

Final Report

Global Fund to End Modern Slavery (GFEMS) Law and Policy Analysis Study Apparel and Ready-Made Garment (RMG) Sector – Bangladesh

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PRESENTED TO:

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PRESENTED BY:

NORC at the University of Chicago

Authors:

Arafat Khan
Tara Mittelberg
Ridhi Sahai

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LIST OF ACRONYMS AND ABBREVIATIONS

AD	Appellate Division
BDT	Bangladeshi Taka
BGMEA	Bangladesh Garment Manufacturers and Exporters Association
COVID-19	Corona Virus Disease 2019
CSI	Chief Safety Inspector
CTC	Counter Trafficking Committee
DIFE	Department of Inspection for Factories and Establishments
DOL	Department of Labour
FPSP	Fundamental Principles of the State Policy
GDP	Gross Domestic Product
GFEMS	Global Fund to End Modern Slavery
HCD	High Court Division
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICLS	International Conference of Labour Statisticians
ILC	International Labour Conventions
ILO	International Labour Organization
KII	Key Informant Interview
MHA	Ministry of Home Affairs
MOLE	Ministry of Labour and Employment
MOWCA	Ministry of Women and Children Affairs
NGO	Non-Governmental Organization
NORC	NORC at the University of Chicago
NPA	National Plan of Action
OSH	Occupational Safety and Health
RMG	Ready-Made Garment
RSC	RMG Sustainability Council
SDG	Sustainable Development Goal
TIP	Trafficking in Persons
UD	Utilization Declaration
UDHR	Universal Declaration of Human Rights
USAID	United States Agency for International Development

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EXECUTIVE SUMMARY

Bangladesh is the second largest textile and garment products exporter in the world and its Ready-Made Garment (RMG) industry employs millions of workers, accounting for 83 percent of export earnings. While labor standards in formal export-oriented RMG sector have improved to include better working conditions, factory inspections and greater accountability, informal factories producing for the domestic market or working as under-the-table subcontractors for exporting factories have not faced the same scrutiny and enforcement of labor laws. The Global Fund to End Modern Slavery (GFEMS) focus areas of Narayanganj district and Keraniganj upazila are hubs for both formal and informal garment production in Bangladesh, where garment workers are vulnerable to forced labor due to high rates of poverty, the fragmented, informal nature of textile supply chains, and the lack of enforcement of legal protections for workers.

NORC at the University of Chicago (NORC) was contracted by GFEMS to conduct an RMG Law and Policy Analysis Study that focuses on the informal sector and seeks to answer nine research questions, grouped into four thematic areas: (i) gaps in Bangladesh's legal framework, (ii) barriers to enforcement in the informal sector, (iii) role of law and prosecution in reducing prevalence, and (iv) coordination and institutional strengthening to prevent labor exploitation and abuse in the informal RMG sector.

The study was conducted in two phases. First a desk review of 42 existing laws and policies that impact the RMG industry, academic literature, gray literature, research reports and examination of the Bangladesh National Plan to Action for Prevention and Suppression of Human Trafficking and other relevant institutional frameworks. Second, 15 interviews to gain a deeper understanding of the enforcement of key laws and regulations, gaps in the legal framework, and potential areas of reform. Interviews consisted of semi-structured questionnaires administered to stakeholders from the government, the legal sector, international brands, employers' associations, informal sector representatives, and donors/NGOs. The study took place from September 2020 through April 2021.

Gaps in the Legal Framework

Findings:

- Rigid provisions related to worker welfare and social protection are a barrier to labor rights in the informal sector.
- Gaps in the legal framework pose risks to occupational health and safety (OHS), and employment rights of workers with disabilities.
- The legal framework does not mandate sufficient fines and punishments, nor provide a comprehensive deterrence mechanism.

Recommendations:

- Relax provisions regarding formulation of trade unions and assign an inspection and monitoring authority for the local garment sector.
- Improve OHS training facilities and adopt a policy to ensure rights to work for workers with disabilities.

- Reform legal provisions and impose stronger regulations for labor violations. Enhance the executive authority of the Department of Inspection for Factories and Establishments (DIFE) and specify a ministry to oversee child-related affairs.

Barriers to Enforcement in the Informal Sector

Findings:

- Lack of enforcement is a principal barrier to legal framework application in the informal sector, which arises due to capacity gaps of DIFE, factories and workers. Political will is also a barrier.

Recommendations:

- Develop and improve systems of accountability by creating stronger consequences for violations. Also centralize the enterprise registration systems to improve DIFE's access to informal factories.
- Organize, fund, educate and reform factories. Raise awareness of labor laws among factory workers and provide pathways to formalization.
- Empower workers to advocate for their legal rights and strengthen advocacy organizations.

Role of Law and Prosecution in Reducing Prevalence

Findings:

- The threat of law and prosecution is not a major deterrent to offenders in the informal RMG sector in Bangladesh, but owners fear the law when confronted with direct legal action.

Recommendations:

- Build the capacity of law enforcement, labor inspectors, and immigration officers to recognize trafficking and forced labor cases, and know how and when to escalate cases.
- Address current legal framework gaps that allow cases to drag out and mandate only minimal fines and jail time for offenders.
- Empower NGOs, workers, and trade unions to file cases against employers by clarifying case escalation procedures and building institutional capacity. Assurance of non-retaliation is essential.

Coordination and Institutional Strengthening

Findings:

- Goals set out in the National Plan of Action (NPA) for Prevention and Suppression of Human Trafficking 2018-22 can be adapted and applied to other anti-trafficking organization programs.
- Limited familiarity with the NPA and its provisions across the board is the biggest challenge in leveraging the NPA.
- The practice of indirect sourcing without an effective regulatory framework has undermined wages and working conditions in the informal garments sector.

Recommendations:

- Increase awareness about NPA through greater involvement of NGOs and other stakeholders in NPA activities.
- Strengthen inter-agency collaboration among government ministries to fully implement the NPA.
- Brands should improve and prioritize transparency of their own supply chains

1. INTRODUCTION

Bangladesh is the second largest textile and garment products exporter in the world and its Ready-Made Garment (RMG) industry employs millions of workers, accounting for 83 percent of export earnings.¹ In the years since the Rana Plaza disaster, labor standards in formal factories have improved as international buyers formed the Accord on Fire and Building Safety in Bangladesh (Accord) and the Alliance for Bangladesh Worker Safety (Alliance) to promote better working conditions, escalate factory inspections, and demand greater accountability. As the five-year period of the Accord comes to an end, the RMG Sustainability Council (RSC) will replace the Accord and will be overseen by the local Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and a board comprised of international brand representatives, labor rights groups, and garment makers. This marks a significant shift away from external oversight and towards the local promotion of improved working conditions in formal, export oriented factories.²

Despite the progress seen in the formalized, export-oriented RMG sector, informal factories producing for the domestic market or working as under-the-table subcontractors for exporting factories have not faced the same scrutiny and enforcement of labor laws. Inspection agencies in Bangladesh are under-resourced and not able to provide proper oversight of all establishments. In addition, complex political realities and corruption often hinder appropriate inspection or legal enforcement.

The Global Fund to End Modern Slavery (GFEMS) focus areas of Narayanganj district and Keraniganj upazila are hubs for both formal and informal garment production in Bangladesh. Narayanganj manufactures 55 percent of the country's total knitwear,³ while 80 percent of domestic apparel originates in the factories of Keraniganj.⁴ Overall, garment workers across Bangladesh, including in Narayanganj and Keraniganj, are vulnerable to forced labor due to high rates of poverty, the fragmented, informal nature of textile supply chains, and the lack of enforcement of legal protections for workers.

NORC at the University of Chicago (NORC) has been contracted by GFEMS to conduct an RMG Law and Policy Analysis Study that focuses on the informal sector and seeks to answer nine research questions (listed in section 1.A Study Overview below) about gaps in Bangladesh's legal framework, law enforcement, and institutional capacities to prevent labor exploitation and abuse in the informal RMG sector. NORC recognizes that the research takes place at a particularly challenging and important time as the RMG industry has suffered immensely due to the COVID-19 pandemic. Many international buyers are canceling orders and refusing to pay for current orders. New orders have slowed significantly in the face of the pandemic. This period of intense pressure creates additional risk for non-compliance in formal export factories and could increase the likelihood of exploitation. Additionally, it could push formal

¹ Dasgupta, A.K., Akhter, M., Masuduzzaman, M., Islam, S.M.N., Uddin, S. (n.d.). "Quarterly Review on RMG: July-September FY20." Bangladesh Bank Research Department. Web.

² Paton, E. (2020, March 1). "After Factory Disaster, Bangladesh Made Big Safety Strides. Are the Bad Days Coming Back?" *New York Times*. Web.

³ Noman, A., Mia, M. A., Banna, H., Rana, Md. S., Alam, A. S. A. F., Chan, S.-G., Isa, C., & Er, A. C. (2016). City profile: Narayanganj, Bangladesh. *Cities*, 59, 8–19. Web.

⁴ Islam, R. (2017, June 9). Myriad of challenges cripple Keraniganj apparel factories. *Dhaka Tribune*. Web.

exporting factories to increase informal, under-the-table subcontracting as buyers pressure manufacturers to accept even lower prices.⁵

1.A. STUDY OVERVIEW

NORC has previously analyzed issues in the RMG sector as part of the GFEMS-funded Prevalence Estimation Program in the RMG sector in Bangladesh. Building on this knowledge, the RMG Law and Policy Analysis Study maps the existing legal framework, identifies and makes suggestions on gaps in the existing framework, and provides deeper insight into the successful implementation and/or challenges of key laws, regulations, and policies.

With a focus on the informal sector, the study identifies key leverage points for reducing labor exploitation and improving workers' access to restitution. Nine research questions and their related sub-questions guide the study:

1. What are the gaps in the legal framework and enforcement of labor laws in Bangladesh as relevant to the apparel industry, especially the informal sector?
- 2a. What current laws in Bangladesh aim to prevent labor exploitation/abuse and enable workers to access restitution if/when faced with abuse, and can you identify areas for reform?
- 2b. What is the applicability of these laws to the informal sector and can you make recommendations on improving regulation in this sector?
- 3a. What are barriers to enforcing labor laws in the informal sector, including applicability of legislation, political will, and capacity of key actors?
- 3b. How do COVID-19 and its economic consequences for the export and local garment industry affect these barriers?
4. How can we achieve greater application of laws to the informal sector and what are the solutions to overcome the barriers to enforcement?
- 5a. What role can law and prosecution play to reduce prevalence and how?
- 5b. How could they be aligned with other GFEMS interventions to form a coordinated strategy?
- 5c. To what extent can stronger law enforcement reduce prevalence of slavery and what is the likelihood of realizing it?
6. How could developments such as Bangladesh National Plan of Action for Prevention and Suppression of Human Trafficking be leveraged?
7. What are necessary improvements to the existing institutional framework and a coordinated effort by them?
- 8a. What is the nature of agreements/understanding between the exporting and importing companies, if any?
- 8b. Can these be leveraged to enforce stricter implementation of preventative measures against exploitation?
9. How should GFEMS and partners or other change agents develop interventions that shift the enabling (legal, regulator) environment against forced labor and in favor of ethical production in the informal garment sector?

⁵ Mirdha, R.U. (2020, December 29). "2020: A Turbulent Year for Apparel." *The Daily Star*. Web.

To answer the research questions, the research team used a document review and qualitative methods and to gain a holistic understanding of the topic and mitigate potential bias in each data source. The report includes a desk review of policies, legislation, reports, academic journal articles, white papers, and other online content to help answer the research questions. Findings are complemented with results from key informant interviews (KIIs) with governmental and non-governmental stakeholders as well as actors across the RMG supply chain.

1.B. DEFINING INFORMAL LABOR IN THE RMG SECTOR

The economy of Bangladesh depends on both the formal and informal sectors, however, compliance with labor law in the informal sector is limited. In addition, there is no precise framework to identify the contribution of informal labor or enable the protection of workers engaged in the informal sector work. Workers in the informal sector tend to be low skilled, take on precarious jobs that lack formal employer-employee agreements, and have limited access to social protections. Moreover, informal jobs are generally associated with lower productivity and wages and higher vulnerability to poverty.⁶

There is no comprehensive legal definition of informal sector establishments, however, some researchers⁷ define informal entities as those that are:

1. Concealed from the state accounting system and are largely unregistered by its economic and criminal measurement techniques;
2. Small scale;
3. Labor intensive, requiring little capital, and
4. Locally based, with trading taking place based on face-to-face relationships between friends, relatives, or acquaintances in a limited geographical area, rather than contractual arrangements with formal guarantees.

Another scholar says, “The informal economy is characterized by one central feature: it is unregulated by the institutions of society, in a legal and social environment in which similar activities are regulated.”⁸ According to the 17th International Conference of Labour Statisticians (ICLS), convened by the International Labour Organization, the formal sector comprises economic activities undertaken by wage workers with written contracts, as well as jobs held by employers or non-account workers who maintain detailed bookkeeping records. Informal jobs comprise work undertaken by wage workers under a verbal agreement or employment agreements not subject to contractual agreement.⁹ The conference further defines, “[...] employees are considered to have informal jobs if their employment relationship is, in law or practice, not subject to labor legislation, income taxation, social protection or entitlement to certain

⁶ “The Informal Sector and Informal Employment in Bangladesh.” (2010). ADB.

⁷ Henry, S. (1987). “The political economy of informal economies.” *Annals of the American Academy of Political and Social Science*, 493, 137 – 153.

⁸ Castells, M., & Portes, A. (1989). “World underneath: The origins, dynamics, and effects of the informal sector.” In *The informal economy: Studies in advanced and less developed countries*.

⁹ “The Informal Sector and Informal Employment in Bangladesh.” (2010). ADB.

employment benefits (e.g., advance notice of dismissal, severances of pay, paid annual or sick leave, among others).”

The 15th International Conference of Labour Statisticians conceptualized the informal sector as having the following characteristics:¹⁰

The informal sector consists of units engaged in the production of goods or services with the primary objective of generating employment and incomes for the persons concerned. These units typically operate at a small scale and at a low level of organization, with little or no division between labor and capital as factors of production. Labor agreements, where they exist, are based mostly on casual employment, kinship or personal and social relations rather than contractual arrangements with formal guarantees.

An informal sector unit can neither engage in transactions or enter into contracts with other units, nor incur liabilities, on their own behalf. Owners have to raise necessary finance at their own risk and are personally liable, without any limit for debts or obligations incurred in the production process. Production expenditure is often indistinguishable from household expenditure. Similarly, capital goods such as buildings or vehicles may be used indistinguishably for business and household purposes.

In addition, activities formed by production units of the informal sector are not necessarily performed with the deliberate intention of evading the payment of taxes or social security contributions, or infringing labor or other legislations or administrative provisions. Accordingly, the concept of informal sector activities should be distinguished from the concept of activities of the hidden or underground economy.¹¹

2. METHODOLOGY AND LIMITATIONS

Methodology

The study included a desk review and series of stakeholder interviews that together aim to answer the targeted research questions proposed by GFEMS.

Desk Review

The desk review was led by Arafat Khan with assistance from analysts Ridhi Sahai and Tara Mittelberg. The desk research began with a review of existing laws and policies that impact the RMG industry.¹² NORC classified sections of relevant laws by research question, paying special attention to the laws most relevant to the informal sector, prevention of labor exploitation, and provision of restitution to workers if/when faced with abuse.¹³ Additionally, the team considered if or how the Bangladesh National Plan of

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² This report uses the terms “ready-made garment” (RMG) and “apparel” interchangeably.

¹³ The review will not include laws that only pertain to Export Processing Zones (EPZs) because these zones do not contain informal factories.

Action (NPA) for Prevention and Suppression of Human Trafficking and other relevant institutional frameworks may be leveraged to fill gaps or improve enforcement.

To complement the policy review, NORC reviewed additional relevant literature on the RMG industry, including interventions, regulations, and law-enforcement strengthening that have reduced forced labor in the RMG sector. Documents included academic literature, gray literature, and research reports. Annex A contains a full list of laws, policies, and documents reviewed. The research team extracted relevant excerpts from these documents and sorted them by research question. Annex B contains a sample of the systematic document review template analysts used to extract key information. The team then synthesized key themes and findings.

Stakeholder Interviews

After completing the desk review, NORC conducted a series of qualitative interviews to gain a deeper understanding of the enforcement of key laws and regulations, gaps in the legal framework, and potential areas of reform. Interviews consisted of semi-structured questionnaires administered to stakeholders from the government, the legal sector, international brands, employers' associations, informal sector representatives, and donors/NGOs. A total of 15 interviews were conducted as depicted below.

Stakeholder Category	Number of Interviews
<i>Government Ministries</i>	2
<i>Courts and Lawyers</i>	1
<i>Accord/Alliance/RSC/International Brands</i>	2
<i>Employers' Associations</i>	2
<i>Informal Sector Representatives</i>	2
<i>Donors/NGOs</i>	6

The Assessment Team used an inductive, data-driven approach to analyze data from the stakeholder interviews. This approach involves first closely reading a sample of transcripts in detail until familiar with the content, then developing a list of emerging categories or themes to be used as codes in the analysis. The final codebook and all interview note files were loaded in Dedoose Computer-Assisted Qualitative Data Analysis Software for analysis. Analysts coded notes files according to the codebook and tagged them according to key descriptor data (e.g., stakeholder category). We then produced summaries for each code, noting key differences across groups. To integrate the qualitative findings into the final report, we produced an outline to map each code to one or more research questions. In drafting responses to each research question, we referred to this outline and the relevant qualitative findings, and triangulated findings with those from the desk review.

Limitations

Constraints related to COVID-19. Research was conducted during the COVID-19 pandemic which prevented travel by the US-based NORC team and required virtual interviewing. Though Dhaka-based team member Arafat Khan traveled to conduct interviews that could not be completed virtually, it is

possible that stakeholders that declined may have been more willing to participate if approached in-person. Additionally, given the significant impact of COVID-19 on the RMG sector and international attention, the timing of this research study might have affected participation.

Selection bias. There is a possibility of selection bias, i.e., those stakeholders who accepted to be interviewed may differ in some important dimensions from those who did not, for example in their attitudes or perceptions. Of the 22 stakeholders NORC contacted for interviews, 15 agreed to participate, five declined (including 2 BKMEA representatives, 1 BGMEA representative, 1 Department of Labor representative, and 1 International brand/alliance representative), and two did not respond to NORC’s repeated attempts via email and phone (1 industrial police representative, 1 RSC representative). As such, these perspectives are not included in this report.

Response bias. Interviews relied on self-reports about perceptions that may be biased due to social desirability or to stakeholders wanting to provide the answers they thought the research team wanted to hear. To mitigate this limitation, the research team outlined confidentiality and anonymity guarantees to all participants and ensured that interviews took place in a private setting.

Limited literature on informal sector. When conducting the document review, NORC found that the vast majority of sources focused on the formal, rather than informal, RMG sector. While this was expected, since the informal RMG sector is not widely reported on, it limited the research team’s ability to leverage document review sources when responding to certain research questions. To mitigate this limitation, the NORC team focused exclusively on the informal sector during stakeholder interviews.

3. FINDINGS

The assessment team found many findings from the desk review to be relevant to multiple research questions. We have, therefore, grouped our findings by themes, each of which encompasses multiple research questions. In this section, the findings are presented as outlined in Table 1.

Table 1: Structure of the “Findings” Section of this Desk Review Report

Section	Theme	Research Question(s)*
3.A.	Gaps in the Legal Framework	1, 2a, 2b
3.B.	Barriers to Enforcement in the Informal Sector	3a, 3b, 4
3.C.	Role of Law and Prosecution in Reducing Prevalence	5a, 5b, 5c
3.D.	Coordination and Institutional Strengthening	6, 7, 8a, 8b

Note: *Research question 9 deals with recommendations for future interventions, therefore findings from the desk review and interviews have been combined into Section 4. Recommendations.

Findings were validated at a virtual workshop on April 6, 2021. The workshop engaged stakeholders – those we already interviewed and additional members of the concerned community – to solicit feedback

on preliminary findings from the study and its recommendations. Feedback from this workshop was integrated into the conclusions and recommendations presented in this report.

3.A. GAPS IN THE LEGAL FRAMEWORK

RESEARCH QUESTIONS

1. What are the gaps in the legal framework and enforcement of labor laws in Bangladesh as relevant to the apparel industry, especially the informal sector?
- 2a. What current laws in Bangladesh aim to prevent labor exploitation/abuse and enable workers to access restitution if/when faced with abuse, and can you identify areas for reform?
- 2b. What is the applicability of these laws to the informal sector and can you make recommendations on improving regulation in this sector?

NORC reviewed Bangladeshi laws and policies, international frameworks, and academic/legal analyses to identify gaps in the legal framework and make recommendations for improving regulation in the informal RMG sector. We open with a brief history of the existing legal framework before providing an overview of the Bangladeshi legal framework as relevant to the RMG industry. Our discussion focuses on three main legislative and policy frameworks: the constitutional framework, commitments under international legal instruments, and the statutory framework. Given the importance of the statutory framework for regulatory implementation and enforcement, the bulk of our findings are in this section. We have divided our discussion of the statutory framework into subsections focusing on laws and policies related to discrimination, forced labor, and child labor; occupational safety and health; and worker welfare and social protection. Within each section, we describe the relevant legislation and summarize key gaps. Recommendations for reform are included in Section 4.

It is important to note that most interviewees reported that the main problem is not gaps in the law itself, rather a lack of monitoring and enforcement of the labor law in the informal sector. This allows forced labor to continue, with more child/youth labor in the informal sector compared to the formal sector. Other effects include for example, workers not being issued an identity card and being deprived of fair wages and overtime pay (KII, Donor/NGO); and no holidays or paid leave (KII, informal sector representative). There are also health and safety issues as a result of the lack of enforcement. The law says there must be a fire extinguisher, fire drills, and fire exists, but many factories don't have them. The law also says factories cannot use boilers without permission, but the inspection is done by a different ministry Department of Boiler (under Ministry of Industry) than the Department of Labour (DOL) or the Department of Inspection for Factories and Establishments (DIFE), so factories often use them without permission. (Donor/NGO). However, incapacity of Department of Boiler and lack of co-ordination between the ministries are major causes of such non-compliance.

History of Existing Legal Framework

The Bangladeshi constitution, international treaties, and national labor laws treaties define labor rights, responsibilities, and welfare measures in Bangladesh. The country's current principal labor law, The Bangladesh Labor Act of 2006 as amended in 2018 is relatively new. However, the first labor law in the Indian sub-continent was enacted during the British period in 1881. The British government primarily

introduced laws to address employment conditions of children, maternity benefits, wages, working hours, and trade union activities. Example laws enacted during this period include The Factories Act (1881), Workmen's Compensation Act (1923), Trade Unions Act (1926), Trade Disputes Act (1929), Payment of Wages Act (1936), Maternity Benefit Act (1939), and the Employment of Children Act (1938).

The Pakistani government kept the prevailing colonial laws with some trivial amendments. When Bangladesh gained independence in 1971, the government retained the existing laws through the Bangladesh Laws Order (President's Order No. 48). To consolidate as many as 50 laws which were in some cases outdated and overlapping, the government formed the Labor Law commission in 1992. The commission drafted a labor act, suggested the repeal of 27 laws, and scrutinized 44 pieces of labor-related legislation. The draft Bangladesh Labor Code of 1994 underwent extensive revisions before parliament finally passed the Bangladesh Labor Act of 2006 (BLA).

However, since the deadly Rana Plaza Disaster¹⁴ and the preceding Tazreen Fashions Fire, national and international stakeholders have criticized the BLA for not mandating sufficient protections to workers. Specifically, though the Government of Bangladesh enacted several policies to safeguard the rights of workers, it in some cases failed to achieve its goals due to poor administrative practices in workplaces.

Constitutional Framework

The Constitution of the People's Republic of Bangladesh (Bangladesh Constitution) describes several rudimentary rights for the working masses and laborers. Article 14, placed in part two of the Constitution titled *Fundamental Principles of the State Policy (FPSP)*, articulates that the states shall emancipate all forms of personal, social and economic exploitation of workers. The constitution also emphasizes the right to choose employment with a reasonable wage, quantity and quality of work, and levels of rest, recreation, and leisure. Article 20 mentions that work is a right of every citizen capable of working and he or she shall be remunerated considering his or her abilities to increase creative endeavor and human personalities.¹⁵ The constitution has also imposed responsibility to the state for adopting steps and standards recognizing all forms of intellectual and physical human labor. Though FPSP provides principles for safeguarding labor rights, non-compliance with FPSP (article 14,15,20 1) does not entitle a person to initiate a lawsuit and is not enforceable by the court.

The constitution provides several fundamental rights concerning freedom, equality, and justice for the working class. Article 34 of the constitution prohibits forced labor and declares it as a punishable offense, but it fails to define forced labor. Labor rights include freedom of movement, freedom of assembly, and freedom of association, which are encompassed by Articles 36, 37 and 38 of the Constitution. All laborers of Bangladesh have the right to movement and assembly for participating in public meetings or processions in a peaceful manner subject to some legal restrictions -- i.e., related to the public interest and public health. However, legislative enactments for realizing constitutional guarantees such as the BLA are often not sufficiently applied in the informal sector, a barrier to informal workers attaining their constitutional rights.

¹⁴ In 2013, the Rana Plaza Building in Dhaka, which housed numerous garment factories, collapsed due to structural failure. The disaster, which resulted in over 1,000 deaths, has sparked action to improve workplace safety in the RMG industry in Bangladesh.

¹⁵ Article 20, Constitution of the people's Republic of Bangladesh

Commitments under International Legal Instruments

UN Instruments

The Universal Declaration of Human Rights (UDHR) asserts the right to life, liberty, and security of every person¹⁶ which includes the liberty of the workers to choose a safe and secure workplace, and the right of social security.¹⁷ The International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) prohibit forced or compulsory labor,¹⁸ declare that every person has the right to freely pursue economic development,¹⁹ and signify the right to freely choose employment. The ICESCR and ICCPR acknowledge the need to form trade unions declaring that, “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”²⁰

ILO Treaties

The list of International Labour Organization (ILO) Conventions contains 190 codifications of worldwide labor standards, of which eight are core conventions. Member states are bound to ratify the core or fundamental conventions. Bangladesh has ratified the following International Labor Conventions (ILCs) and in the case of the “Minimum Age Convention” specified its own labor standard:

- **Forced Labor Convention, 1930 (No. 29):** This fundamental convention prohibits all forms of forced or compulsory labor and requires that the illegal extraction of forced or compulsory labor be punishable as a penal offence.²¹ Under the Constitution of Bangladesh, forced labor is prohibited. However, the BLA fails to expand upon the definition of forced labor by penalizing acts such as coercion, bonded labor, prison labor, and forced overtime. However, the Penal Code, 1860 prescribes minimum one-year imprisonment, a fine, or both for unlawfully compelling any person to labor against the will of that person.
- **Freedom of Association and the Right to Organize Convention, 1948 (No. 87):** This fundamental convention sets forth the right for workers and employers to establish and join organizations of their choice without previous authorization. Workers' and employers' organizations shall organize freely and not be liable to be dissolved or suspended by the administrative authority, and they shall have the right to establish and join federations and confederations, which may in turn affiliate with international organizations of workers and employers.²² The Government of Bangladesh has incorporated the principal of this convention in the BLA. Previously, workers needed permission from their employer to form a trade union but a recent amendment has repealed the requirement. However, the BLA still contains some laws that are inconsistent with the Convention. For example, a maximum of three associations can be

¹⁶ Art. 3, the Universal Declaration of Human Rights (UDHR).

¹⁷ Art. 22, Universal Declaration of Human Rights (UDHR).

¹⁸ Art 8(2), the International Covenant on Economic, Social and Cultural Rights (ICESCR) & International Covenant on Civil and Political Rights (ICCPR).

¹⁹ Art 1, the International Covenant on Economic, Social and Cultural Rights (ICESCR) & International Covenant on Civil and Political Rights (ICCPR).

²⁰ Art 22, the International Covenant on Economic, Social and Cultural Rights (ICESCR) & International Covenant on Civil and Political Rights (ICCPR).

²¹ “Rules of the Game: A Brief Introduction to International Labour Standards.” (2014). ILO.

²² *Ibid.*

formed at any establishment, and 20 percent of the workers must give their consent to form an association.

- **Right to Organize and Collective Bargaining Convention, 1949 (No. 98):** This convention ensures that workers enjoy adequate protection against acts of anti-union discrimination in respect of their employment.²³ It also stipulates the right to collective bargaining. In line with the convention, BLA contains provisions to ensure the aforementioned rights.
- **Equal Remuneration Convention, 1951 (No. 100):** The convention requires ratifying countries to ensure the application of the principle of equal remuneration for men and women workers for work of equal value. The term ‘remuneration’ includes “any additional emoluments payable by the employer to the worker and arising out of the worker’s employment.”²⁴ Under the governing labor law of Bangladesh, the employer is required to pay equal wages for male, female, and handicapped workers for work of equal nature or standard²⁵ and provide other financial entitlements (subject to employment conditions). Also, a minimum wage board has been established to fix minimum payable wages.²⁶
- **Abolition of Forced Labor Convention, 1957 (No. 105):** This convention ensures that all forced labor is abolished. Bangladesh has ratified the convention on 22 Jun 1972 and incorporated the principal into various national laws.
- **Discrimination (Employment and Occupation) Convention, 1958 (No. 111):** This convention requires ratifying states to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in these fields. In the National Labor Policy, 2012, provisions have been made to address various forms of workplace discrimination including gender-related and wage discrimination, along with an assurance of equal rights and opportunities for women workers.²⁷
- **Minimum Age Convention, 1973 (No. 138):** The Convention sets general minimum age for commencing employment or work at 15 years (13 for light work) and the minimum age for hazardous work at 18 (16 under certain strict conditions). It provides for the possibility of initially setting the general minimum age at 14 (12 for light work) where the economy and educational facilities are insufficiently developed.²⁸ Though Bangladesh is yet to ratify the convention, BLA prescribes that the minimum age to work is 14 (although a special clause states that children between the ages of 12 and 14 may be employed to do “light work” that does not endanger their health, development, and education).²⁹
- **Worst Forms of Child Labor Convention, 1999 (No. 182):** This Convention articulates several duties upon the Member States including the duty to identify and take steps for prohibiting the worst forms of child labor. Also, it identifies slavery, sale and trafficking of children, child prostitution, using children for illicit activities, etc. as worst forms of child labor. The Women and Children Repression Prevention Act, 2000, Prevention and suppression of Human Trafficking Act, 2012, and Children Act, 2013, recognize the aforementioned activities as crime and prescribe strong sanctions to prevent the commission of these crimes.

²³ Art 1, Right to Organise and Collective Bargaining Convention, 1949

²⁴ Page 40, Rules of the game: a brief introduction to international labor standards.

²⁵ Section 345, Bangladesh Labor Act, 2006 as amended in 2013

²⁶ Section 138, Bangladesh Labor Act, 2006 as amended in 2013

²⁷ Page 42, Rules of the game: a brief introduction to international labor standards.

²⁸ Page 37, Rules of the game: a brief introduction to international labor standards

²⁹ Section 44, Bangladesh Labor Act, 2006 as amended in 2018

Statutory Framework

The Bangladesh Labor Act, 2006, amended in 2018, is a major and comprehensive enactment. It emerged as a response to demand by stakeholders such as international buyers, workers, employers, and advocacy groups for improving the regulatory framework on working conditions, and for the codification of existing labor laws to avoid overlaps and inconsistencies.³⁰ The BLA has experienced many amendments to comply with international labor standards and prevent labor exploitation. Additionally, the Government of Bangladesh has introduced a number of rules and policies to protect the rights of workers. However, several stakeholders interviewed in the legal and donor/NGO sector mentioned the committee formed to amend the Bangladesh Labor Act of 2006, but that this work was not specific to the informal sector. One stakeholder mentioned that the government always pays attention to export-oriented sectors first.

Stakeholders interviewed by the research team noted that Bangladesh's legal framework tends to favor owners. Many policymakers are also profiting from the RMG business, so there is a conflict of interest in regulating this sector. Businesses and employers' associations are close to policymakers and are able to influence the law in favor of the owner. One donor/NGO representative estimated that about 30% of policymakers are also RMG owners; another said that of the 300 MPs, approximately 30-40 are direct RMG owners and nearly 200 are indirectly connected with the RMG business.

Laws and Policies that Prevent Discrimination, Forced Labor, and Child Labor

The Penal Code 1860, (Act No Xlv Of 1860) prohibits forced labor.³¹ The BLA provides a comprehensive definition of worker: "an apprentice, employed in any establishment or industry, either directly or through a contractor, to do any skilled, unskilled, manual, technical, trade, promotional or clerical work for hire or reward, whether the terms of his employment are expressed or implied, but does not include a person employed mainly in a managerial or administrative capacity."³² The BLA applies both to permanent workers and workers employed through a contractor. Under the Act, a contractor who employs workers is treated as an employer and is liable for any violations of the provisions of the law. BLA provides a number of protections related to the minimum age of employment, minimum wages, working hours, compensation for work-related injuries, wage manipulation, child labor, health and safety, the welfare and working environment of employees, and other related issues.

Labor laws prohibit child labor under the age of 14 even if a guardian of a child enters into a contract with the employer.³³ The Children (Pledging of Labor) Act, 1933 prohibits the pledge of the labor of a person who is under the age of fifteen³⁴ and prescribes fine for both parties (the parent or guardian and the person to whom the child's labor was pledged) of the agreement to pledge³⁵ and for the person who knowingly employs a child whose labor has been pledged.³⁶ The National Child Labor Elimination Policy of 2010 aims to eliminate children from every sort of hazardous and worst forms of child labor category task, and

³⁰ Al Faruque, A. (2009). "Current Status and Evolution of Industrial Relations System in Bangladesh." International Publications.

³¹ Section 374, The Penal Code 1860

³² Section 2(65), Bangladesh Labor Act 2006, as amended in 2018

³³ Section 35, Bangladesh Labor Act 2006, as amended in 2018

³⁴ Section 3, The Children (Pledging of Labor) Act, 1933 (Also see section 2, definition of child, child= 14 years)

³⁵ Section 4 & 5, The Children (Pledging of Labor) Act, 1933

³⁶ Section 6, The Children (Pledging of Labor) Act, 1933

to bring meaningful change to the lives of many Bangladeshi children.³⁷ It also outlines plans to raise awareness among parents, citizens, and civil society about the harmful consequences of child labor³⁸ and emphasizes different short, medium, and long term strategies and programs to eliminate various forms of child labor from Bangladesh.³⁹ The National Children Policy 1994 provides that child labor, child abuse, child oppression, and trafficking must be stopped, and that people and organizations responsible for these abuses should receive exemplary punishment.⁴⁰ In 2014, the Government of Bangladesh established the National Child Labor Welfare Council to plan and monitor the implementation of the National Child Labor Elimination Policy. As detailed in Table 2, the Children Act, 2013⁴¹ protects a child against child labor and penalizes the crime with strong sanctions. The Children Act criminalizes any person who has the custody of a child and employs that child in accordance with BLA but exploits that child for his own interest or enjoys his earnings or leads the child to seduction, or exposes the child to the risk of engaging in prostitution or immoral activities.

Table 2: Key Provisions in the Children Act, 2013

Relevant Provision	Punishment
Section 80(1): If any person responsible to take care of a child employs him/her as a servant, or in a factory, or in other establishment in accordance with the provisions of Bangladesh Labor Act 2006, but in fact exploit the child for his own interest, or keeps him detained, or enjoys his earnings, such acts shall be deemed to be an offence.	Imprisonment up to 2 years or fine up to 50,000 BDT, or both.
Section 80(2): If any person responsible to take care of a child employs him/her as a servant, or in a factory, or in other establishment in accordance with the provisions of Bangladesh Labor Act 2006, but in fact leads the child to seduction, or exposes the child to the risk of engaging in prostitution or immoral activities such acts shall be deemed to be an offence under the act.	Imprisonment up to 5 years, or fine up to one lac, or both.
If a person takes an article on pledge from a child, whether offered by the child on his own behalf or on behalf of any person, the person commits a crime.	Imprisonment up to 1 year, fine up to 25,000 or both.

The act mandates the establishment of a “Child Welfare Board”⁴² at the national level and a “Child Desk”⁴³ at every police station in the country. In practice, every police station has a women and children desk and a female police officer is assigned to attend the women and children victims. The “Child Welfare Board” concentrates on monitoring the compliance with the rights of the child.⁴⁴ Monitoring the child labor situation in Bangladesh is therefore one of its main tasks. The Government of Bangladesh clearly recognizes the damaging effects of using child labor in the hazardous informal sector, of which the

³⁷ Art 5, National Child Labor Elimination Policy 2010

³⁸ Art 5VIII, National Child Labor Elimination Policy 2010

³⁹ Art 5IX, National Child Labor Elimination Policy 2010

⁴⁰ National Children Policy 1994, pg 13

⁴¹ The Children Act, 2013 is an Act which has repealed the Children Act of 1974 (Act no XXXIX of 1974). The Children (Pledging of Labor) Act, 1993 is a separate act and only deals with pledging of labor.

⁴² Section 7, Bangladesh Children Act, 2013

⁴³ Section 13, Bangladesh Children Act, 2013

⁴⁴ Section 7(2), Bangladesh Children Act, 2013

garment industry is just one part. The National Labor Policy, 2012 discourages child labor (both formal and informal) in cities and rural areas and prohibits all forms of hazardous child labor.⁴⁵ Accordingly, in 2013, government provided a hazardous work list to prevent children's participation in hazardous work which includes tanning and dressing of leather, dyeing or bleaching of textiles, and weaving.⁴⁶ However, this list was not updated when the government amended the labor law in 2013 and 2018, and there are still RMG- and textile-related activities that are not yet defined as dangerous, such as laser printing and potassium permanganate spraying. Poverty is one of the main causes of child labor. National Child Policy, 2011 emphasizes poverty alleviation of the children and elimination of all forms of child abuse and discrimination.⁴⁷ Therefore, implementation of the policy will reduce child labor in the country.⁴⁸ Additionally, the National Education Policy, 2010 makes schooling compulsory until class VIII to ensure that there is no gap between the age of compulsory schooling and the general minimum age for employment (age 14) as required by the BLA and ILO Convention No 138.

Furthermore, a representative of the Government interviewed by the research team stated that GoB had committed to eliminating all child labor by 2025. He also added that there are ongoing attempts to strengthen labor inspection services and awareness of good practices by the authorities.

The BLA prescribes different kinds of leaves⁴⁹ and working hours,⁵⁰ and establishes a minimum wage board.⁵¹ Workers are protected by laws that prohibit them from working more than 6 (six) consecutive hours per day,⁵² or ordinarily work more than 48 hours a week.⁵³ BLA also provides that no woman worker shall, without her consent, be allowed to work in an establishment between 10 p.m. and 6 a.m.⁵⁴ Workers enjoy the right to receive leave (annual, sick, and maternity). A tripartite agreement was signed in May 2006 between government, BGMEA, and RMG sector workers to establish a Minimum Wages Board, which developed a 7-grade minimum wage structure for RMG sector workers.⁵⁵ The National Labor Policy, 2012 stresses on fixation of wages considering the skills of a worker and nature of work. It aims to eradicate wage-related discrimination among male-female workers and workers who belong to the backward section of the society.⁵⁶ A gazette notification for the minimum wage rate for garment industry sector (Re-fixation) was published on November 29, 2018, to ensure that every garment worker receives minimum wages.⁵⁷

⁴⁵ Art 20, National Labor policy 2012

⁴⁶ "Hazardous Work List." (2013). ILO

⁴⁷ Art 4, National Child Policy 2011

⁴⁸ However, we note that it is now 9 years since the policy was adopted and it is unclear if legal or other factors are preventing implementation.

⁴⁹ Section 15-18, Bangladesh Labor Act 2006, as amended in 2018

⁵⁰ Section 100 & 102, Bangladesh Labor Act 2006, as amended in 2018

⁵¹ Section 138, Bangladesh Labor Act 2006, as amended in 2018

⁵² Section 101, Bangladesh Labor Act 2006, as amended in 2018

⁵³ Section 102, Bangladesh Labor Act 2006, as amended in 2018

⁵⁴ Section 109, Bangladesh Labour Act 2006, as amended in 2018

⁵⁵ Al Faruque, A. (2009). "Current Status and Evolution of Industrial Relations System in Bangladesh." International Publications.

⁵⁶ Also see Art 7, National Labor Policy, 2012

⁵⁷ "Circular: Regarding re-fixation of the minimum wages and other benefits for the workers of the enterprises in EPZs under BEPZA-2018." (n.d). Bangladesh Export Processing Zones Authority. <https://bepza.gov.bd/app/webroot/ckfinder/userfiles/files/Wage%20Circular%202018.pdf>

The BLA also prescribes equal opportunities including wages for both male and female workers. Per the BLA, “In determining wages or fixing the minimum rate of wages for any worker, the principle of equal wages for [male, female and handicapped] workers for work of equal nature or standard or value shall be followed; and no discrimination shall be made in this respect on the ground of being [male-female-handicapped.]”⁵⁸ Further, the National Women Development Policy, 2011 emphasizes ensuring equal wages, increased participation of women in the labor market, equal opportunity at the workplace, ensured security, and removal of disparities in employment.⁵⁹ Additionally, the policy recognizes the need to make necessary reforms of all concerned laws, rules, and policies for wider employment of women. However, policies are not enforceable in court, and the BLA is not applied in the informal sector. Thus, in practice, women, particularly in the informal sector, are paid less than men.

However, key informants (Donor/NGO) noted that the lack of monitoring and enforcement of labor laws results in several of the above rules not being followed in the informal sector. Female workers are not receiving maternity leave or benefits they are entitled to. Women are being forced to work during hours of 10pm-6am without their consent, which is illegal.

Laws and Policies that Prevent Discrimination, Forced Labor, and Child Labor – Gaps in the Legal Framework

Allowance of Non-Regular Hiring Arrangements

The BLA has given some employers flexibility to resort to the hiring of non-regular workers (i.e., apprentice, casual, substitute, probationer, temporary), allowing them to avoid unionism and payment of various workers’ benefits. Rules for discharging a worker under section 22(1) of BLA due to physical or mental incapacity or continued ill-health are relaxed. Workers face challenges gaining financial benefits due to termination. For retrenchment and discharge, a worker must show proof of a minimum one-year service (Section 20 & 22). In cases of serious misconduct, the law allows summary termination without prior notice. This deprives the worker not only of compensation but also and more importantly, of the right to due process or the right to be heard (section 23(1)). Although the current law extends maternity leave to permanent workers, those who are under short-term hiring arrangements do not enjoy this benefit, especially since the law states that a six-month employment is necessary to gain maternity leave. In addition, maternity benefits are limited only up to the birth of two living infants (Section 46). Further, there is a significant difference between the private and public sectors in terms of maternity leave and benefit. Per the BLA, mothers are entitled to maternity benefits eight weeks prior to the baby’s birth and eight weeks after delivery. On the other hand, the government provides six months of maternity leave with benefits for female workers employed in government, semi-government, and autonomous organizations.

Stakeholders from the donor/NGO sector also noted that some owners keep workers as contractual, not permanent, workers. Despite the BLA mandating that these workers are entitled to social security derived from an enterprise’s social protection fund, contractual workers often do not receive resignation or termination benefits, nor do they receive festival bonuses (i.e., Eid bonuses). An Employers’ Association representative confirmed this and stated that factory workers are hired by referral and paid by the piece of

⁵⁸ Section 345, Bangladesh Labor Act 2006, as amended in 2018

⁵⁹ See generally, National Women Development Policy 2011

cutting or sewing, rather than regular wages. The same source shared that salespeople are considered permanent employees and receive bonuses, but factory workers do not.

Insufficient Punishments/Fines to Provide Deterrence

Recent amendments to the BLA failed to modify the few existing punishments for factory owners and other culpable individuals and make no reference to other penal regulations under which RMG factory owners may be held liable. Notably, there is no penal sanction against employing forced labor, though the BLA says it prohibits it. The list below shows some of the offenses committed by the employer and associated punishment:

Table 3: Example Penalties for Labor Offenses, per the BLA

Offense	Punishment
Section 284: Penalty for employment of a child and adolescent (punishment for employer)	Up to 5,000 (five thousand) BDT.
Section 289: Penalty for payment of wages at a rate below the minimum rate of wages.	Up to 1 (one) year, or with fine which may extend to 5,000 (five thousand) BDT, or with both.
Section 298: Penalty for misappropriation of provident fund and trade union funds.	Up to 3 (three) years and shall also be liable to fine.
Section 286: Penalty for contravention of the provisions of Chapter IV by an Employer (maternity benefit)	Fine up to 25,000 BDT.

Under The Children (Pledging of Labour) Act, 1933 the only punishment for child labor is a penalty which may extend to 200 BDT (around \$2.00). Generally, the penalty is paid to the court and court either gives it to the victim or sends it to government fund; however, the Act is outdated and rarely used.

Stakeholders from the donor/NGO and government sectors asserted that the punishment/fines for non-compliance with the BLA are too small to provide deterrence. One interviewee from the donor/NGO sector mentioned that fines are “very scanty, maybe around 5000, 10000 or 20000 BDT.” Another interviewee expounded that according to the law, the biggest fine is 25000 BDT and therefore, in most BLA violation cases, the employer can just pay this fine and get out of there.

Furthermore, one government stakeholder mentioned that there is no system of instant penalty by DIFE for finding BLA violations. Therefore, in order to implement the labor laws, DIFE does not have any power to take any action other than filing a case in the labor tribunal. And filing a case initiates a long-term process as well as it takes quite a bit of time to get any result from labor tribunal due to the huge backlog of cases. A donor/NGO stakeholder interviewed agreed, stating that it can take 5 or 10 years to solve a case if a worker files a case against an owner. During this time, the worker will have to hire a lawyer and pay expenses which will not be feasible for many workers (especially when the payout would be small if the worker eventually wins).

Lack of Clarity on Child Labor Policy and Enforcement Responsibilities

The prohibition of child labor in the BLA is contradicted by the provision which allows for the employment of children who are 12 years old in work that is supposedly not detrimental to their health and education.⁶⁰ The BLA does not provide a strong enforcement mechanism for its child labor provisions. Moreover, the Children Act, 2013 does not prescribe what constitutes child labor.

Another major issue related to child labor is that the Ministry of Women and Children Affairs (MOWCA) deals with issues related to children, while the Ministry of Labor and Employment (MOLE) deals with the issues related to labor. To date, neither of these ministries takes overall responsibility for overseeing matters related to child labor. This leads to challenges in implementing child labor laws. In terms of monitoring and enforcement, DIFE under MOLE has the obligation to monitor child labor in factories. MOWCA is also working intensely for overall development of women and children. MOWCA is responsible for coordination and monitoring of the development activities related to women and children as well as establishing and preserving legal and social rights of women and children. However, the ministries do not collaborate to deal with child labor issues. Furthermore, the National Child Labour Elimination Policy 2010 does not specify the responsibilities of MOWCA despite mentioning some other concerned ministries. To address the issue, greater policy cohesion between child labor and related policies and coordination between concerned ministries (i.e., MOWCA, MOLE) and civil society is crucial.

Lack of Discrimination Provisions

The BLA lacks specific provisions on discrimination related to workplace facilities, treatment of non-wage issues (e.g., promotion and placement), and other grounds of discrimination such as race, origin, religion, political beliefs, ethnic group or disability status.

Lack of Access to Daycare Facilities

A stakeholder from the legal sector noted that workers in informal factories also do not have access to daycare facilities; the law says factories must have daycare facilities only if there are more than 40 women working there.⁶¹ Given the small size of many informal factories, this threshold is rarely met and thus this benefit is not afforded to women workers in the informal RMG sector. Also, BLA does not specify the required breast-feeding break with pay. At least two 20- to 30-minute breast feeding breaks should be provided. Lack of such provisions deprive lactating mothers and babies from proper natural care and rights.

Laws and Policies that Promote Occupational Safety and Health

Per the BLA, all registered establishments are required to maintain minimum standards for occupational safety and health (OSH). The BLA captures the need for a safe working environment and mandates that employers take “appropriate measures to protect workers in times of hazardous activities and from the danger and damage of fire.”⁶² The BLA requires the employer to keep a first-aid box and fire

⁶⁰ Section 44, Bangladesh Labor Act 2006, as amended in 2018

⁶¹ Section 94(1), Bangladesh Labor Act 2006

⁶² XVII of 2006 Bangladesh Laws, 2006, p. 42

extinguisher, and maintain a workplace that is not overcrowded and injurious to the health of the workers.⁶³ The National Occupational Health and Safety Policy, 2013 recognizes the need to comply with the international standard regarding OSH and aims to implement national OSH laws to reduce workplace accidental and occupational diseases. The policy also stresses the need to provide proper treatment, adequate compensation, and rehabilitation of injured workers.⁶⁴ The National Labor Policy, 2012 says the Government will facilitate the establishment of a medical center, introduce a medical insurance scheme, and provide other health facilities in workplaces and areas where workers densely reside for the betterment of physical and mental health conditions of workers.⁶⁵

Section 78A of the 2006 Labor Act requires employers to provide personal safety equipment (e.g. safety shoes, helmets, goggles, ear plugs) and offer trainings for the mandatory use of such equipment. Mandatory fire drills are required every six months in factories with fifty or more employees.⁶⁶ Every RMG factory must possess at least one alternative exit per floor; no exit can be locked during working hours and all passages to escape route must be clear. Section 80 directs factory inspectors to report serious accidents to a competent authority such as the government, Fire Service, Directorate of Factories and Establishments, or Police Station. A new provision has also been added in 2013, requiring the formation of safety committees in factories with fifty or more employees.⁶⁷

Fire and building safety (including related issues such as building, electrical, and chemical safety) is regulated through legislative and administrative instruments. It is considered necessary to review all instruments to ensure they are up to date or/and any gaps or overlap in legislation and administrative authority can be addressed.⁶⁸ In recognition of the fact that unions play a vital role in promoting fire safety, the policies stipulate that union leaders should have access to fire safety trainings so they are better able to identify fire safety risks and remediation measures, as well as raise awareness of union members.⁶⁹

The Accord, signed on May 13, 2013, is a legally binding contract between international retailers and international and Bangladeshi trade unions that requires the implementation of reasonable health and safety measures in Bangladesh's RMG industry for a period of five years. The 2018 Transition Key Accord (formerly The Accord) aims to ensure no worker fears fires, building collapses, or other accidents that could be prevented with reasonable health and safety measures. The signatories to this agreement agree to continue a fire and building safety program in Bangladesh until May 31, 2021 (see Annex D for a full list of rules). It requires that the Safety Inspector make all reasonable efforts to ensure that an initial inspection of each factory covered by this Agreement shall be carried out within the first three months of it being listed by a signatory company, and that follow-up and maintenance inspections are carried out during and after the initial remediation process. Also, where corrective actions are identified to bring a factory into compliance with building, fire, and electrical safety standards, the signatory company or companies that have designated that factory as their supplier shall require the factory to implement these corrective actions according to a defined schedule that is mandatory and time-bound, with sufficient time

⁶³ Sarker, Suvo. (2018). "Implementation of Labor Laws in RMG Factories Gazipur."

⁶⁴ See generally National Occupational Health and Safety Policy 2013

⁶⁵ Art 10, National Labor Policy, 2012

⁶⁶ Section 62(8), Bangladesh Labor Act 2006, as amended in 2018

⁶⁷ 90A, Bangladesh Labor Act 2006, as amended in 2018

⁶⁸ Integrated National Tripartite Plan of Action on Fire Safety and Structural Integrity in the Garment Sector of Bangladesh (NTPA) Signed by the government, factory owners, and workers

⁶⁹ Ibid.

allotted for all major renovations. Where delays beyond the control of the factory occur, the Accord Chief Safety Inspector (CSI) may revise the remediation timeline, provided that reasonable progress in remediation is being made.

The Accord also outlines processes for workers to file complaints. The mechanism established under the Accord ensures that workers from factories supplying signatory companies can raise concerns about health and safety risks in a timely fashion, safely and confidentially, with the CSI. The agreement also calls for the development of a training and complaints protocol to ensure that workers' rights to Freedom of Association are respected in relation to protecting their own safety.

The BLA and other laws and policies establish sanctions for violations of workplace OSH. If an employee develops an occupational sickness or injury, employers must finance the cost of treatment until the employee has fully recovered.⁷⁰ In addition, under the BLA, an employer is liable to pay compensation in case the worker suffers from an occupational disease or workplace accident, or dies in the course of employment.⁷¹ As detailed in Figure 4, a 2018 amendment has increased the amount of compensation payable to workers.

Table 4: Worker Compensation for Workplace Accidents per the BLA, as Amended in 2018⁷²

Contingencies	Amount Payable (2018)	Amount Payable (Pre-2018)
Death	200,000 BDT	100,000 BDT
Permanent total disablement	250,000 BDT	125,000 BDT
Permanent partial disablement	A determinable proportion of 250,000 BDT	A determinable proportion of 125,000 BDT
Temporary disablement	Variable monthly payment proportionate to worker's monthly wages	

Several laws and policies protect the rights of people with disabilities in the workplace, and aim to ensure access to resuscitation should a worker become disabled due to a workplace injury. The Disabilities Rights and Protection Act, 2013 deals with those people who by birth or due to extraneous intervention including occupational disease, workplace injury or accident, are suffering from any kind of disability mentioned in section 3 of the Act. The Disability Act prescribes that if a disability occurs while in service, the worker has a right to continue in service or to get appropriate rehabilitation or adequate compensation.⁷³ The act further says, "despite being qualified for a position, which is suitable for a disabled person according to the type of disability, no disabled person shall be deprived of or discriminated against in getting such position⁷⁴... If any question arises as to whether any position is

⁷⁰ Section 89(7), Bangladesh Labor Act 2006, as amended in 2018

⁷¹ Section 150, Bangladesh Labor Act 2006, as amended in 2018

⁷² Schedule V of Bangladesh Labor Act

⁷³ Section 16(1)(J), Disabilities Rights and Protection Act 2013

⁷⁴ Section 35(1), Disabilities Rights and Protection Act 2013

suitable for any disabled person, the National Coordination Committee shall provide necessary instruction and the instruction provided by the National Coordination Committee shall be final⁷⁵... If any person or organization does not comply with the provisions of this act, the aggrieved person may submit an application to the Zilla Committee formed under section 23 of the 2013 Act⁷⁶... If any party is aggrieved by the order of the committee, the aggrieved person may file an appeal to the National Executive Committee within 30 days of such order⁷⁷... The aggrieved person can also file a complaint with criminal court.⁷⁸ Similarly, the National Disability Policy, 1995 prescribes that measures shall be taken regarding education, health, and treatment of the disabled persons (including workers) in order to rehabilitate. The policy also emphasizes employing disabled workers considering the nature of their disability.⁷⁹

The National Labor Policy, 2012 mentions that the government will take initiatives to establish medical centers, introduce a medical insurance scheme, and establish other health facilities in workplaces and areas where workers densely reside for the betterment of physical and mental health condition of workers.⁸⁰ The policy also says the government will take measures to improve workers' occupational health and safety conditions.⁸¹ The National Occupational Health and Safety Policy 2013 acknowledges the importance of implementing national OSH laws to reduce workplace accident and occupational disease. It also emphasizes raising the awareness of workers in the formal and informal sectors about possible health hazards.⁸² The policy aims to ensure that injured workers receive proper treatment and adequate compensation; workers with disabilities should be rehabilitated considering their disability.⁸³

Laws and Policies that Promote Occupational Safety and Health – Gaps in Legal Framework

Under section 22 of the BLA, a worker may be discharged for reasons of physical or mental incapacity or continued ill-health certified by a registered medical practitioner. Under the BLA, a person who acquires a disability at work has no right to alternative employment. This Act states that where a person becomes disabled for any reason during the course of employment, s/he shall be offered an appropriate compensation package.⁸⁴ Therefore, an employer on mere apprehension of diminished productivity of their employee due to disablement (mostly for incidents which are non-work related) may discharge their employee even if in reality that employee is capable of holding their office. Therefore, to some extent this provision is in conflict with the rights established by the Rights and Protection of the Persons with Disabilities Act, 2013 and thus, there is very limited redress available for any person who becomes disabled at work. The Disabilities Rights and Protection Act, 2013 and the Rights and Protection of Persons with Disability Rules, 2015 neither clarify the legal consequences that an employer may face for non-compliance with the provisions of the act nor prescribe the method of rehabilitation.

⁷⁵ Section 35(2), Disabilities Rights and Protection Act 2013

⁷⁶ Section 36, Disabilities Rights and Protection Act 2013

⁷⁷ Section 36(5), Disabilities Rights and Protection Act 2013

⁷⁸ Section 38(1), Disabilities Rights and Protection Act 2013

⁷⁹ See generally Art 8, National Disability Policy 1995

⁸⁰ See generally Art 10, National Labor Policy, 2012

⁸¹ See generally Art 12, National Labor Policy, 2012

⁸² See generally National Occupational Health and Safety Policy 2013

⁸³ See generally National Occupational Health and Safety Policy 2013

⁸⁴ Section 150, Bangladesh Labor Act 2006, as amended in 2018

The BLA has no clear provisions on the ratio of alternative stairs/fire escape routes against the number of workers, nor on the workers to toilet ratio.

The BLA and Bangladesh Labor Rules do not provide detailed guidance to regulate training on and use of personal safety equipment. Workers employed in the informal sector are especially vulnerable because they are invisible to regulators. Their employers operate on such slim margins that they cannot invest in even basic safety equipment or procedures.

Laws and Policies that Promote Worker Welfare and Social Protection

The BLA holds every employer, including contractors and indirect employers, liable for the payment of workers' wages,⁸⁵ and similarly holds principals employing workers through one or several contractors accountable for the payment of any compensation that would have been due, had the workers been employed directly by the principal. It establishes that where a labor offense is committed by a corporate body, every agent of that corporation will be held liable for the commission of the offense, unless he or she can prove that the offense was committed without his or her knowledge or consent, or that he or she exercised all due diligence to prevent the commission of the offense.

Apart from wages and compensation, the BLA provides gratuity and other financial grants from a provident fund, workers' participation fund, and workers' welfare fund. Annex E summarizes the welfare funds that workers may access. The Bangladesh Labor Welfare Foundation has been formed under Labor Welfare Foundation Act, 2006, as amended in 2013 in accordance with Article 234 of the BLA. The objective of the Foundation is to promote the welfare of workers in the *formal and informal* sectors. Welfare includes introducing different kinds of welfare projects, providing financial grants to the injured and disabled workers (or the beneficiaries of the worker in case the worker is dead), introducing group insurance, and paying premiums.⁸⁶

Establishment of a provident fund is dependent on the demand of a prerequisite number of workers. Group insurance is also dependent on the number of the workers and the prerequisite number is quite high. The amount of lump sum compensation given to workers due to work-related injury, disability, and death is not adequate for the worker and his/her family. Other aspects of social protection have remained untouched in the labor law of Bangladesh such as provisions on pension and medical and life insurance for the workers. Workers employed in the formal and informal sectors in workplaces with at least 200 permanent workers shall receive a life insurance, whether they are a member of an association/organization or not.⁸⁷

Under the BLA, workers can form a trade union to represent workers' demands and necessities and take steps to avoid exploitation.⁸⁸ With respect to collective bargaining, a clause has been added to Section 202 of the Labor Act permitting workers to appoint outside experts to assist in their collective bargaining agreements. The BLA also protects union members from retaliation by employers. Per section 195, no employer shall, "dismiss, discharge, remove from employment, or threaten to dismiss, discharge, or

⁸⁵ Section 121, Bangladesh Labor Act 2006, as amended in 2018

⁸⁶ Section 5, Labor Welfare Foundation Act 2006, as amended in 2013

⁸⁷ Rule 5(1)

⁸⁸ Section 176, Bangladesh Labor Act 2006, as amended in 2018

remove from employment a worker, or injure or threaten to injure him in respect of his employment by reason that the worker is or proposes to become, or seeks to persuade any other person to become, a member or officer of a trade union.” Additionally, the National Labor Policy, 2012 adopts policies to promote the formation of trade unions, encourage activities of collective bargaining agents, and improve measures for strengthening owner-worker relationships and resolving industrial disputes.⁸⁹

Laws and Policies that Promote Worker Welfare and Social Protection – Gaps in the Legal Framework

Although new legislation blocks employers from interfering with union activities, the Director of Labor still maintains wide discretionary powers with regard to the regulation of trade unions. The 2013 Labor Act does not change the stipulation that unions may only select their leaders from their own establishment. In addition, the law requires that a third of the factory’s workforce be registered with the union to gain government recognition. This provision can make it challenging for large factories (e.g. those with 10,000 workers) to unionize.⁹⁰ A union’s right to strike remains limited under the new laws, since a supermajority of the union would still have to vote for the strike. The law has also imposed a ban on strikes in some industries, in particular a 3-year ban on strikes in newly-established industries and industries established for or supported by foreigners.⁹¹ The requirements for a lawful strike are stiff, particularly the requirement of proof of support of at least 3/4 of members of the collective bargaining unit.⁹² The government is also able to end a strike or lock-out that persists for 30 days regardless of whether the dispute has been settled. In cases where the government deems the strike or lock-out as causing “serious hardship to the community” or as “prejudicial to the national interest,” the government does not need to wait 30 days.

A stakeholder from the legal sector expressed an additional concern that Section 183 of the BLA does not allow workers employed in a group of establishments to form a union if the number of workers involved is less than 100. Given the small size of most informal factories, this effectively prevents unionization since all workers from a city or area would be needed to reach the threshold.

There is no specific provision with respect to protection of workers in lockout situations, especially if the intention of the employer is to temporarily close down the factory to destroy the union. The BLA has no express provisions on the principle of “due process”, which should be observed by employers in disciplinary, suspension, and termination cases.

The BLA stipulates that representatives of the government, employer, and workers’ union participate in most major negotiations and decisions.⁹³ However, this system of tripartism, tripartite consultations, and formation of tripartite bodies requires clearer rules. For example, the BLA is silent on the tenure of the tripartite members of the Wage Board and the manner and criteria guiding the selection of the workers’ and employers’ representatives in the Wage Board.

⁸⁹ See generally Art 13, National Labor Policy, 2012

⁹⁰ Labowitz, S., & Baumann-Paully, D. (2015). “Beyond the Tip of the Iceberg: Bangladesh’s Forgotten Apparel Workers.” (p. 43). NYU Stern.

⁹¹ Labor Act, 2013, Section 211(8)

⁹² Labor Act, 2013, Section 211(1)

⁹³ Labor Act, Section 138

3.B. BARRIERS TO ENFORCEMENT IN THE INFORMAL SECTOR

RESEARCH QUESTIONS

- 3a. What are barriers to enforcing labor laws in the informal sector, including applicability of legislation, political will, and capacity of key actors?
- 3b. How does COVID-19 and its economic consequences for the export and local garment industry affect these barriers?
4. How can we achieve greater application of laws to the informal sector and what are the solutions to overcome the barriers to enforcement?

As noted in the above section most stakeholders interviewed reported that the main cause of forced labor in the informal sector is not gaps in the legal framework, but rather a lack of monitoring and enforcement. They also provided input and insight on the effect of this lack on worker's rights and working conditions. In this section we present the barriers to enforcement and the effect of COVID-19 on barriers to enforcement.

Barriers to Enforcement

Sound labor administration and inspection systems are fundamental for good labor market governance, equitable economic development, and the effective implementation of international labor standards. The document review and KIIs revealed that political will and capacity by actors such as DIFE, DOL, and factories are key for enforcing enforcement of labor laws in the RMG sector.

Political Will

Pressure by international brands for more ethical production has led to improvements in labor conditions in the formal sector. However, this pressure does not necessarily translate to informal subcontractors, who are not directly accountable to buyers.⁹⁴ Because the international RMG industry is so prominent to Bangladesh's economy, the Government of Bangladesh invests greater resources into enforcement in the formal sector, leaving gaps to enforcement in the informal sector. Until similar pressure – from international brands or elsewhere – exists for reforms to the informal sector, lack of political will may continue to hinder enforcement.

Several desk review sources alluded to direct barriers to enforcement related to political will by police and prosecutors. For example, the 2020 U.S. Department of State Trafficking in Persons (TIP) Report noted that corruption and complicity by officials hindered anti-trafficking investigations and prosecutions.⁹⁵ Key informants identified several ways by which corruption and complicity limit the passage and strong implementation of labor laws in the RMG sector. Many members of the MP (and local enforcement agencies, one respondent said) are factory owners or indirectly connected to the garment sector, relationships that affect the application of labor laws in several ways. For example, respondents said there is reduced willingness at the national level to pass strong labor laws, enact cross-departmental

⁹⁴ ILO. (2020). "What next for Asian garment production after COVID-19?"

⁹⁵ U.S. Dept. of State. (2020). "2020 Trafficking in Persons Report."

efforts to streamline inspection/registration regimes, and empower departments to strongly enforce laws; diminished resources budgeted for inspection and enforcement; and fear among workers and inspectors about speaking up against powerful factory owners. Factory owners who do not hold government positions still have strong influence. Respondents reported that factory owners bribe or even threaten inspectors, registration authorities, local government, and workers to deter them from identifying and reporting labor and safety infractions.

Capacity of Key Actors

MOLE oversees most in-country labor issues in Bangladesh. The main implementing agencies under the MOLE are DIFE and DOL. Capacity barriers by these two agencies and by factories themselves limit effective enforcement of labor laws in the informal sector.

Department of Inspection for Factories & Establishment (DIFE)

The ILO with support from Accord and Alliance has strengthened the capacity of DIFE to conduct inspections in formal factories. These efforts have led to the inspection of thousands of factories; however, even in inspections of formal factories, DIFE lacks the staffing, resources, and prosecutorial power to adequately enforce labor laws.⁹⁶ The inspectorate does not have the legal power to impose fines in case a factory owner violates the BLA, denies access to their factory, or does not obtain license from DIFE. DIFE also has limited data collection capabilities, insufficient staff, limited training facilities, and no effective performance management or monitoring mechanism.

With 23 district offices, DIFE is responsible for ensuring the health, safety, and welfare of workers by enforcing labor laws in the country. It helps employers and workers to comply with legal provisions by informing and educating workers and enterprises on the content of laws and regulations, advising on ways of complying with legal requirements, and enforcing the laws as appropriate.⁹⁷ However, DIFE faces major barriers to fulfilling its mandate.

Limited enforcement powers. DIFE can only enforce health, safety, and welfare regulations through prosecuting violations of the BLA to the labor court. To impose fines, it must first file a series of warnings and paperwork that limits its ability to immediately and effectively punish violations of labor laws. For this reason, DIFE is a weak enforcing authority compared to other enforcement entities such as Department of Environment or inspection agencies in other countries. Even if DIFE prosecutes violations in the labor courts, the fines that a court can impose are small (Max. 25,000 BDT, approximately \$300). Given these barriers, the enforcement powers by the use of legal provisions are minimal.

Insufficient human resources. DIFE lacks a sufficient number of inspectors to properly enforce labor laws. Per the agency's organogram, for example, the Dhaka district office is currently staffed at half capacity. Staffing gaps include inspectors and data managers. DIFE also has difficulties recruiting and retaining doctors and engineers – whose expertise is essential for assessing workers' health and factories'

⁹⁶ ILO. (2017). "Towards safer working conditions in the Bangladesh ready-made garment sector"; Labowitz, S., & Baumann-Pauly, D. (2015). "Beyond the Tip of the Iceberg: Bangladesh's Forgotten Apparel Workers" (p. 43). NYU Stern.

⁹⁷ Sections 61(2), 84(1), 85(3), 318 & 319 of the Labor Act, 2006(as amended in 2013)

structural soundness – because they do not perceive room for upward career growth within the agency.⁹⁸ In addition, key staff within DIFE do not receive rigorous training on OSH, labor laws, and M&E, partially because there are few higher education courses on these topics in the country.⁹⁹ Key informants confirmed that a lack of inspectors and logistical support hinder DIFE’s ability to reach factories in the informal sector. For instance, one stakeholder said some districts where DIFE is active have over 30 inspectors, while others have fewer than five. Respondents also mentioned that new OSH codes and other labor laws that emerged after the Rana Plaza disaster are new concepts for many DIFE officials, and the agency is still building inspector knowledge to implement them.

Lack of capacity for data collection and monitoring. As of September 2016, 23,218 factories were registered by DIFE, 5,002 of which are RMG factories. However, there are no dedicated personnel at DIFE for the collection, compilation, and maintenance of data about inspection and factories. As a result, The Inspection Annual Plan and other procedures are not supported by credible data. Furthermore, there is no effective system of following up on the annual inspection plan with the DIFE district offices after the end of the year.

Lack of awareness of and physical access to factories. Key informants said barriers within DIFE to reach and regulate unregistered factories is one of the top barriers to enforcement of labor laws in the informal sector. For one, DIFE does not have access to other agencies’ enterprise databases, limiting their oversight to factories that have undergone the DIFE licensing process. Many informal factories are either unaware that they must obtain licenses from DIFE or are unwilling to initiate the process because they view it as burdensome, expensive, and unnecessary to business. And DIFE inspectors face barriers to physically entering informal clusters. Respondents provided examples including lack of logistical support (e.g. vehicles), plus overt efforts by factory owners and local officials to block their entrance by telling them that there are no factories there. Indeed, when asked if they were familiar with DIFE or DOL, one employers’ association representative in Keraniganj said non-local government representatives do not come there, and that NORC’s research team was the first external group to visit them.

Inspection Procedure. During the time of the inspection, the inspector does not use any special equipment to identify personal health and hygiene issues. There is no standard procedure for collecting and preserving evidence during the inspection, which creates problems during the trial of cases referred to the Labor Court.

Legal barriers. If the inspectors see violations of the law, the inspectors issue an improvement note. If the enterprise does not adhere to the improvement note, DIFE refers the case to the Labor Court. However, DIFE doesn’t have any lawyers among their staff. Furthermore, the labor courts of Bangladesh bear the primary responsibility for enforcing the rights of workers and corresponding duties of employers under the labor laws. These Labor Courts adjudicate complaints brought before them under existing labor laws. Although designed to provide speedy justice to distressed workers at nominal cost; in fact, disposal of cases in the Labor Courts can be tedious and time consuming. There are instances of outstanding cases over long periods. The number of Courts is disproportionately low compared to the number of cases filed. This results in inordinate delay and overstressing the capacity of the Courts. Therefore, the enforcement

⁹⁸ Akhter, S., Rutherford, S., & Chu, C. (2019). Exploring the system capacity to meet occupational health and safety needs: The case of the ready-made garment industry in Bangladesh. *BMC Health Services Research*, 19.

⁹⁹ *Ibid.*

mechanism of DIFE becomes very weak. While key informants from DIFE said it is common for them to file and prosecute violations, the literature and other respondents noted few instances where fines were imposed successfully through court proceedings.

Lack of will. A few key informants from the donor/NGO community said DIFE was not working to its full capacity to enforce laws in the informal sector. One stakeholder said DIFE knows that informal factories will be unable to comply with labor laws, so they turn a blind eye rather than attempt to bring them into the formal sector. Another stakeholder said corruption, nepotism, and political pressure are barriers. Respondents from DIFE said they implement laws in every sector and establishment.

Department of Labor (DOL)

DOL is the most important government agency providing services in support of labor relations. It operates through 49 offices located at divisional headquarters and important industrial areas. The responsibilities of DOL are:

- i. To provide conciliation machinery to deal with labor disputes, including strikes and lockouts;
- ii. To ensure industrial peace in the interest of increased productivity;
- iii. Registration and regulation of trade unions and collective bargaining agents;
- iv. To provide support to elections and the functioning of Participation Committees; and
- v. Management and prosecution of complaints related to anti-trade union discrimination and unfair labor practices. (ILO, April 2020)

According to the KIIs, DOL has little administrative or implementation authority compared to DIFE, and primarily serves to “maintain the peace” during labor disputes. One respondent from the donor/NGO community noted that the police often take the sides of employers.

Union Registration process: In a study on DOL business practices¹⁰⁰ DOL officials reported that workers often fail to complete legally required DOL paperwork, which can hinder monitoring and registration of unions. Furthermore, the registration process often takes longer than stipulated in the BLA, as it often takes time for trade union applicants to submit their replies to any objection/s raised by the DOL. Finally, the DOL does not maintain up-to-date and publically accessible databases of trade unions, hindering accountability and transparency.

Per the BLA, if the DOL refuses to register a trade union applicant, applicant workers should go to labor court to challenge the decision of DOL. However, in reality less than one percent of rejected applicants go to court and the rest chose alternative means such as press conferences. The DOL claimed that most trade union applications are rejected due to false or fake information provided by the applicant. However, although there are provisions in the BLA to take action for providing false information, as of 2016, there were no attempts to take action under the law for this offense.

¹⁰⁰ Khan, A. (2016). “Mapping of the Business Process of the Department of Labour (DOL)”

Factories

In one 2015 study, researchers found that 32 percent of 479 factories in two sub-districts of Dhaka were informal, and 91 percent of these factories produced at least partly for export.¹⁰¹ This is significant because the majority of labor exploitation takes place in the informal sector. For instance, international organizations estimate that 93 percent of child labor, including forced child labor, takes place in the informal sector.¹⁰² One reason for this gap is because of capacity barriers by key actors, particularly factory owners; capacity-building initiatives in the RMG sector have focused on the formal sector.

Among formal factories who received citations from inspectors for safety violations, few have the financial capacity to remediate them. For example, in November 2015 Accord reported that of the 1590 factories it had inspected, only six had passed the final inspection. While some safety violations are relatively simple to resolve, citations for structural or electrical dangers can cost up to \$250,000-\$350,000 to remediate.¹⁰³ High interest rates and lack of financial literacy limit owners' ability to finance these renovations.¹⁰⁴ Factory owners feel that international brands should underwrite some of these costs, but brands have yet to do so.¹⁰⁵

Another barrier to enforcement of OSH and labor regulations is factories' noncompliance with recordkeeping and monitoring rules. The BLA mandates that factories maintain a register of workers, past and former, including the terms of their employment, their wages and compensation, nature of any dangerous work they perform, personal safety equipment allotted to them, reasons for their dismissal if applicable, and a record of any misconduct.¹⁰⁶ However, in practice, owners may be unwilling or unable to take records of practices, limiting the ability of both factories and inspectors to monitor violations.¹⁰⁷ A detailed list of record-keeping requirements can be found in Annex C.

Key informants confirmed that lack of resources is one factor that prevents factories from complying with labor and safety codes. For example, one employers' association representative noted that fire extinguishers and other safety equipment is expensive. Another respondent commented that it isn't a challenge to build new factories to code, but it is difficult for factories to retroactively meet new safety standards related to ventilation and other structural features. Despite these challenges, employers' association representatives said they had managed to improve factory washrooms and implement some safety features thanks to support from local government officials; however, they acknowledged that factory safety was still "not 100 percent."

Informal sector employers face unique barriers related to awareness of and capacity to comply with labor laws. Multiple stakeholders said informal sector employers do not pursue knowledge of labor laws because they know they will not be able to afford to comply with them. With visits from enforcement agencies rare, they do not have reason to learn and comply with costly safety and wage laws. Representatives from employers' associations said processes for licensing are confusing and costly for

¹⁰¹ Labowitz, S., & Baumann-Pauly, D. (2015). "Beyond the Tip of the Iceberg: Bangladesh's Forgotten Apparel Workers" (p. 43). NYU Stern.

¹⁰² U.S. Dept. of State. (2020). "2020 Trafficking in Persons Report."

¹⁰³ Labowitz, S., & Baumann-Pauly, D. (2015)

¹⁰⁴ ILO (2017)

¹⁰⁵ Labowitz, S., & Baumann-Pauly, D. (2015)

¹⁰⁶ Bangladesh Labor Act, 2018

¹⁰⁷ Akhter et al. (2019)

individual owners, deterring them from pursuing licenses. Across the board, respondents emphasized that awareness-raising efforts, while necessary, will be insufficient on their own to promote compliance by informal factories. Instead, awareness-raising efforts must be accompanied by stronger pressure from external stakeholders such as government enforcement agencies or international brands.

Workers

One informal sector representative summarized that workers understand that if they work they get paid; if they don't work they don't get paid. Multiple key informants said workers lack the knowledge and capacity to demand better working conditions, which hinders systemic application of labor laws in the informal sector. For example, workers do not know the details of laws mandating minimum wages, overtime pay rates, workplace health and safety, and maximum working hours. They may also be unaware of their rights to strike and resist against their employer to demand better conditions. Without this knowledge, workers cannot demand adequate payment, safe working conditions, and fair hours from their employers. While there are efforts to inform workers of their rights, it is difficult to reach all workers because there are so many of them and because a significant proportion of them are temporary or transient.

Perhaps more important than lack of awareness of labor laws, the enabling environment in the informal RMG sector can make it difficult and even dangerous for workers to demand better conditions. Stakeholders from the donor/NGO community and informal sector noted that few informal workers have collective bargaining power. Informal sector representatives said workers may also fear violence and backlash by employers and the owners' associations for advocating for their rights. According to employers' association stakeholders, disagreements between workers and owners are often resolved between themselves. Multiple respondents said forming and strengthening unions would allow for easier awareness-raising among workers and give workers greater strength to demand their rights.

Incentives for Compliance

The KIIs explored the role of positive incentives in moving informal factories to comply with labor laws. While government stakeholders were not aware of existing positive incentives offered by the government to informal factories, members of the donor/NGO community said such incentives could be important for pushing factories to formalize. For example, the government and international actors have offered loans for factory remediation and financing for COVID-19 relief to registered factories. Stakeholders suggested either developing a separate mechanism for providing support to subcontractors, which could be governed by the government, owners, NGOs, and/or trade unions. One respondent also recommended offering informal factories access to training, capacity-building services, or certifications upon registration with the government so it becomes advantageous for owners to formalize.

Effects of COVID-19 on Barriers to Enforcement

The economic effects of COVID-19 have afflicted factories and workers throughout the RMG supply chain. As international brands' revenues have fallen, buyers have reduced orders, canceled contracts, and

put holds on ongoing orders.¹⁰⁸ Consequently, hundreds of factories have shuttered in both the formal and informal sector, with millions of workers affected by lay-offs, furloughs, and cutbacks.¹⁰⁹ One key informant estimated that up 60-65 percent of the informal sector has gone out of business due to COVID-19. As restrictions lift, reduced profit margins may depress wages and supply of decent work. And increased attention to COVID-19-related OSH concerns may divert attention from other priorities like violence, harassment, and gender inequality.¹¹⁰ For example, one government stakeholder said a multi-stakeholder initiative to improve inspections in the informal construction sector was on-hold indefinitely due to COVID-19. In aggregate, COVID-19 has had dire economic effects on the RMG industry and informal sector, increasing worker vulnerability to exploitation, and exacerbating existing challenges to enforcement of labor laws including political will and lack of capacity by key actors.

The economic effects of the COVID-19 pandemic have highlighted asymmetrical power relations between buyers and suppliers. Previously, a desire to meet the standards of international brands motivated formal factories and the Government of Bangladesh to comply with and enforce labor laws.¹¹¹ However, as brands have unilaterally canceled contracts and refused to help cover costs of worker severance and expanded OSH measures, many suppliers have lost trust in their partnerships with buyers, according to key informants and the literature.¹¹² It's conceivable that these power imbalances and trust deficits will erode existing political will by stakeholders throughout the sector to uphold ethical labor standards, especially as international brands have demonstrated that they are not willing to bear the costs of doing so. Relatedly, one respondent noted that buyers' new strict OSH standards are potentially unsustainable because buyers imposed them forcefully.

As factories reopen, both BGMEA and DIFE established regulations to help protect workers from COVID-19. In consultation with the Ministry of Health, ILO, and World Health Organization, BGMEA developed new OSH guidelines for member factories, which it enforces with random and unannounced factory audits. DIFE released COVID-19 guidelines for all factories, which mandate reduced workers, masks, and multiple shifts to protect workers from the spread of the virus. However, these mandates have weak enforcement mechanisms and are not sufficient for protecting workers even when properly implemented.¹¹³ Respondents from DIFE noted that economic strife and additional OSH requirements from COVID-19 have caused the informal factories to become even more insular and closed off, affecting DIFE's ability to enter informal clusters for inspections. As a result of this lack of enforcement and regulation, many workers have contracted the virus from the workplace.¹¹⁴

The economic impact of COVID-19 will likely further limit factories' capacity to comply with labor laws. As revenues fall, the ILO has noted the risk of a "race to the bottom," where RMG factories seek to reduce costs by cutting wages, workplace OSH measures, and benefits to workers. This trend will take place locally, but also transnationally, as global brands seek to source from countries that can provide the

¹⁰⁸ Anner, M. (2020). Unpaid Billions: Trade Data Show Apparel Order Volume and Prices Plummeted through June, Driven by Brands' Refusal to Pay for Goods They Asked Suppliers to Make; A number of RMG workers may lose jobs: Rubana Huq. (2020, June 4). The Daily Star.

¹⁰⁹ Anner (2020)

¹¹⁰ ILO (2020)

¹¹¹ *Ibid.*

¹¹² Hansen, C., Sahai, R., Bansal, V., Iyer, M., Kysia, K., Iqbal, J., & Parpiani, M. (2020). "GFEMS South Asia Prevalence Estimation Research Program: RMG India & Bangladesh COVID-19 Rapid Assessment Report." Prepared for GFEMS by NORC at the University of Chicago.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

cheapest products.¹¹⁵ Many potential cost-cutting measures are in direct contradiction of labor laws. In addition, it is important to keep in mind that vulnerable groups like pregnant women are not protected under current labor laws, and may be more prone to exploitation.

While the government of Bangladesh has taken steps to blunt the economic effects of the COVID-19 pandemic on the RMG sector, these initiatives do not reach unregistered factories in the informal sector. Informal workers and employers did not receive government wage subsidies and small factories haven't had access to bank loans. As a result, workers and owners suffered, and factories shuttered or implemented intense cost-saving measures. For instance, one key informant estimated that almost 50 percent of RMG workers in the informal sector are now children because they work for lower rates.

The long-term effects of COVID-19 on labor law enforcement remain uncertain. On one hand, safety concerns may become more important to buyers seeking suppliers. Brands may be more likely to do business in countries whose governments have demonstrated that they have the capacity to deal with future crises;¹¹⁶ presumably, capacity to enforce OSH guidelines would be part of this calculation. On the other hand, COVID-19 may have lasting economic impacts on factories' and officials' capacities to apply ethical labor standards. And new trust deficits between suppliers and buyers may dampen the effect that political pressure once played in motivating enforcement in the formal sector.

3.C. ROLE OF LAW AND PROSECUTION IN REDUCING PREVALENCE

RESEARCH QUESTIONS

- 5a. What role can law and prosecution play to reduce prevalence and how?
- 5b. How could they be aligned with other GFEMS interventions to form a coordinated strategy?
- 5c. To what extent can stronger law enforcement reduce prevalence of slavery and what is the likelihood of realizing it?

Without a credible threat of law enforcement and prosecution, a strong legal framework and inspectorate may not deter the worst forms of labor exploitation. Close coordination between public institutions and the establishment of special labor tribunals can lead to more convictions and prosecutions for labor violations. According to key informants, the threat of law and prosecution is not a major deterrent to offenders in the informal RMG sector in Bangladesh, but owners fear the law when confronted with direct legal action.

In some countries, labor officials play a direct role in enforcing forced labor laws, while in many countries, enforcement takes place through joint strategies involving the labor inspectorate, police, and prosecutors. Joint strategies are most effective where relevant public institutions have close cooperation. For example, the inspectorate must have a clear mandate and pathway for involving police and prosecutors when they uncover suspected violations. And providing the inspectorate secure access to public records can aid with targeting inspections. Where there are robust labor inspections and adequate

¹¹⁵ ILO (2020)

¹¹⁶ *Ibid.*

penalties in the legal framework, a credible threat of prosecution for labor violations can deter offenders and reduce prevalence.¹¹⁷

Although Bangladesh now has special tribunals for labor and trafficking cases, convictions for forced labor offenses remain low. The U.S. Department of State upgraded Bangladesh to Tier 2 in its 2020 TIP Report, in part because the government increased trafficking convictions and improved its prosecutorial capacity by establishing seven anti-trafficking tribunals. However, many of these increased cases were for sex trafficking, and the TIP Report called for a significant increase in prosecutions and convictions for labor trafficking. There is also need for greater prosecution of complicit government officials.¹¹⁸

Labor Courts in Bangladesh

There are seven labor tribunals and one Labor Appellate Court with territorial jurisdictions in Bangladesh. These courts can adjudicate both criminal and non-criminal cases. The main objectives of labor courts are to adjudicate industrial disputes, inquire about and arbitrate any matter relating to the implementation or violation of a settlement, and try any legal and labor act offences.

Individual workers and employers can file cases before the labor court. Collective Bargaining Agents can also file cases on behalf of the workers they represent. Industrial disputes, including wage issues and terms of employment, are recorded as civil cases, and the judge functions as a District Judge guided by the Civil Procedure Code. Violations of the Labor Court's Order, employment of children, failure to pay the minimum wage, failure to serve notice of an accident, and unfair labor practices are treated as criminal offences under the BLA.

Grievance Procedure. Before filing a complaint with the labor court, any individual worker must submit his grievance to his employer, in writing, by registered post within thirty days of the occurrence of the cause of such grievance. The employer must within 15 days of receipt of such grievance, enquire into the matter, give the worker concerned an opportunity of being heard, and communicate his decision, in writing to the said worker.

Labor Tribunal. If bipartite negotiation and conciliation fail, the disputant parties may settle their dispute by referring it to the Labor Court. In most cases, the Labor Court constitutes three government-appointed members,¹¹⁹ and has the power to dismiss a case or to decide the same ex-parte. The award, decision, or judgment of the Labor Court must be delivered within sixty days from the date of filing of the case unless the parties to the dispute give their consent in writing to extend the time-limit.

Labor Appellate Tribunal. The aggrieved party may prefer an appeal to the Tribunal within 60 days of the delivery of the judgment. The Labor Appellate Tribunal has the power to hear or dispose appeals from the Labor Court, and its decision is final. The Labor Appellate Tribunal on appeal may set aside, vary, or

¹¹⁷ ILO. (2013). "Strengthening action to end forced labor."

¹¹⁸ U.S. Dept. of State. (2020). "2020 Trafficking in Persons Report."

¹¹⁹ The Labor Court typically constitutes a government-appointed chairman and two advisors. In the case of trial of an offence or adjudication of any matter under Chapters Ten and Twelve, the Court consists of the Chairman alone. To be the Chairman of the Labor Court, a person is to be the sitting District Judge or Additional District Judge.

The Labor Appellate Tribunal consists of a Chairman plus additional members if the Government deems fit. The Chairman must be a former Judge or Additional Judge of the Supreme Court. Any Member must have been a Judge or an Additional Judge of the Supreme Court or is or has been a District Judge for at least three years.

modify any award decision in judgment or sentence given by the Labor Court, or send the case back to the Court for re-hearing. The judgment of the Tribunal must be delivered within a period of 60 days following the filing of the appeal.

Barriers to Prosecution

The structure of the Bangladeshi labor courts may inhibit adequate prosecution of labor and safety violations. On one hand, non-labor cases are tried in a three-tiered judiciary system: a party may appeal the decision of the lower judiciary (Trial Court) to the High Court Division (HCD) of the Supreme Court, whose decision may then be appealed to the Appellate Division (AD) of the Supreme Court. On the other hand, labor cases are tried in a two-tiered system.¹²⁰ Thus, the existing framework does not provide any mechanism for referring an appeal to a third court such as the AD or an equivalent labor court. While the aggrieved party can appeal labor cases to the HCD under Article 102 of the Constitution, they must prove that their fundamental rights were violated. Reframing a case in this manner is time-consuming and sometimes unfeasible.

Another barrier to convicting labor violations is lack of capacity by prosecutors. In most labor tribunal proceedings, DIFE or DOL officials play the role of a prosecutor. These officials are not trained as legal advocates, so lack the skills to effectively compile evidence and present their cases in court. Factory owners usually hire professional lawyers, making it challenging to bring about successful convictions.

Key informants from the government, employers' associations, and donor/NGO community said that the threat of law and prosecution does not deter many informal factory owners from breaking labor laws. Numerous respondents attributed this lack of deterrence to gaps in awareness. Informal factories may not know the consequences of having a case filed against them, so thus are not deterred by the threat of law and prosecution. On the other hand, the formal sector is aware of labor laws and takes action by DIFE and seriously.

Due to voluntary buyer/supplier contracts, the commercial consequences of non-compliance are also greater for formal sector factories. Informal factory owners may perceive that the cost of non-compliance is negligible, particularly when there are costs associated with complying with laws. Respondents noted that fines are low, workers cannot afford attorneys, case litigation can take up to ten years, and owners are rarely sent to jail. One respondent also said owners bribe officials if they are caught. For these reasons, many informal-sector owners are not deterred by the threat of law and prosecution.

Key informants agreed that while the threat of law and prosecution is not pervasive in the informal sector, owners fear the law when they are directly confronted by legal action. For example, when an employer wrongly terminated workers during the peak of the COVID-19 pandemic, an NGO called the factory and threatened legal action; this call led the factory to reinstate the workers. Trade unions can also exert similar power and sway when they call factories. However, workers are rarely aware that they can file cases, and thus often fail to do so.

¹²⁰ The Labor Tribunal is equivalent to lower judiciary and the Labor Appellate Tribunal is equivalent to the HCD.

3.D. COORDINATION AND INSTITUTIONAL STRENGTHENING

RESEARCH QUESTIONS	
6.	How could developments such as Bangladesh National Plan of Action for Prevention and Suppression of Human Trafficking be leveraged?
7.	What are necessary improvements to the existing institutional framework and a coordinated effort by them?
8a.	What is the nature of agreements/understanding between the exporting and importing companies, if any?
8b.	Can these be leveraged to enforce stricter implementation of preventative measures against exploitation?

The Bangladesh National Plan of Action for Prevention and Suppression of Human Trafficking (2018-2022)

Provisions of the NPA

The National Plan of Action (NPA) for Prevention and Suppression of Human Trafficking emerged as a result of efforts of the Government of Bangladesh to combat all forms of trafficking in persons. While the first NPA was initiated in 2002, it has been consistently implemented only since 2009, with each subsequent NPA building off of the experience from earlier rounds of implementation. Prior to the 2018-22 round, earlier NPAs covered a 3-year period, which was changed to align with the Bangladesh Five-Year plans. The NPAs reflect the goals set out in the Bangladesh Five-Year Plans as well as the Sustainable Development Goals (SDG) Action Plans. Under the NPA, the government in partnership with NGOs and donors implement anti-human trafficking activities to enforce legal instruments, reduce risks, and improve efforts in the rescue, repatriation, recovery, and integration of human trafficking survivors. NPAs are meant to be guiding documents for all actors involved in anti-trafficking activities in Bangladesh with specific responsibilities assigned primarily to government stakeholders.

The current NPA in effect is framed for a five year duration, from 2018 to 2022, and includes programs, projects, and strategies for combating all form of internal and international human trafficking. Specifically, it prioritizes developing social and economic safety-nets to prevent human trafficking. In addition, it includes specific interventions to build the capacity of implementing agencies, combat trafficking in children, and strengthen the legal provisions for prosecuting traffickers. The five action areas under NPA 2018-2022 are prevention of human trafficking, holistic protection of trafficking victims, prosecution of traffickers and cross-country legal assistance, multi-stakeholder partnerships and monitoring and evaluation. Each of these action areas constitute objectives, under which there are a series of expected outputs. Table 6 lays out the objectives and expected outputs for the current NPA.

Table 6: NPA 2018-2022 Objectives

Objective 1	Prevention of human trafficking
Expected Output 1.1	Reduction of economic vulnerability of the marginalized households

Expected Output 1.2	Reduction of disaster induced vulnerability of the marginalized households to human trafficking
Expected Output 1.3	Reduction of risks of the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations
Expected Output 1.4	Reduction of sexual violence against women and children
Expected Output 1.5	Elimination of harmful practices against children including child labor and child marriage
Expected Output 1.6	Promotion of safe labor migration
Expected Output 1.7	Increased access to decent work for the youth
Expected Output 1.8	Enhanced access of the vulnerable communities to awareness on human trafficking
Objective 2	Protection of victims of human trafficking
Expected Output 2.1	Eradication of forced labor, to end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labor
Expected Output 2.2	Strengthened policy-legal tools for delivery of recovery and integration supports to the women and child victims of trafficking
Expected Output 2.3	Strengthened protection services to the child victims of trafficking
Expected Output 2.4	Strengthening the coordinated protection system
Objective 3	Justice to the victims of human trafficking and prosecution of the traffickers
Expected Output 3.1	Increase the rate of and strengthen the capacity of delivering justice to the victims of trafficking
Expected Output 3.2	Implementation and revision of policy-legal tools for delivering justice to the woman and child victims of trafficking
Expected Output 3.3	Strengthening legal provisions for children
Expected Output 3.4	Priority access of the victims of human trafficking to legal services
Expected Output 3.5	Enhanced access of the victims of human trafficking to social services
Objective 4	Multi-stakeholder partnerships that mobilize and share knowledge, expertise, technology and financial resources, to support the achievement in combatting human trafficking
Expected Output 4.1	Multi-stakeholder partnership to prevent and suppress human trafficking
Expected Output 4.2	Multi-stakeholder consultation to report on achievements in combating human trafficking
Objective 5	An effective system of monitoring, evaluation and reporting installed
Expected Output 5.1	Enhanced capacity on monitoring and reporting on progress in implementation of NPA 2018-2022

The Ministry of Home Affairs (MHA) leads the implementation of the NPA, facilitating collaboration between multiple ministries to implement a broad range of interventions to meet priority objectives. Ministries involved in various activities include the Ministry of Women and Children Affairs, MOLE, Ministry of Social Welfare, Ministry of Religious Affairs, Ministry of Foreign Affairs, and the Ministry of Finance. Organizations such as Winrock, Justice and Care, and the International Organization for Migration contributed in the drafting of the NPA. They are also part of the Government-NGO (GO NGO) coordination committee, which meets quarterly to discuss emerging issues and plans of action.

Leveraging the NPA

Although NPA implementation is limited to government agencies and selected NGOs and international donors, the goals set out in the NPA can be adapted and applied to other anti-trafficking organization programs. For instance, the United States Agency for International Development (USAID) is working

with the Government of Bangladesh to implement the NPA to combat human trafficking in partnership with Winrock. As part of those efforts, they have invested more than \$8 million to support TIP shelter homes and judicial sector capacity building.

The NPA specifies that the MHA encourages NGO organizations to collaborate on interventions, which provides an opportunity for NGOs to initiate discussions with government agencies if they identify areas of contribution. Multi-stakeholder partnerships and knowledge sharing is a key objective of the NPA, for research organizations there could be an opportunity to disseminate relevant findings to government agencies working on related interventions under the NPA.

However, despite potential pathways highlighted above, KIIs with stakeholders suggest that limited familiarity with the NPA and its provisions across the board is the biggest challenge in leveraging the NPA. RMG sector inspection and regulation representatives reported that they had never heard of the NPA. A Court stakeholder interviewed stated they were not familiar with NPA either. Of the six donors/NGOs interviewed, only two were familiar with the NPA and able to discuss their organization's role in supporting the government to execute the NPA. Finally, only one of two international brands/alliances interviewed was slightly familiar about the NPA, specifically with the NPA's role in *"migrating the Alliance and Accord to RSC and in institutionalizing those efforts into the work of BGMEA and the others"*.

In addition, most interviewees were not familiar enough with the NPA to discuss its implementation successes or challenges. However, the two interviewees familiar enough to comment noted that there is a disconnect between the high level policy in the NPA and actual impacts on informal factories. One stakeholder noted that the NPA was limited in its ability to guarantee decent work conditions in the informal sector without a lot of other interventions due to this disconnect. Another stakeholder emphasized that the government needs to take complete responsibility to establish enforcement entities and lay down clear procedures for monitoring and implementation of the various NPA activities.

Other Multi-Stakeholder Frameworks and Institutional Coordination

Apart from the NPA, several other multi-stakeholder frameworks or agreements designed to reduce labor exploitation in the informal RMG sector exist. However, similar to the NPA, most of the KII interviewees were not familiar with other frameworks and could not name other agreements. Overall, the agreements mentioned were the Social Compliance Forum, the National Child Labor Policy and agreements that have no government involvement, such as, the National Monitoring Committee under the Global Framework Agreement (members from H&M and trade unions).

Interview stakeholders discussed various problems when asked how well ministries or other implementing organizations coordinate with each other while implementing activities to increase decent work and to reduce labor exploitation in the informal sector. First, there is a lack of coordination between government ministries, and ministries and garment factories. Factories are required to get licensed by DIFE, yet some factories procure normal trade licenses from another part of the government instead and start their business. There is no mechanism to ensure that factories are licensed by DIFE before getting other government services like power and water. Some stakeholders suggested that ego clashes and power dynamics between ministry heads lead to poor coordination and implementation of interventions.

Second, there is also a lack of commitment by the government to address issues around decent work and labor exploitation in the informal sector. The government established an RMG tripartite coordination committee, the Tripartite Consultative Council (TCC), to discuss labor law and amendments. Non-government participants in the committee include workers representatives, trade unions, and owners. However, as a donor/NGO stakeholder reports, there have never been any meetings of the RMG TCC after its establishment. In addition, employers have significant influence over RMG issues (and many policymakers are themselves garment factory owners). This could lead to a conflict of interest as they are the ones likely perpetuating labor exploitation but are also the ones making final policy decisions on labor exploitation. One Donor/NGO stakeholder noted that the employers are more powerful than the government and the government is helpless in some ways.

RMG Buyer and Supplier Agreements and Power Dynamics

The RMG sector is based on business-to-business (B2B) relationships between retailers (buyers), mainly multi-national corporations, and factories (suppliers). Contracts include an agreement to deliver a specific number of garments with appropriate specifications, which tend to be seasonal as buyers attempt to coincide production with Spring/Summer/Fall/Winter collection releases.¹²¹

RMG suppliers include direct and indirect garment suppliers to international brands. Direct suppliers assume responsibility for every aspect of production from procuring materials, to cutting, sewing, finishing, packaging, and transport. This requires significant investment of capital, sophisticated international relationships, and capacity to withstand production delays due to late delivery of materials or other external shocks. Suppliers that demonstrate the highest order and export volumes also have the greatest access to capital, which is made available on the basis of total order and export volume, not production capacity. Such production requires a level of sophistication in business practices and exposure to international compliance standards that do not trickle down to indirect suppliers or informal factories.

Indirect suppliers specialize in low-skill production (cutting and sewing) or discrete production processes (washing and dyeing). They also conduct business in Bangladeshi Taka, without access to the credit-based financing facilities or export credits that are available to direct exporters. If the indirect sourcing model was conducted within an effective regulatory framework and efficient markets, it could allocate and re-allocate production according to the competitive advantages of each actor in the supply chain. The absence of those conditions, however, has resulted in a supply chain driven by pursuit of the lowest nominal costs. This has undermined wages and working conditions, investment in technology and training, and improvements in productivity and quality.

Many direct suppliers take on contracts that exceed their production capacity and source from indirect factories or subcontract with informal factories to cover excess demand or push lower-margin work to factories that operate at a lower cost. Direct suppliers source from indirect factories that are registered with Accord/Trade Associations, which are on the "Utilization Declaration" or "UD List," which means these factories can import raw material for export garment production without paying any duty. According to a 2015 NYU-Stern Study, about half of all factories on Accord/Trade Association lists are

¹²¹ Lightcastle. 2019. "RMG Sector: Difficult Relationship with Sustainability." <https://www.lightcastlebd.com/insights/2019/07/14/bangladesh-rmg-sector-difficult-relationship-with-sustainability>

indirect suppliers, operating on tight margins and subject to wide fluctuations in demand.¹²² These suppliers are therefore more likely to have exploitative labor conditions and workers trapped in forced labor situations.

Informal factories are a subset of indirect suppliers, however, they are not registered with the government or trade associations and rely on subcontracts. Subcontracting is a controversial practice because although it allows large orders to be fulfilled, the smaller factories that take up the excess production may not meet compliance standards. The NYU-Stern study found that as many as 7,100 factories in Bangladesh were subcontractors, who helped larger factories manage their export workload.¹²³ These factories are neither covered by the Accord or Alliance guidelines for worker safety and inspections nor overseen by the Bangladeshi government. Owners of these factories often have less secure sources of income, less access to credit, and may be reluctant to invest in health and safety measures, especially if they know they are not likely to be inspected.

Though buyers formally require their suppliers to disclose the use of subcontractors, suppliers do not consistently do this. International brands/alliance representatives interviewed reported that they do not know when unauthorized factories are being used and thus cannot ensure compliance. As one employer association representative stated, buyers have no idea if their suppliers are getting the work done by children, if there are any occupational health or safety risks, or if other compliance requirements are not being met. The responsibility for compliance falls instead on the supplier, as buyers ask them to sign that all factories will be inspected and meet the same high workplace standards specified in the brand's code of conduct. However, international brand/alliance stakeholders reported a lack of due diligence on the part of suppliers.

Though buyers may not know which factories are producing their goods, they are aware that most of their work is produced in non-compliant factories, according to donor/NGO stakeholders. These sources reported that buyers are aware of the capacity of factories when they give orders so they know when work is being done somewhere else. One stakeholder noted that buyers often increase orders with fast turnaround times without re-evaluating capacity, creating a gap that is often closed by unauthorized subcontracting.

Over the last few years, specifically since the Rana Plaza incident, international buyers have been making concerted efforts toward closer scrutiny of their supply chains to prevent exploitative practices among suppliers, reduce unauthorized subcontracting, and to bring about greater transparency. In 2019, over 180 international fashion brands disclosed their suppliers in an effort to bring greater transparency to global supply chains. This trend may become a requisite for reputation, as companies who do not disclose their information are distrusted and are seen as not taking responsibility for their practices. To ensure supply chain monitoring, some foreign brands hire agents to ensure that production capacity is sufficient, or that sub-contractors meet safety and compliance requirements. However, several donor/NGO stakeholders raised ongoing concerns about the quality of some buyers' audits. One stakeholder noted that the audits often do not keep documentation of the bigger violations, only small violations for which corrective action plans are issued. Another mentioned that many suppliers have become accustomed to the audits

¹²² NYU-Stern. 2015. "Beyond the Tip of the Iceberg: Bangladesh's Forgotten Apparel Workers."

<http://static1.squarespace.com/static/547df270e4b0ba184dfc490e/t/5672bef1c647ad862c494795/1450360561022/Bangladesh-Report-Final.pdf>

¹²³ NYU-Stern. 2019. "Mapping the Garment Industry in Bangladesh: A Call for Transparency."

<https://bhr.stern.nyu.edu/blogs/2019/2/20/mapping-the-garment-industry-in-bangladesh-a-call-for-transparency>

and learned how to game the system. Audits during COVID-19 have been done virtually and were reported to be particularly low quality.

4. RECOMMENDATIONS

RESEARCH QUESTION

9. How should GFEMS and partners or other change agents develop interventions that shift the enabling (legal, regulator) environment against forced labor and in favor of ethical production in the informal garment sector?

In this section we provide a synthesis of recommendations for policy reform, improving law enforcement, leveraging the role of law and prosecution, and strengthening institutional coordination based on findings from the interviews and desk review. We then provide overarching conclusions and cross-cutting recommendations for GFEMS to consider as they engage stakeholders to improve the enabling environment for ethical labor practices.

4.A. RECOMMENDATIONS FOR CLOSING GAPS IN THE LEGAL FRAMEWORK

The desk review and KIIs revealed gaps in the constitutional framework, commitments under international legal instruments, and the statutory framework. The following recommendations present potential areas for reform. While various stakeholders may play a role in advocating for legal reform, ultimately these recommendations target policymakers in the Government of Bangladesh.

Constitutional Framework

1. The constitution of Bangladesh should explicitly define forced labor and recognize the informal labor sector so all existing labor laws become applicable to the informal sector.

Commitments under International Legal Instruments

1. The International Labour Conventions (ILCs) should prescribe stronger sanctions for forced labor.
2. The government should take measures to bring the informal economy under the supervision of an enforcement agency such as the Department of Inspection for Factories and Establishments (DIFE) so that they comply with the international standards.

Statutory Framework

Laws and Policies that Prevent Discrimination, Forced Labor, and Child Labor

1. The Bangladesh Labor Act of 2006 (BLA) is applicable to all workers in Bangladesh, including those in both the formal and informal sectors. However, enforcement of the BLA is very focused

on the formal sector. Thus, a great number of workers in the informal sector remain outside the ambit of enforcement. Furthermore, there is no special focus in the BLA or any labor policy to address enforcement of the BLA in the informal RMG sector. Hence, the BLA should make provisions to improve its enforcement in the informal sector.

2. Section 22 of BLA should be amended so employers can no longer dismiss the workers under the pretext of diminished capacity.
3. Section 27.3A,¹²⁴ should be repealed in which it states that if workers do not go for work for consecutive ten days, the factory can terminate them after three show-cause letters. This was suggested by a stakeholder from the donor/NGO sector.
4. The process of applying and receiving financial grants should be worker-friendly.
5. Maternity leave should be available to every female worker irrespective of any conditions and also section 94(1) of BLA should be amended to provide daycare facility to all establishments for women workers irrespective of the number of women workers in a particular establishment.
6. The BLA should incorporate provisions on discrimination related to workplace facilities, treatment of non-wage issues (e.g., promotion and placement), and other grounds of discrimination such as race, religion and ethnic group.
7. The legal code should mandate stronger sanctions for labor violations. The existing laws prescribe a minimal fine and imprisonment for forced labor offenses. The term of imprisonment and fine are so trivial that many employers do not mind paying or enduring it. Therefore, relevant provisions should be reformed to impose a higher fine and term of imprisonment to prevent forced labor. The concerned authority should also take measures for proper implementation of the law. In addition, the BLA should prescribe specific sanctions for every offense, rather than general sanctions. This recommendation was suggested by most interviewees (stakeholders) and they stated that fines need to be higher and jail time needs to be enforced. One stakeholder mentioned that the government could take away social security if an employer fails to enforce labor laws. Another interviewee, a Government representative, suggested an instant punishment system for non-compliance.
8. The Government of Bangladesh should repeal the section that allows the employment of children who are 12 years old.
9. Children Act, 2013 should define child labor.
10. Update the Hazardous Work List, per Section 40 of the BLA. Particular gaps include laser printing and spraying potassium permanganate.
11. The fine prescribed in The Children (Pledging of Labor) Act, 1933 should be increased.
12. Establish protocol such as Zero Tolerance Protocol to reduce/ eliminate child labor or engagement of child workers in hazardous works. Many times, hazardous works by the children are unnoticed by the government, for example, Children are engaged in human Halls (bus, tempo, etc) in cities but no government agency tried to stop this. Further, co-ordination among the agencies is needed to address such issues.
13. The Government of Bangladesh should assign a specific ministry to oversee the matters related to child labor or develop a mechanism for greater coordination between MOLE and MOWCA.
14. A representative from the donor/NGO sector suggested having the Bangladesh Small and Cottage Industries Corporation (BSCIC) take over the local RMG sector so that it is overseen by a

¹²⁴ Sub-section (3A) was inserted by section 13 of the Bangladesh Labor (Amendment) Act, 2013 (Act No. XXX of 2013).

regulatory body and labor law can be implemented easier. However, it is likely that BSCIC would require additional support to take on this responsibility. BSCIC currently provides support services to the small, rural, and cottage industry sector. It was created through an Act of Parliament in 1957 which was later amended in 1992.

Laws and Policies that Promote Occupational Safety and Health

1. Strengthen mechanisms in the BLA to reinstate or rehabilitate workers with disabilities and prescribe penalties for violations of such provisions. Therefore, it was suggested by a Government representative in KII to strengthen laws related to worker safety.
2. The Rights and Protection of the Persons with Disabilities Act, 2013 should prescribe a means of rehabilitation.
3. The Labor Rule, 2015 should contain a more detailed provision regarding training on and use of safety equipment.
4. The BLA requires the formation of safety committees in factories with fifty or more employees. However, informal factories are generally much smaller, so the pre-requisite number of employees should be reduced.
5. Create a fund for informal factories to use to increase worker safety. A donor/NGO stakeholder recommended that it could be funded by owners, government, NGOs and trade unions.
6. Obtaining a judgment from the labor court is a time-consuming process, though BLA prescribes a specified time and process to deliver judgment. A donor/NGO sector suggested to amend the labor law so that workers can get their rights within 6 months of filing a case against an employer.

Laws and Policies that Promote Worker Welfare and Social Protection

1. Relax provisions in the BLA that restrict workers' right to strike. Currently, the government may, by order in writing, prohibit a strike or lock-out if any strike or lock-out lasts for more than 30 days, even if the industrial dispute hasn't been settled.¹²⁵ The BLA should be amended and a clause added to require government to take necessary steps to resolve the dispute before prohibiting a strike or lock-out.
2. Provisions should be made to protect workers in lock-out situations. Currently, the Government may, by order in writing, prohibit a strike or lock-out at any time before the period of 30 days if it is satisfied that the continuance of such strike or lock-out is causing serious hardship to the public life or is prejudicial to the national interest.¹²⁶ The terms 'serious hardship' and 'national interest' are vague and provide ample scope of interpretation. These terms should be explained and a list of acts that constitute 'serious hardship' and 'prejudicial to the national interest' should be incorporated in the BLA.
3. Establishment of provident fund and group insurance should not be subject to the pre-requisite number of members.
4. Introduce measures to provide pension and life insurance for all workers.
5. Change the labor law to allow workers to unionize with fewer than 100 employees.

¹²⁵ Section 211, Bangladesh Labour Act 2006

¹²⁶ Section 211, Bangladesh Labour Act 2006

Considerations for Policy Reform

The procedure for reforming, amending, or changing any law is complex and can face roadblocks due to a lack of political will, particularly if the law affects key sectors like the apparel industry. To summarize the process for passing legal reform, after intra-ministerial meetings, the concerned ministry communicates to parliament its recommendation to make, amend, or change a law. Based on the ministry's recommendation, parliament members debate the issue and make a final decision to pass it as a law. However, obtaining government commitment to change the legal framework on certain issues is difficult and policy-level advocacy is very complex. In particular, changes in labor policies that affect the business community can be challenging to pass if business leaders perceive that the laws will add more compliance requirements. Often employers have more connections to and sway among policymakers than do workers, resulting in employer-friendly rather than worker-friendly laws.

These challenges are particularly pertinent to policy reform to benefit informal workers. Advocacy efforts by international brands, donors, and NGOs have led to regulatory reform, which has improved working conditions for formal sector workers. However, many provisions in the BLA are unenforced in the informal sector. For legal reforms to have strong impacts in the informal sector, there must be improved enforcement. To achieve this, stakeholders may need to put similar resources and political pressure towards promoting labor law enforcement in the informal sector as they have in the formal sector.

4.B. RECOMMENDATIONS FOR OVERCOMING BARRIERS TO ENFORCEMENT

The document review and key informant interviews yielded the following recommendations for improving application of laws to the informal sector:

Develop and improve systems of accountability

- ***Increase likelihood of inspections.*** Expanding inspections to the informal sector will encourage factories to move into the formal sector and meet minimum standards for labor rights and worker protection. To accomplish this objective, there must be investment in DIFE to build the agency's capacity to conduct inspections and follow-ups. According to key informants, capacity-building initiatives could include support to hire more inspectors and train staff on OSH topics.
- ***Create stronger punishments for violations.*** Example measures include granting DIFE the power to impose fines directly and on-the-spot; increasing fines imposed on non-compliant factories; escalation to hold owners' unions accountable (where applicable); and withdrawing factories' DIFE licenses, access to gas and electricity, and trade licenses.
- ***Improve transparency and visibility in the informal sector.*** Key informants said improving informal factory visibility is a key step towards enabling access by regulators and formalization. One respondent suggested conducting a mapping exercise of informal factories, citing a similar initiative by BRAC in the formal sector. Another key informant commented that many brands claim full traceability in their supply chains, but few in practice have reached true transparency to the level of subcontractors. There is also potential opportunity to leverage the visibility generated by the International Year for the Elimination of Child Labor (2021) and the Government of Bangladesh's commitment to eradicate child labor by 2025. These initiatives may provide a window for increasing transparency of the prevalence of child labor in informal segments of the

garment supply chain, particularly in hazardous and low-skill environments such as washing and dyeing. Publicizing brands' subcontractors could put pressure on informal factories to achieve compliance (see section 3.D.).

Empower workers

- ***Increase workers' awareness of labor laws.*** Numerous key informants encouraged awareness efforts to inform workers of their rights so they can know how and when to push back against illegal wage, overtime, and safety practices. Most respondents said such awareness-raising initiatives could take place through unions where possible. In the long term, one NGO respondent suggested including information about labor laws in school curricula so both workers and employers are aware of the laws.
- ***Form and strengthen labor and trade unions.*** Unions can play an important role in providing oversight, awareness, and advocacy. The BLA provides clear guidance on workers' rights to form trade unions. However, workers fail to unionize due to lack of knowledge of the law and, to some extent, lack of confidence in the DOL. To disseminate relevant information and required documents on trade unions, DOL should arrange trainings for workers on establishing, registering, operating, and raising awareness on trade unions. If there is no registered union, form bi-partite committees in factories through fair elections.
- ***In the absence of unions, empower NGOs and other local worker groups.*** Key informants acknowledged that the enabling environment for unions is weak, limiting their capacity to advocate for workers and disseminate information about labor laws. They encouraged donor organizations to help local NGOs raise awareness among and advocate for workers if engaging unions is not a possibility. One stakeholder suggested creating worker resource centers in industrial areas.
- ***Include workers' voices in national- and district-level policy planning.*** Convene worker union leaders, factory owners, and the government to ensure labor laws are enforced, particularly during the pandemic. One respondent from the donor/NGO community mentioned they are currently working through a national federation called the Bangladesh Labor Congress to make a plan to improve worker conditions in the informal sector.

Organize, fund, educate, and reform factories

- ***Raise awareness of labor laws among factory owners.*** Employers must have greater awareness of labor laws before they can adequately comply with them. One respondent said awareness campaigns should start by addressing low-hanging fruit such as keeping an accident register and separating toilets by gender. Another suggested emphasizing the benefits of formalization such as access to financing. However, given that violations are often a result of lack of willingness to apply labor laws in addition to lack of knowledge, accountability initiatives will also be necessary.
- ***Create a system for knowledge sharing between formal and informal factories.*** To address capacity gaps by subcontractors, one source suggested that large, export-oriented factories "buddy up" with informal factories to provide knowledge and resources. This knowledge could

help subcontractors know how to meet minimum labor standards and move into the formal sector, while formal factories will benefit by improving the reputation of the overall RMG sector.¹²⁷

- **Develop financing mechanisms for factory remediation.** Few factories cited for labor or safety abuses passed their follow-up investigations, largely because they lacked the funds to implement repairs. Finance-related interventions are particularly absent in the informal sector and may include improving access to credit or financial literacy trainings. Informal factories have also lacked access to the OSH and worker relief funds that some formal factories have received during the COVID-19 pandemic; finance and incentive programs should consider addressing these gaps. It may be appropriate for international brands to invest in financing or interventions. These activities will improve factories' willingness and capacities to adhere to labor laws.
- **Provide pathways to formalization.** One key informant emphasized the importance of providing factories pathways to formalization to bring them within the scope of inspectors and taxation. Rather than immediately imposing fines and taxes on newly registered factories, such an initiative should include at first focus on positive incentives for factories to formalize, such as access to knowledge, trainings, and capacity-building services. The process for developing such incentives should include careful consultation with factories to ensure that incentives are beneficial and desired. It should also take into account that many informal factories exist on a "gig" basis – to fulfil unpredictable and irregular production demands when formal factories have large orders. Given these circumstances, the incentives necessary to nudge subcontracting and local factories towards formalization (and the feasibility of relying on positive incentives at all) likely differ from those targeted at export-oriented factories.
- **Form employers' associations.** An employers' association of informal factories would allow owners to undergo registration processes collectively. Employer representatives said such an organization would allow subcontractor factories to more effectively interface with supplier employers' associations, and assure buyers of compliance throughout supply chains. Associations could also help improve enforcement by serving as a middleman between factories and DIFE.
- **Consolidate and relocate factories.** Some respondents doubted that existing factories could be renovated, reformed, and made accessible to inspectors; government stakeholders called for the establishment of a new manufacturing zone to move factories outside of Old Dhaka. According to KIIs, such an initiative was underway under the Ministry of Industry, but was postponed indefinitely. In absence of such drastic measures, respondents suggested at least closing some of the most dangerous factories.

Strengthen governmental coordination

- **Centralize enterprise registration systems.** DIFE's lack of knowledge of and access to informal factories is a principal barrier to enforcement. Stakeholders from NGOs and DIFE called for greater coordination between DIFE and other ministries that interface regularly with businesses. For example, metropolitan police departments and the home affairs ministry have information about buildings and roads within their jurisdictions. One government stakeholder said representatives from the City Corporation – which issues trade licenses and goes door-to-door to collect taxes – could ensure workplaces are safe and healthy before issuing licenses, though the respondent acknowledged that only DIFE can play a role in enforcing labor laws. Another

¹²⁷ Labowitz & Baumann-Pauly (2015)

stakeholder noted that greater coordination between DIFE and DOL could help smooth union registration. They specifically suggested granting DOL access to the DIFE biometric database to enable the verification of worker documents submitted during union registration processes; at the same time, such databases would need to be updated more regularly.

4.C. RECOMMENDATIONS FOR LEVERAGING THE RULE OF LAW AND PROSECUTION

- ***Smooth pathways to prosecution.*** Law enforcement, labor inspectors, and immigration officers should recognize trafficking and forced labor cases, and know how and when to escalate cases. While the Government of Bangladesh has increased its training of inspectors and law enforcement, gaps remain.
- ***Escalate costs of non-compliance.*** Address current legal framework gaps that allow cases to drag out and mandate only minimal fines and jail time for offenders.
- ***Increase credible threats of prosecution.*** Strengthen the capacity of NGOs, workers, and trade unions to file cases against employers.
- ***Increase worker awareness and knowledge around seeking prosecution and procedures for filing cases.*** Information sessions or trainings for workers would be helpful in enabling them to seek prosecution. Some ways to make it easier for workers to file cases include developing templates for filing cases, sharing examples of how to file a case, digitizing the process of filing cases, setting up a worker hotline specifically for those seeking restitution etc.

4.D. RECOMMENDATIONS FOR STRENGTHENING INSTITUTIONAL COORDINATION

Recommendations for Necessary Improvements in the NPA

A review of the NPA and briefs published by organizations working on the ground suggest several areas of improvement and recommendations to ensure better and more inclusive implementation of the NPA:

- ***Fully implement the 2018-2022 National Plan of Action.*** The 2020 U.S. Department of State TIP Report identified that a key area of improvement in the NPA would be to fully implement the various provisions and activities. This includes enhancing victim care interventions and operating the seven anti-trafficking tribunals to provide access to justice for survivors and victims of trafficking. In addition, the NPA states that as of 2018, the National Fund for mobilizing resources to combat trafficking is yet to be activated. Moreover, the National Authority to Suppress and Prevent Human Trafficking to coordinate all anti-trafficking interventions in Bangladesh is yet to be institutionalized and has not begun operations as yet.¹²⁸
- ***Activate specialized law enforcement agencies.*** There are several provisions within the NPA that have not been implemented yet. These include stipulated Anti-Trafficking Tribunals that should be activated to provide victims legal support in prosecuting traffickers. Moreover, activating the Counter Trafficking Committees (CTCs) and linking the CTCs with a referral network for victim support and care can promote awareness raising and monitoring activities at the community

¹²⁸ U.S. Dept. of State. (2020). "2020 Trafficking in Persons Report." <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

level.¹²⁹ In addition, the Victim-Witness Protection Act should be properly implemented to ensure the safety and security of survivors of trafficking.¹³⁰

- **Strengthen inter-agency collaboration among government ministries.** The 2020 U.S. Department of State TIP Report also highlighted that coordination between the large numbers of ministries in charge of implementing interventions remained weak. Institutionalizing the National Authority to Suppress and Prevent Human Trafficking will ensure better cooperation, monitoring and implementation of NPA stipulated anti-trafficking efforts.
- **Greater involvement of NGOs and other stakeholders in NPA activities.** While the NPA specifies that there is an NGO coordination committee and engagement from other NGOs is encouraged, there needs to be better provisions to engage the wide variety of organizations implementing anti-trafficking programs and directly working with survivors. Currently, interventions are operated by the government with input from very few NGOs. In addition to NGOs, the design and implementation of anti-trafficking interventions could even involve private sector stakeholders committed to reducing trafficking in their businesses. For instance, many RMG brands implement practices to prevent human trafficking in their supply chain; engaging them in advisory committees could help ensure increased commitment and coordinated efforts.
- **Increase the engagement of labor leaders and entities working for labor rights.** KIIs suggest that labor leaders have not been able to meet with the government, yet employers are regularly meeting and influencing labor law. Including the worker's perspective would be very important.
- **Need for greater awareness about the NPA.** The NPA is not publicly available and only a limited number of people or organizations have access to the document. As a result, there is limited awareness about the goals and activities implemented to combat human trafficking and most organizations may not be using the NPA to guide their activities so they align with national anti-trafficking objectives. Thus, general awareness among vulnerable populations and victims of survivors about the protective mechanisms provided for them in the NPA is likely limited.
- **Better enforcement of the NPA legal provisions.** Despite the existence of legislation intended to extend legal protections for survivors, many of the most vulnerable are not aware of or able to access adequate protection. Therefore, creating more awareness about available provisions, as well as improving access to justice should be a priority. This is another area where partnerships with organizations working with victims of trafficking could be leveraged.
- **Coordinated efforts to collect and maintain a centralized human trafficking database.** A publicly available centralized, well-maintained database including anti-trafficking law enforcement data, legal prosecution data and victim protection data would help monitor progress toward achieving NPA objectives. This data would also be useful for NGOs implementing anti-trafficking interventions who can adapt their programs based on where progress is limited. In the past, the MHA has maintained publicly available anti-trafficking law enforcement data, however, in 2020 they no longer made this publicly available.¹³¹

Recommendations for Improving Buyer and Supplier Agreements

A review of relevant literature and stakeholder interviews revealed several recommendations to improve the effectiveness of buyer and supplier agreements in reducing labor exploitation.

¹²⁹ Ibid.

¹³⁰ IOM. July 2020. "Human Trafficking in Bangladesh Concept Note." https://www.iom.int/sites/default/files/default/worlddayagainsttip_conceptnote_and_agenda.pdf

¹³¹ U.S. Dept. of State. (2020). "2020 Trafficking in Persons Report." <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

- Pressure brands to improve transparency of their own supply chains, including by disclosing their list of suppliers publicly and by working with suppliers to disclose their subcontractors.
- Brands should increase monitoring of supplier factories and make unannounced visits by buyer representatives to discourage suppliers from resorting to unsafe labor arrangements, and illegal subcontracting.
- The government should develop appropriate sub-contracting business guidelines to regulate the garments supply chain and encourage compliance with established worker safety standards, therefore, minimizing worker exploitation in informal factories.
- The government along with brands/buyers should ensure more regular work for smaller factories so that they will have an incentive to maintain standard regulations as required by brands and move into the formal sector. These factories could also be supported in other ways, such as with access to loans that currently go to larger factories.

4.E. OVERARCHING RECOMMENDATIONS

In addition to the detailed recommendations above we group the action points and suggest stakeholder groups GFEMS can engage with to bring change in the legal and policy framework, law enforcement, and institutional capacities to prevent labor exploitation and abuse in the informal RMG sector.

Action Points	Stakeholder to Implement								
	GoB	Quasi Govt	Research Orgs	Pvt. Sector	Media / Public	Multi-lateral	Civil Society	NGOs / INGOs	GFEMS
<i>Advocate for legislative reform:</i> fill gaps in legal framework	X	X				X			X
<i>Build the capacity of DIFE and DOL:</i> Improve resources, knowledge, empowerment, and capacity to effectively enforce labor laws and support exploited workers	X	X				X		X	X
<i>Strengthen govt. and multi-stakeholder coordination:</i> Increase engagement and dialogue among govt. the NPA and other multi-stakeholder agreements or frameworks	X	X				X		X	X
<i>Advocate for informal workers:</i> Improve visibility, rights, knowledge and formation of trade unions for workers in the informal sector	X	X			X	X	X	X	X
<i>Reform factories:</i> Organize, fund, and educate factories to move to the formal sector	X	X		X		X	X	X	X
<i>Smooth pathways to prosecution and conviction:</i> Strengthen the knowledge and capacity of govt. officials, workers and NGOs to file cases against employers	X	X				X	X	X	X

	Stakeholder to Implement									
<i>Collect and maintain data on the informal sector:</i> Map the informal sector and maintain a centralized human trafficking database	X	X	X			X	X	X	X	
<i>Engage buyers to promote safe labor practices in their supply chain:</i> Facilitate discussion and commitment from buyers to be transparent and comply with safe labor practices	X	X		X		X				X

ANNEX A: List of Laws, Policies, and Documents Reviewed

Table A: List of Laws, Policies, and Documents Reviewed

No.	Document Type	Document Name	Key Content / Findings
1	Law/Policy	Articles 14, 15, 20, 34 and 38 of the Constitution of the People's Republic of Bangladesh, 1972	Every citizen has the right to choose his employment at a reasonable wage having regard to the quantity and quality of work, and reasonable rest, recreation and leisure.
2	Law/Policy	Bangladesh Labor Act, 2006 as amendment in 2018	Prescribes employment conditions, health & safety measures, industrial relations and other rights in compliance with international standards but in some cases the BLA requires to add or amended some provisions.
3	Law/Policy	Bangladesh Labor Rules, 2015	Provides detailed guideline for better understanding of BLA.
4	Law/Policy	National Labor Policy, 2012	Acknowledges the importance of establishing decent workplace maintaining international standard in both formal and informal sector
5	Law/Policy	Labor Welfare Foundation Acts 2006 as amended in 2013 (Bangla)	Provides financial grants to the workers who have developed occupational disease or sustained injury or to the dependents in case of death of a worker.
6	Law/Policy	Bangladesh Labor Welfare Foundation Rule 2010 as amended in 2015 (Bangla)	Provides detailed guideline for better understanding of Labor Welfare Foundation Acts 2006 as amended in 2013.
7	Law/Policy	Gazette notification for the minimum wage rate notification for garment industry sector (Re-fixation) (29.11.2018) (Bangla)	The government has fixed minimum wage rate to prevent exploitation
8	Law/Policy	National Occupational Health and Safety Policy 2013 (Bangla)	Adopted policies to identify the risks of OHS and emphasized on implementation of national OHS laws in order to reduce workplace accident and occupational disease.
9	Law/Policy	Government Order Issued 2013 Prohibiting Hazardous Process/Activities for Children	Provided a hazardous work list to prevent children's participation in hazardous work
10	Law/Policy	Penal Code 1860, Act No Xlv Of 1860	Prohibits and penalizes forced labor
11	Law/Policy	Women and Children Repression Prevention Act, 2000	Not Applicable
12	Law/Policy	Children Act, 2013	Penalization of certain action with strong sanctions. Also, establishes a "Child Welfare Board" at the national level and make a "Child Desk" available at every police station in the country
13	Law/Policy	National Child Labor Elimination Policy 2010	
14	Law/Policy	The Children (Pledging of Labor) Act, 1933	Prohibits the pledge of the labor of a person who is under the age of fifteen. Prescribes minimal punishment for pledging the labor of a child.

No.	Document Type	Document Name	Key Content / Findings
15	Law/Policy	National Education Policy 2010	Adopts the policy to make compulsory education till 8 th grade so that there is no gap between the age of compulsory schooling and the general minimum age for employment as required by Bangladesh Labor Law 2006.
16	Law/Policy	Disabilities Rights and Protection Act 2013 (Bangla)	Prescribes to continue in service, or to get appropriate rehabilitation or adequate compensation if disability occurs while in service
17	Law/Policy	The Rights and Protection of Person's with Disability Rules, 2015 (Bangla)	Supports Disabilities Rights and Protection Act 2013
18	Law/Policy	National Disability Policy 1995 (Bangla)	Adopted policies for employment and rehabilitation of the disabled persons, including disabled workers.
19	Law/Policy	National Child Policy 2011 (Bangla)	The policy sets some indicators to mitigate child labor in the light of the National Child Labor Alleviation Policy 2010.
20	Law/Policy	National Women Development Policy 2011	Adopted policies to ensure gender equal rate of wages, increase participation of women in the labor market, equal opportunity at the workplace, ensured security, and removal of disparities in employment.
21	Law/Policy	Bangladesh EPZ (export processing zone) Labor Act, 2019 (Bangla)	Not relevant
22	Academic/law lit	Sarker, Suvo (2018) Implementation of Labor Laws in RMG Factories Gazipur	Discusses the provisions stipulated in the BLA
23	Academic/law lit	Afrin (2014) IISTE Labor Conditions in Apparel Industry 2006 Labor Law	Discusses the provisions stipulated in the BLA and analyses a survey result
24	Academic/law lit	Rubya (2015) RMG Industry Analysis of Bangladesh's Labor Law Provisions after Savar	Emphasizes on the health and safety related provisions of BLA. Suggests that Bangladesh lacks man force for proper implementation of labor laws.
25	Policy	Integrated National Tripartite Plan of Action on Fire Safety and Structural Integrity in the Garment Sector of Bangladesh (NTPA): Signed by the government, factory owners, and workers;	Talks about the betterment of fire safety and structural integrity and the role of the implementing agencies like DIFE and DoL.
26	International standard	Bangladesh ratified ILO Conventions (87, 98, and 111),	Establish the right to form and join organizations like trade union freely. (87) enjoy adequate protection against acts of anti-union discrimination in respect of their employment (98) and eradicate occupational/employment related discrimination (111).
27	International standard	International Covenant on Civil and Political Rights (ICCPR),	Prohibits compulsory forced labor and established the right to freedom of association.
28	International standard	International Covenant on Economic, Social and Cultural Rights (ICESCR)	Prohibits compulsory forced labor and established the right to freedom of association.
29	International standard	International Convention on the Elimination of Discrimination Against Women (CEDAW)	States Parties shall take all appropriate measures to eliminate discrimination against women in the field of

No.	Document Type	Document Name	Key Content / Findings
			employment in order to ensure, on a basis of equality of men and women, the same rights.
30	Policy	The 2018 Transition Key Accord (former The Accord) which handed over some of the responsibilities to the RCC; and Nirapon (the successor to the Alliance).	No worker needs to fear fires, building collapses, or other accidents that could be prevented with reasonable health and safety measures. All signatories will follow the guideline regarding factory inspection and compliance rules.
31	Gray lit	Lupo, Verma (2020) ILO Labour Standards Compliance in Global Garment Supply Chain	Report is evaluation of a 6-country ILO program. It found that labor unions are effective in improving enforcement of labor laws, but of all 6 countries, Bangladesh had the fewest unions.
32	Gray lit	FIDH (2020) Women at Work - Violations of Human Rights Construction RMG Bangladesh	Report explores the overall situation of women working in the ready-made garment (RMG) and constructions sectors in Bangladesh, including the extent to which their treatment is in conformity with existing laws, the rights abuses they face, and to identify areas where reform is necessary.
33	Gray lit	ILO (2017) Towards Safer Working Conditions in the Bangladesh RMG Sector	Report summarizes accomplishments of ILO Improving Working Conditions in the Ready-Made Garment Sector Programmed (2013-2017). Primarily focuses on formal factories, but contains some useful information about DIFE and other inspector capacity-building to allow them to better implement OSH/other labor laws.
34	Gray lit	Labowitz, Baumann-Pauly (2015) NYU Stern Beyond the Tip of the Iceberg	Report discusses nature of informal and indirect subcontracting in Bangladesh garment sector. It finds that 1/3 of factories in 2 subdistricts of Dhaka are informal, and that 91% of these factories produce at least in part for export. Provides background on some of the barriers to preventing labor exploitation in the informal sector (namely tight profit margins and lack of regulatory oversight).
35	Gray lit	ICF International (2012) Child Labor in Informal Garment Production Bangladesh	Report describes the working conditions of children in the informal garment sector in Dhaka. Discusses safety concerns, but does not find that many children meet the indicators for the ILO definition of forced labor. Literature review discusses how the Bangladeshi legal framework pertains to child labor.
36	Gray lit	ADB ILO (2016) Employment Diagnostic Study: Looking Beyond Garments	This Employment Diagnostic Study highlights key labor market trends and challenges in Bangladesh, analyzes in depth the major issues relating to employment, and makes recommendations for government and stakeholder consideration. It touches upon the key trends in the RMG sector but has a macro focus on accelerating growth in Bangladesh.
37	Gray lit	ILO (2020) Asia Garment Production after COVID-19	Results from this study provide an early and tentative picture of industry sentiment on key questions related to the future of Asian garment production, including the role of technology, buyer-supplier relationships, and the impact on workers.
38	Gray lit	USDOS Trafficking in Persons Report – Bangladesh (2020)	Annual report released by USDOS. Focuses primarily on sex trafficking and overseas labor trafficking, but

No.	Document Type	Document Name	Key Content / Findings
			some of the information about legislation, prosecution, and survivor remediation is relevant to forced labor in garment industry.
39	Policy	National Plan of Action 2018-22	
40	Gray lit	Strengthening Action to End Forced Labor	A few sections provide general overview of how prosecution leads to decreased prevalence of forced labor
41	Academic Lit	Exploring the system capacity to meet occupational health and safety needs: the case of the ready-made garment industry in Bangladesh (2019)	Contains results from KIIs with DIFE to outline key capacity gaps within the agency and among inspectors.
42	Research report	RMG India & Bangladesh COVID-19 Rapid Assessment Report (October 2020 draft)	Analyzes effects of COVID-19 on forced labor in the RMG industry in India and Bangladesh. Prepared by NORC for GFEMS.

ANNEX B: Sample Document Review Template

Table B: Sample Document Review Template, by Document and Research Question

Inventory Code	Document Name/Title	RQ1: Laws and policies for apparel industry, especially local garment sector		RQ2a: Current laws in Bangladesh		
		Gaps in legal framework	Gaps in enforcement of labor laws	Prevent labor exploitation	Access restitution if/when faced with abuse	Areas for reform in these laws
1	Articles 14, 15, 20, 34 and 38 of the Constitution of the People’s Republic of Bangladesh, 1972	Relevant excerpt 1 for Doc#1	Relevant excerpt 1 for Doc#1	Relevant excerpt 1 for Doc#1		
		Relevant excerpt 2 for Doc#1	Relevant excerpt 2 for Doc#1			
2	Bangladesh Labor Act, 2006 as amendment in 2018	Relevant excerpt 1 for Doc#2	Relevant excerpt 1 for Doc#2			

ANNEX C: Factory Record-Keeping Requirements

Table C: Factory Record-Keeping Requirements, per the BLA

BLA Section	Record-Keeping Requirement(s)
<p>Section 6: Service book</p>	<p>Every employer shall, at his own cost, provide a service book for every worker employed by him. Every service book shall be kept in the custody of the employer. (s. 6)</p> <p>(1) A service book shall be maintained of such size and in such form as may be prescribed by rules and a photograph of the worker shall be affixed thereto.</p> <p>(2) A service book shall contain the following particulars, namely:</p> <ul style="list-style-type: none"> (a) name of the worker, names of the mother and father and address of the worker (the name of the spouse shall also be written, where applicable); (b) date of birth; (c) special particulars for identification; <ul style="list-style-type: none"> 1[(cc) designation; (ccc) department or section; (cccc) ticket or card;] (d) if previously employed under any employer, the name and address of that employer; (e) period of employment; (f) occupation or designation; (g) wages and allowance (if any); (h) leave availed; and (i) conduct of the worker. (s.7)
<p>Section 8: Entries in the service book.</p>	<p>The employer shall at the commencement and during continuance, of the employment of a worker, make such entries therein relating to him from time to time as are required by this Chapter and the rules, and both employer and worker shall put their signatures thereon.</p>
<p>Section 9: Register of workers</p>	<p>i) The employer shall maintain a register of workers of his establishment and make it available to the Inspector for inspection at all times during working hours. (s.9(1))</p> <p>i) The following particulars shall be included in the register of workers, namely:</p> <ul style="list-style-type: none"> (a) name and date of birth of every worker; <ul style="list-style-type: none"> 1[(aa) names of father and mother of the worker;] (b) date of appointment; (c) nature of work; <ul style="list-style-type: none"> 2[(cc) designation; (ccc) department of section; (cccc) ticket or card;]

BLA Section	Record-Keeping Requirement(s)
	(d) working hour fixed for him; (e) interval for rest and meals to which he is entitled; (f) day of rest to which he is entitled; (g) group, if any, in which he is included; (h) where his group works on shifts, the relay to which he is allotted; and (i) such other particulars as may be prescribed by rules. (s 9(2))
Section 10: Procedure for leave.	If the leave asked for is refused or suspended, the fact of such refusal or postponement and the reasons thereof shall be recorded in the register maintained for the purpose. (S 10(4))
Section 17: Muster-roll for laid-off workers.	Notwithstanding that the workers employed in an establishment are laid-off, the employer shall maintain a muster roll, and cause to be recorded therein the names of those who may, from amongst the laid-off workers, present themselves for work at the establishment during normal working hours
Section 24: Procedure of punishment	No order of punishment for misconduct shall be made against a worker unless- (a) the allegation against him is recorded in writing; (s. 24(1))
Section 25: Special provisions relating to fine	All fines and all realizations thereof shall be recorded by the employer in a register prescribed by rules (25(5))
Section 62: Precaution as to fire.	In factories and establishments wherein 50 (fifty) or more workers/employees are employed, at least once in every 2[6 (six months)] a mock firefighting shall be arranged and a book of records in this regard shall be maintained in the prescribed manner by the employer. (s 62(8))
Section 64: Work on or near machinery in motion.	(1) Where, in any establishment, it becomes necessary to examine any part of machinery while in motion such examination or operation shall be carried out by a specially trained male worker, and the tight-fitting cloths shall be worn by that worker, and his name shall be recorded in the register prescribed in this behalf (s.64(1))
Section 78A: Requirements to use personal safety equipment.	No authority shall engage any worker in work without providing him with personal safety equipment and ensuring uses thereof and a record book shall be maintained in this behalf by the employer in the prescribed manner.
Section 83: Power to direct for enquiry into cases of accident or disease.	The person holding the enquiry shall submit a report to the Government and shall record in that report the causes of the accident and the circumstances relating thereto. (4)

BLA Section	Record-Keeping Requirement(s)
Section 90: Maintenance of safety record book	In every factory or establishment, where more than 25 (twenty five) workers are employed, a compulsory safety record book shall be maintained and a safety information board shall be exhibited in the manner prescribed by rules.
Section 111: Notice of hours of work for adult workers and preparation Thereof	The Inspector shall return a copy of the notice(time of working of adults) indicating any modification, if necessary, to the employer within one week of its receipt, and the employer shall immediately comply with the modifications, if any, and shall preserve such approval in the records of the establishment.(s 111(9))
Section 127: Deductions from wages for damage or loss.	All such deductions and all realizations relating thereto shall be recorded in such register as may be prescribed by rules by the person responsible for the payment of wages.
Section 170: Registration of agreements	Where the amount of any lump sum payable as compensation is fixed by an agreement, either by way of redemption of a monthly payment or otherwise or where such fixed compensation is payable to a person under a legal disability, a memorandum thereof shall be sent by the employer to the Labor Court, and the Court shall, on being satisfied as to its genuineness, record it in a register in the manner prescribed by rules.
Section 181: Registered trade unions to maintain register, etc	Every registered trade union shall maintain the following registers or books in such form as may be prescribed by rules, namely: (a) a register of members, which shall contain the particulars of subscriptions paid by each member; (b) an accounts book, in which the receipts and expenditure shall be shown; and (c) a minute book, in which all kinds of minutes shall be recorded.

ANNEX D: Rules of the Accord Framework

Rules of the Accord Framework:¹³²

- “Signatory companies shall make reasonable efforts to ensure that any workers whose employment is terminated as a result of a factory termination or relocating triggered by Accord activities, are offered employment with safe suppliers.
- Signatory companies shall require their supplier factories to respect the right of a worker to refuse work that he or she has reasonable justification to believe is unsafe, without suffering discrimination or loss of pay, including the right to refuse to enter or to remain inside a building that he or she has reasonable justification to believe is unsafe for occupation. As soon as possible thereafter, the case shall be reported to the Accord.
- Building on the program developed under the preceding Accord, the extensive fire and building safety training program shall be revised and further implemented. The training program shall be delivered by skilled personnel for workers, managers, and security staff to be delivered with involvement of trade unions and specialized local experts. These training programs shall cover basic safety procedures and precautions, as well as enable workers to voice concerns and actively participate in activities to ensure their own safety.
- Signatory companies shall require their suppliers to provide access to their factories to training teams designated by the Training Coordinator, in accordance with a training plan approved by the SC, that include safety training experts, as well as Accord-certified trade union trainers. Such training shall cover the importance of Freedom of Association and the role of industrial relations in ensuring the functionality and empowerment of effective Health and Safety Committees and protecting workers’ health and safety.
- Each signatory company shall require that its suppliers in Bangladesh participate fully in the inspection, remediation, health and safety and training activities, as described in the Agreement. If a supplier fails to do so, the signatory will promptly implement a notice and warning process in accordance with the Escalation Protocol established by the SC leading to termination of the business relationship.”

¹³² Ibid.

ANNEX E: Summary of Financial Grants Provided to Workers

Table E: Summary of Financial Grants Provided to Workers

Fund	Establishment	Funding Source	Who may Access
Provident Fund	At least three-fourths of the total number of workers employed therein so demand to the employer by an application in writing. (s. 264)	i) Not less than seven percent and not more than eight per cent of a (who is a member of the fund) permanent worker’s monthly basic wages ii) The employer shall contribute to it an equal amount (s 264)	i) Member of any Provident Fund is entitled to any benefit from the Fund (s.29) ii) Shall not be deprived of such benefit due to retrenchment, discharge, dismissal, retirement, removal, or termination of service. (s. 29)
Participati on Fund	Every company shall establish (s.234)	Five percent (5%) of the net profit of the previous year at the proportion of 80:10:10 to respectively the Participatory Fund, Welfare Fund and Workers Welfare Foundation Fund (s.234)	i) Two-thirds of the total amount deposited in the Participation Fund in every year shall be distributed in equal proportion to all beneficiaries in cash (s 242) ii) If a beneficiary voluntarily leaves the service or is terminated (otherwise than dismissed), from a company he shall be entitled to benefits of both the Funds, (s 242) iii) In the event of retirement of a beneficiary, the beneficiary himself, or in the event of his death during employment in a company, his nominee, shall receive full benefits (s 242) iv) If any beneficiary is dismissed from service, his share in the Funds shall be forfeited (s.242)
Welfare Foundatio n Fund	Established by the employer	Five percent (5%) of the net profit of the previous year at the proportion of 80:10:10 to respectively the Participatory Fund, Welfare Fund and Workers Welfare Foundation Fund (s.234)	i) Use the fund for the welfare of the workers and their families and take initiative in this regard ii) Will provide grants to the workers who have developed occupational disease or injury iii) Will provide grants to the beneficiaries of the death worker iv) Provide stipend to the talented family members of the worker

Fund	Establishment	Funding Source	Who may Access
			v) Will introduce group insurance and provide premium. (S. 5-Labor Welfare Foundation Act 2006)
Welfare Fund	Every company shall establish (s.234)	Five percent (5%) of the net profit of the previous year at the proportion of 80:10:10 to respectively the Participatory Fund, Welfare Fund and Workers Welfare Foundation Fund (s.234)	i) The amount deposited in the Welfare Fund may be utilized for such purposes and in such manner as the Board of Trustee may decide
Group Insurance	Where at least 200 (two hundred) permanent workers are employed, the employer shall introduce group insurance under the existing insurance laws. (s.99)	Welfare foundation fund	i) Insurance shall be in addition to the other dues of a worker under this Act ii) Recovery of the insurance claim due to death of a worker shall be the responsibility of the employer and he shall make arrangement for payment of the amount so recovered from such insurance claim directly to the dependents. iii) Such insurance shall not be introduced in 100% export oriented or other industries where a central fund is established under section 232 of BLA (s.99(3))
Central Fund	Will be Established in hundred percent export oriented industries (s.232BLA & R. 212 BLR)	i) 0.03% of the total amount against each work order fully export oriented industries; ii) Voluntary donations from buyer or work order provider organizations iii) Voluntary made by the Government iv) Voluntary donations from foreign individuals or organizations v) Profit from the investment of fund (R.214(1) BLR)	i) 2 (two) accounts will be opened under the Central Fund of which one is beneficiaries welfare account and the other is emergency accounts. ii) Among others, group insurance premium will be provided from the emergency fund (r. 215(8)B iii) Fund will be given from welfare account at a time for death or permanent disability due to accident or loss of any body part of the beneficiaries of the concerned sector. iv) Arranging treatment or provide financial grants to the ill beneficiaries (welfare account). Fund will be given for other purposes also (BLR R. 215)