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# **EU's EBA and Prospect of GSP+ for Bangladesh**

**Addressing challenges related to  
Labour Laws and Rights**

**Khondaker Golam Moazzem  
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Publisher

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## Acronyms

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BLA	Bangladesh Labour Act
BLR	Bangladesh Labour Rules
DIFE	Department for Inspection of Factories and Establishments
DoL	Department of Labour
EBA	Everything but Arms
EU	European Union
FGD	Focus Group Discussion
GSP	Generalised System of Preferences
ILO	International Labour Organisation
ISU	Industrial Safety Unit
KII	Key Informant Interview
LDC	Least Developed Country
MDGs	Millennium Development Goals
MoC	Ministry of Commerce
MoFA	Ministry of Foreign Affairs
MoLE	Ministry of Labour and Employment
RCC	Remediation Coordination Cell
RMG	Readymade Garments
RSC	RMG Sustainability Council
SDG	Sustainable Development Goals
SOP	Standard Operating Procedures
TCC	Tripartite Consultative Council

## 1. Introduction

Over the past few years, Bangladesh has surpassed several milestones in terms of economic development: Bangladesh entered into the SDG era in 2015 after successful accomplishment of the MDGs, graduated from the 'lower income country' to the 'lower middle-income country' category of the World Bank in 2016 and fulfilled in 2018 all the three criteria to be eligible for graduation from the LDC group by 2024.

It is widely acknowledged that Bangladesh is capable of capitalising on the opportunities made available by its newfound achievements; however, there are many new challenges too. Bangladesh can now avail of due to its newfound achievements; however, there are a lot of new challenges as well. Bangladesh must overcome numerous legislative, structural and administrative challenges relating to labour standards, especially when it comes to the smooth graduation from the LDC category. The main challenges stem from the fact that Bangladesh will lose preferential market access to a lot of export destinations. It is estimated that Bangladesh will lose about 8 per cent of its total export earnings because of additional tariffs on its exports by 6.7 per cent due to preference erosion, which may lead to a loss of around USD 2.7 billion (Rahman and Bari, 2018).<sup>1</sup> Since there will be a 'grace period' of another three years after 2024 when Bangladesh can still benefit from the preferential treatment facility for LDCs in the European Union countries, Bangladesh has around seven years left to prepare for the upcoming challenges.

The European Union is one of the major export destinations for Bangladesh, and one way to ensure that the exports from Bangladesh to the EU do not suffer a major setback in the post-graduation period is by becoming eligible for the Generalised Scheme of Preferences (GSP+ Scheme). However, gaining market access through the GSP+ scheme requires Bangladesh to comply with twenty-seven international Conventions, fifteen of which are related to human rights and the labour standards of ILO. This study reviews the shortcomings in the legislation, in the monitoring and application of the relevant standards in Bangladesh, and it puts forward suggestions for fulfilling all the requirements of GSP+ related to labour standards in a time-bound manner.

## 2. Economic Importance of EBA

Bangladesh, as a Least Developed Country (LDC), has been enjoying 'zero tariff benefits' from the best possible schemes available under the Generalised Scheme of Preferences of the European Union. After the introduction of the 'Everything But Arms' (EBA) initiative in 2001 under the GSP scheme, Bangladesh automatically qualified due to its LDC status. Under this initiative, almost all products except arms and ammunition originating from LDCs, get duty-free and quota-free access to the EU market. Although LDCs automatically qualify for this scheme, the preferences provided to them through this initiative can be withdrawn in 'exceptional circumstances', especially when certain principles of human rights and labour rights are violated (as per Article 19 of the regulation).

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<sup>1</sup>For details, please see, Rahman, Mustafizur and Estiaque Bari (2018). "Strategy towards Bangladesh's Sustainable LDC Graduation" in *CPD Policy Brief 2018 (4)*, Centre for Policy Dialogue (CPD), Dhaka.

From 2016 to 2018, the utilisation rate of EBA for Bangladesh has increased from 95.7 per cent to 96.8 per cent,<sup>2</sup> which means that Bangladesh uses almost all of the eligible preferences under EBA, which is one of the highest utilisation rates of EBA among all the beneficiary countries. On the other hand, the European Union (EU) is one of Bangladesh's biggest trading partners and accounts for 58 per cent of the country's total exports and 64 per cent of the total apparel exports.<sup>3</sup>

As mentioned earlier, Bangladesh will officially be regarded as a 'developing country' in 2024 and will no longer be regarded as an LDC; however, the 'zero duty' access to EU will continue until 2027 due to a three-year grace period noted earlier. When the preferences under EBA are not available after that as scheduled, the exports of Bangladesh would face 8.7 per cent duty on average, and it is estimated that shipments would drop at the rate of 5.7 per cent annually.<sup>4</sup> Hence, Bangladesh would face major setbacks in terms of increased tariffs, particularly in the European Union. In fact, most garments exports of Bangladesh will face a tariff increase of 10 per cent on average in the EU market as EBA ceases to be applicable on exports from Bangladesh once the country transitions to the 'developing country' status. This graduation from LDC status will however not have any effect on GSP preferences in the USA. Since its suspension in June 2013, the major item exported to the US (i.e., apparel) is not covered under the US GSP programme. Hence, while the loss of LDC-specific preferences will result in a significantly higher tariff burden in the European Union and other markets with high preference utilization, there will be little to no effect in the US market.

As for other major export destinations, this graduation towards 'developing country' status would lead to: 16-18 per cent tariff increase for most export products in the Canadian market, 8-11 per cent increase in the Japanese market, 4-12 per cent increase in the Republic of Korea and 7-13 per cent increase in the Chinese markets.<sup>5</sup> Overall, the continuation of tariff preference after LDC graduation is important for Bangladesh in all major markets, but particularly in the EU market, as maintaining export competitiveness through the preferential tariff would increase the country's exports which would contribute to higher manufacturing production, higher export earning, higher employment, women empowerment, and ultimately, the reduction of poverty.

To mitigate these effects, Bangladesh needs to qualify for the GSP+ scheme in order to preserve its competitiveness in the export market.

### **3. Importance of Qualifying for GSP+**

The GSP+ Scheme is a 'special incentive arrangement' towards 'Sustainable Development and Good Governance' for 'vulnerable developing countries',<sup>6</sup> and this system grants full removal of tariffs on over 66 per cent of EU tariff lines. The criteria for being eligible for GSP+ include the following:

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<sup>2</sup>European Union Trade Database ([https://trade.ec.europa.eu/doclib/docs/2020/february/tradoc\\_158640.pdf](https://trade.ec.europa.eu/doclib/docs/2020/february/tradoc_158640.pdf))

<sup>3</sup>Daily Star—June 29, 2020(<https://www.thedailystar.net/opinion/rmg-notes/news/bangladesh-needs-clear-strategy-gsp-2093889>)

<sup>4</sup>Daily Star—June 29, 2020 (<https://www.thedailystar.net/business/news/bangladesh-seeks-extension-eu-trade-benefits-even-after-ldc-graduation-1922029>)

<sup>5</sup>Based on the analysis included in 'Trade Impacts of LDC Graduation', WTO, 2020.

<sup>6</sup>European commission website(<https://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences>)

- a) The country must fulfil the 'vulnerability' criteria as set out by the EU
- b) The country must ratify 27 core International Conventions (15 conventions relate to core human and labour rights)
- c) The country must not have formulated reservations prohibited under these conventions
- d) Monitoring bodies under those conventions must not identify any serious failure to effectively implement them

After a country qualifies for GSP+, the European Union monitors the country's compliance levels in terms of maintaining adherence to the conventions and their implementation, reporting requirements and monitoring cooperation, e.g., by checking all of the relevant information is provided.

As mentioned in the previous section, Bangladesh has one of the highest utilisation rates of EBA preferences and the erosion of these preferences may mean that Bangladesh will have to face tough competition in terms of exports. However, if Bangladesh can maintain the preferences under the GSP+ scheme, the negative effects of the preference erosion would be eased.

There are social benefits as well that result from qualifying for the GSP+ scheme which can later translate into sustainable development for the country. The eligibility for this scheme requires countries to ratify and properly implement many of the core international conventions related to labour rights and human rights. The proper realization of these rights can lead to better human development and sustainable economic growth of the country.

**Box 1: Fifteen Conventions relating to core human and labour rights for qualifying for GSP+**

Convention on the Prevention and Punishment of the Crime of Genocide (1948)  
 International Convention on the Elimination of All Forms of Racial Discrimination (1965)  
 International Covenant on Civil and Political Rights (1966)  
 International Covenant on Economic, Social and Cultural Rights (1966)  
 Convention on the Elimination of All Forms of Discrimination Against Women (1979)  
 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)  
 Convention on the Rights of the Child (1989)  
 Convention concerning Forced or Compulsory Labour, No. 29 (1930)  
 Convention concerning Freedom of Association and Protection of the Right to Organize, No. 87 (1948)  
 Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, No. 98 (1949)  
 Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No. 100 (1951)  
 Convention concerning the Abolition of Forced Labour, No. 105 (1957)  
 Convention concerning Discrimination in Respect of Employment and Occupation, No. 111 (1958)  
 Convention concerning Minimum Age for Admission to Employment, No. 138 (1973)  
 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No. 182 (1999)



This study will mainly focus on identifying gaps in application of the concerned laws and make recommendations for effective implementation of the conventions relating to labour rights, such as conventions on child labour, forced labour, right to organize, collective bargaining and violence against workers. This study will also focus on the labour law of Bangladesh in general and the administrative procedures impacting its implementation.

#### **4. Methodology of the Study**

The study employed a qualitative method of research to understand the grey area concerning the labour law, administrative processes and the overall scenario of Bangladesh vis-à-vis the labour conventions of ILO. Firstly, data on different activities of the government and recent developments in different labour related issues have been collected from secondary sources, such as the Ministry of Labour and Employment (MoLE), Department of Inspection for Factories and Establishments (DIFE) and ILO. Data from previous research of CPD<sup>7</sup>, especially the National Tripartite Plan of Action (NTPA) Review (which was a study conducted by CPD in collaboration with the ILO) has also been used directly in this study. Secondly, several Key Informant Interviews (KIIs) have been conducted with key stakeholders along with legal experts to understand the current situation, the gaps therein and what needs to be done to address those gaps in ensuring decent work and establishing workers' rights in Bangladesh. Here also, information was obtained from KIIs and FGDs conducted for previous studies of CPD. Besides, a number of case studies on petitions lodged on child labour related issues in the High Court Division of Bangladesh Supreme Court have been discussed based on the information and documents collected from the High Court library. So, a combination of information from both primary and secondary sources has been used in order to arrive at key recommendations of the study to address the shortcomings to ensure decent work environment and effective workers' rights in Bangladesh.

#### **5. Key Recommendations to Qualify for GSP+ and Addressing Shortcomings Identified by EU**

The European Union, on the basis of its technical missions to Bangladesh, proposed the development of an Action Plan to further improve the labour rights situation of Bangladesh on the 21<sup>st</sup> of November, 2018. A year after that on the 21<sup>st</sup> of October, 2019, the 9th Session of the European Union (EU)-Bangladesh Joint Commission was held in Dhaka, Bangladesh. During the session, it was emphasised that any sort of preferential treatment and future trade relations with Bangladesh would depend on the state of human rights including labour rights in the country; hence, sustained reforms of labour rights standards by the Government of Bangladesh and their full alignment with International Labour Organisation (ILO) Conventions on the basis of consensus between the tripartite constituents are of utmost importance. The EU and Bangladesh reached an agreement to develop a roadmap for addressing those issues. The EU suggested nine areas of action, which are:

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<sup>7</sup>For further detail see Dr Khondaker G Moazzem, Mr Ariful Islam (2015), "*Moving Beyond the Shadow of the Rana Plaza Tragedy in Search of a Closure and Restructuring Strategy Fourth Monitoring Report*"

- Action 1:** Amendment of labour related laws
- Action 2:** Elimination of child labour
- Action 3:** Combating violence against workers, harassment, unfair labour practices and anti-trade union discrimination
- Action 4:** Increasing the success rate of trade union registration
- Action 5:** Elimination of the backlog of cases at labour courts
- Action 6:** Efficient follow-up of workers' complaints
- Action 7:** Recruitment of new Labour Inspectors
- Action 8:** Ensure proper work of the Remediation Coordination Cell (RCC) and transition to Industrial Safety Unit (ISU) while ensuring close cooperation of the RCC/ISU with the RMG Sustainability Council (RSC)
- Action 9:** Ratify ILO Conventions on minimum age (CO 138) and forced labour protocol (P29)

The Government of Bangladesh has already developed an indicative action plan on the basis of tripartite meetings, and preliminary comments on it have been received from the EU on the 31<sup>st</sup> of January, 2020, detailed comments were received on 27<sup>th</sup> of February, 2020. The European Union had proposed a 'Technical EBA Mission' to Bangladesh during 10-12 March, 2020, but due to the Covid-19 pandemic, this technical mission was replaced by a video conference on 11<sup>th</sup> March, 2020. Also due to the pandemic, the negotiations for finalising the Action Plan were put on hold.

The government, however, has been active on this issue. Due to technological issues, holding all tripartite consultations was not possible; however, meetings of Secretaries of the Ministry of Commerce (MoC), Ministry of Foreign Affairs (MoFA) and Ministry of Labour and Employment (MoLE) were held. An Inter-Ministerial Committee on the Implementation of the Action Plan has already been formed; also, DIFE has formed its own dedicated committee on this.

In the light of these areas of action, the following sub-sections provide an overview of the progress so far, identifies gaps in the processes and makes recommendations.

### **5.1 Amendments to the Bangladesh Labour Act, 2006**

The Bangladesh Labour Act, enacted on 11<sup>th</sup> October 2006, (amended twice: in 2013 and in 2018) states in detail the rights and entitlements of workers with regard to wages, working hours, freedom of association, industrial relations, workplace safety and other related issues. Bangladesh Labour Rules (2015) provide specific guidelines for the implementation of the law; however, rules for its amendment in 2018 are yet to be issued. A tripartite committee has already been formed with six representatives from the government, three representatives from entrepreneurs and three representatives from workers, whose objectives include updating Bangladesh Labour Rules (2015) in the light of the 2018 amendment of Bangladesh Labour Act, reviewing the observations of ILO Committee of Experts, etc.

The Bangladesh Labour (Amendment) Act, 2013 revised eighty-seven sections of the labour law of 2006, and the major revisions included: extension of coverage of group insurance to a minimum of

one hundred workers instead of two hundred, introduction of four new categories of workers—ship-breaking, construction, agro-firms and rice-husking mills – adding the requirement of setting aside five per cent of their net profit as a contribution to the workers welfare fund, deletion of the existing provisions requiring the intending trade unions to submit workers' list to the factory owners/managers inclusion of provisions prohibiting gender discrimination and disability discrimination, making safety committees mandatory in factories with more than fifty workers and requirement for registration of workforce supply agencies under the labour act. The old provision of gathering signatures of at least 30 per cent of a company's workers to form a trade union remained unchanged, but a prohibition requiring the GOB, MoLE to hand over the list of signatories to factory owners was included.

The latest amendment to the labour act, the Bangladesh Labour (Amendment) Act, 2018, revised fifty sections of the previous labour law; most of them included: minor revisions in definitions, exclusion of women who have abortion from maternity leave benefits, requirements for providing space for rest and lunchtime and relaxation of the requirement for group insurances given the establishment of a centralised fund by the government. As per the recommendations made by the ILO's Committee of Experts,<sup>8</sup> substantial progress was made in expanding the scope of the Act by broadening the definitions of workers to include: industries and groups of workers that were previously excluded the repeal of specific provisions (that infringed upon freedom of association and collective bargaining rights) such as the requirement of government approval to access funds from external sources, possibility for the DoL to cancel union registration if it had been obtained by fraud or misinterpretation of facts, possibility to cancel a union if it secures less than 10 per cent of votes in an election for a collective bargaining agent, the prohibition of strikes in establishments formed less than 3 years ago, the adoption of Standard Operating Procedures (SOPs) for the registration of trade unions and for responding to unfair labour practices and anti-union discrimination, deletion of the provision that allowed the employment of children under age 12 in light works and the formation of a Tripartite Consultative Council (TCC) in the garments sector through which tripartite consultation takes place.

### 5.1.1 Gaps in the Labour Law

**Freedom of Association:** Bangladesh has ratified the 'freedom of association' (C 87) and 'right to bargain' (C 98) conventions of ILO; however, there are certain concerns about the proper alignment of the laws of the land with the conventions. The major concerns are as follows:

- a) One major advancement in trade union registration was the lowering of the membership requirement to twenty per cent, as mentioned earlier. However, this is still a high percentage given that collecting necessary documents from many workers, for example, collecting signatures etc., is especially difficult in large factories with thousands of workers.<sup>9</sup>
- b) One complaint from representatives of workers' organizations is that unions are allowed to select their leaders only from workers within the establishment, which enables employers to force out

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<sup>8</sup>Comments of ILO Committee of Experts, 2018

<sup>9</sup>As per worker representatives

union leaders by firing them due to such reasons as 'unruly behaviour' (as cited in the law); whereas the term 'unruly behaviour' has not been defined properly in the labour law.

- c) As per the law, the government has the power to stop a strike or declare lockout if there is apprehension of "serious hardship to the community" or if it is "prejudicial to the national interest"; but the related terms are not properly defined by the law.
- d) There are discriminatory anti-strike provisions; strikes are prohibited in an enterprise during the first three years of operation if it is "owned by foreigners or is established in collaboration with foreigners."
- e) There is no clearly defined role of the participatory committees, and they are not empowered with the right to bargain.

**Loss of Lien:** According to the Section 27-3(A), if a worker is absent at the workplace for more than ten (10) days without prior notice or prior permission, then the worker would be given another ten (10) days to provide reasons for the absence; and if the worker fails to do so he/she would be given another seven (7) days to defend himself/herself. If he/she fails to do so again within the extended period, the worker's contract would be considered as 'terminated' from the date of the first day of his/her absence. This implies to what is known as the 'loss of lien', as, according to the KII's conducted with workers' representatives, this is sometimes used against the interests of the workers.

**Lack of Clarity in Different Sections of the Labour Act:** Section 23-3 of the Labour Act 2006 states that a worker will not get any compensation (excluding other lawful dues) if he/she is dismissed for misconduct under sub-section 4(b) and (g), where sub-section 4(g) mentions 'disorderliness, riot, arson or breakage in the establishment'; however, no definition was provided for 'disorderliness' or 'disorderly behaviour'. The procedure for taking leave is also quite complex; it involves a long bureaucratic process. It requires a worker to apply to his/her employer in writing, then the employer will issue an order leading to a leave pass, and the employer is also required to state their reasons in the event of refusal. This proved to be particularly difficult for un-lettered workers.

**Child Labour:** Bangladesh has already ratified the Worst Forms of Child Labour Convention, 1999, (CO 182); whereby employing children under the age of 12 in any factory or establishment has been prohibited and is now a punishable offence according to the 2018 amendment of labour law. However, eliminating child labour completely in order to move towards the ratification of the Minimum Age Convention (CO 138) will be difficult due to the socio-economic conditions of Bangladesh, where many children work in order to provide for themselves and their families.<sup>10</sup>

**Violence against Workers and Workplace Harassment issues:** Bangladesh Labour Act, 2006 and its amendments thereafter do not explicitly address the issues of 'violence against workers' and 'workplace harassment'. There are no explicit laws for addressing the issues related to workplace violence. Even workers unrest is sometimes considered as a 'criminal offence' and the police force gets involved in the event of the unrest turning violent, although the unrest usually stems from industrial disputes. Workplace harassment issues are largely ignored in the Bangladesh Labour Act as well. There are other laws in place for violence against women, and that too would be tried in

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<sup>10</sup>As per KIIs conducted in 2020

criminal courts when they turn into 'criminal offences'. But harassment at the workplace is not clearly identified anywhere in the law, and so, the consequences of such actions are not yet delineated.

### 5.1.2 Recommendations

To further align the labour law of Bangladesh with the international conventions, the following steps need to be taken:

**Revision of provisions related to freedom of association in BLA:** There are some provisions in the Labour Act of Bangladesh that need to be considered for revision in order for BLA to be fully aligned with the ILO Conventions, especially the conventions ratified by Bangladesh. These provisions include:<sup>11</sup>

- a) restrictions regarding freedom of association on many sectors and workers, including but not limited to, government workers, university teachers and domestic workers (sections 1(4), 2(49) and (65) and 175).
- b) one remaining restriction on organizing in civil aviation (section 184(1) – the provision should clarify that trade unions in civil aviation can be formed irrespective of whether they wish to affiliate with international federations or not);
- c) restrictions on organizing in groups of establishments (sections 179(5) and 183(1));
- d) restrictions on trade union membership (sections 2(65), 175, 193 and 300);
- e) interference in trade union activity, including cancellation of registration for reasons that do not justify the severity of the act (sections 192, 196(2)(b) to be read in conjunction with 190(1)(c), (e) and (g), 229, 291(2)– (3) and 299);
- f) interference in trade union elections (section 180(1)(a) to be read in conjunction with section 196(2)(d), sections 180(b) and 317(4)(d));
- g) interference in the right to draw up constitutions freely by providing overly detailed instructions (sections 179(1) and 188 (in addition, there seems to be a discrepancy in that section 188 gives the DOL the power to register and, under certain circumstances, refuse to register any amendments to the constitution of a trade union and its Executive Council whereas Rule 174 of the BLR only refers to notification of such changes to the DOL who will issue a new certificate));
- h) excessive restrictions on the right to strike (sections 211(3)– (4) and (8) and 227(c)) accompanied by severe penalties (sections 196(2)(e), 291(2)–(3) and 294–296);
- i) excessive preferential rights for collective bargaining agents (sections 202(24)(b), (c) and (e) and 204);
- j) the ILO Committee of Experts suggests that while BLA amendments 2018 (sections 195(1)(g) and 202(13)) prohibit employers' interference in the conduct of elections for a collective bargaining agent and Rule 187(2) of the Bangladesh Labour Rules (BLR) prohibits interference in elections of workers' representatives to participation committees, these provisions do not cover all acts of interference prohibited under Article 2 of the Convention, such as acts designed to promote the establishment of workers' organizations under the domination of the employer, to support workers' organizations by financial or other means with the objective of placing them

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<sup>11</sup>Based on the 2020 report of the Committee of Experts on the Application of Conventions and Recommendations

under the control of an employer or an employers' organization and to exercise pressure in favour or against any workers' organization, etc;

- k) worker representatives suggest that the safety of trade union activists is a vital issue, and rather than introducing harsher provisions in the law, there is a need to ensure proper implementation of the provisions that are already present in the Labour Act of Bangladesh. Hence, DIFE needs to be empowered more.

***Inclusion of workplace harassment:*** Currently, there are different provisions under the Penal Code of Bangladesh that protect the citizens of Bangladesh, especially women, from different forms of harassment. But there is no specific law or no specific provision in the labour law for workplace harassment issues. So, this should be added in the labour law, with adequate detail along with punishment for different offences.

***Revision in the provision of closure of establishments:*** Section 13 (1) of the labour law suggests that the employer may close down any section of the establishment, or can close down the whole establishment, due to an 'illegal strike'; also, workers participating in that strike will not be paid wages after such closures. Worker's representatives suggest that this is one of the most misused provisions of labour law, particularly because in the absence of laws or provisions dealing with industrial disputes, strikes are considered as public nuisances and are subject to criminal procedures.

***Termination of workers:*** Although Section 26 (1) of the Labour Act provides that workers are to be given prior notice of 120 days before they are terminated by the employer, section 26 (3) suggests that the employer to terminate the workers by paying them wages covering notice period 'in lieu of the notice'. According to workers representatives, this is another provision of the law that is frequently misused, as it allows entrepreneurs to terminate workers without any notice.

***Introducing adequate penalties:*** Another important part of implementing the Labour Act properly is the introduction of adequate penalties for offences committed under the act. Currently, the fines prescribed for different offences under the act range from Tk. 1,000 to Tk. 10,000 (\$11.72 - \$117.2); for entrepreneurs, this fine is too inadequate to be an issue. In fact, the relative cost of providing labour-friendly working conditions to workers is significantly higher than the cost of penalties associated with non-compliance under the labour law. Hence, this is a major area where significant revisions are required.

## **5.2 Aligning Labour Rules and EPZ Labour Law in line with ILO Conventions**

As mentioned earlier, the Bangladesh Labour Rules were gazetted in 2015, and the monitoring of the implementation of those rules falls under the jurisdiction of DIFE. These rules outline basic safety procedures for workers as well as protection against interference of owners in trade union and participatory committee elections (through Rule 187 (2) of BLR 2015). On the other hand, the EPZ Labour Act was gazetted in 2019, and it is to function as a substitute of labour law in the export processing zones of Bangladesh. This basically adds to the complexity of implementing two types of laws for workers in the same country.

### 5.2.1 Gaps in EPZ Labour Act and Recommendations

As a measure to make the EPZ Labour Act compatible with BLA, a number of restrictive provisions need to be removed. The EPZ Labour Act, 2019 has a number of restrictive provisions. Section 94 of the EPZ Labour Act (gazetted on 28 February 2019) allows workers to join Workers' Welfare Associations (WWAs); however, section 100 allows only one WWA to be formed in each enterprise operating in EPZs. Moreover, section 102 outlines the activities of WWAs which include awareness building about workers' responsibilities, establishing harmonious relationships between workers and employers, increasing productivity, etc.; but it does not include the 'right to collective bargaining'. With regard to Bangladesh Labour Rules (2015), the ILO Committee of Experts, in their latest report, has urged the Government of Bangladesh to consider amending rule 202 in consultation with social partners. Therefore, there is an urgent need to consider required revision of these provisions.)

Another restrictive provision is outlined in Section 109, which empowers the EPZ authority to cancel the registration of WWAs if the concerned association is involved in any kind of 'malpractice', although the term is not properly defined anywhere in the law. Also, workers representatives have complaints about limited opportunity for collective bargaining and freedom of association, given that the Workers Welfare Associations (WWA) inside the EPZs are not allowed to have any contact with NGOs or other organisations outside the EPZs. The act allows exclusion of specific categories of workers in supervisory and managerial positions, and exclusion of the members of the security staff, drivers, irregular workers, workers employed in kitchen and clerical workers. The act also allows, inter alias, a broad authorisation and interference of the EP Zone Authority in the approval for funds from an outside source, the approval and arrangements for elections to the Executive Council of WWAs, the transfer or termination of a WWA representative and the monitoring of any WWA elections and so on. Hence, these legal complexities need to be taken care of towards smooth processes in collective bargaining and to ensure labour rights are respected.

In case of labour inspection, Inspectors of DIFE are now allowed to inspect EPZ factories; however, they're required to conduct the inspections subject to EPZ authority. This does not allow Inspectors to undertake unannounced visits for proper inspections and therefore, these restrictive provision needs to be removed too.

There are provisions in the EPZ law for the formation of labour court inside or outside EPZs; however, one Court in Dhaka was to be formed, but has not yet been formed. Current labour courts are performing the duties for EPZs as an additional duty. When the same Chairman functions under labour law, it's a normal labour court; and when he /she functions under EPZ law, it's an EPZ labour court. This just adds to the complexities in the processes of the labour courts, and so quick formation of the EPZ labour courts is required.

## 5.3 Establishing an Action Plan to Eliminate Child Labour

### 5.3.1 Legal Framework

The legal framework of Bangladesh with regard to child labour is governed by Bangladesh Labour Act, 2006 and its amendments. According to the Bangladesh Labour Act, a *child* means a person who has not completed his/her fourteenth year of age, while *adolescent* is a person who has completed his/her fourteenth year of age, but not the eighteenth year. The amendment of the labour law in 2018 has eliminated the provision of allowing twelve-year-old children for 'light work'. Only adolescents are allowed to be employed by establishments for light work. According to BLA, section 34 (2), no adolescent can be employed or allowed to work in any occupation or establishment without a certificate of fitness in the form prescribed by BLR 2015 and granted by a registered medical practitioner; the adolescent must carry it with him/her. Section 35 prohibits adults making employment agreements as a *parent* or *guardian* of the child. Also, Section 39 restricts the employment of adolescents in work such as cleaning, lubricating or adjusting machinery in motion.

Previously, there was a provision that a child who has completed 12 (twelve) years of age may be employed in such light work as is not dangerous to his/her health and development or it shall not come in the way of his/her education. When the child is a student, his or her working hours shall be so arranged that the work does not interfere with his or her school attendance. After the 2018 amendment, this provision has been made null and void; hence, no child can now be employed in establishments.

According to Section 40, no adolescent will be allowed to work at any machine unless he/she has received proper training or is under adequate supervision. Also, the government is to publish a list of hazardous works from time to time where no adolescent shall be employed. Other provisions in the labour law include restricting the working hours for adolescents and the prohibition of adolescents from working underground and underwater, etc.

The inspection about the presence of child labour in factories and establishments falls under the jurisdiction of the Department for Inspection of Factories and Establishments (DIFE), and every inspection checklist explicitly includes the number of children and adolescents employed as one of the metrics for evaluating the overall compliance of factories. If the Inspector is not clear about the age of any worker, then according to section 36 of labour law, it is to be resolved on the basis of a birth registration certificate, a school certificate, or a certificate issued by a registered medical practitioner certifying the age of the concerned child. Additionally, Inspectors can order for a medical examination according to Section 38. Complaints about child labour can be made directly to DIFE through their help lines, and DIFE can act against the guilty party through labour courts, if necessary.

### 5.3.2 Challenges and Recommendations

Bangladesh Child Labour Elimination Policy, 2010 outlines the identification of child labour and plan for gradual elimination of child labour in Bangladesh. However, there are certain challenges that can



impede the progress of gradual child labour elimination in the country. The main challenges that need to be addressed and overcome are:

- a) The Labour Act does not cover the large number of domestic workers in Bangladesh, and child labour is one of the dominant categories in this area. Since the act does not cover domestic workers, it is impossible to bring domestic workers under scrutiny. So, the labour act needs to expand its purview in order to include domestic workers as well.
- b) The socio-economic conditions in Bangladesh are such that many families are dependent on the income of their children. Also, the only option for livelihoods of many children is working in different establishments. So, the application of the provisions introduced in tackling child labour needs to be ensured through a planned approach that addresses the socio-economic contexts of the problem as well.
- c) The Inspectors of DIFE are not sufficiently empowered to act against different factories which employ child labour; DIFE can only take action through labour courts, which is a lengthy and cumbersome process. There should be some form of enforcement capacity options (such as charging fines, etc.) for the Inspectors that would enable them to apply the law properly. In the absence of this, the enforcement of law gets cumbersome for labour courts dispensation.
- d) The punishment for employing child labour is minimal – a maximum amount of Tk. 5,000/- (approximately US\$ 58.6) can be charged for employing a child labour. This level of fine is insufficient and should be raised adequately.

## **5.4 Combating Violence against Workers**

### **5.4.1 Legal Framework**

In Bangladesh, the Penal Code 1860 contains provisions that protect the citizens of the country from any form of violence. Hence, any type of violence against workers or violence from workers (if any) is generally considered to be an offence under the penal code and is tried according to Criminal Procedure Code (CrPC). But there are no laws specifically designed for handling workers unrest resulting from harmful attempts of industrial dispute resolution mechanisms. Hence, any form of workers unrest, which is sometimes viewed as violence that can damage private or public property, is dealt with in the same manner as public unrest, as there are no separate laws or provisions detailing the handling of such unrest resulting from industrial disputes. So, when workers unrest reaches the streets and the police gets involved, they take action under the Penal Code of Bangladesh. Hence, the ILO Committee of Experts, in their latest report, has raised its concerns over these 'allegations' (complaints from ITUC to ILO) of 'violent suppression of several workers' protests and 'filing of false criminal complaints' against unionists and hundreds of 'unnamed persons'.

The Penal Code of Bangladesh has provisions too for protecting women from different forms of violence. As for harassment (especially for women) in the workplace, the High Court of Bangladesh has issued guidelines that detail the forms of harassment and how to deal with them in different organisations through the formation of designated committees. However, there are no provisions in the labour law nor is there a separate law dealing specifically with workplace harassment; and until a detailed law is in place, the guidelines provided by the High Court would serve as law. However, if the guidelines are not followed, the guilty parties can only be held in contempt of court. The

enforcement mechanism is quite vague, too, as punishments are not outlined in detail. Clause 332 of the Labour Act can be remotely linked with punishments for harassment, where the maximum punishment is Tk.25,000/- (US\$295). However, there are no direct links of workplace harassments to punishments prescribed in the law, as the punishment only talks about 'un-gentlemanly conduct', with no clear definition. Moreover, the High Court asked the Ministries to initiate the formation of committees in the offices to deal with harassment issues, but there has been no noticeable progress as yet. Recently, a writ petition has been filed by Bangladesh National Lawyers women's association BNWLA, and in response thereto, the High Court issued a rule to several ministries enquiring of the reasons behind the delay in the formation of Committees directed earlier.

#### **5.4.2 Implementation Challenges and Recommendations**

Most of the incidents of violence against workers in Bangladesh have been workplace related. There are also legal issues related to it; in fact, if entrepreneurs are found to be committing violence against workers which can be classified as *unfair* labour practices, a maximum fine of Bangladeshi Taka=10,000/- (BDT) which equals US\$120 is applicable, according to section 291(1) of the BLA. The ILO Committee of Experts finds this penalty inadequate and 'not sufficiently dissuasive'. However, since there are no explicit details in the law with regard to the handling of workers in case of industrial disputes, any form of workers unrest is generally considered as an activity harmful to public property, and hence, the police deal with it like any other unrest. Therefore, there should be new provisions in the labour law, or a new law introduced to govern the industrial disputes to handle them properly, so that the use of excessive force against workers can be controlled. Also, if workers face anti-union discrimination, they aren't entitled to any compensation for it as yet. The ILO Committee of Experts has also raised concerns about the allegations communicated by the ITUC referring to widespread anti-union practices in the country and illustrated by the dismissal of 36 workers in two EPZ factories in April 2019 following unsuccessful attempts at collective bargaining.

The issue of workplace harassment currently receives the least priority everywhere due to the prevalence of problems such as non-payment of wages, industrial disputes, safety issues, etc. So firstly, a new law needs to be formed or the current labour law modified with requisite provisions in detail towards addressing the issues which are directly related to workplace harassment. There should be effective enforcement mechanisms and adequate punishments prescribed in those laws as well. Secondly, many workers have been found to have no idea about what constitutes 'workplace harassment'; hence, awareness building mechanisms need to be developed, too.

#### **5.5 Trade Union Registration**

Slow progress in trade union registration accompanied with different complexities of the registration process have always plagued workers' the freedom of association in the factories and establishments all over Bangladesh. To ease these complexities, an online trade union registration system was officially launched by the Department of Labour, Government of Bangladesh with support from ILO in April 2015. Also, the Standard Operating Procedures (SOPs) to address the Unfair Labour Practice and Anti-Trade Union Discrimination issues have been developed (published in August 2017) and incorporated into the Amendment of the Labour Act, 2018. After the adoption of the SOPs, the

success rate in union registration has increased from 65 per cent in 2017 before the adoption of the SOPs to 79.85 per cent after their adoption; then 74.85 per cent in 2018 and 74 per cent up to July 2019. However, during 2018-19, as many as 667 applications were received and 98 of them were rejected and 302 trade unions have been registered of which 41 are in process and 226 have been filed.<sup>12</sup>

### **5.5.1 Challenges and Recommendations**

The adoption of SOPs and launching of an online system for trade union registration are certainly major achievements for Bangladesh; however, there are certain challenges with regard to the implementation of the whole process. The major challenges are:

- a) Many of the workers in Bangladesh are un-lettered and so handling online registration procedures is difficult for them; the online procedure seems more difficult to them than the manual process. This means that there is a need for proper training and awareness raising of the workers and all persons involved in the whole registration process.
- b) The whole process of trade union registration is basically a combination of the manual and online systems; this only increases complexities. These complexities need to be reduced.
- c) The online database could not yet be functional due to upgrading of the software and technical issues; hence, obtaining updated data is quite difficult. However, after upgradation, the database will include requisite information on status of the applications for registration whether accepted and rejected, registration of sectoral and national federations and confederations; trade union-related court cases, dispute conciliation, election of collective bargaining agents and anti-union discrimination and participation committees, etc.

### **5.6 Eliminating Backlog of Cases in Labour Courts**

There were mainly seven labour courts in Bangladesh; however, three new courts have been added during 2018-19. There were 9821 cases filed in total in the appeal tribunal and the seven labour courts, of which 8530 fetched a verdict. The establishment of three new labour courts at Narayanganj, Gazipur and Comilla has already been approved by GOB and MoPA. The establishment of a new labour court in Faridpur is underway as well. The labour courts of Bangladesh have historically suffered from problems of backlogs, where cases take years to reach a proper verdict. The ILO Committee of Experts, in their latest report, has also raised their concerns over the issue.

#### **5.6.1 Challenges and Recommendations**

- Although the problem of case backlog is acute, there is also the problem of cases ending due to absence of either party during litigation. Sometimes, workers don't show up due to the burden of increased costs they cannot afford to bear and lengthy processes; cases are eventually dismissed early. Worker's access is limited, too, as the cases go on year after year triggering increased and prolonged financial burden on the workers.

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<sup>12</sup>Annual Report, MoLE, 2018-19

- The procedure in labour courts also sometimes leads to cases not reaching a verdict soon enough. For example, written statements are required from owners or their representatives. This consumes a lot of time. After that when the hearings start, there is the problem of backlog. Even if dates are given, sometimes owners ask for time, sometimes workers ask for time, again some members are not present, or the chairman is not available (due to illness, may be); all these complicate and prolong the process further.
- There is a provision that cases must be disposed of within 180 days, but it is not a mandatory provision. There are no consequences for extending the period; so there should be a revision in the law so that there is an incentive for all parties to take care of the cases to quicken verdict.
- One of the reasons behind backlog is insufficient number of labour courts. Due to distance, all workers of Bangladesh do not have access to labour courts. Still, given these circumstances, the situation can be improved; for that, there is a need for further amendment of the law in the following areas:
  - The cumbersome procedure of court hearings should be eased in terms of say evidence and witness, because many cases can be decided using document-based evidence.
  - Alternative dispute resolution mechanisms can be made mandatory whereby labour courts can ask for mediation, like family court ordinance. Because dispute resolutions based on verdicts take up a lot of time, especially when one of the parties decides to appeal, most cases are disposed of through out-of-the-court mediations anyway. These out-of-the-court settlements should be brought under the legal framework and should not depend on the Chairman's discretion. That's the reason behind some disposals of the courts being faster than other courts. Furthermore, dispute resolutions can be settled through the members.

## 5.7 Filling the Vacant Posts of Labour Inspectors

The main administrative body for monitoring the implementation of labour law is the Department for Inspection of Factories and Establishments (DIFE). After the Rana Plaza tragedy, effective from 14th January 2014, DIFE was upgraded to a Department under the Ministry of Labour and Employment, and initially Inspectors were selected through Bangladesh Public Service Commission. The detailed organogram of DIFE has already been developed and DIFE is now finalising the procedures for ensuring the tenure for different posts. Currently, a total of 340 posts are vacant (around 34 per cent), of which 144 posts belong to labour Inspectors, which is roughly 15 per cent of the total posts and 40 per cent of total labour inspector posts (Table 1).

**Table 1: Status of Total Posts, Filled-in and Vacant under the DIFE**

Posts	Total Posts	Total Posts Filled-in	Total Vacant Posts
Inspector General	1	1	0
Additional Inspector General	1	1	0
Joint Inspector General	4	4	0
Deputy Inspector General	27	9	18
Assistant Inspector General (General)	96	40	56
Assistant Inspector General (Health)	41	10	31
Assistant Inspector General (Safety)	41	24	17
Statistics and Research Officer	1	1	0

Posts	Total Posts	Total Posts Filled-in	Total Vacant Posts
Librarian	1	0	1
Information and Communication Officer	1	1	0
Law Officer	1	1	0
<b>A. Total Officers (First Class)</b>	<b>215</b>	<b>92</b>	<b>123</b>
Labour Inspector (General)	248	168	80
Labour Inspector (Health)	58	34	24
Labour Inspector (Safety)	58	17	41
Administrative Officer	1	1	0
<b>B. Total Officers (Second Class)</b>	<b>365</b>	<b>220</b>	<b>145</b>
Total Staff (Third Class)	206	145	61
Total Staff (Fourth Class)	207	196	11
<b>C. Total Staff (Third and Fourth Class)</b>	<b>413</b>	<b>341</b>	<b>72</b>
<b>Total (A + B + C)</b>	<b>993</b>	<b>653</b>	<b>340</b>

### 5.7.1 Recommendations

DIFE is still going through an upgrading process, where a revised organogram has been designed with the aim of delineating the duties of each official. There is also an ongoing process with regard to transforming the posts of Labour Inspectors to tenured positions. Also, there is the issue of delegation of authority. Almost all major decisions have to be taken by the Inspector General, and the staff, even at the immediate lower levels, have little to no capacity for decision making. This is one major shortcomings in the system.

Further, DIFE still needs to enhance its workforce to extend its activities to all the districts of Bangladesh and all industrial establishments. So, not only does DIFE need to fill-in the vacant posts, but it additionally needs to work on recruiting new Inspectors for covering all sectors of Bangladesh.

Another main problem with the current situation is that the scope of promotion is limited, which leads to high turnover of DIFE staff; with no prospect for career advancement, Inspectors leave their jobs as and when suitable; this limiting aspect should be well addressed to improve the performance of DIFE. There is also absence of proper incentives for the Inspectors, such as 'risk allowances' and 'performance bonuses. These issues need to be addressed properly along with the design and implementation of a proper organogram.

### 5.8 Ensuring Proper Work of the Remediation Coordination Cell (RCC)

The Remediation Coordination Council (RCC) was set up in 2017<sup>13</sup> by DIFE to expedite the remediation process of factories inspected under the national initiative. The RCC has been monitoring and overseeing the progress of the Corrective Action Plan (CAP) in NI factories. Until January 2019, 26 Engineers worked under the RCC with technical support provided through an

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<sup>13</sup>Established through funding from Canada, Kingdom of Netherlands and UKAID and technical support from ILO.

Implementation Agreement with the ILO, bringing onboard 3 Engineers, IT, communications, and support staff to aid and assist RCC management. Additionally, the government recruited 60 Engineers in 2019 to facilitate remediation process. Furthermore, ILO provided 54 personnel including 47 Engineers recruited by way of hiring a private firm for the support of the RCC.

As of August, 2020, 42 per cent, 43 per cent and 40 per cent of the 2821 factories under the national initiative have received and are implementing Corrective Action Plan CAPs for improving the structural safety, electrical safety and fire safety of those factories respectively. Overall, the process of remediation of the factories under the national initiative has been 42 per cent. A plan for a future transition of RCC into Industrial Safety Unit (ISU) is currently underway, and a proposal has been made to form ISU with a workforce of 227 comprising 99 Engineers. There are also plans for establishing a Government Coordination Council (GCC).

### 5.8.1 Recommendations

The KIIs conducted with employers and development partners suggest that the progress of factories in terms of remediation activities have been slower than the factories under Accord and Alliance, because most national initiative factories operate in shared buildings, and so they need to move to their own buildings for proper remediation. Moreover, most of these factories do not work for international brands, hence they do not face increased pressure from buyers and about brands with regard to social compliance issues. So, DIFE needs to work with these factories to ensure remediation is timely completed and ensure that proper awareness of the entrepreneurs is progressively developed.

Remediation financing is still an issue, as stressed by the entrepreneurs. Efforts have been undertaken by ILO as well as the German Development Agency GIZ to enhance access to remediation financing. Access to (finance sessions) Finance sessions has been carried out for factory owners to present the remediation credit line (two-step loan) supported by JICA and facilitated by Bangladesh Bank. Recommendations from access to finance sessions with factory owners have been shared with GIZ to address in their capacity needs assessment study. However, according to KIIs involving development partners, access to finance is still an issue due to complications in the associated rules; for gaining access to the funds from JICA, factories require approval from PWD, which in turn, gives its approval only if the load requirements for different floors of BNBC are met, and BNBC requirements are higher than those of Accord and Alliance in terms of load capacity. So, factories certified by Accord and Alliance as compliant still didn't get the JICA funding due to the higher requirements.

Private consulting firms that are employed for detailed engineering assessments<sup>14</sup> (DEAs) by RCC have higher and differential rates, which adds to the burden of factories already burdened with increased costs of remediation. Hence, there is a need for revision in the current process of hiring

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<sup>14</sup>A detailed engineering assessment (DEA) is a detailed engineering investigation and reporting of the structure of a building, which is primarily required to understand the safety issues and the remedial works required.

private consulting firms. However, as per 14<sup>th</sup> NTC meeting<sup>15</sup> minutes, DIFE will explore the mechanism of intervening into issues of different rates by firms possibly by invoking the relevant provisions of CAPs as to the costs associated with different types of work required.

## 5.9 Ratifying ILO Conventions 29 and 138

The Forced Labour Convention, 1930 (CO 29) of ILO states provides for each member of the ILO to 'suppress the use of forced or compulsory labour in all its forms within the shortest possible period', where forced or compulsory labour is defined as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'. The Constitution of The People's Republic of Bangladesh, while guaranteeing the fundamental rights for the people, prohibits all forms of forced labour under Article 34. Article 34 lays down that 'all forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law'. There's also the Penal Code of Bangladesh where, under section 374 (1), it is stated that forced or bonded labour can lead to punishments such as imprisonment, fines, or both. Now, the ratification of this Convention implies that there would be adequate penalties for forced labour and that they are 'strictly enforced'. However, the presence of forced labour in Bangladesh is a debated issue; KIIs with different stakeholders reveal that forced labour might be present in some sectors of Bangladesh, but generally it is non-existent in the export-oriented industries. Currently, the government is actively considering ratification of CO 29 and is in the process of receiving comments from concerned Ministries.

On the other hand, the Minimum Age Convention of ILO (CO 138) specifies that the minimum age for admission to work should not be less than the age of completion of compulsory schooling, and, 'in any case, shall not be less than 15 years'. There must also be a plan by the government for 'raising progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.' With regard to child labour, however, there has been important progress in terms of legislation (as discussed in the section on child labour); employing workers under twelve years of age is now a punishable offence. Bangladesh has ratified the ILO's Worst Forms of Child Labour Convention (C182). In addition, the country also ratified the UN Convention on the Rights of the Child.

### 5.9.1 Recommendations

The basic challenge for ratifying the Forced Labour Convention is the fact that the labour law of Bangladesh does not clearly address the 'forced labour' issue, as there is no clear definition of forced labour in the law. As for child labour, the definitional issues are well addressed in the law (as mentioned in the section on child labour), and through the amendment of the Labour Law in 2018, Bangladesh has eliminated the provision of employing children under twelve years of age.

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<sup>15</sup>Meeting of 16<sup>th</sup> August, 2018

There are still complaints of 'child labour' and 'bonded labour' in Bangladesh, as evident from different cases lodged in the Supreme Court of Bangladesh.<sup>16</sup> For example, one such case by Ain-o-Salish Kendra in 2004 (which reached a verdict in 2011) has led to High Court recommendations stating that there is bonded labour or servitude practised in the coastal fishing areas, where child labour is also employed. So, first of all, harsher punishments need to be introduced, and secondly, the inspection system along with the enforcement of penalties for non-compliance with the rule need to be reformed/modified to better enforce the law.

The data on 'forced labour' and 'child labour' is also not readily available in Bangladesh; there is an urgent need for an updated survey on those issues in order to review the current situation here. The Government of Bangladesh, however, is currently in the process of implementing a survey on child labour soon.

## 6. Conclusion

Bangladesh has made substantial progress in terms of ensuring congenial work atmosphere in factories, especially in the garments sector. Regulatory issues under different laws, acts and rules have been amended and/or revised in order to ensure workers' rights and decent working environments. Major amendments/revisions include (a) the elimination of provisions that allowed the employment of workers under the age of twelve and (b) the establishment of an administrative process for trade union registration and labour inspection. However, there is still a lot to be done in terms of implementation of the laws: inclusion of workplace harassment issues in the legal framework, addressing the forced labour issue properly (including adequate punishments in labour law), addressing the concerns of the ILO Committee of Experts and improvement of the overall monitoring and implementation framework of decent work in Bangladesh. The Government of Bangladesh is, however, actively consulting with the stakeholders about how to address these issues in a timely manner; hopefully there will be adequate improvements in the areas of decent work and the related legal framework so that Bangladesh can become eligible for the GSP+ scheme. A time-bound Action Plan with specific responsibilities for concerned public institutions is urgently required to set in order necessary changes as per a timeline. Furthermore, the necessary technical support needs to be extended by the development partners and international organisations in this regard.

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<sup>16</sup>A few examples of such cases have been added in the appendix.



## Annexure

### Annex 1: Information on Petitions Lodged to the High Court Division of Bangladesh Supreme Court on Child Labour

(1)

Discussion/ Petition	Specific Laws/Provisions	Sectors/ Schedules	Constitution and Concerned Laws	Issues/ Concerns	Recommendations/ Directions
<p>(Date: Case filed 2010 Judgment 2010)</p> <p>_____</p> <p>This Application was filed under Article 102 of the Bangladesh Constitution; that the plight of child domestic workers has been noticed by BNWLA and brought as an issue; that incident of physical violence against a child domestic worker has been highlighted in the daily Amar Desh report on 03.05.2010 (Annexure A to the writ petition). For breaking her flower vase, the lady of a house tied up her child housemaid aged 10 years, pushed her on to the floor and inserted the handle of a hot cooking utensil into the back passage of the domestic housemaid; the girl</p>	<ol style="list-style-type: none"> <li>1. Seeking rights as guideline for Domestic worker. especially child worker</li> <li>2. Inclusion of the domestic workers within the definition of 'worker' in the labour act.</li> </ol>	<ol style="list-style-type: none"> <li>1. Domestic Child Worker</li> </ol>	<p>The Constitution of Bangladesh Article 17, 34 (1), The Labour Act 2006, Section 35, Sub-section 65, The Domestic Registration Ordinance 1961.</p> <p>National Policies National Child Policy 2010 (Draft). National Child Labour Elimination Policy 2010 and Workers Protection and Welfare Policy 2010</p> <p>This case also covers International Law and Conventions as follows.</p>	<ol style="list-style-type: none"> <li>1. The Labour Act 2006 defines child as anyone up to the age of 14 years and an adolescent as anyone between the age of 14 and 18 years. In this regard, it was pointed out that, there is a prohibition within Section of 34 of the Labour Act employing any child, profession or establishment, and adolescents may be engaged in employment or in an establishment but may not be made to work unless they have a certificate from a registered practitioner. Section 35 prohibits parents or guardian of any child to enter into an agreement concerning the employment of the child.</li> </ol>	<ol style="list-style-type: none"> <li>1. The court directs the government to take immediate steps to prohibit employment of children up to the age of 12 for any type of employment, including employment in the domestic sector, and to ensure that children up to the age of 12 attend school and obtain the basic education.</li> <li>2. Education or training of domestic workers aged between 13 and 18 must be ensured by the employers by allowing them to attend educational or vocational training.</li> <li>3. Establishment of local ministry/focal point, Child Labour Unit and National</li> </ol>

Discussion/ Petition	Specific Laws/Provisions	Sectors/ Schedules	Constitution and Concerned Laws	Issues/ Concerns	Recommendations/ Directions
<p>was in a critical condition receiving treatment at the Dhaka Medical College Hospital. The report also gives details of how the girl was sent by her poor father two years back to work as a housemaid and how she would be tortured for every small mistake that she made in and around the house. While she became ill after the incident, she was kept confined in the house and on the third day, seeing her critical condition, the wicked lady took her to the government hospital. The doctors informed the police, and the lady of the house was eventually arrested. Calling upon the respondents no. 1 to 6 in connection with their inaction to take appropriate steps against respondent no. 7 (the employer of the domestic child worker) regarding the incident reported in the daily Amar Desh to report to this court within 24 hours with regard to their actions and measures taken in</p>			<p>International Law: The Domestic Workers (registration Social Security and Welfare) Act 2008, Section 11, India. Gubernatorial Decree No. 1099 of 1994, Indonesia.</p> <p>International Convention : ILO Convention 182 Article 3(d),</p>	<p>Labourer in Section 2 Subsection (65) as anyone engaged in any establishment or industry in exchange for payment but does not include any one in work as a domestic worker.</p> <p>The definition of establishment appearing in Section 2(31) means any shop, trade establishment, industrial establishment, premises or yard where workers are employed for the management of an industry. that the persons working inside the house in exchange for payment either cash or in kind, are totally excluded from purview of the existing labour act.</p>	<p>Child Labour Welfare Council in order to ensure implementation of the policy 2010.</p> <p>4. To implement all the beneficial provisions of the draft of Domestic Workers Protection and Welfare Policy 2010 as announced by the government.</p> <p>5. The cases relating to the violence against the domestic workers must be monitored and prosecution of the perpetrators must be ensured by the government.</p> <p>6. The court directed the government to ensure mandatory registration of all domestic workers by all employers engaging in their household any child or other domestic worker and to maintain an effective system through the respective local government units such as</p>

Discussion/ Petition	Specific Laws/Provisions	Sectors/ Schedules	Constitution and Concerned Laws	Issues/ Concerns	Recommendations/ Directions
connection with the incident as to why direction should not be given to respondents no. 4 to 6 to send the victim for immediate treatment in the nearest One Stop Crisis Centre at Dhaka Medical College Hospital and why the respondents shall not be directed to monitor the employment of children as domestic workers, and/or such other or further order or orders passed as to this Court may seem fit and proper.					pourashava or municipal corporation in all towns and cities for tracking down each and every change of employment or transfer of all the registered domestic workers from one household to another.

(2)

Discussion/ Petition	Specific Laws/Provisions	Sectors/ Schedules	Constitution and Concerned Laws	Issues/ Concerns	Recommendations/ Directions
<p>Date: (Suo Motu Rule no. 4 of 2008)</p> <p>“8-year-old girl child sued, sent to jail for drug trade”</p> <p>The fact that the alleged offender was reported to be aged only eight years and the court issued Rule Nisi calling upon 1. The</p>	<p>1. The Children Act, 1974 (Then and now repealed by the Children Act, 2013)</p>	<p>1. Right of the children</p> <p>2. Duties of the child (respective government officer and authority when dealing with the children)</p>	<p><b>The Constitution of Bangladesh</b></p> <p>Article 28(4)</p> <p>Section 83 of Penal code,</p> <p>The Children Act 1974 (16, 31, 13 (2), 48, 49, 50, 66)</p>	<p>1. Best interest of any child would demand its custody with the parents. In this regard, the court might invoke guidelines from the UNCRC. As one of the first signatories, Bangladesh should well honour as soon as possible the aims and goals under UNCRC guidelines.</p>	<p>1. The parents of the children who are brought before the police under arrest or otherwise must be informed without delay.</p> <p>2. A Probation Officer must be appointed immediately to report to the court about matters concerning the child.</p> <p>3. Bail should be considered as a matter of course and detention/confinement should</p>

Discussion/ Petition	Specific Laws/Provisions	Sectors/ Schedules	Constitution and Concerned Laws	Issues/ Concerns	Recommendations/ Directions
<p>Metropolitan Police Commissioner, Khulna; 2. Chief Metropolitan Magistrate, Khulna and 3. Sub-Inspector Ashim Kumar Das, of the Detective Branch to show cause as to why they would not be directed to explain under what authority a criminal case has been started against a minor girl of 8 years of age, under what provision of law she was arrested and detained in custody in the district jail, Khulna, why the minor girl should not be paid compensation for her illegal arrest and detention and why the compensation would not be directed to be paid from their personal fund for acting in violation of the laws of the land.</p>			<p>The Child Labour Rules 1976 Rule 21</p> <p><b>International</b> UNCHRC Act 3(1), 9(1), 19.1, 20 (1-3), 12 12)</p>	<ol style="list-style-type: none"> <li>2. Bail of the child arrested</li> <li>3. Submission of information to Probation Officer by police after arrest</li> <li>4. 13(2) where the child is arrested, the Officer In-Charge of the police station to which s/he is brought shall forthwith inform the parents or guardian of such arrest, if he can be found, and shall also cause him to be directed to attend the court before which the child will appear and shall specify the date of such appearance.</li> <li>5. 49 (2) A court shall order him/her to be detained in a remand home or a place of safety, when the child is not released on bail by the trial court.</li> <li>6. To have even forgotten the proviso in Section 497 of granting of bail to a child even in case involving non bailable offences.</li> </ol>	<p>ensue only as the exception in unavoidable scenarios.</p> <ol style="list-style-type: none"> <li>4. In dealing with the child, its custody, care, protection, and well-being the views of the child, its parents guardians, extended family members as well as social welfare agencies must be considered.</li> <li>5. Where the best interests of the child demand its separation from its parents, special protection and assistance must be provided and there must be alternative care for the child.</li> <li>6. In the light of the above the learned CMM and in due course, any other Court dealing with the child, will bear in mind the observation made by the court and decided upon the issue of granting bail and giving custody of the accused child, taking into account the report of the Probation Officer, the views of the parents and relatives as well as the child herself and any other materials available before him and</li> </ol>

Discussion/ Petition	Specific Laws/Provisions	Sectors/ Schedules	Constitution and Concerned Laws	Issues/ Concerns	Recommendations/ Directions
				<p>7. Section 66(1) of the Act to ascertain the age of the girl, by holding a full-fledged inquiry, where evidence in respect of her age was given by a number of persons.</p> <p>8. Nothing is an offence committed by a child above nine years of age and under twelve, who has not attained maturity of understanding to judge the nature and consequences of his/her conduct on that occasion.</p>	<p>deciding the custody of the child choosing whichever avenue might be in the best interest of the child.</p> <p>7. Appropriate steps should be taken for training their officials on compliance with the legal provisions relating to children. Authorities may further consider setting up officers properly trained and sensitized to deal with child offenders and children generally.</p>

(3)

Discussion/Petition	Specific Laws/provisions	Sectors/Schedules	Constitution/concerned laws	Issues/concerns	Recommendations/directions
<p>1. Date--- (Case filed 2004. Judgment 2011)</p> <p>2. Ain-o-Salish Kendra (ASK) and Aparajeyo Bangladesh filed the writ petition (public interest litigation) seeking an order from this Court declaring the continuous failure of the</p>	<p>Employment Of the Children Act, 1938 (repealed by the <b>Labour Act, 2006</b>) provided as follows: "3(3) No child who has not completed his twelfth year shall be employed, or permitted to</p>	<p>1. Bidi-making 2. Carpet weaving 3. Cement manufacture, including bagging of cement 4. Cloth printing,</p>	<p><b>Constitution of Bangladesh</b> Article 14. Emancipation of peasants and workers Article 15. Provision of basic necessities</p>	<p>1. With regard to the age of workers, Section 2(Ka) of the Factories Act described as "adolescent" someone between the age of 16 to 18 years and an "adult" as someone who has completed the age of 18 Years and a "child" as anyone who has not completed the age of 16</p>	<p>1. There is bonded labour (TH) or Servitude practiced in the coastal fishing areas of the country and young children are the victims.</p> <p>2. Ministry of Labour and Employment to take all necessary steps to put an end to such practice immediately and with the help of the law enforcing agencies to bring the</p>

Discussion/Petition	Specific Laws/provisions	Sectors/Schedules	Constitution/concerned laws	Issues/concerns	Recommendations/directions
<p>Respondents to ensure healthy, hygienic and safe work place, for the workers within the 'bidi' factories of respondents No. 3 to 5 in accordance with the provisions of the Factories Act 1965 and why such activity should not be declared as illegal and unconstitutional, being in violation of the fundamental rights guaranteed under Articles 27 and 31 of Bangladesh Constitution and why they should not be directed to discharge their legal duties to ensure compliance with the aforesaid provisions of law. It was further prayed that the respondents No. 3, 4 and 5 be directed to provide cost of medical treatment to the workers within those "bidi" factories including the children,</p>	<p>work in any workshop wherein any of the processes set forth in the Schedule is carried on</p>	<p>dyeing and weaving 5. Manufacturers of matches, explosive and fire works 6. Mica-cutting and splitting 7. Shellac manufacture 8. Soap manufacture 9. Tanning 10. Wool cleaning'</p>	<p>Article 17. Free and compulsory education Article 34. Prohibition of forced labour <b>Labour Act, 2006</b> Section 2(viii) adolescent Section 2(xxxvi) adult Section (34-43, 51-52, 54-60, 100-103, 317-319, 323, 283-285)  This case also covers International Conventions as follows. <b>Convention on the Rights of the Child (CRC)</b> Article (18.2, 27.1, 28.1, 31.1, 32, 36) <b>ILO Convention C182 – Worst</b></p>	<p>years. A "young person" is one who is a child or an adolescent. 2. It was pointed out that Section 66 of the Factories Act, 1965 prohibited the Employment of any child who had not completed 14 Years of age and Section 67(Ka) provided that non-adult workers between the age of 14 to 18 years would not be allowed to work unless a certificate of fitness was granted for the purpose under Section 68 of the Act. (Para 32.)</p>	<p>perpetrators of such practice to justice. 3. Relevant Ministries and Government Departments to ensure full time education and necessary financial assistance to the parents/guardians of these children to enable them to desist from such illegal and harmful practices and to encourage them to educate their children. 4. Directed to ensure that all employers, particularly those engaging children as labourers abide by the the law and do not engage those under the age stipulated by statute and provide all necessary facilities and equipment to ensure a healthy working environment in their establishments for those who may be awfully engaged in remunerated work. Needless to say, prompt action must be taken against those who violate the provisions of law thereby creating</p>

Discussion/Petition	Specific Laws/provisions	Sectors/Schedules	Constitution/concerned laws	Issues/concerns	Recommendations/directions
<p>who are suffering from diseases due to their work in those establishments.</p>			<p><b>forms of Child Labour 1999</b> Article (1, 3, 7, 17)</p>		<p>unhygienic, cramped and unhealthy workplaces.</p> <ol style="list-style-type: none"> <li>5. Bearing in mind the inherent health hazards of the tobacco industry, the manufactures must be compelled to provide adequate medical facilities and medical insurance for all employees.</li> <li>6. Immediate steps to phase out within a period of one year further 'home <i>bidi</i> rolling' by directing the '<i>bidi</i>' factory owners not to allow working from home.</li> </ol>

## **Annex 2: Overview of Public Offices Dealing with Labour related Issues**

### ***Ministry of Labour and Employment (MoLE)***

The Ministry of Labour and Employment of the Government of Bangladesh was formed in 1972. It is currently led by a state minister; while one Secretary, four Additional Secretaries and six Joint Secretaries along with other officials are responsible for the day-to-day activities of the Ministry. The major functions of the Ministry include formulation, updating and implementation of labour laws, ensuring compliance with labour law and rules, eradication of child labour, working towards ensuring the welfare of women workers, ensuring occupational safety and health, creation of skilled manpower, registration of trade unions, industrial dispute resolution, fixing minimum wages and working with ILO and other international organisations with a view to facilitating decent work in factories and establishments, etc.

### ***Ministry of Commerce (MoC)***

The Ministry of Commerce is basically responsible for regulating and implementing different policies related to domestic and foreign trade. The Ministry was formed in 1972, and is currently led by the Minister of Commerce, assisted by a Secretary and other Officials. The main role of the Ministry entails such activities as expansion of domestic trade, regulation of imports, controlling prices, negotiating bilateral and multilateral agreements, conducting research on trade issues, etc.

### ***Ministry of Women and Child Affairs (MoWCA)***

The Ministry of Women and Children Affairs is responsible for formulation of policies that promote welfare of women and children. It was established in 1972 and is currently led by a state minister and a Secretary. The main vision of this Ministry is to establish a society featuring gender equality and child protection, and its mission is the realization of rights of women and children through mainstreaming in development.

### ***Bangladesh Export Processing Zones Authority (BEPZA)***

Bangladesh Export Processing Zones Authority (BEPZA) is the official organ of the government to attract, facilitate and promote foreign investment in the EPZs. The Chairperson of the Board of Governors of BEPZA is the honourable Prime Minister of Bangladesh. Other governing body members include representatives of different Ministries including finance, industries, commerce, planning, shipping, foreign affairs, energy and mineral resources, labour and employment, home affairs, Prime Minister's office, NBR, Bangladesh Bank and Board of Investment. The primary objective of an EPZ is to provide special areas where potential investors would find a congenial investment climate free from cumbersome procedures. The main functions of BEPZA include strengthening the economic base of Bangladesh through industrialization, promotion of investment, boost up export and generation of employment in the Export Processing Zones, inspection and supervision of social and environmental compliance of enterprises in the EPZs, safety and security at work place in order to maintain harmonious labour-management and industrial relations in EPZs.



### ***Bangladesh Economic Zones Authority (BEZA)***

Bangladesh Economic Zones Authority (BEZA) was formed through The Bangladesh Economic Zones Act, 2010 and was officially instituted by the Government of Bangladesh on 9th November 2010. BEZA aims at establishing economic zones in all potential areas in Bangladesh in order to encourage rapid economic development through increase and diversification of industry, employment, production and export. BEZA is linked with the Prime Minister's Office (PMO) and its main activities include establishing economic zones, providing license, and the operation, management and control of the economic zones in Bangladesh. BEZA is governed by a 3-level management structure: Governing Board (headed by the Prime Minister), Executive Board and BEZA Office/Secretariat. The Executive Board exercises all powers and performs all functions as may be exercised and performed by the Authority. The BEZA Office/Secretariat performs all day-to-day activities as guided by the Executive Board. BEZA has got an approved personnel pool of 130 Officers and Staff.

### ***Department of Labour (DoL)***

The Department of Labour is a department under the Ministry of Labour and Employment; its main mission is to maintain peaceful industrial relations in all sectors of Bangladesh and increase productivity of workers through skills development. Currently, it operates under the leadership of the Director General, who is an Additional Secretary; DoL operates out of its headquarters in Dhaka, six divisional offices, nine branch offices, four offices dedicated for industrial relations training and thirty-two labour welfare centres. The basic services currently provided by the department include industrial dispute resolution, trade union registration, regulation and monitoring, implementing different activities of the government aimed at labour welfare, imparting training on labour law and labour rights, and collecting data on labour rights, trade unions, etc., etc.

### ***Department of Inspection for Factories and Establishments (DIFE)***

The Department of Inspection for Factories and Establishments (DIFE) is the main government agency for ensuring proper application of the labour law and labour rules of Bangladesh. It was established in 1969 as a Directorate by the government of Pakistan in pre-Bangladesh period. After the independence of Bangladesh in 1971, the Directorate was subsumed into the Ministry of Labour and Employment, and in 2014, it was upgraded to a department. Currently, it is led by the Inspector General (IG), who is also an Additional Secretary; under the IG, four branch offices, five sub-branches and twenty-three offices of the Deputy Inspectors General are currently operational. The main activities of the department include ensuring safety and congenial work environment, minimum wages, implementation of the labour law and labour rules in all sectors of Bangladesh, undertaking regular inspection of different factories, awareness building programs, etc., etc.

### ***Remediation Coordination Cell (RCC)***

Launched in 2017, the Remediation Coordination Cell (RCC) was set up by the Department of Inspection for Factories and Establishments (DIFE) along with the support from other industry regulators to manage the remediation work of readymade garments factories that were being

inspected under the National Initiative. Currently, it is led by a Project Director, along with other staff, and periodically, private entities are also employed by RCC to conduct detailed engineering assessments. The goal of RCC is to ensure the proper implementation of the Corrective Action Plans (CAPs) relevant to different factories to ensure proper safety in the garment factories of Bangladesh.