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Labour Inspection Governance in Bangladesh

Informed by the 2020 comments of the Committee of Experts on the Application of Conventions and Recommendations, this normative analysis was undertaken under the auspices of ILO Bangladesh's multi donor Readymade Garments Cluster i.e.: Better Work Bangladesh, Ready-Made Garments Program, Social Dialogue and Industrial Relations, Sustainability Compact and the Employment Injury Insurance project.

1. Background

The responsibility of labour inspections in Bangladesh lies in the jurisdiction of the Department of Inspection for Factories and Establishment (DIFE) under the Ministry of Labour and Employment (MOLE). DIFE is responsible for enforcing provisions of the Bangladesh Labour Act 2006 (BLA) (and its subsequent revisions in 2013 and 2018), **except Chapter 13: Trade Union and Industrial Relations, and Chapter 14: Arbitration, Labour Courts, Labour Appellate Tribunal Rules and Procedures**. The Department of Labour (DOL) is responsible for enforcing the provisions in Chapter 13 & 14 of the BLA. As per the BLA, DIFE is responsible for inspection of factories, commercial establishments, industrial establishments, commercial banks & insurance companies and outsourcing contractors.

The key functions carried out by DIFE include:

- 1) approval of factory's machinery layout plan;
- 2) issue and renewal of licenses to enterprises under its jurisdiction;
- 3) inspection of the enterprises for enforcement of relevant provisions of BLA in terms of working conditions, safety & health and welfare of the workers;
- 4) sharing knowledge and experiences with workers and employers and advising them on labour laws, rules and regulations;
- 5) conducting investigations on complaints received on labour law violations, investigation of occupational accidents and diseases, and;
- 6) reporting on labour inspection, wage administration, conditions of work and occupational safety and health (OSH).

After a number of tragic industrial incidents (notably in 2012 and 2013), the Government of Bangladesh (GoB) embarked on an ambitious labour inspection reform process. This included the upgrade of status of DIFE from a Directorate to a Department on 15 January 2014, which provided greater operational and management authority that allows DIFE to facilitate discussions with other government agencies and departments on an equal footing.

From 2014, the labor inspection reform process served to strengthen DIFE's planning and operational mechanisms with the active technical and financial support from ILO and other technical agencies and development partners.

The following are some of the key reform measures to date:

- DIFE adopted a Labour Inspection Reform Roadmap covering the period 2014-2016.

- The first ever National Labour Inspection Plan was adopted by DIFE in February 2015.
- Inspection checklists for the Ready Made Garments (RMG) sector were developed in 2016. Four more checklists for Factory, Small and Medium sized Factories, Ship building and breaking, Shops and Establishments were drafted and field-tested in 2019.
- DIFE documented its Standard Operating Procedures (SOP) for inspection in 2016.
- In 2016, DIFE developed and adopted a Code of Ethics for the Labour Inspectors and other staff in order to prevent corrupt practices.
- The Labour Inspection Management Application (LIMA) was developed and launched in 2018 i.e. a robust labour inspection Management Information System that allows DIFE to perform its functions digitally under five distinct modules i.e.:
 - ▶ Enterprise Data Base;
 - ▶ Labour inspection
 - ▶ Occupational Safety and Health (OSH)
 - ▶ Remediation Tracking, and;
 - ▶ DIFE MIS

In its Direct request adopted in 2018, and published in 2019, the CEACR noted with interest the Government's indication that since May 2018, all labour inspectors at the DIFE are using tablet computers with a mobile application that enables them to enter inspection data digitally.

The CEACR noted that the Government reiterated that the annual labour inspection report for 2016 was under preparation. The CEACR encouraged the Government to pursue its efforts to comply with its obligation under Article 20 to regularly prepare, publish and transmit to the ILO, copies of the annual labour inspection reports.

- In 2015, with assistance from ILO, DIFE introduced a toll free Labour Help line and in January 2019 introduced a five- digit number (16357) for receiving complaints. DIFE is now taking over full operation of the help line and integrating it into the overall complaints management system.
- In order to strengthen the capacity of DIFE in the area of OSH, an OSH unit was formed in 2015 at DIFE HQ, and which was restructured in 2019 to support the development of the approved OSH institute, which is expected to be in operation by 2021.
- With a view to fulfil its commitments to improve compliance in the factories and establishments, the GoB formed a high- level National Industry Health and Safety Council in 2014, chaired by the Minister of Labour and Employment. Representatives of various government agencies, employers and trade unions are members of this council.

Two studies on DIFE were conducted in 2016, with support from ILO i.e.:

- ▶ Labour inspector's motivation and retention.
- ▶ DIFE's organizational structure and business process.

The findings and recommendations from these studies are reflected in DIFE's subsequent plans, e.g. Reform Roadmap and DIFE's expanded organogram where several function-based units with more than 2000 labour inspectors will work to cover all geographical areas and industrial sectors.

In its Observation published in 2020, the CEACR noted that retention of labour inspectors was a problem and that a number of recently recruited labour inspectors had left the DIFE after having been trained, to take up work with other government services. The CEACR noted that a study on the reasons for the high attrition rate of the DIFE recommended, among other things, the creation of more senior positions and the further development of staff competencies. The CEACR further noted that the amendments to the BLA, adopted in November 2018, provided for the creation of an additional labour inspection position, bringing the number of career positions with the labour inspectorate to six (previously five).

The CEACR requested the Government to continue to provide information on the measures taken to implement the recommendations in the study on the reasons for the high attrition rate, and to provide information on the implementation of the new career structure adopted in 2018, including the number of appointments made at each position, as well as information on the attrition rate among inspectors at different professional levels.

Key Issues

Since 2013, a considerable amount of work has been done on the reform of the labour inspection system in Bangladesh, but several important issues still need to be addressed as follows:

- **Exclusion in coverage of inspection:** The BLA has exempted various enterprises and groups, e.g. government offices, Export Processing Zones (EPZ), educational institutions, domestic workers, etc. from application of important labour laws. The BLA amendment in 2018 provides some scope for inspections in EPZs, which is limited but does not provide scope for applying laws and rules equally.

*In its Observation published in 2020, the CEACR noted that the EPZ Labour Act of 2019, provides for labour inspection by labour inspectors appointed under the Bangladesh Labour Act (Act). However pursuant to section 168 of that Act, labour inspectors require the approval of the Executive Chairman of the Bangladesh Export Processing Zones Authority (BEPZA) to undertake an inspection. **While the CEACR welcomed the progress made in opening EPZs and SEZs for labour inspections by the DIFE, it requested the Government to provide information on the outcome of the abovementioned discussions and consultations. Further, the CEACR requested the Government to take the necessary measures to ensure that labour inspectors are empowered to enter freely and without previous notice establishments in EPZs and SEZs, without any restrictions.***

- **Professionalization of Labour Inspection services:** Although labour inspection is a specialized service, the current system does not recognize it as a professional cadre. The remuneration and other benefits, professional development opportunities and overall career path are limited when compared to other similar services, conditions of work are demotivating.
- **Inspection targeting:** DIFE's planning and inspection targeting is still not risk-based but rather, based on the economic importance of sectors, prominence of the issues, availability of resources and convenience to inspect. However, the ILO continues to work towards strengthening the capacity of DIFE for risk-based inspection targeting, but it will take time to put that in practice.
- **Power of inspectors and sanctions:** Labour inspectors have no administrative sanctioning power and cannot impose fines directly. However, they can file a case in the labour court but the resolution of these cases usually takes a long time, and the fines imposed via a lengthy legal process do not provide a sufficient deterrent. Admissibility of evidence to support cases presented to the Labour Courts are severely restricted by the Evidence Act of 1872; the labour courts often do not recognize modern formats such as photograph or video as evidence. These factors serve to demotivate the labour inspectors from taking cases to court. The inspectors themselves have to prosecute cases, which is a weak area due to lack of legal capacity in DIFE.

In its Observation adopted in 2018, and published in 2019, the Committee noted with regret that the Government did not provide a reply in response to the Committee's request for information on any measures taken or envisaged to ensure that penalties for labour law violations are sufficiently dissuasive, including penalties other than fines.

The CEACR once again requested the Government to provide information on any measures introduced or envisaged to ensure that penalties for labour law violations are sufficiently dissuasive and, where applicable, to improve the proceedings for the effective enforcement of the legal provisions.

- **Limited capacity of Labour courts to handle large number of cases:** DIFE's key enforcement mechanism is to file cases against the enterprises on non-compliances at workplaces. The filing of cases results in a large number of cases that take the labour courts a long time to settle. Although the number of labour courts has increased to 10, the capacity to handle the increased number of cases in labour courts is still inadequate and aggrieved persons find it difficult to travel on assigned dates.
- **Limited Coordination:** The legislative controls to ensure initial safety and integrity of factories before work a business license is issued are vested in several different authorities (e.g. Office of the Chief Inspector of Boilers; RAJUK Rajdhani Unnayan Kartripakkho (RAJUK); Bangladesh Fire Service and Civil Defence (BFSCD); BFSCD; Bangladesh Energy Regulatory Commission, etc.). However, there is a lack of coordination among these regulatory bodies. To address this and guided by the One Stop Service Act (2018)¹, the Bangladesh Investment Development Authority (BIDA) has developed a One-Stop-Shop (OSS) to provide various licensing services using a single window. BIDA's OSS objective is to facilitate investment and promote ease of doing business and forms a basis for improving the coordination of RMG factory licensing.

*In a direct request published in 2020, the CEACR noted that the ALLIANCE initiative ceased operations as planned in December 2018 after five years of operations inspecting factories. It noted that the operation of the ACCORD has been extended by 281 days effective May 2019, and further notes from the website of ACCORD that it has carried out over 37,000 inspections at more than 1,600 factories since its formation, listing over 260 remediated factories. The CEACR also noted that there have been no further recruits in the governmental authorities responsible for fire, electrical and structural safety. In this respect, it noted that the Department of Fire Service and Civil Defence (DFSCD) responsible for fire safety currently employs 268 inspectors (up from 50 in 2014), and that the capital development authorities responsible for building safety now employ a total number of 122 inspectors (up from 61 in 2013). It noted that the Remediation Coordination Cell (RCC) responsible for monitoring the remediation work in all factories in terms of fire, electrical and structural safety increased the number of engineers (and 26 engineers from the Department of Inspection for Factories and Establishments (DIFE)) by recruiting another 63 engineers (in addition to the 60 currently employed). The Government reiterated that it is proposed to turn the RCC into a permanent "Industrial Safety Unit" at the DIFE, responsible for the monitoring of fire, electrical and structural safety of all factories. It adds that a proposal has already been submitted for approval, which includes 184 labour inspectors and ten offices (at headquarters and within nine divisional offices). **Emphasizing that labour inspection is a public function, and reiterating its concern that the public inspection authorities may not yet have the necessary capacity to assume monitoring of the factories that were covered by ALLIANCE and are currently covered by ACCORD, the CEACR requested the Government to pursue its efforts to strengthen the capacity of the Government services responsible for the monitoring of fire, electrical and structural safety, with a view to ensuring the protection of workers.***

In this respect, the CEACR requested the Government to continue to provide information on increases in the number of staff in the responsible bodies, as well as progress towards the establishment of the Industrial Safety Unit within the DIFE. It also requested the Government to provide information on the number of inspections undertaken by these bodies and the corrective action requested. The CEACR further requested the Government to provide information on the number of factories not covered by the ACCORD initiative that have taken the remedial action suggested in their corrective action plans.

- **Low rate of registration of the enterprises:** As per BLA and BLR, enterprises need to obtain licenses at a set fee from DIFE before operation. However, only a few enterprises are registered with DIFE under the licensing scheme. The enterprises often do not recognize the need to obtain and renew licenses issued by DIFE. Even though DIFE has initiated the development of an enterprise database under LIMA, the creation of a comprehensive enterprise database is not possible until all enterprises can be brought under DIFE's licensing scheme.
- **Ineffective system for complaints management and occupational accidents and disease notifications:** While there is a requirement for a mechanism to receive complaints from the workers and employers on labour issues, DIFE's current helpline and overall complaints management system is not yet effective or trustworthy. Similarly, there is a requirement in the legislation for accidents at work to be notified, but reporting levels are very low and the enforcing authority, DIFE, therefore relies on other means, such as newspaper reports, to identify accidents requiring investigation.

*In its Direct published in 2020, as well as in earlier comments, the CEACR noted the under-reporting of industrial accidents and the lack of reporting of any cases of occupational disease. The CEACR also observed that no information on statistics of cases of occupational disease were provided. The CEACR requested the Government to continue to take steps to improve the system for **notifying the labour inspection services of industrial accidents and cases of occupational disease, and provide relevant information in this respect (such as awareness-raising activities on employers' obligations to notify industrial accidents and cases of occupational disease, incentives or penalties for the lack of reporting by employers, the training of medical doctors at the DIFE to enable them to identify cases of occupational disease, the dissemination of a list of occupational diseases and their symptoms, etc.).***

- **Low level of transparency, accountability and credibility:** DIFE's labour inspectors and other staff are obliged to follow the governments established rules and procedures related to anti-corruption measures. Any corrupt or unethical practice should result in disciplinary actions, including termination of employment, according to the Government Servant (Conduct) Rules, 1979 and the Government Servant (Discipline and Appeal) Rules, 1985. However, it is widely perceived that DIFE's officials and labour inspectors are prone to corruption. Although measures like the adoption of the code of ethics and adherence to national integrity strategy are followed, there is scope to actualize the practices of the labour inspectors by introducing corruption-proof systems as well as addressing human factors. With full implementation of LIMA, the work of DIFE will have greater visibility, transparency and accountability.
- **Lack of awareness on labour laws among workers and employers:** In general, workers and employers have limited knowledge on labour laws and rules, and especially on role of labour inspectors at large, which contributes to low level of compliance.

Way forward

Based on the current situation and critical issues now, the following interventions are suggested:

- **Transparency, accountability and credibility:** Ensure transparency, accountability, and reliability of the labour inspection system through the use of LIMA, other guidelines and tools, and publishing annual reports on inspection results to public.
- **Professionalization of Labour Inspection Service:** Recognize labour inspection is a specialized professional service and create cadre service for the labour inspectors with appropriate qualifications and remuneration packages, and provide professional development opportunities. Increase powers, professional profiles, and benefits of labour inspectors so that they are comparable with other similar services (e.g., tax inspectors, anticorruption department, etc.).
- Promote enterprise registration and enterprise database: Considering the effectiveness of factory registration, review:
 1. whether DIFE is best equipped to approve the factory floor layout plans or whether it could be carried out by other authorities already required to approve aspects of the factory infrastructure, and;
 2. whether the registration requirement in its current form is needed or whether the information could be provided to DIFE by other authorities already involved in the process.

If it remains a requirement, conduct a factory-licensing campaign to bring all factories under one licensing scheme and maintain the enterprise database. Making the DIFE license a prerequisite and conditional with other necessary services, like gas, water, and electricity, may increase enterprise registration. This licensing system also needs to be linked with One-Stop-Service (OSS) so that employers and investors can acquire mandatory licenses from a single window.

- **Legal review and revisions to BLA and BLR:** More clarity is required on several issues including the definition of 'workers' due to a general perception that labour laws are only applicable for the lower - ranked workers; often junior, mid and senior-level management officials (who are not owners) are deprived of the coverage of the laws. The exemptions in the BLA also need to be reviewed to level the application of the labour law to ensure equality of protection under the law at work, e.g., it applies to EPZ, EZ equally.

As mentioned above, in its observation published in 2020, the CEACR noted that the EPZ Labour Act of 2019, provides for labour inspection by labour inspectors appointed under the Bangladesh Labour Act (Act). However pursuant to section 168 of that Act, labour inspectors require the approval of the Executive Chairman of the Bangladesh Export Processing Zones Authority (BEPZA) to undertake an inspection. While the CEACR welcomed the progress made in opening EPZs and SEZs for labour inspections by the DIFE, it requested the Government to provide information on the outcome of the abovementioned discussions and consultations. Further, the CEACR requested the Government to take the necessary measures to ensure that labour inspectors are empowered to enter freely and without previous notice establishments in EPZs and SEZs, without any restrictions.

In this respect, the CEACR requested the Government to provide information on the nature and the modalities of the approval required from the BEPZA for the undertaking of inspections, including if a separate request is required before each inspection, and if so, the number of requests made, the number approved, the time elapsed between each request and approval, and the reasons given for each failure to approve.

In its Observation published in 2020, the CEACR once again requested the Government to provide information on any measures introduced or envisaged to ensure that penalties for labour law violations are sufficiently dissuasive and, where applicable, to improve the proceedings for the effective enforcement of the legal provisions.

The GoB may also look at the structure and nature of the legislation against current international labour standards to determine whether the current legislation remains appropriate as the economic activity continues to increase. The schedule of fines for each type of violation also needs to be updated regularly to ensure the fines/sanctions provide an adequate deterrent.

- **Targeted inspection towards strategic compliance:** Currently, it is not realistic for Bangladesh to create an inspectorate sufficiently large to regulate all economic units with the frequency and rigour needed to ensure compliance with legislation, and therefore there needs to be a balance between the resources allocated to raising awareness and enforcing compliance.
- **Robust inspection system:** DIFE needs to refine further the SOP and inspection tools developed earlier, based on analyses of data gathered from inspections in LIMA. Additionally, DIFE needs to publish the inspection results regularly, and develop the soft skills of the labour inspectors to ensure better interaction with the employers and workers. Moreover, DIFE needs to review the accident injury and disease reporting requirements to make the system more effective, recognizing that procedures and investigation criteria will also be needed to deal with increased information received. LIMA contains an accident injury and reporting module, that needs to be promoted among the employers and workers to improve compliance. Similarly, DIFE needs to review and redesign the overall complaints management system, integrate it with the LIMA platform, operate the helpline more effectively and promote the overall complaints management system among the workers and employers through targeted campaigns.

See relevant comments made by the CEACR and cited above concerning the need to publish annual labour inspection reports and the need to take measures to address the underreporting of occupational accidents and diseases.

- **Reform of labour courts and strengthening the legal capacity of DIFE:** As the labour courts take a long time to resolve cases, modernization of the labour courts and some changes in their business processes would help to speed up the legal measures taken against the non-compliant enterprises. The labour courts should accept new formats for evidence (e.g. photograph, video, audio, digital data, etc.). The legal capacity of DIFE needs to be strengthened to allow them to better prosecute cases.

In its observation published in 2020, the CEACR noted that there is one legal officer at the DIFE responsible for the follow-up of labour law violations detected by labour inspectors, that a legal advisory firm is affiliated with the DIFE, and that there is a plan to establish a legal unit at the DIFE (with 17 legal officers). The CEACR requested the Government to provide information on the progress made to establish a legal unit at the DIFE, including on the number of staff and their functions. It requested the Government to continue to provide information on the specific outcome of the cases referred to the labour courts (such as the imposition of fines and also sentences of imprisonment) and to specify the legal provisions to which they relate.

- **Promote a culture of OSH:** DIFE's current drive for promoting a culture of OSH needs to be continued and scaled up. With its OSH Institute planned to be in operation in 2021, research, education, and training on OSH should contribute to promoting OSH culture. In the meantime, the focus should be placed on strengthening and monitoring of enterprise-level OSH management systems.

- **Institutional Strengthening of DIFE:** DIFE has proposed a new function based organogram as part of its second phase expansion plan. The new organogram introduces several new features requiring more personnel of higher-level authority and new skills. Some of the new units in the proposed organogram, e.g. planning and monitoring, IT and knowledge management, Industrial Safety Unit (ISU), etc., are new areas that require capacity building support in terms of recruiting personnel of right skill set and subsequent professional development. The Remediation Coordination Cell (RCC) is proposed to be absorbed into the new ISU, which will monitor the safety of all industries. Support is needed to develop the technical capacity of the RCC to perform its intended function, and which will then be transferred into the ISU.

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