have been sacked. The response by the labour inspectorate has been very slow to date, and most union leaders or members illegally fired for trade union activity have not yet been reinstated, nor have the employers been punished for these egregious violations. **We are aware of over 100 acts of anti-union discrimination in factories where new trade unions have been registered (including dismissals, threats, intimidation and violence).** Police routinely fail to carry out credible investigations in cases of anti-union violence, if at all.

Global Garments Factory Ltd: As reported in our previous Compact evaluation, union activists at some Azim Group[6] factories had been subject to brutal acts of anti-union violence at the hands of company thugs. On 10 November 2014, at Global Garments Factory Ltd, a closed-circuit camera recorded a female union leader being beaten while a

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[4] See *http://newagebd.net/172246/trade-union-involvement-dacca-dyeing-garments-fires-152-workers/*

[5] This factory is owned by Palmal Group, one of the largest garment producers in Bangladesh. It is also owner of Aswad Composite Mills, where seven workers died in a fire in October of 2013 (the most recent mass fatality fire in the RMG sector). Palmal's size (they have at least a dozen other factories) explains why it would be in the company's perceived interest to close a single factory to eliminate a union.

[6] Azim Group has 24 factories and roughly 27,000 workers in Bangladesh,

male union leader was punched and chased off. Another female leader was pushed out of a factory door and attacked out of the range of the camera.[7] This management-orchestrated beating and humiliation of union members culminated in the unlawful dismissal of 15 leaders and activists. This case was only resolved through the intervention of foreign buyers who source from the Azim Group, who were acting under pressure from international unions and NGOs. This resulted in a bipartite monitoring agreement involving at least one of the buyers and resulted in a series of follow-up inspections in the Global Garments Factory Ltd.[8]

However, in the last year there have been a series of closures of union factories by the Azim Group. Azim has closed four union factories since May of this year: Global Trousers, Global Specialised Washing, Global Knitted and Global Specialised Garments Ltd. Unit 1. The closure of Global Specialised Garments was announced in November, when the entire workforce was dismissed. Workers received only basic retrenchment benefits, in violation of Azim Group's contractual obligations, leading the union to file a case with the Chittagong JDL. The JDL called a meeting between the union and Azim Group management but the latter failed to attend. As of early 2015, Azim Group had five union factories. As of today, it has one: Global Garments, which has been the subject of intense international scrutiny. There have been no reports of any closures this year among the more than twenty non-union factories owned by Azim Group.

BEO Apparels Manufacturing Ltd. In September of 2014, the union at BEO, which is affiliated with the Akota Garment Worker Federation (AGWF), conveyed complaints to management concerning compensation and workplace safety. On 24 September 2014, management terminated 48 of the union's members, including most of the leadership. When workers protested peacefully outside the factory, refusing to go to work, management summoned the police who ordered workers to return to their machines and then assaulted them. Five workers, including the union president, required medical treatment as a result.

AGWF leaders and two union members not fired from the factory met with the Accord on Fire and Building Safety in Bangladesh on 21 October 2014 to seek its intervention. Several BEO buyers are Accord signatories. BEO demoted the two workers who participated in the meeting and initiated a campaign of harassment against them. The Accord concluded in December that the firings were retaliatory and asked BEO's owner to reinstate all of the fired workers. Under heavy pressure from buyers he agreed to do so, setting 1 February 2015 as the date for their return. In January of 2015, he withdrew his commitment claiming his managers would all quit if the union members were allowed to return to work. A delegation including representatives of the Accord, buyers and AGWF went to the factory on 16 February 2015 to meet with management to try to resolve the conflict. When the delegation told managers that reinstatement of the fired union members was essential, several managers physically attacked the representative of AGWF, leading to a melee in which managers, armed with sticks and iron rods beat a

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

[8] See, Steven Greenhouse and Hiroko Tabuchi, *Company in Bangladesh Agrees to Union Peace*, NY Times, Feb 18 2015, online at http://www.nytimes.com/2015/02/19/business/international/azim-bangladeshi-factory-agrees-to-union-peace-to-win-back-customers.html?_r=0. See also IndustriALL Press Release, Feb 12, 2015, online at http://www.industriall-union.org/bangladesh-union-strength-and-brand-pressure.

number of pro-union workers at the factory. The Accord delegation ultimately required police assistance to safely depart.

Later in February, BEO's owner announced that he was closing the factory. In March, he dismissed the entire workforce.[9] At no point in the course of this conflict did any agency of the Bangladesh government take any action to restore workers' employment or hold factory management accountable for its actions.

Dress & Dismatic Co. Ltd: D&D is owned by the Al-Muslim Group, one of Bangladesh's largest garment producers. The factory union, affiliated with the Bangladesh Garment and Industrial Workers Federation (BGIWF), received its registration on December 18, 2014 and, several weeks later, on January 14, 2015, submitted a charter of demands to management, attempting to initiate collective bargaining. Management responded with an array of retaliatory tactics. Over the next three months, management continually relocated trade union leaders to different parts of the factory, threatened rank-and-file workers with retaliatory increases in production targets if they talked to any of the union leaders, formed a bogus management-controlled union at the factory, and forced many workers to sign a petition denouncing the union's January charter of demands. Union leaders also received anonymous phone calls, threatening violence.

On 16 March 2015, the union submitted a complaint to the Accord on Fire and Building Safety in Bangladesh, alleging that D&D management had failed to maintain building safety practices ordered by the Accord. An Accord inspection on 19 March confirmed that the factory was out of compliance. On 2 April, Factory management retaliated against the union by organizing anti-union workers to physically attack several union leaders, including the president, and then demanding that nine union leaders resign as employees of D&D. When they refused, management summoned police to the factory and officers told workers they would be arrested if they did not agree to resign. In the face of this pressure, most then did so. When the union president refused, police forced her to leave the factory premises. Facing threats of further violence, she did not feel safe returning.[10] Workers attempted to utilize the official means of redress available, filing complaints, seeking reinstatement for the nine union leaders, with the Joint Directorate of Labour and the arbitration committee of the Bangladesh Garment Manufacturers and Exporters Association (BGMEA). These complaints yielded no corrective action. Instead, it took months of pressure from buyers, urged by the Accord, to convince D&D management to reinstate the union leaders. They finally did so on December 15, 2015.

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

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[9] See "Conspiracy of goodwill: In a Lidl supplier factory workers in Bangladesh have expressed safety concerns – the were fired; Now, the German owner closed the factory", http://www.taz.de/!5017977/ (original in German)

[10] *See Our Voice, Our Safety: Bangladeshi Garment Workers Speak Out*, International Labor Rights Forum, http://laborrights.org/sites/default/files/publications/Our%20Voices,%20Our%20Safety%20Online_1.pdf

g. Completing the upgrading of the Directorate of the Chief Inspector of Factories and Establishments to a Department with a strength of 800 inspectors, having adequate annual budget allocation, and the development of the infrastructure required for its proper functioning. The Government of Bangladesh will move to recruit 200 additional inspectors by the end of 2013.

The Department of Inspection for Factories and Establishment (DIFE) has been upgraded from a directorate to a department and the Government has recruited 218 new labour inspectors bringing the total 993 inspectors. Although this is in line with the commitments under the National Tripartite Plan of action, the question remains whether this cadre of inspectors is sufficient to supervise an industry of 4 million workers (let alone outside of the RMG sector where the majority of Bangladeshi workers are employed).

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

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

h) Creating, with the support of ILO and other development partners, a publicly accessible database listing all RMG and knitwear factories, as a platform for reporting labour, fire and building safety inspections, which would include information on the factories and their locations, their owners, the results of inspections regarding complaints of anti-union discrimination and unfair labour practices, fines and sanctions administered, as well as remedial actions taken, if any, subject to relevant national legislation.

Reporting on labour inspection is infrequent and incomplete. In the RMG sector, where factories are being inspected by a combination of public and private initiatives, transparency on factory inspections leaves much to be desired. The Department of Inspection for Factories and Establishment (DIFE) has established an RMG Sector Database which includes factory names, addresses, owner name, number of workers, and the number of inspections completed by initiative. The Bangladesh University of Engineering and Technology (BUET) have started uploading inspection reports; however, the reports contained limited information and there are significant concerns about the quality of the inspections. So far, only the Accord has published its reports in English and Bangla together with photos on its website. The translation in Bangla and the photos are crucial for workers to understand the otherwise highly technical reports. Notably, only the Accord reports publicly as to whether the identified safety hazards are actually being corrected in factories.

i) Launching, by 31 December 2013, with the support of the ILO, skills and training programme for workers who sustained serious injuries in the recent tragic events and redeploying the RMG and knitwear workers that were rendered unemployed as well as rehabilitated workers.

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

j) Conducting, by 31 December 2013, with the support of the ILO, a diagnostic study of the Labour Inspection System and develop and implement a resulting action plan, including appropriate measures.

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

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

a. **Implement the National Tripartite Plan of Action on Fire Safety and Structural Integrity in the RMG industry in Bangladesh with the support of ILO, in accordance with the established milestones and timelines, as stipulated in the Programme of Action. This will be coordinated and monitored by the Bangladesh National Tripartite Committee with the support of the ILO.**

Implementation of the National Tripartite Plan of Action (NAP) is proceeding very slowly. As of December 2015, the majority of benchmarks in the plan remain missed or substantially delayed, with little prospects to achieve these benchmarks in the near future. The absence of consolidated public and transparent reporting of progress under the NAP contributes to the lack of accountability on progress. Some notable problems include:

Inspections: As noted in 1.g, the government has missed its deadline to conduct credible factory inspections. The claim by the government that 80% of the factories they inspected are considered safe raises serious questions about the rigor of these inspections. Further, when factories are inspected, we do not see evidence that inspectors have regularly undertaken the necessary corrective follow-up inspections on fire and building safety and labour rights (including publishing inspections in the DIFE database as mentioned see also 1.h and 2.c). Equally, it is unclear to what extend resources are allocated to ensure

the necessary follow-up inspections to monitor correct remediation. 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 guidelines on how these can function. Our initial assessment of the Rules is that they do not address current problems and create new ones, including relating to OHS committees.

Further details about the NAP, the stipulated timeframes and implementation are provided in Annex IV.

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. Both private initiatives have inspected all factories under their remit and the national effort is reported to have inspected all of the remaining factories not covered by either private initiative However, the national effort is reported to have immediately declared 80% of the factories within its remit to be safe, whereas both the Accord and the Alliance found critical issues in every single factory and the Accord found a staggering 52,000 violations of the standards.

Whereas the Accord has published its Quarterly Report, which indicates 700+ identified issues have been corrected and verified, there is very little evidence that equally crucial remediation efforts are in process in factories inspected by the Alliance or the national program. The pace of remediation in factories remains slow, raising questions with regard to the availability of sufficient financing for remediation.

c. Develop, with the assistance from the ILO and other development partners, the publicly accessible database described in paragraph 1.h), to record: the dates of labour, fire and building safety inspections; identification of inspectors, violations identified, fines and sanctions administered; factories ordered closed and actually closed; factories ordered relocated and actually relocated; violations remediated; and information on management and worker fire and building safety training activities subject to relevant national legislation.

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

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

Pillar 3: Responsible Business Conduct

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

b. **[The parties] welcome the fact that over 70 major fashion and retail brands sourcing RMG from Bangladesh have signed the Accord on Fire and Building Safety to coordinate their efforts to help improve safety in Bangladesh's factories which supply them. In this context, [the parties] encourage other companies, including SME's, to join the Accord expeditiously within their respective capacities. They recognise the need for appropriate involvement of all stakeholders for an effective implementation of the Accord.**

At present more than 200 fashion and retail brands have signed up to the Accord, a legally binding agreement which reflects genuine cooperation between labour and management and includes a central role for independent worker representatives in its implementation. Binding arbitration, backed up by the courts of the home country of the company in question, is used to resolve disputes and enforce company commitments. While this number is unprecedented and contains a majority of European companies, a large number of brands and retailers based in Europe have still not signed up to the Accord. Many brands (mostly from the United States) created and joined the Alliance for Bangladesh Workers Safety, which is a unilateral corporate initiative, designed and governed by corporations with no involvement by independent worker representatives.

c. **The EU and Bangladesh recognise the need for multi-national enterprises (MNEs)/brands/retailers to deepen discussion on responsible business conduct with a view to addressing issues along the supply chain. We encourage retailers and brands to adopt and follow a unified code of conduct for factory audit in Bangladesh.**

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

d) Bangladesh and the EU take note of the work by European social partners in the textile and clothing sector started on 26 April 2013 to update their 1997 and 2008 Codes of Conduct on fundamental rights, in the framework of the European Sectoral Social Dialogue Committee for Textile and Clothing.

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

ANNEX I: Additional Concerns

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

Employees at Grameenphone, owned by Norwegian company Telenor, have spent the past two years struggling to gain recognition of a union to represent their interests. The Government has repeatedly denied the application on technicalities, frequently claiming information that had been included in the application was absent. After prolonged court proceedings, the Labour Appellate Court ordered the Director of Labour to register the union. However, the Government refused to issue formal recognition for the union. The company then filed a writ with the High Court to stay the decision, which has since been granted. The government has included in the new Rules a broad definition of the term "supervisory officer" which could be invoked to render workers with any supervisory function ineligible to join a union. This appears included to attempt to frustrate workers from forming a union at Grameenphone though we do not believe that those workers are in fact properly deemed supervisors. Further, the proposed rules would declare mobile phones an essential public utility service, which would allow the GOB to intervene to limit or prevent strikes and demonstrations.

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

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

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

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

ANNEX II

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

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

Labour Act enjoy the right to organize. The Committee notes the Government's indication that sectors which have 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;	from the law, whereas non-profit and for profit institutions were excluded. However, non-profit hospitals, 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)); 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)) and that only one trade union of seafarers	**No action taken** **No action taken** **No action taken**

shall be registered (section 185(3)); 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	**No action taken**

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;	
– the need to amend sections 202(24)(c) and (e) 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;	**No Action Taken**
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);	**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**

--- and interference in trade union matters (section 229)); --- in the framework of settlement of industrial disputes;	**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; 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** **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</u>

	administrative division, 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 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.	**No action taken**
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 undersection 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*	**No action taken**

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.	
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**

ANNEX III

INITIAL EVALUATION OF THE BANGLADESH LABOUR RULES
RULE BY RULE CONCERNS

Rule 2 - Definitions: Under Article 2(65) of the BLA, a person who is 'mainly administrative, supervisory officer or a person responsible in managerial work' is excluded from the definition of "worker".[11] Rule 2 has defined 'Supervisory Officer' and 'administrative or managerial work' very broadly:

> (g) 'Supervisory Officer' means a person being authorized in writing by the employer or management who by virtue of the said authority determine target of the work or service of the section of a factory or establishment, control the scope of work, control the implement of the activities, evaluate or review the work, give direction and supervise the workers.
>
> (j) 'Any person responsible in administrative or managerial work' means a person authorized in writing by the employer or the management who by virtue of the said authority engaged in the factory or establishment in work of appointment, determination of the salary and allowances, termination and removal from employment of the workers, making final payment and approval and control of the expenditure of the establishment.

In particular, the broad definition of supervisory officer could result in the classification of workers who are not managers or supervisors but who perform any sort of decision making about the scope or target of work to be misclassified and thereby excluded from the scope of the protections in the law for workers. This concern is heightened in light of the fact that Grameenphone has taken the position that nearly all of its 3,000 workers are entry-level managers or supervisors and thus ineligible to form a union. It is also well known that the telecommunications association actively lobbied the government in this regard. Rule 2(e), which provides a new and expansive definition of telecommunications services is further evidence of the intent of this rule.

Rule 4 – Process of Approval of the Service Rules: In cases where there is a trade union, service rules are often the subject of collective bargaining. However, while trade unions are permitted to provide proposals or objections, under Rule 4(4), the Inspector General only forwards to the employer those proposals or objections which s/he deems 'reasonable'. This gives the IG total discretion to shape the outcome of the Service Rules. The IG also has total discretion to determine whether or not the Service Rules are inconsistent with the law, or otherwise insufficient. These rules cannot be said to be the product of negotiation.

Rule 16 – Standard of Wages and facilities: While 16(4) provides joint liability for the employer and contractors in the case of OSH violations, there is not such joint liability for

[11] Article 2 (Lxv): 'worker' means any person including an apprentice employed in any establishment or industry, either directly or through a contractor, in whatever name he is called, to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment be expressed or implied, *but shall not include a person who is mainly administrative, supervisory officer or a person responsible in managerial work.*

other violations. While we view as positive the joint liability for OSH, it should apply also to other violations.

Rule 19 – Issuance of Appointment Letter: 19(8) could be interpreted to be a permanent non-compete clause. There is no duration for the period in which the managerial worker may not discuss the business techniques of a formal employer. Additionally, this type of prohibitions cannot be incorporated in the Rules but only via the BLA.

Rule 32 – Employer Worker Relations in Case of Situation Out of Control: Rule 32(b) provides that in case of the shifting factory or establishment, if the worker concerned is not willing to relocate due to relocation of a factory or establishment to a distance within 40 kilometres from the previous one, then the worker shall receive as per section 27 of the BLA. It means that workers will receive only resignation benefits, which is substantially less than the benefits workers would get for other methods of termination from service. For example, in the above circumstances, a worker who has not completed five years of service will not get any benefits from the employer. While 40 kilometres may appear to be a reasonable distance, in a city like Dhaka, such a distance would add several hours onto transportation time. This should be deleted.

Rule 71, notice of dangerous occurrence: The rule gives the employer 3 days to inform the authorities if there has been an explosion, a building fire, a building collapse or other serious accident. Such notification should happen immediately.

Rule 81, Formation of a safety committee: Rule 81(9) makes clear that the Worker Participation Committee will be the main driver in electing the worker representatives in the safety committees just by their ubiquity and the relative absence of registered active trade unions. In general, WPCs are management constituted/dominated vehicles and companies are directed to provide all resources and/support. RMG employers will continue to exert a high degree of control of the process of establishing WPCs, and by extension OSH-committees, which will call into serious question the credibility to these institutions.

Rule 82 - Vacancy of post and filling thereof: Workers representatives in the Safety Committee will be nominated by the CBA union any and if there is no CBA union in the company then the workers representatives of the Participation Committee will nominate those members in the Safety Committee. However, after the constitution of the committee, if any post of a member becomes vacant, the vacant position will be filled up with the support of the two-third of the members of the Safety Committee. This means that if a workers' representative's post becomes vacant the employer's representatives shall also have a role in the nomination of the workers representatives to fill the position. An employer shall very easily be able to use this provision of this Rule to fill up the vacant position(s) of the worker representative with his loyal worker(s).

As majority of the RMG Companies do not have any Trade Unions, the workers representatives of the Participation Committee will nominate the workers representatives in the Safety Committee. Most of the workers representatives in the existing Participation Committees are hand-picked by the management. As a result it is feared that most of the Safety Committees will be packed with management friendly workers.

Rule 85, Schedule IV – Matters Related to Safety Committee:

Subrule 1(h): This rule prohibits anyone on a safety committee from initiating or participating in an industrial dispute. (BLA Section 209 provides that no industrial dispute shall be deemed to exist unless it has been raised by a collective bargaining agent (trade union). In the case the workers on the safety committee are represented by members or leaders of a trade union, this may ban them from participating in an industrial dispute called by their own union. This cannot possibly be consistent with the BLA. Moreover, it is urgent safety and health matters where the ability to engage in industrial action is particularly important.

Subrule 11(b): In earlier drafts, it was provided that in case of special necessity, members from workers' side in the Safety Committee, at any time putting their signatures, may submit a special report to the employer or the management. In the final Rules, this power of the workers representatives has been taken away. Instead, it is stated that in case of emergency or special necessity, the majority of the members of the Safety Committee without holding any formal meeting shall, at any time putting their signatures, be entitled to submit special report to the employer or the management.

Article 12(c): This rule provides that a member of the Committee shall not be held responsible personally for any decision taken or any action undertaken in good faith by the Safety Committee, or for any opinion or a descending (sic) opinion in any meeting. This provision is not enough to protect the services of the workers representatives of the Safety Committee. In spite of the provision of Article 12, the employer will still be able terminate the service of such a member of the committee utilizing other provisions of the law if he intends to victimize any member for his activities in the committee.

Note: Rule 205 (6a) of the Bangladesh Labour Act states that, "In an establishment where no trade union exists, the worker representatives of the participatory committee may carry out the activities related to the interests of the workers until a trade union is formed in that establishment." However, neither the BLA nor the Rules define what is meant by "activities related to the interests of the workers leaving ambiguous the scope of action of the WPC.

Rule 97, medical facilities for newspaper workers: There is no problem with the text per se, but it is unclear as to why there is a separate provision for workers in this particular industry,

Rule 106, Casual and Sick Leave: Rule 106 states that if a weekly or festival holiday falls during a casual leave or sick leave, then those holidays shall be counted as casual/sick leave rather than being excluded. A worker could get 10 days casual and 14 days sick leave in a year. With the application of the rule, workers will have fewer days effectively. Under Article 117(3) of the BLA, it such weekly or festival days were only counted during annual leave. This appears to amend the BLA and therefore unlawful.

Rule 115, Wage deductions for the absence of duty: The Rule takes the total amount of the wage as the basis of the calculation for the deductions. However, the bonuses on top of the basic wage, namely house bonus, medical bonus etc. are all independent of the number of days or hours worked.

Rule 124, leaving Bangladesh by Members: It seems excessive for members of the wage board to inform the government in advance each time the person intends to travel outside the country.

Rule 121, nomination of representative of employer and worker in wage board: Rule 121(3) provides that in case there is no union federation or union in that industry, the government can nominate such persons who are capable of representing workers. While we recognize that someone needs to represent the workers, there are no criteria in the rules to ensure that an appropriate representative is nominated. As currently written, the government could choose anyone.

Rule 129, settlement of proceedings: The Rule is unclear, in particular the possibility of 'voting by sides.' It would also suggest that workers and employers will always have a common position amongst themselves.

Trade Union Registration Generally: The Rules do nothing to remove the discretion of the JDL as to the registration of trade unions, meaning we can expect continued arbitrariness in the application process.

Rule 167, Application for being a member of a trade union: It appears that the government is requiring new forms be used to register a union. This raises questions about whether pending applications on old forms will still be accepted.

Rule 169, Number of executive committee members: Rule 169(4) provides that "No worker shall be eligible for being a member to the executive committee, unless he is employed as a permanent worker in the concerned establishment." This means that workers on permanent contracts can be eligible to be a member of the executive of a union. This is a new restriction not found in the BLA. It also opens creates another opportunity for the Registrar to delay or reject registration (by verifying whether all of these workers are on permanent contracts).

Rule 170, Maintenance of registers of members, account books, minute books, etc.: Under the Industrial Relations Rules, 1977, Rule 5(5), in a general meeting (e.g. annual congress), the general members of the union attending in the meeting were not required to sign (put their signature) in the minute/resolution book. There was a requirement only to mention the number of the members present in the meeting.[12] Those provisions of the IR Rules, considered as favourable for the unions, have not been included in the present Bangladesh Labour Rules. Absence of the above provisions (which the Labour Leaders insisted to include in the BLR) means that the Registrar of Trade Unions(RTU)/JDL will require all the members of the union who are present in a general meeting (e.g. union formation meeting of the workers) to sign the resolution book. This will make the union formation much more difficult, and easier for the RTU to reject the registration application

[12] **Rule 5(5) of Industrial Relation Rules, 1977:** The minute book of a registered trade union or federation of trade unions shall be kept in a bound register, every page of which shall be numbered serially, and shall contain the following information. namely:-
(a) date, place and time at which the meetings of the general body or the executive committees of the registered trade union or federation of trade unions are held:
(b) details of all point discussed and all resolutions passed ;
(c) **in the case of meeting of the general body, the approximate number of members who attended the meeting** and, in the case of meetings of the executive committee, the names and signatures of the officers of the executive who attended the meeting.

of a Trade Union. The RTU, if intends to reject the registration application, will verify/compare all the signatures of the resolution book with other documents (such as wage register) of the factory/establishment and if he find anomalies in some the signatures (which is naturally possible in every cases), he will cite it as a ground to reject the registration application of the union. IR Rule 5(5) in Bangladesh Labour Rules 2015 should be included in BLR 2015.

Rule 187, manner of electing workers' representatives to participation committee where no trade union: Rule 187(1) appears to permit only the employer to inform the Director of Labour of the need to hold an election, not workers. It is unclear whether under Rule 187(2) the request for the Director of Labour to monitor the election must come from the employer, at the time the election is requested, or again whether monitoring of the election can come at the request of the workers. While 187(2) does include a non-interference clause, it is unclear what the penalty is for interference, and whether it is sufficiently dissuasive.

Rule 188, the election committee: The Rule requires an election committee to be formed to conduct the elections of the WPC worker representative elections. It is unclear how the worker members of that election committee will be determined. Worse, the Rules require that election committee to elect workers' representatives must include employer representatives on a 2:3 ratio. The workers' representatives should be elected by an election committee constituted by the workers.

Rule 190, Qualification of voters: This rule prohibits all workers who do not have a permanent contract from voting from among the proposed representatives to serve on the participation committees. While it may be appropriate to but some limits on candidates, there is no reason to disenfranchise workers from voting. All workers should be able to vote.

Rule 202, Refrain from some activities: This rule provides than any worker representative (Any trade union, trade union federation, or confederation, Collective Bargaining Agent, Participation Committee or any Member thereof) refrain from the following acts: 1) interfering in the administrative acts of the establishment; 2) interfering in the employment, transfer and promotion of the officers, staff and workers of the establishment; 3) accepting any transportation, furniture or financial benefits from the management; 4) interfering in the production and normal activities of the establishment; 5) calling any strike without following the procedure of law and rules. Most of these provisions are drafted so broadly as to impinge on the right to freedom of association and collective bargaining. If an agent instructed a worker not to perform work because of a hazard, this is a legitimate exercise of freedom of association, but could violate #1 and #4. If a union were to bargain language on wage scales or to have a role in hiring and transfers, this could violate #2. We would note that the BLA is not consistent with Convention 87 on the right to strike, and thus #5 infringes on workers' rights under international law.

Rule 204, arrangement of secret ballot to issue notice of strike: [13] Rule 204(2) provides that those eligible to vote are the subscription paying members of the CBA union. However, it should not be the government but rather the union which decides who is eligible to vote to issue a strike notice (or any other decision). Rule 204 is also inconsistent with BLA's section 211(1).[14] The BLA requires the CB agent to serve strike notice within 15 days of receipt of the failure certificate (from the conciliator if that conciliation has failed). However, the number of days mentioned in 204 may be 22 days.

Rule 350, Powers and functions of Director of Labour: Rule 350(a-b) gives the director of labour sweeping powers to enter union offices (or homes if the office is located there) to inspect the premises, all books and records and to question any persons "to fulfil the objectives under the act." The rule also allows all such files, etc. to be seized for up to 30 days. While there may be appropriate reasons to do so, this regulation appears to empower the director of labour to do so without any due process.

Rule 351, Powers and functions of Inspector. Under Rule 351, if the Inspector General or any officer authorized him receives any complaint in respect of the violation of any rights (which are secured by BLA and the Rules) he *may* conduct an enquiry and investigation within 10 (ten) working days of receipt of such complaint. While it may be a matter of translation, the grant of discretion not to conduct an investigation upon receiving a complaint is disturbing, given that the Labour Inspectorate already does such a poor job of following up on complaints. It would also be helpful if the rules had included a standard methodology for inquiries and investigations, again such the quality of such work is already so poor.

Rule 366, Resolution of Grievance: This Rule states that an application regarding any unfair labour practice (ULP) committed by any worker or employer of the factory or establishment shall have to be submitted to the Director of Labour or any officer authorized by him within 30 (thirty) days of offence and the Director of Labour or any Officer shall resolve the matter within 30 (thirty) working days of receipt of such application. Unions are concerned here with the term "resolved". For example, if a union officer is terminated by the employer and a ULP complaint is filed to the DoL, it is believed that the DoL will ask/coerce the union official to accept severance payment and thereby "resolve" the matter, rather than insisting that the employer reinstate the worker as per the law.

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[13] Rule 204: (1) Within 7 (seven) days of receipt of the certificate of failure in accordance with Section 211 (1) , the Collective Bargaining Agent (CBA) shall request the Conciliator in writing to arrange a secret ballot in order to issue notice of strike. (2) Within 15 days of the receipt of such a request, the Conciliator shall make arrangements for secret ballot considering the subscription-paying members of the CBA union of such establishments as voters and the CBA union shall make necessary arrangement for the secret ballot as per the advice of the Conciliator.

[14] Section 211: Strike and lock-out: (1) The party which raised the dispute may, within fifteen days of the issue to it a certificate of failure under section 210(11), either give to the other party a notice of strike or lockout, a the case may be, to commence on a day, not earlier than seven days and not later than fourteen days of the date of such notice, to be specified therein, or make an application to the Labour Court for adjudication of the dispute. Provided that no collective bargaining agent shall serve any notice of strike unless two- third of its members have given their consent to it through a secret ballot specially held for the purpose, under the supervision of the Conciliator, in such manner as may be prescribed.

ANNEX IV

The chart below describes the extent to which the government has complied with the terms of the National Action Plan. We would note that in none of the few cases where the government complied with a term that it did so by the agreed deadline.

National Tripartite Plan of Action			
	Activity	Expected date of Completion	Implementation Status
Legislation and Policy			
1.	Submission of a labour law reform package and the amendment of the Bangladesh Labour Law 2006	July 15, 2013	**Fail:** The Labour Law Amendment Act 2013 was passed and the Rules have been finalized, though major flaws exist. The amended BLA remains far out of compliance with ILO conventions.
2.	Adoption of a National Occupational Safety and Health Policy	30 April, 2013	**Minimal Progress:** The National Occupational Safety and Health Policy have been approved by the Cabinet but the underlying 'National Work Plan' to implement it has not been adopted.
3.	Review and where necessary adjustment of relevant laws, rules and regulations in different legislative and administrative instruments related to ensure fire, building, electrical and chemical safety	31 December, 2013	**Minimal Progress:** A Task Force was constituted under the Ministry of Commerce but the taskforce did not produce any results of note.
4.	Establishment of a taskforce of the cabinet committee on building and fire safety of the RMG industry	30 May, 2013	**Minimal Progress:** A Task Force was constituted under the Ministry of Labour and Employment but the taskforce did not produce any substantial results.
Administration			
5.	Recruitment of factory inspectors and supporting staff with 200 additional labour inspectors to the Department of Inspection for Factories and Establishments (DIFE)	31 December, 2013	**Achieved:** 23 district offices have been established along with the headquarters in Dhaka. The personnel of the DIFE were increased to 993 with 218 newly recruited safety inspectors.
6.	Upgradation of the Institution of Inspection for Factories and Establishments from a Directorate to a Department	31 December, 2013	**Achieved:** The DIFE has been upgraded from a Directorate to a Department.
7.	Implementation of MoLE project 'Modernization and Strengthening the Department of Inspection for Factories and Establishments' in order to improve the capacities of the	31 December, 2014	**Minimal Progress:** The implementation of the work-plan is still ongoing.

	DIFE		
8.	Review and where necessary adjustment of factory licensing and certification procedures concerning fire, structural, environmental, chemical and electrical safety	30 June, 2013	**Minimal Progress:** A Task Force was constituted under the Ministry of Commerce, but the taskforce did not produce any substantial results.
9.	Consideration to establish a one-stop shop for fire-safety certification and licensing	31 December, 2013	**Minimal:** A Task Force was constituted under the Ministry of Commerce, but the taskforce did not produce any results of note.
10.	Development and introduction of a unified fire safety checklist to be used by all relevant authorities	30 April, 2013	**Achieved:** A fire safety checklist was prepared by the DIFE along with structural, electrical and other general issues for regular inspection
Practical Activities			
11.	Inspection and assessment of factory level fire safety needs	30 April, 2013	**Achieved, with concerns:** The inspection teams under the NAP have inspected all 1500 factories for fire, electrical and structural safety needs. Serious concerns remain on the quality of these inspections.
12.	Development and implementation of a factory fire improvement program based upon the fire safety needs assessment	31 December, 2013	**Minimal Progress:** Two taskforces have been formed to oversee the remedial works according to the safety assessment reports.
13.	Inspection and assessment of structural integrity of all active RMG industries	31 December, 2014	**Achieved, with concerns:** The inspection teams under the NAP have inspected all 1500 factories for fire, electrical and structural safety needs. Concerns remain on the quality of these inspections.
14.	Development of an accountable and transparent industry sub-contracting system	30 June, 2013	**Ongoing:** Draft rules and regulations for industry sub-contracting system have been developed by the MoLE but it has not been finalized yet
15.	Delivery of a fire safety 'crash course' for mid-level factory management and supervisors	30 September, 2013	**Achieved, but results unclear:** Mid-level factory management and supervisors received 'crash course' in most factories.
16.	Development and delivery of specific training on fire safety for union leaders	31 December, 2013	**Fail:** The union leaders did not receive any fire safety training under NAP
17.	Development and delivery of a mass worker education tools to raise awareness regarding fire safety and OSH risk and prevention among workers	31 December, 2013	**Fail:** The education tools have not been received in all factories

18.	Establishment of a worker fire safety hotline	30 June, 2013	**Minimal Progress:** A help line has been established on pilot basis in Ashulia. However awareness remains low and workers who reach out to the hotline get negative/no response.
19.	Development and delivery of specific training on fire safety and structural integrity for factory inspectors	30 June, 2013	**Achieved:** All newly recruited and the existing inspectors received specific training on safety issues
20.	Strengthen the capacity of Fire Service and Civil Defence (FSCD)	30 September, 2013	**Achieved:** The number of fire service staff working as inspectors has been increased from 55 to 265
21.	Development of guidelines for the establishment of labour management committee on OSH	30 September, 2013	**Achieved, yet serious concerns remain:** Rules on the establishment of labour-management committees on OSH is included in the BLA 2013 and the 2015 Rules. However, major issues exist regarding the democratic election of workers on the committees.
22.	Development and dissemination of fire safety self-assessment and remediation tools	31 December, 2013	**Fail:** The factories did not receive any self-assessment remediation tools for fire safety
23.	Development of a tripartite protocol for the compensation of the workers who dies and injures because of the occupational accidents and diseases	31 December, 2013	**Fail:** No significant development made to establish the tripartite protocol.
24.	Establishment of a publicly accessible database on OSH issues in RMG factories	31 December, 2013	**Achieved:** A publicly accessible database on the basic information of 3,946 RMG factories is available online at the DIFE official website. It also includes summary of safety assessment reports of factories inspected under the Accord, Alliance and NAP.
25.	Redeployment of the RMG workers who lost jobs as a result of the occupational accidents and rehabilitation of the disabled workers	30 June, 2014	**In progress:** The Rana Plaza Coordination Cell (RPCC) was formed in November 2013 and is working on the redeployment and rehabilitation of disabled workers. The services provided by the cell include medical support, job support/skills training, small business/entrepreneurship development, financial support/compensation, etc.