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Factsheet on Technical Note and Global Good Practices to Align Bangladesh Labour Laws with Selected International Labour Standards (Bangladesh Labour Act and Rules)¹ No. 6: Labour Inspection²

- **F1: Inspections without previous notice and the duty of confidentiality in relation to complaints.**
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- **F8: Annual reports on labour inspection.**

Introduction

The Labour Inspection Convention, 1947 (No.81) requires ratifying states to maintain a system of labour inspection

for workplaces in industry and commerce; states can make exceptions with regard to mining and transport. It sets out a series of principles respecting the determination of the fields of legislation covered by labour inspection, the

¹ Labour law reform under the Road map of actions and the National Action Plan (NAP) on the Labour Sector of Bangladesh (2021-2026) needs to address recommendations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) since both instruments were mainly drafted to address issues on ILO Conventions Nos. 87,98 and 81, including issues raised by CEACR. The ILO Office in Bangladesh and the Bangladesh's Ministry of Labour and Employment agreed that the ILO prepare a Technical Note as a useful tool that provides information for the Government and social partners on how the labour laws in Bangladesh can be amended in response to CEACR's recommendations and in alignment with selected international labour standards.

² The ILO Office in Bangladesh has developed 12 chapter-wise factsheets on two sets of the Technical Note, one for the Bangladesh Labour Act of 2016 (revised in 2013 and 2018) (BLA) and Bangladesh Labour Rules of 2015 (revised in 2022) (BLR) and another for the Export Processing Zones (EPZ) Labour Act, 2019 and the EPZ Labour Rules, 2022. Each issue and recommendation under the Technical Note has a specific code by letter and number for easy references. For example, for B1, B represents the topic on freedom of association which is linked to Matrix B of the Technical Note, and it is the first issue identified under this topic. There is also recommendation B1 which is corresponded to issue B. The recommendation can be found in the full Technical note.

functions and organizations of the system of inspection, recruitment criteria, the status and terms and conditions of service of labour inspectors, and their powers and obligations. The labour inspectorate has to publish and communicate to the ILO an annual report indicating the general functioning of its services on a number of issues. Bangladesh ratified ILO Convention No. 81 in 1972.

Key Issues in Bangladesh

Regarding the application of ILO Convention No.81, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) have identified a number of compliance issues in recent years. Among them, the following 8 issues have implications for laws and regulations³:

Issue F1: Inspections without previous notice and the duty of confidentiality in relation to complaints.

[BLA sec. 319, 342]

According to the Government, in 2021-2022, 959 unannounced inspections visits and 4,855 announced visits were conducted.⁴ The Standard Operating Procedure (SOP) on labour complaints investigation was adopted in 2022 and it provides that a minimum of 50 per cent regular visits should be announced, while special inspections (such as complaint investigation, accident investigation, etc) are usually unannounced unless the announcement is necessary, for instance for ensuring the presence of witnesses.⁵

CEACR Observation on C.81, 2022 (2023)⁶:

- “The Committee recalls once again the importance of undertaking a sufficient number of inspections that are unannounced to ensure that when inspections are

conducted as a result of a complaint without prior notice,

the fact of the complaint is kept confidential...***The Committee also requests that Government...to indicate the number of inspections conducted as a result of a complaint, and the outcome of all such inspections.***”

- “Concerning the confidentiality of complaints...The Committee also takes note of the Gov’s indication that the modalities to ensure confidentiality are provided in the relevant SOP....***The Committee requests the Government to provide its comments to the observations of the trade unions.***”⁷ (emphasis original).

Relevant ILS and ILO Jurisprudence⁸

- **Article 12(1) of C.81** provides that labour inspectors shall be empowered to “enter freely and **without previous notice** at any hour of the day or night any workplace liable to inspection”. [Emphasis added]. Sub-section (2) provides that inspectors shall notify the employer....“**unless they consider that such a notification may be prejudicial to the performance of their duties**” [Emphasis added.]
- **Article 15(c) of C.81** provides that labour inspectors shall “treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.”
- **CEACR**: “Conducting unannounced visits on a regular basis is especially useful as it enables inspectors to observe the confidentiality required by Article 15, subparagraph (c), of Convention No. 81 and Article 20, subparagraph (c), of Convention No. 129 as regards the purpose of the inspection if it was carried out in response to a complaint” (General Survey, 2006, para.263).⁹

³ Note: Several of the Committee's comments are related to practical and institutional issues that do not necessarily require amendments to the laws and regulations: e.g. request to secure adequate number and capacity of labour inspectors, etc. The Technical Note for Bangladesh mainly deals with the issues that require amendments to the laws and regulations.

⁴ “collected through the Labour Inspection Management Application (LIMA).” Government’s statement noted in the CEACR, “Observation on C.81 for Bangladesh, adopted in 2022 and published for the 111th ILC session in 2023” [Hereinafter referred to as “CEACR Observation 2022 (2023)”].

⁵ *Ibid.*

⁶ *Ibid.*

⁷ The Committee noted the observation of the trade unions indicating that: (i-ii) Workers are not aware that they can file a complaint without fear of retaliation, because there is no information provided by the DIFE; (iii) Currently, an ID card is required to submit a complaint and DIFE should set up complaint boxes in factories (out of the range of CCTV); (iv) There should be sanctions provided in the law for the disclosure of the details of a complaint by DIFE officials.

⁸ Note: The factsheets only provide selected examples of ILS and ILO jurisprudence due to space limitation. Richer body of ILS and ILO Jurisprudence is provided in the Technical Note.

⁹ CEACR, 2006, “General Survey of the reports concerning the Labour Inspection Convention, 1947 (No.81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No.81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No.82), the Labour Inspection (Agriculture)

Issue F2: Penalties are not sufficiently dissuasive.

[BLA sec. 283-316, 282-309]

Under the BLA, penalties for the violations of labour law provisions range from fines of maximum 5,000 taka¹⁰ for the employment of a child or an adolescent, to the imprisonment of maximum 6 months or fines of maximum 25,000 taka or both for the obstruction of labour inspection.¹¹

CEACR Observation on C.81, 2022 (2023):

- “Noting the observation from the trade unions and the limited progress reported by the Government on this matter, the Committee requests the Government to pursue its efforts to ensure that penalties for labour law violations are sufficiently dissuasive.

► Relevant ILS and ILO Jurisprudence

- **Article 18 of C.81** requires national laws or regulations to provide for adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties.
- **CEACR:** “... if penalties are to have a deterrent effect, the amount of fines should be regularly adjusted to take account of inflation. It would be regrettable in every respect if employers preferred to pay fines as a less costly alternative to taking the measures necessary to ensure compliance with the legal provisions on working conditions. Several trade union organizations have expressed concerns to this effect (General Survey, 2006, para.295).

Issue F3: Measures needed to improve legal proceedings for the effective

enforcement of legal provisions.

[BLA sec. 38, 61, 310, 313, 314, 315, 316, 319, BLR 351]

On one hand, section 319 of the BLA empowers the labour inspectors to submit any complaint with the Labour Court against any person for any offence. On the other hand, Rule 351 of the BLR requires labour inspectors, after an enquiry

and investigation of any complaint, to direct the party concerned to take action as per law and if the said party fails to take action, then to lodge complaints to the labour court¹². Furthermore, in practice, it is reported that labour inspectors have to issue notices three times before they can file a case to the labour court. In other words, labour inspectors are not given the discretion to decide whether to give warning or to file a case to the labour court immediately.

CEACR Observation on C.81, 2022 (2023)

- *“The Committee requests the Government to continue to provide information on the progress made in the establishment of a fully operational legal unit in the DIFE” [i.e. indicating the number of staff and their functions, and to provide information on any other measures taken or envisaged to improve the proceedings for the effective enforcement of legal provisions] (CEACR Observation on C.81, 2021 (2022))* [emphasis original]

► Relevant ILS and ILO Jurisprudence

► Art.17 of C. 81

- (1): Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning.
- (2) It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

Convention, 1969 (No.129) and the Labour Inspection (Agriculture) Recommendation, 1969 (No.133)” (ILC95-III(1B)-2006-01-0329-1-EN)[Hereinafter referred to as “General Survey on Labour Inspection, 2006”]

¹⁰In March 2023, 1 USD was between 100 and 110 taka. (according to the exchange rate by the Central Bank of Bangladesh)

¹¹BLA Chapter XIX: Offence, Penalty and Procedure, Sec. 283-316.

¹²Except for the case of any dues of the workers such as wages and compensation, they can file a case to the labour court directly

Issue F4: Lack of information on the specific outcome of the cases referred to the labour courts and the need to identify the legal provisions to which they relate.

[BLA sec. 319, 351]

It is unclear whether DIFE has a follow-up system on the cases referred to the labour courts. If this information is not currently communicated to the DIFE, it would be important that a system be established so that the outcome of cases referred to courts can be notified to the inspectorate

CEACR Observation on C.81, 2022 (2023):

- *"Noting the absence of information... the Committee once again requests that Government indicate the specific outcome of the cases referred to the labour courts (such as the imposition of fines and also sentences of imprisonment) and to specify the legal provisions to which they relate."* [emphasis original]

Relevant ILS and ILO Jurisprudence

- **Art.17 of C.81.**
- **CEACR:** "The effectiveness of the binding measures taken by the labour inspectorate depends to a large extent on the manner in which the judicial authorities deal with cases referred to them by, or at the recommendation of labour inspectors. It is therefore indispensable for an arrangement to be established
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Relevant ILS and ILO Jurisprudence

- **Article 27 of C.81:** the term "legal provisions" includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by labour inspectors.

Issue F6: Whether the conciliation function interferes with the effective discharge of the primary duties of the labour inspectors.

whereby relevant information can be notified to the labour inspectorate so that, on the one hand, it can review where necessary its criteria for assessing situations in which, with a view to bringing an end to a violation, it would be more appropriate to use other means than prosecution in the courts or the recommendation that legal action be taken and, on the other, it can take measures to raise the awareness of judges concerning the complementary roles of the courts and the labour inspectorate, respectively, in achieving the common objectives of the two institutions in the field of conditions of work and the protection of workers.

- Cooperation between the labour inspection services and the justice system is necessary to ensure the enforcement of legal provisions relating to conditions of work and the protection of workers in cases where the other means of action of the labour inspectorate, such as advice, notifications and warnings, have not been effective." (General Observation on C.81, 2007).

Issue F5: Lack of enforcement of collective agreements by the labour inspectors [Added]

[BLA sec. 2(25), 319 and BLR 113]

It has been observed that labour inspectors are not necessarily aware of the need to enforce collective agreements, where they exist, especially when they provide higher standards than the laws and regulations. The BLA and BLR currently do not give clear recognition to the legal effect of collective agreements.

[BLA sec. 124A]

According to sec.124A of the BLA, disputes over wages and other legal dues may be submitted to the labour inspectorate for conciliation. According to the Government, it takes 30 days to resolve such complaints through the conciliation process.¹³ The Government also added that in the fiscal year 2021-2022, there were 3,604 complaints received and all of them were resolved.¹⁴ To this, the trade unions submitted their observation to the Committee of Experts that, due to the responsibility of conciliation and wage settlement, DIFE inspectors are diverted from their main responsibilities. ¹⁵ The Committee requested the Government to reply to this observation of the trade unions, and at the same time requested the Government to indicate the number of labour inspectors involved in conciliation functions and to indicate the proportion of

time and resources spent on labour disputes, **in comparison to those spend on labour inspection**,¹⁶ so that the Committee itself can determine whether conciliation function does not interfere with the effective discharge of the primary duties or prejudice the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

¹³ CEACR, Direct Request on C.81, adopted in 2022 and published in 2023.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

Relevant ILS and ILO Jurisprudence

- ▶ **Article 3(2) of C.81:** "Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers"
- ▶ **Labour Inspection Recommendation No.81, 1947**
Paragraph 8: The functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes

Issue F7: The need to provide for

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diseases; (ii) provide an assessment on the reasons for the underreporting of industrial accidents and the lack of reporting of any cases of occupational disease; (iii) indicate whether consideration is being given to providing for sufficiently dissuasive penalties for non compliance with reporting obligations in relation to cases of occupational diseases." [emphasis original]

Relevant ILS and ILO Jurisprudence

- ▶ **Article 14 of C. 81:** The labour inspectorate shall be notified of industrial accidents and cases of occupational disease in such cases and in such manner as may be prescribed by national laws or regulations.
- ▶ **CEACR:** "Efforts should be made to establish, in all

sufficiently dissuasive penalties for non compliance with reporting obligations in relation to cases of occupational diseases.

[BLA sec. 80, 81, 82 and 290]

CEACR, Direct Request on C.81, 2022 (2023):

- **"The Committee requests the Government to provide its reply to the observations of the trade unions [i.e. that reasons for under-reporting of industrial accidents and disease include (i) the lack of will from the employers to report; (ii) the lack of sufficiently dissuasive penalties for non-reporting; and (iii) the lack of trade union presence and of effective safety committees at the level of the establishment].**
- **It also requests the Government to indicate the impact of the technical SOP on the reporting of occupational accidents and diseases. In addition, the Committee requests the Government to provide information on the duties of the safety committees in the promotion of OSH at the level of the establishment, including any involvement in the reporting of notification of occupational accidents to the DIFE. Noting the absence of information...the Committee requests once again that the Government (i) indicate any impact that the LIMA might have on the collection of statistics of industrial accidents and cases of occupational**

countries that do not have one, a system to ensure that the labour inspectorate has access to information on occupational accidents and incidents of occupational disease. Legal provisions that are in conformity are often not sufficient to ensure that practice is also in conformity. The Committee has had occasion to note that in many developing countries, provisions adopted in laws of general scope have only a limited effect in practice. Detailed regulations and precise instructions to all concerned, employers, workers, social and health insurance funds, police, and other bodies involved in dealing with occupational accidents and diseases are essential for ensuring that the principles enshrined in law are

actually put into practice.” (General Survey on Labour Inspection, 2006, para 119).

Issue 8: Annual reports on labour inspection.

CEACR Direct Request on C.81, 2022 (2023):

- The Committee also notes that the Government is in the process of publication of the labour inspection report for the financial year of 2020-2021. The Committee also notes the Government’s indication that as the LIMA will be fully functional from this year, the labour inspection report for 2022-2023 will reflect all the elements of Article 21 of Convention No.81. ***The Committee requests the Government to continue to pursue its efforts to ensure that the labour inspection reports are published and contain all the information required in Article 21 of the Convention.*** [emphasis original]

Relevant ILS and ILO Jurisprudence

- ▶ **Article 20(1) of C.81:** The central inspection authority shall publish an annual general report on the work of the inspection services under its control.
- ▶ **Article 21 of C.81:** The annual report published by the central inspection authority shall deal with the following and other relevant subjects in so far as they are under the control of the said authority:
 - (a) laws and regulations relevant to the work of the inspection service;
 - (b) staff of the labour inspection service;
 - (c) statistics of workplaces liable to inspection and the number of workers employed therein;
 - (d) statistics of inspection visits;
 - (e) statistics of violations and penalties imposed;
 - (f) statistics of industrial accidents;
 - (g) statistics of occupational diseases.

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