



Amsterdam 16 February 2019

Your excellency, dear Harry Verweij,

We are writing from the Dutch trade union FNV, Clean Clothes Campaign/Schone Kleren Campagne, Centre for Research on Multinational Corporations (SOMO) and Arisa (new name of India Committee of the Netherlands) to share our deep concern about the further deterioration of political space for workers to exercise their fundamental rights in Bangladesh, and the ongoing serious and systematic labour and human rights violations. Indeed, over five years after the Rana Plaza disaster, the Government of Bangladesh still fails to protect or respect freedom of association and collective bargaining, pursuant to ILO conventions 87 and 98; and occupational safety and health, pursuant to Article 7 of the ICESCR, in law and in practice. This is particularly apparent when considering the disproportionate and repressive measures of the Bangladeshi security apparatus which followed recent wage protests in Bangladesh, resulting in dozens of demonstrators injured, one death, thousands of worker dismissals, and dozens of arrests and charges against workers and union representatives. Below we provide details concerning alarming developments in Bangladesh which deserve your immediate attention and action.

The new minimum wage, the wage protest and the repression

On 30 December 2018, the Awami League (AL)-led ruling coalition was re-elected for a third consecutive term in a landslide. The political opposition, as well as numerous governments (including the EU) and NGOs have seriously called into question the integrity of the election. The elections took place in a context of sustained political violence. Many in civil society fear retaliation by authorities against those who voice dissent.

In this repressive and dangerous environment, the ready-made garment (RMG) labour federations understand that they are expected to be loyal to the government and the Bangladesh Garment Manufacturers and Exporters Association (BGMEA). Union leaders are under the constant threat of physical harm, arrest and detention, or worse. In December 2018, unrest started over the new minimum wage. The long-awaited minimum wage hike came after a lengthy, highly problematic process, which lacked adequate representation of workers' voices. As a result, the wage revision amounted to only half of the workers' unified demand. It falls far short of any credible calculation

of a living wage. After workers saw what the wage revision amounted to in their paychecks, as well as the unequal treatment of workers in different pay grades, thousands of them went on strike and organised massive protests.

The authorities engaged in direct threats to union leaders about their alleged involvement, and there have been many reports of physical violence by police against workers. Law enforcement also threatened unionists that if worker unrest continued or spread, union leaders would be arrested and “disappeared.” They also stated that law enforcement officers had the authority to shoot as they deemed necessary and referenced as a warning the unsolved murder of trade union leader Aminul Islam.

On 9 January 2019, the police used water cannons, tear gas, batons and rubber bullets to disperse roughly 10,000 garment factory workers in Savar who were protesting the still poverty-level minimum wage which went into effect in 2019. The clashes killed at least one worker and wounded over 50. Over 50,000 workers have reported walking off the job in protest. It is estimated that at least 800 to 900 workers were fired or suspended in direct retaliation for participating in demonstrations.

Severe repression of workers remains ongoing. Factory managers have now fired over seven thousand workers for participation in the protests, with the numbers expected to grow¹¹. The vast majority of terminations flagrantly violate the existing labor law. Reports include but are not limited to the following: workers who were forced to resign, sometimes in the presence of police; factory management physically refusing workers entry into the factory for work and then issuing dubious show-cause notices saying that workers failed to report for their shifts; workers who were transported from their factories to the BGMEA offices where they were forced to sign resignations falsely implicating themselves in vandalism.

To further intimidate workers, some factory managers have affixed billboards with names and photographs of terminated workers to factory gates. We have obtained evidence and received credible reports of at least 1792 blacklisted workers, from over 50 factories. However, these are only estimated numbers, and actual numbers are likely to be higher and will likely continue to rise.

Furthermore, at least 28 cases were filed under the penal code targeting 435 named and 4667 unnamed garment workers. Almost all cases were filed by a number of factories producing for major European and US brands. The factories identified as party to the case include: A R Jeans Producer Ltd, Algausia Textile Ltd, Besta Apparels Ltd, Disney Sweater Ltd, Dorin Apparels Ltd, FNF Trend, Hameem Group, Hoplon Apparels Ltd, Industrial Police-1, Islam Garments Ltd Group of Industries, JK Group, Kint Asia Ltd, Luna Fashion Ltd, Mahmud Fashion Ltd, Marchen Dying Fashion Ltd, Metro Knitting & Dying Mills Ltd, Nordan Corporation Ltd and Nordan Garment, Orbit Apparels Ltd, Partiot Eco Apparels Ltd, Shishir Knitting & Dying Ltd, Sin Sin Apparels Ltd, Tengon Garment Ltd, Tex Teach Ltd, and Tusuka Apparels Ltd & Jeans Polo Ltd.

At least 45 workers, including union representatives, have been arrested and now face trumped-up charges that could lead to lengthy prison sentences, including life imprisonment. These include 11 workers whom have been detained for weeks and denied bail. This adds to the many charges against worker representatives that are still pending since the 2016-2017 protests for higher wages.

Workers have the fundamental right to demonstrate and strike for decent wages and should be able

¹ http://news.trust.org/item/20190205134326-zlysp/?fbclid=IwAR3nsFG66mtfi2ufa1-rSVpFeRhdkV7cgxaeqk_Dq1vAWjoSca9432cadaA

to do so, free from repression. It is critical that the EU takes action to urge the government of Bangladesh to respect workers' rights to peaceful assembly and demonstration. More specifically the Bangladesh government must immediately put an end to worker dismissals and blacklisting, reinstate workers who wish to be reinstated with full back wages, and release of all workers and union representatives that were arrested and drop charges related to the demonstrations.

Government Attempt to Eject the Bangladesh Accord

The current spate of violence and repression come at a time of already increased international attention on Bangladesh's garment industry. The Accord on Fire and Building Safety in Bangladesh has achieved concrete and lasting improvements in the country's garment industry following the Rana Plaza building collapse in 2013, which killed at least 1,134 workers.

The only effective mechanism to ensure compliance with laws relating to fire and building safety is the Bangladesh Accord. However, beginning in 2018, the Government of Bangladesh has worked to eject the Accord from the country, even though the ILO, foreign governments and brands all recognize that the Government of Bangladesh is unprepared to assume inspection functions and enforce the law, both essential for ensuring safe workplaces. Indeed, the European Parliament passed a resolution in November 2018 to this effect. A lawsuit was filed against the Bangladesh Accord in 2017 which was clearly politically motivated. A legally dubious order was issued to require the Accord to cease operating in Bangladesh from 30 May 2018, which was later extended to November 2018.

The Accord appealed to the Supreme Court of Bangladesh. On 17 December 2018, after several hearings, the Appellate Court's Chief Judge urged the Government of Bangladesh and the Bangladesh Accord to discuss these matters outside court, before appearing again on the 21st January 2019. This prompted negotiations between the government, the Accord, the brands and others to determine whether there is a way forward. To date, the negotiations have not resulted in an outcome that would allow the Accord to function in any meaningful way.

In its response to the appeal, the Government of Bangladesh responded that the Accord should only be allowed to continue operations in Bangladesh under a set of strict conditions that would remove its ability to operate independently of government and employer control. The proposed constraints by the government include that there would be no further extensions allowed to permit the Bangladesh Accord to maintain its office in Dhaka, independent of whether the work of securing fire and building safety is complete. Further, despite ongoing fire and building safety concerns, Accord inspectors would be prevented from identifying any new safety violations, such as faulty alarm systems, blocked fire exits and cracks in structural columns, which would mean that inspectors would be forced to ignore any new deadly hazards. In addition, the Accord would be prevented from taking any action against factory owners who threaten or fire workers for raising safety complaints. These restrictions would essentially render the Bangladesh Accord ineffective.

These restrictions stand in clear contrast with the Government of Bangladesh's commitments in international fora, including during the June 2018 event to evaluate the Bangladesh Sustainability Compact. The Bangladesh Accord has long committed to hand over its functions to a suitable national regulatory body of the government; however, at this point in time, the Government of Bangladesh's Remediation and Coordination Cell (RCC) is still in an early stage of development. There is broad consensus among stakeholders - the International Labour Organization (ILO), Bangladesh's major trading partners including the EU, and brands - that the RCC is not yet ready to perform the inspection tasks of the Bangladesh Accord to the same standards, and has no proven record of enforcing safety standards in the factories under its purview.

As a result, a genuine transition plan for factory inspections, safety trainings, and a worker complaint mechanism will need much more time and genuine engagement by the government. In the meantime, it is absolutely vital that the Accord be allowed to continue its life-saving work.

Even if the RCC were to establish the necessary regulatory capacity, it has clearly indicated that it will not take over key Accord functions such as the Occupational Health and Safety complaint mechanism which deals with the same safety complaints the Government of Bangladesh sought to stifle in its submission to the High Court. The RCC has repeatedly stated that this complaint mechanism will not be part of its mandate. This means that worker-management grievances would be dealt with in a similar fashion as any other labour rights violation; that is with indifference or hostility.

Failure to Amend the Bangladesh Labour Act (BLA)

In 2013, the Government of Bangladesh enacted amendments to the BLA in the wake of the Rana Plaza disaster. As explained in prior communications to the European Commission, these amendments did nothing to address the long-standing concerns of workers and the ILO, and in some cases made matters worse. On 24 October 2018, the government again passed amendments to the BLA and again failed to address the vast majority of concerns related to freedom of association and collective bargaining. While we have yet to complete our legal review of the amended law, we fear that the vast majority legal issues raised by the ILO Committee of Experts remain unaddressed (in whole or in part) and thus continue to violate the conventions.

One amendment that the government has heralded as evidence of progress on freedom of association is the reduction of the minimum number of workers to establish a union at a factory from 30 percent to 20 percent of the workforce. However, as amended this still violates Convention 87. As a practical matter, particularly in large factories, it is difficult to imagine how several hundreds of workers could be organised and convened for a founding meeting as required by law in order to apply for and obtain registration.

The amended BLA also reduces sanctions against workers, including for illegal strikes. While a step in the right direction, the fact that penal sanctions of up to 6 months (down from 1 year) remain in the law violates Convention 87. Penal sanctions are not to be imposed for illegal strikes unless violent. At the same time, the amended BLA punishes workers by eliminating overtime pay for piece-rate workers, which will affect thousands of workers and significantly reduce their wages.

No Meaningful Action Taken in Export Processing Zones (EPZs)

The BLA still does not apply to workers employed in EPZs, and labour inspectors are not permitted to conduct labour inspections in the zones. In the Export Processing Zones the EPZ Workers Welfare Association and Industrial Relations Act (EWWAIRA) applies. Under this law, EPZ workers are prohibited from forming unions. Workers may only form Workers Welfare Associations (WWA). WWAs, however, do not have the rights of trade unions. The ILO Committee of Experts has identified numerous provisions of the EWWAIRA that violate Conventions 87 and 98.

The terms and conditions of service for EPZ workers are regulated by the Instructions of the Bangladesh Export Processing Zones Authority (BEPZA), essentially eliminating any room for collective bargaining. EPZ workers also have little access to justice for labour violations due to ambiguities in the law. An amendment to the EPZ Labour law was passed in early 2019 and foresees scrutiny by the Ministry of Labour. However, as the ILO Committee of Experts noted in last year's report in anticipation of the amendment, the draft and the final amended law does almost nothing to address the Committee's numerous concerns on core ILO Conventions. As we see it, the

amended law has done nothing to extend ILO fundamental labour rights to workers in EPZs.

Union registration procedures remain flawed

It remains challenging for independent unions to register with the Joint Director of Labour (JDL), especially in Narayanganj and Chittagong. Over the last 8 years, roughly 45% of all union registration applications were denied. Little to no meaningful improvement has been observed since the Government of Bangladesh's adoption of standard operating procedures (SOPs) for union registration in 2017. The JDL still has significant discretion to register unions, and has rejected applications for specious reasons, or sometimes for no reason at all. Further, the JDL does not usually respond according to the strict deadlines set forth in the law and the SOPs. When a reason is provided, the government has claimed for example:

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

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

Failure to Enforce the Law and Provide Workers Remedy

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

Violence was reported in Gazipur where workers and industrial police interacted at one factory and limited vandalism was reported at another factory. Following this incident, the industrial police, local police authorities and BGMEA leadership, threatened trade union organisers and leaders with

arrest and even physical disappearance during public meetings and in direct communication, should unrest by factory workers continue.

Conclusion

As we have outlined above, the deterioration of the human and labour rights of garment workers is deeply disturbing and deserves serious attention. We respectfully call upon you to raise the above mentioned issues with your counterparts in Bangladesh and press for material change on the ground to address the climate of fear and repression that garment workers in Bangladesh now currently face.

Given that the human and labour rights violations are of a serious and systemic nature, we do urge the EU to investigate the status of Bangladesh as a beneficiary of preferential tariffs under the GSP.

Sincerely,

Jacob Plat
Union Official Textile and Garment Industry, FNV

Christa de Bruin
Coordinator Schone Kleren Campagne

Pauline Overeem
Senior Researcher, SOMO

Sandra Claassen
Director Arisa (new name of India Committee of the Netherlands)