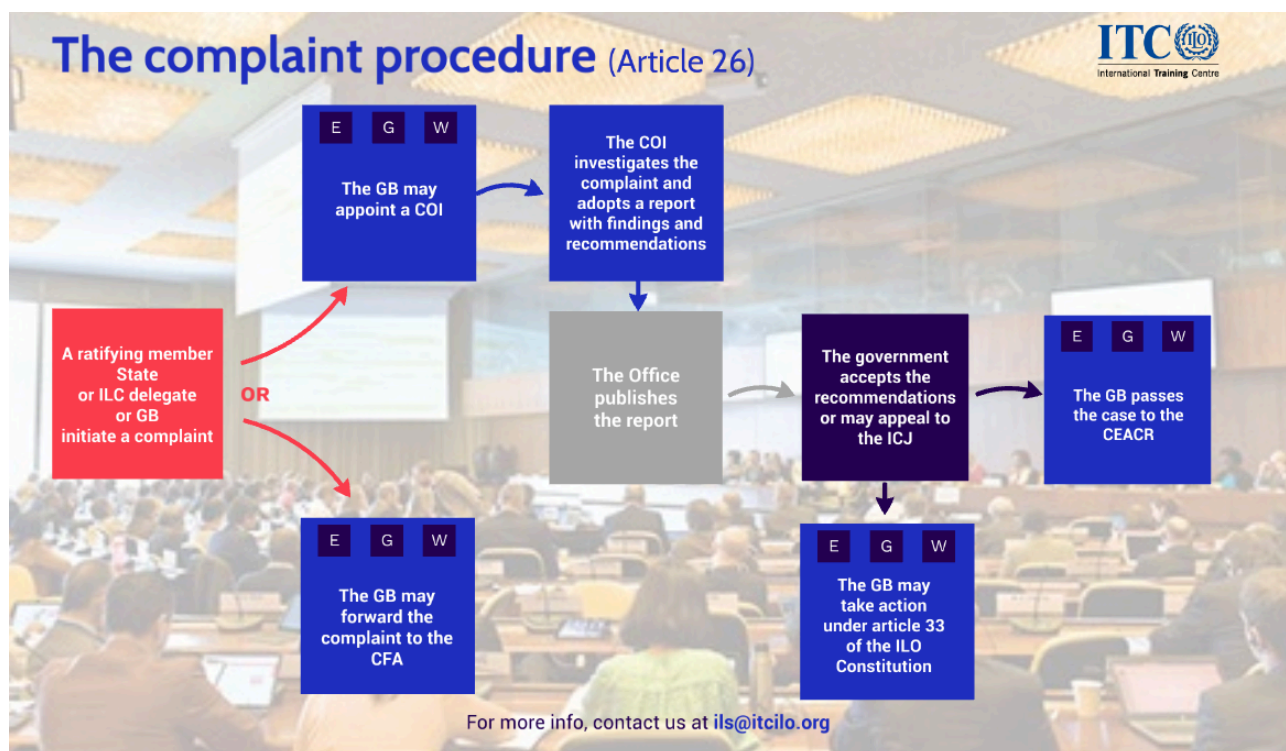


ILO's supervisory mechanism, the Article 26 Complaint and the Road map

Bangladesh ratified 36 ILO Conventions and 1 Protocol, including Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and Labour Inspection Convention, 1947 (No. 81).

After ratifications of ILO Conventions (and Protocol), Bangladesh undertakes to apply the instruments, in national law and practice. The ILO supervisory system which monitors the application includes

- **Regular supervisory system** Bangladesh is required to **report** regularly on the measures it has taken for its implementation. **The CEACR** reviews the reports and provides an impartial and technical evaluation of the application of international labour standards in ILO member States in the form of observations and direct requests (to simplify, this note will refer to them as recommendations).
- **Special procedures:** There are three special procedures, including **freedom of association cases** and **Article 26 Complaint**.



- Bangladesh has two active Freedom of Association cases, namely Case No 3263¹ (serious and urgent) and Case 3203² (Extreme serious and urgent).
- In 2019, delegates to the International Labour Conference (ILC) filed **an Article 26 Complaint** concerning non-observance by Bangladesh of ILO Conventions Nos. 87, 98 and 81. The complaint procedure is governed by Articles 26 to 34 of the ILO Constitution.

¹https://www.ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001_COMPLAINT_FILE_ID:3328577

²https://www.ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001_COMPLAINT_FILE_ID:3280489

- As a result of this complaint, in 2020, the ILO Governing Body (GB) requested the GoB to develop a time-bound road map of actions. Subsequently, the GoB submitted **the Road map of actions to address all the outstanding issues mentioned in the complaint.**³ The issues raised in the complaint and the actions under the Road map are linked to the **CEACR recommendations.**
- Since then, the GB has been requesting the GoB to **report** on further progress made on the timely implementation of the road map in GB sessions, in March and November each year. Since 2021, the GB has been discussing the reports to the GB received from the Government of Bangladesh before the GB sessions and based on the GB discussions, deferring the decision on further action in respect of the complaint.
- Generally, when discussing the Article 26 Complaint, the Governing Body may decide to
 - **form a Commission of Inquiry (COI)** consisting of independent members, tasked to carry out a full investigation on the complaint and report thereon.
 - In accordance with the ILO Constitution, a Commission of Inquiry is the ILO's highest-level investigative procedure and is generally set up when a member State is accused of committing persistent and serious violations and has repeatedly refused to address them. To date, 15 Commissions of Inquiry have been established.
 - Member states should place at the disposal of the Commission of Inquiry all the information in their possession the subject matter of the complaint.
 - When the Commission of Inquiry has fully considered the complaint, it shall prepare a report with findings on all questions of fact relevant to determine the issue and containing the recommendations with proposed steps and the time within which they should be taken.
 - The Director-General of the ILO communicates the report to the Governing Body and the governments concerned and causes it to be published.
 - Once the report of a COI is published, actions are required on it. Within three months the government concerned informs the Director-General whether or not it accepts the recommendations contained in the report of the COI, and if not, whether it proposes to refer the complaint to the International Court of Justice (ICJ).
 - Any decision of the ICJ regarding a complaint which has been referred to it by the governments concerned shall be final.
 - When a government fails to carry out the recommendations of a COI or the decision of the ICJ, the Governing Body may recommend to the International Labour Conference any action it deems wise and expedient to secure compliance.
 - The implementation of the recommendations of a COI falls under the mandate of the regular supervisory bodies, by the CEACR and the CAS.
 - **suspend a decision on referral pending developments.**
- Article 26 complaints are treated by the Governing Body at its discretion. For example, a complaint case brought by delegates to the International Labour Conference could be closed by referral to the CFA within months after it is lodged. Alternatively, a complaint can remain pending for years subject to developments that are followed by the Governing Body.
- The next GB discussion on the Article 26 complaint on Bangladesh will be held at the upcoming 350th GB session on 4-15 March 2024 in Geneva on the 12th March 2024 at 10.30 am (CET). The

³ https://www.ilo.org/gb/GBSessions/GB342/ins/WCMS_800701/lang--en/index.htm

Government of Bangladesh submitted the Report to GB on progress made in the implementation of the road map to address all outstanding issues mentioned in the Article 26 complaint concerning alleged non-observance of Conventions Nos. 81, 87 and 98.⁴

EU's Generalised Scheme of Preference (GSP) and the NAP

- Bangladesh, as a least developed country, is a beneficiary of the EU's Everything But Arms providing the country with duty-free, quota-free access to EU market for all products except arms and ammunition and is required to respect the principles of fifteen core Conventions on human rights and labour rights, including eight ILO fundamental Conventions and Conventions Nos. 87 and 98 specifically.
- The EU may engage with GSP beneficiary countries due to the gravity of alleged shortcomings in respecting core human rights and labour rights standards, as testified by reports from the United Nations, **CEACR recommendations**, and civil society. This includes the consideration on complaints and cases such as **the Article 26 Complaint**. GSP preferences can be removed if beneficiary countries fail to respect core human rights and labour rights
- EU conducted enhanced engagement with Bangladesh which allowed for constructive bilateral exchanges on labour rights. As a result of the recommendation of the 9th session of the EU-Bangladesh Joint Commission held in October 2019, **the National Action Plan (NAP) on the Labour Sector of Bangladesh (2021-2026)**⁵ was adopted. Actions under the NAP include, among others, actions to address issues related to ILO Conventions Nos. 87, 98 and 81 as raised by CEACR.
- Bangladesh is required to submit **Implementation Status of the NAP report** to the EU periodically.

Linkages amongst reports to the CEACR, GB, EU and actions under Road map and NAP

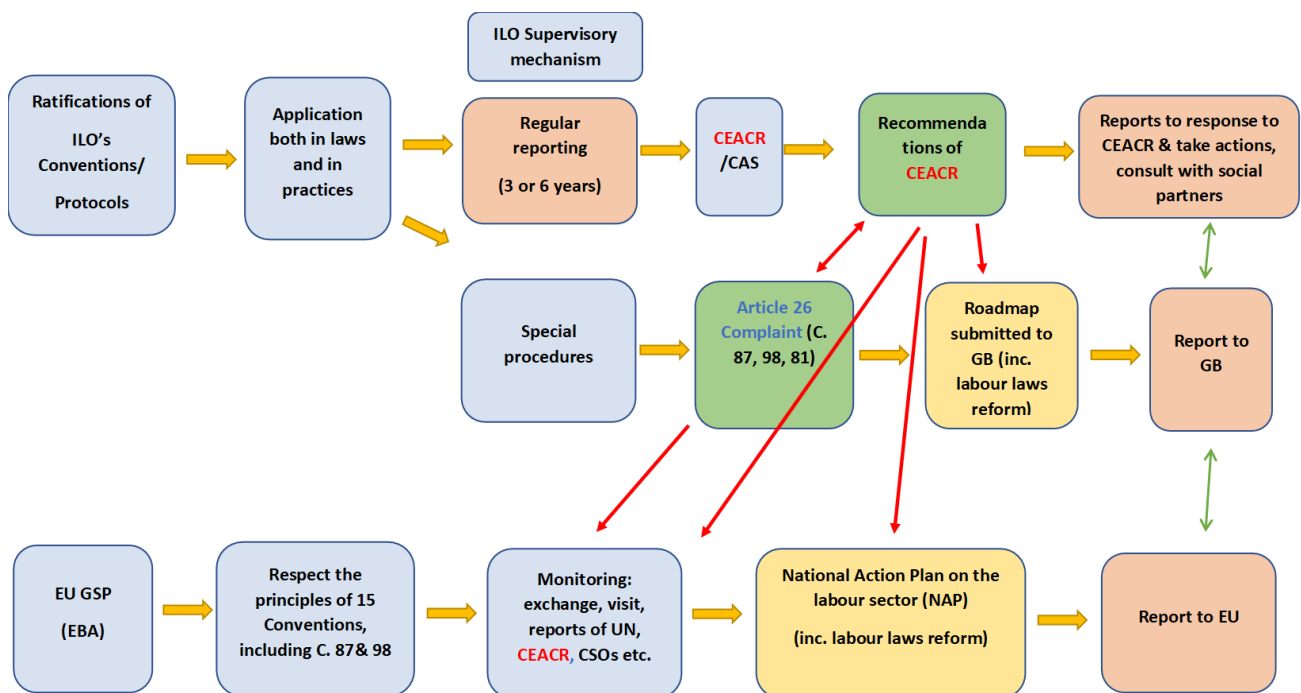
- As part of the reporting obligations under the ILO regular supervisory system, the CEACR regularly assesses GoB's **reports to the CEACR (and observations of social partners)** on the application of principles under ratified ILO Conventions, including ILO Conventions Nos. 87, 98 and 81. The CEACR recommendations are used by other actors, including international organisations and trade partners. Preparing good reports to the CEACR and on time submission are therefore important. The reports shall respond to the CEACR recommendations, demonstrate progress made and include detail on the GoB's plan to address the CEACR recommendations. The CEACR also takes into account GoB **report to GB on Article 26 complaint**

⁴ [GB.350/INS/14: Report by the Government of Bangladesh on progress made in the implementation of the road map to address all outstanding issues mentioned in the article 26 complaint concerning alleged non-observance of Conventions Nos 81, 87 and 98 \(ilo.org\)](https://mole.gov.bd/sites/default/files/files/mole.portal.gov.bd/notices/816f03a6_6237_4a20_8c9f_0c4120d260ff/National%20Action%20Plan%20on%20Labour%20Sector%20on%20Bangladesh_30%20June%202021.pdf)

⁵ https://mole.gov.bd/sites/default/files/files/mole.portal.gov.bd/notices/816f03a6_6237_4a20_8c9f_0c4120d260ff/National%20Action%20Plan%20on%20Labour%20Sector%20on%20Bangladesh_30%20June%202021.pdf

and vice versa. It can also consider **the Implementation Status report** on the NAP to the EU and vice versa.

- Both Road map and the NAP, although derived from different process, were mainly drafted to address issues on ILO Conventions Nos. 87, 98 and 81, including issues raised by the CEACR. Actions planned under the Road map and NAP such as labour law reform, therefore, needs to address the CEACR's recommendations.
- The 2024 Report of the CEACR on Application of Conventions and Recommendations has been published online [here](#).⁶ The report includes the CEACR comments on Bangladesh, particularly observations on Conventions Nos. 87, 98 and 81 and direct request on Convention No.81, which repeat the issues raised in earlier comments of the CEACR, that were not addressed by the GoB.



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