

RANA PLAZA 3 YEARS ON: COMPENSATION, JUSTICE, WORKERS' SAFETY



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INTRODUCTION

Following the collapse of the Rana Plaza building on 24th April 2013 a significant number of campaigns were undertaken to ensure the survivors and the families of the workers killed receive just and fair compensation, and to ensure that future building safety accidents would be prevented. These campaigns contributed to several initiatives including the Rana Plaza Arrangement (set up to provide compensation for injury and death) and the Bangladesh Accord on Fire and Building Safety (set up to improve garment factory safety). They also resulted in promises to improve the legal climate regarding Freedom of Association.

This document, published by the Clean Clothes Campaign and the International Labor Rights Forum on the eve of the third anniversary of the tragedy, provides an update on the key developments and outcomes in each of these three areas.

PART 1: Justice for the Rana Plaza families

a) Rana Plaza Arrangement

Background

The Rana Plaza Arrangement was originally developed at a meeting in September 2013, convened and chaired by the International Labour Organisation (ILO), which was attended by a number of brands sourcing from Rana Plaza, the Government of Bangladesh, the Bangladesh Garment Manufacturers and Exporters Association (BGMEA), global and national trade unions, and NGOs, including the Clean Clothes Campaign. At that meeting it was agreed that a scheme would be established, that would calculate and distribute payments to the families of those killed and injured as a result of the building collapse. The scheme would use the ILO Convention 121 as the basis for calculation and payments would be intended to address the loss of income suffered by a family or survivor affected by the Rana Plaza disaster.¹

By November 2013 a Memorandum of Understanding, which came to be known as the Rana Plaza Arrangement, had been signed by four brands,² IndustriALL Global Union, IndustriALL Bangladesh Council, the Clean Clothes Campaign, the Bangladesh Government and the BGMEA. These same groups committed to work together to develop and oversee the implementation of the Arrangement as members of the Rana Plaza Coordination Committee (RPCC). The Bangladesh Institute of Labour Studies, which coordinated the Bangladesh Worker Safety Forum, the National Coordination Committee for Workers' Education (NCCWE) and the Bangladesh Employers Federation also joined the RPCC. All of the original members have remained active in the Rana Plaza Coordination Committee (RPCC) throughout the implementation of the Arrangement.³

¹ For more information on the formulas used to calculate payments see <http://www.ranaplaza-arrangement.org/mou/claims/claims-calculations>.

² Primark, Loblaw, Bon Marche and El Corte Ingles.

³ For more information on the role of the coordination committee see <http://www.ranaplaza-arrangement.org/mou/governance>.

Implementing the Arrangement

The Rana Plaza Claims Administration was established in January 2014 and was tasked with setting up the systems required to practically implement the scheme. At the same time the Rana Plaza Donors Trust Fund was established, with the ILO as Trustee, to collect contributions primarily from brands and retailers that had been buying from a Rana Plaza factory at the time, or in the period prior to, the collapse.⁴ The original target for the Fund was to raise USD 40 million; this figure was revised to USD 30 million in December 2014 as the claims received were processed.⁵ The eventual awards paid to the families and survivors would be funded from two different sources: funds contributed to the Rana Plaza Donors Trust Fund and payments made prior to the establishment of the scheme by the Prime Minister's Fund, which had collected several million dollars in the months immediately following the disaster.⁶

The Rana Plaza Claims Office was set up in Savar near Dhaka, where the Rana Plaza building had been located. The processing of claims started in March 2014 and ran for just over six months until the office was closed to new claims in September 2014. Each claimant (or relatives of the claimant) was given an appointment during which they were assisted in filling out the required forms, having their documents checked, and in setting up bank accounts. The information gathered through each claims interview and medical assessment was then entered into a database and the awards were calculated using actuarial software, commissioned by the ILO for this purpose.

Where claims were not straightforward – for example where documentation could not be provided or where there were queries over who qualified as eligible beneficiaries to a claim – they were reviewed by the lawyers employed by the Rana Plaza Claims Administration and ultimately by the three Commissioners overseeing the programme. In some cases, where the issues involved were particularly complex, cases were presented to the RPCC for review.

The RPCC met monthly through video-conferencing, and prior to each meeting was provided with a Commissioners' report, a list of claims and awards that had been processed and an overview of recurring issues that required action or decision. Each round of claims was ultimately reviewed and authorised by the RPCC.⁷

⁴ For a list of donors see <http://www.ranaplaza-arrangement.org/fund/donors>.

⁵ The original sample data which was used to estimate the Fund's target was based on those claims where the level of injury was serious and permanent. When the actual claims were processed only 98 workers had extremely severe injuries. The majority had injuries that were not considered as impacting their ability to earn income and therefore those workers received considerably lower awards than those with permanent and serious disability. Secondly, the original target had also been deliberately set at a generous level on the basis that, once the actual amount needed was known, it would be easier to revise the target down than it would be to increase it. For more information see: <http://www.ranaplaza-arrangement.org/news/rpcc-revises-estimate-on-funding-target>.

⁶ As the payments from the Prime Minister's Fund had already been distributed prior to the establishment of the Arrangement, this was achieved by treating any such payment as an advance against the final total owed.

⁷ See also <http://www.ranaplaza-arrangement.org/mou/governance>.

Amounts paid through the Rana Plaza Arrangement

Over the course of the claims process 720 claims for deceased and 140 claims for missing persons were processed, including a number of claims for killed or missing rescue workers. In total, awards were given to 2,559 beneficiaries, all of whom were verified as eligible dependants of workers killed at Rana Plaza. 2027 claims were received from injured workers, all of whom were assessed by a team of specialists coordinated by the Centre for the Rehabilitation of the Paralysed.

In total, awards were given to 2,559 beneficiaries.

The estimated USD 30 million that would be required overall to fund all awards calculated was paid via three different schemes, which were all counted as efforts towards the final total. The Rana Plaza Arrangement paid out total of BDT 1,421,273,046.31 (equivalent to almost 13 million GBP/ 16 million EURO/USD 18.5 million), from the money collected by the Rana Plaza Donors Trust Fund to the injured workers and family members of deceased and missing workers. A further USD 2.5 million was provided to claimants from the Prime Minister's Fund prior to the establishment of the Arrangement; these payments were treated as advance payments against the final awards, with the Arrangement paying the remaining amount. Finally, 257 awards to the dependants of deceased and missing workers and 405 awards to survivors were paid under a scheme set up by Primark for the New Wave Bottoms factory workers. In total these claimants received USD 12.4 million.⁸

The awards were calculated on the basis of individual circumstances and therefore differ so much that it is impossible to provide a meaningful average award amount. However, the Coordination Committee did agree to set a minimum amount that would be awarded for each claim. This would be provided as a supplementary payment to those that whose awards fell below the agreed upon minimum, calculated to ensure the overall amount paid would meet the minimum floor. The minimum amount paid on a claim for a deceased, missing or seriously injured person was 1,050,000 BDT (GBP 9,500/11,500 EURO/USD 13,400). The minimum amount paid against a claim of a person who had no life-changing injury, or whose injury had a limited impact on their ability to earn a comparable income was 105,000 BDT (GBP 950/1,200 EURO/USD 1,340).

Impact of funding delays

Although the RPCC had authorised awards for all but a handful of the submitted claims by November 2014, at that time there was still a significant gap between the amounts needed to pay them and the amounts committed to the Rana Plaza Donors Trust Fund. In fact, the money required to pay everybody in full would not be received until June 2015, delaying the payments owed to the families and survivors by over six months. This delay had a detrimental impact on the ability of the Arrangement to deliver the payments in a timely and predictable manner and in the end undermined the effectiveness of swiftly addressing the financial hardship of the beneficiaries.

As the RPCC was unable to inform the beneficiaries when, or even if, the remaining amounts owed to them would become available, it was forced to pay the awards in three instalments, rather than

⁸ See section 1b below for more information on Primark's scheme.

as one single award. This increased the administrative costs of the scheme, caused considerable confusion and distress to the beneficiaries and led to payments that were often not sufficient to do more than address the most immediate needs of the families. By the second anniversary of the building collapse, the Fund was still facing a funding gap of almost USD 10 million and the despondency of the beneficiaries, who were starting to doubt that the full awards would ever be paid, increased. In the end, the Rana Plaza Donors Trust Fund did receive sufficient contributions by June 2015, and the RPCC was finally able to authorise final payments. Because of the time required to receive the funds, transfer them to Dhaka and complete the related administration, the final payment was made in October 2015 – a full 12 months after the awards were calculated.

Long-term medical care

A key part of the scheme was to ensure long-term medical care, both physical and psychological, to those workers who had survived the Rana Plaza collapse. The RPCC authorised a subcommittee, made up of national RPCC members and the Executive Commissioner, to develop a proposal for providing services to this group of workers.

A large Bangladeshi NGO, BRAC, whose USA wing had been used as a conduit for funds from North American brands to the Fund, submitted a proposal to the RPCC, for the provision of treatment and rehabilitation for the 98 workers who had been identified as having serious and permanent injury. The subcommittee discussed the proposal and USD 900,000 was provided from the Fund for this purpose.

However, the BRAC scheme would not provide medical care to the other 2,000 or so workers whose injuries are less disabling, but who still require ongoing treatment including counselling, physiotherapy and pain management. The subcommittee proposed that a Trust be established in Bangladesh for the purpose of providing medical services to these workers. The funds earmarked for this provision would be managed by the Trust, comprising of representatives of the government, the employers' organisations and labour organisations. The Trust would arrange for contracts and agreements with local medical providers who would be paid to provide necessary services to those requiring them.

The RPCC has now in principle authorised this approach and work is underway to take the legal and administrative steps required to formalise the Trust prior to the final disbanding of the Rana Plaza Arrangement.

Impact of the Rana Plaza Arrangement

The establishment and implementation of the Rana Plaza Arrangement has been a ground-breaking, although not problem-free, initiative. Within two and a half years after the disaster, a mass claims process was agreed upon by representatives of all stakeholders and was then implemented through a huge collective national and international effort.

The Arrangement has ultimately succeeded in achieving something that has never previously been done in the aftermath of any industrial disaster: the entire global supply chain in which the affected workers were employed contributed to ensuring they received some form of compensation.

Governments, garment industry representatives, brands and retailers, trade unions, NGOs and labour groups, lawyers, campaigners, trade unions and consumers have all made some form of contribution to making the scheme a reality.

One of the major achievements of the Rana Plaza Arrangement, aside from establishing the first ever supply chain-funded compensation scheme, is the precedent it has created for the development of other schemes. The model has already been applied to another disaster in Bangladesh, the Tazreen Fashions fire, and it is expected that similar awards will be made to the survivors of that fire by the end of May this year. A similar approach is also being discussed in Pakistan, where the families of over 250 workers killed in the Ali Enterprises factory fire, are still waiting to receive the full compensation they were promised.

It is hoped that the Trust for the provision of long-term medical care will also be transformed into a more permanent programme. There is even a laudable proposal to also include Tazreen survivors in the scheme, using separate funds earmarked for that purpose. Depending on the success of this model the ambition is to use it as a basis for a permanent scheme to provide medical care to any person suffering from workplace injury in Bangladesh.

Perhaps even more importantly, all these processes have added momentum and increased enthusiasm for the development of permanent, state-run workplace injury programmes, led by the ILO. This way all workers, regardless of the public attention garnered by a particular incident, would be given access to awards based on similar principles to those underlying the Rana Plaza Arrangement.

b) Primark's long-term compensation scheme

In March 2013, Primark, which had been involved in the original negotiations of the Arrangement, announced that they were withdrawing in favour of implementing their own scheme. This would cover only those workers employed in one of the five factories present in the building: the New Wave Bottoms factory, which had been a supplier of Primark.

Primark had been developing this alternative programme since shortly after the collapse, when it had employed a Spanish consultant to develop their response. The Primark scheme would calculate awards to the victims based on a formula used in Spanish insurance law rather than on international or Bangladeshi standards. It also involved a number of Bangladeshi NGOs to deliver complex “vulnerability assessments”, which those victims considered by Primark to be most vulnerable – largely female beneficiaries of the scheme – would be required to undertake as part of the claims process.

At the beginning of the negotiations leading to the Rana Plaza Arrangement, Primark had been advocating for this scheme to be adopted by the RPCC and it had been examined by the Executive Commissioner and the ILO as to its suitability to serve as a basis for the Arrangement. In the end it was decided that the collective scheme of the Arrangement needed to be based on standards that were more applicable to the Bangladesh context, so that it could ultimately be used as a basis for a future national system for workplace injury payments. Other factors against taking up the scheme

were that it would be significantly more costly to implement and, due to the fact that important implementation elements of the scheme had been copy-righted, it would not be freely available for adaptation in other cases, including that of the Tazreen Fashions fire, which had taken place five months prior to the Rana Plaza building collapse and where a commitment had been made to follow the Rana Plaza Arrangement with a comparable scheme for the 112 deceased and missing and the injured workers.

c) **Legal cases for compensation**

The Clean Clothes Campaign, International Labor Rights Forum and their allies have, from the beginning, called for the families affected by the Rana Plaza collapse to be provided with full compensation. They however accepted the decision made at the beginning of the Arrangement negotiations that this scheme would not be able to fully achieve this objective. The Rana Plaza Arrangement provided payments that were designed to cover the loss of income inflicted on families as a result of the disaster. It was never intended to provide full compensation, which would necessarily include payments that also recognised the pain and suffering caused to survivors and families of those killed. This proved impossible to deliver through the Arrangement, in part because of the legal implication that including this principle would contain. However, the agreement that established the Arrangement did include a specific clause that made clear that the acceptance of an award under the scheme would not provide a barrier to families who wished to pursue payments for pain and suffering through other means.

Legal cases to obtain such payments are now underway in Bangladesh's courts, although the processes are moving slowly through the court system and there is a need for more pressure on the courts to resolve these cases. Lawyers in the USA and Canada have also filed lawsuits on behalf of Rana Plaza survivors in an attempt to force Walmart, JC Penney and The Children's Place in the USA, and Loblaw in Canada, to pay full compensation.

Legal cases in Bangladesh

Thus far the owner of the building, Sohel Rana and the owners of the five individual factories: Ether Tex, New Wave Bottoms, New Wave Style, Phantom Apparels and Phantom Tac, have not provided any financial compensation to the affected families. Nor have any of the implicated government agencies, such as those responsible for upholding building safety standards. The only payments made by the Government of Bangladesh to Rana Plaza families were drawn from the Prime Minister's Fund, which received significant donations from Bangladeshi citizens and companies in the immediate aftermath of the disaster. This included the donation of one-day salaries made by garment workers themselves.

Money Case 33/2013, was filed on the 6th May 2013 at the district court in Dhaka on behalf of one deceased worker and her family, with a claim of 20,400,000 BDT (229,000 EURO/USD 259,000) as "*Realization of money for causing death by wrongful Act, Negligence or Default.*" The claim has been filed against Sohel Rana, the owner of the Rana Plaza building and eight others whose negligence contributed to the disaster. To date a summons has only been issued to six of the defendants. Almost three years after the initial filing of the claim, the court is still considering the issuing of

summons for the remaining two people via the submission of an advertisement in daily newspapers. Despite a number of hearings, only one of the defendants has appeared at court to date and all have yet to file any written statements to the court.

Two Public Interest Litigation (PIL) cases were also filed to the High Court in the immediate aftermath of the Rana Plaza disaster, both of which included aspects of financial compensation and medical care. The first case – filed in April 2013 under Suo Motu Rule No. 9 – was primarily meant to establish which government departments were accountable for the failing that led to the collapse (see Part 2). As a result of the case the High Court ruled that a Committee be established which would propose compensation criteria for the survivors and affected families. The Committee invited a range of civil society organisations to make submissions in this regard. In October 2013 the Committee produced a recommendation that 1,451,000 BDT (18,400 EURO/USD 16,295) should be provided as compensation to the family of each dead and missing worker and a further payment of 500,000 BDT (5,600 EURO/USD 6,350) should be made as a payment for pain and suffering. The Committee submitted its report to the Court in January 2014, although this was only officially recorded by the Court in April 2015.

The second case, known as Writ – No 4390, was filed in April 2013, and included a request for the court to freeze the assets of the owner(s) of the Rana Plaza building and the five factories housed in it. On 28th April 2013 the Bangladesh Bank issued a circular to all banks to restrict the withdrawal or transfer of monies from the bank accounts of the six named owners, aside from monies required to pay outstanding wages. In September 2013, the South East Bank applied for the release of funds from the bank account of Sohel Rana, but this was rejected by the Court.

In April 2015 two well-known NGOs, BLAST (Bangladesh Legal Aid and Services Trust) and ASK (Ain o Salish Kendra) filed a supplementary affidavit to this case, which included a request to establish a training centre and a medical care centre for the families of the deceased and injured survivors of the Rana Plaza collapse. It also requested the maintenance of a written and electronic database of Rana Plaza workers, which could later be used for the purposes of informing potential beneficiaries of court directions and for distributing any resulting payments.

To date, both PIL cases are pending hearings at the High Court and no decision or ruling has been made on the utilisation of the frozen assets or on the distribution of compensation under the direction of the court.

Legal cases in Canada

In April 2015 a Toronto-based law firm filed a class action lawsuit on behalf of Rana Plaza workers, represented by families of two deceased workers and two injured workers, against clothing company Loblaw, its brand Joe Fresh and the auditing company Bureau Veritas for damages of almost two million Canadian dollars.⁹ The case argues that Loblaw breached their duty of care to the workers employed at Rana Plaza and failed to take necessary steps to ensure a safe work environment. Bureau Veritas is argued to have failed to conduct necessary building safety audits and

⁹ <http://www.rochongenova.com/Current-Cases/Rana-Plaza.shtml>.

to notify Loblaw of the safety issues that were detected. It appears that Canadian courts have now accepted jurisdiction over the case and have scheduled a hearing for April 2017 to decide on the suitability of the plaintiffs to represent the Rana Plaza families.

Legal cases in the USA

A similar case to the Canadian class action was filed at the District Court, District of Columbia, USA, also in April 2015. This case is taken on by affected families represented by the family of one deceased worker and one injured worker and claims that the defendants – JC Penney, Walmart Stores Inc, The Children’s Place and the Government of Bangladesh – were responsible for wrongful death through negligence. To date there is no update as to the progress of this case.

d) Holding those responsible to account

Although in a context where financial hardship is so extreme the demand for compensation remains a high priority, it is also vital that those individuals, government departments and companies that acted negligently are held to account.

A number of cases to establish responsibility for the Rana Plaza disaster and to provide justice to the survivors are proceeding through the Bangladesh courts. Three criminal cases have been filed. All of them involve the owner of Rana Plaza, Sohel Rana, who was arrested shortly after the building collapse and has remained in custody since then. A further 11 cases have been filed to the Labour Court for breaches of Bangladesh labour law.

Criminal cases

The first case – Savar PS Case No. 53 – was filed by the state on the 24th April 2013, and charge sheets alleging breaches of Section 12 of the Building Construction Act were filed in June 2015 against Sohel Rana and 12 other persons. The last hearing was held in March 2016, where the case was accepted for trial at the Chief Judicial Magistrate Court in Dhaka, but no trial dates have been set.

The second case – Savar PS Case No. 55 – was filed on the 25th April 2013 under Sections 337/338/304(A)/427/34 of Bangladesh' Penal Code (causing grievous hurt, endangering life, death by negligence and criminal damage)¹⁰ against Sohel Rana and 40 other persons, including the owners of the five factories operating in the building.

¹⁰ Sections 337 and 338 of the Penal Code refer to causing hurt and grievous hurt by act endangering life or personal safety of others. Section 304A refers to causing death by negligence. Section 427 refers to criminal damage. Section 34 is similar to “joint enterprise” laws: “When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.” http://bdlaws.minlaw.gov.bd/pdf_part.php?id=11.

The third case – CR Case No. 364/2013 – was filed in May 2013 by Sheuli Akhter, the widow of a worker killed at Rana Plaza. Charges have been brought under Sections 302/506/34 of the Bangladesh Penal Code (murder and criminal intimidation).¹¹

Of the 41 persons charged under these two cases only two remain in prison. Sohel Rana has been held on remand since April 2013 and Awlad Hossain, who was a building inspector of Rajdhani Unnayan Kartripakkha (Rajuk), the Government department responsible for urban development in Dhaka, was denied bail in February 2016 after he surrendered to the court.¹² 18 others have now been released on bail, while 22 have failed to surrender to the court. Both cases have now been transferred to the Session Judge Court for trial, but no future hearing dates have been set.

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Cases filed at the Labour Court

Eleven cases were filed against Sohel Rana, Rana Plaza factory owners and other responsible persons at the Labour Court in April 2013 by the Department for Inspections of Factories and Establishments. Nine cases were filed under Section 290 of the Bangladesh Labour Act and the remaining two under Section 309 of the Bangladesh Labour Act.¹³ Violation of both sections constitutes a criminal offense under Bangladesh law and carries a potential prison sentence.

Of the accused only Sohel Rana is currently held in prison; the remainder are either on bail or have failed to surrender to the court. This includes the Spanish CEO of Ether Tex Limited, David Mayer Rico, who has been charged under Section 290 in two cases and under 309 in one case.

The court will hear arguments in four cases on April 19th 2016 and in one further case on 25th May 2016. In two cases the court will hear from the accused on May 18th 2016 and it will hear the execution report in the other four cases on the 20th April 2016.

Public interest litigation

As mentioned above, a Public Interest Litigation (PIL) case, taken under the Sumo Moto Rule 9, as well as asking for recommendations on appropriate compensation levels, also requested the Government of Bangladesh, Sohel Rana and the owners of the five factories to provide a defence against prosecution for the failure to protect the Rana Plaza workers. As an interim step, the Savar Municipal Council was requested to provide the court with a building plan for Rana Plaza; the authorities were requested to bring Sohel Rana and the five factory building owners to the court; and the City Development Authority (Rajuk) was asked to explain its role and responsibilities with regard to the Rana Plaza building. The ultimate purpose of the case is to ensure that responsibilities

¹¹ Section 302 of the Penal Code refers to murder, Section 506 refers to Criminal Intimidation, Section 34 as above.

¹² <http://www.dhakatribune.com/bangladesh/2016/feb/08/rana-plaza-rajuk-building-inspector-awlad-sent-jail#sthash.rCikcMBH.dpuf>.

¹³ Section 290 refers to the failure to give notice of an accident and Section 309 refers to contravention of law leading to death/grievous harm/harm.

for averting future disasters are clearly defined between the various different government departments and the individuals involved.

PART 2: Preventing future disasters

e) The Bangladesh Accord on Fire and Building Safety¹⁴

On 15th May 2013, just three weeks after the collapse of Rana Plaza, H&M became the first brand to sign the Bangladesh Accord on Fire and Building Safety, following a massive worldwide campaign demanding that they do so. Over the following days dozens of other retailers also felt obliged to sign on as a result of pressure from consumer and trade union campaigns. To date over 200 garment brands, retailers and importers have signed up.¹⁵

The Accord is a legally-binding agreement, signed between these companies, two global unions – IndustriALL and UNI Global – and 14 Bangladeshi trade union federations. Four international labour rights NGOs signed as international witnesses; Clean Clothes Campaign, Worker Rights Consortium, International Labor Rights Forum and the Maquila Solidarity Network.

The Accord sets out a number of key principles, which are vital to ensure that Bangladesh garment factories are safe:

- that inspection programmes should be independent and carried out by engineers who are experts in fire, structural and electrical issues;
- that brands and retailers have a responsibility to ensure that, when identified, repairs and renovations should be carried out in a timely manner and that the factories are able to pay for them;
- that workers should have the right, backed up with knowledge and appropriate structures and complaint mechanisms, to refuse unsafe work and are integral to the long-term monitoring of safety issues;
- that information related to building and fire safety should be made available to all interested parties, through the publication of inspection reports, Corrective Actions Plans (CAPs) and regular progress updates.

The packaging of such principles into a legally-binding agreement, which was signed by a significant number many of the major industry players, was a ground-breaking victory. For the first time brands and retailers were forced to acknowledge, not just by implication but through contract, that they do have a responsibility for ensuring the safety of workers in their supply chains. The inclusion of unions and NGOs in the agreement, the clauses relating to transparency and the appointment of a Chief Inspector who was not contractually or financially linked to a brand, meant that the programme would be truly independent. Workers, campaigners and consumers would be able to

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¹⁴ All of the data included in this section can be found at www.bangladeshaccord.org. Some of the figures are based on the upcoming Quarterly report which will be published shortly.

¹⁵ <http://bangladeshaccord.org/signatories/>.

access credible and detailed information on the progress of factory renovations, rather than being forced to rely on extremely selective information provided by brands. And, perhaps somewhat astoundingly, almost 2000 of Bangladesh's garment factories would be inspected for the first time ever by qualified engineers, with an expertise in structural, fire and electrical safety, rather than by an entirely unqualified social auditor.

Getting the agreement of so many brands to sign the Accord was certainly hard won, but the implementation of a programme that had to be designed from scratch and which at the same time was subject to perhaps an unprecedented level of interest, was always going to be the real battle. The Accord now needed to become a living, breathing entity which would end up employing hundreds of staff, including engineers, inspectors, case handlers, trainers and administrative staff. The resistance of factory owners, who were suddenly faced with a whole new level of scrutiny and obligation, needed to be overcome. Above all, there was a need to ensure that all the brands, many of which had signed against their will, produced complete lists of the factories in which the programme was to be implemented and took on the obligations to which they had committed.

Inspections

The programme of inspections got underway in late 2013, with a pilot inspection of ten factories. The full inspection programme started in March 2014 and by September 2014 initial inspections of all 1,100 originally listed suppliers were completed.¹⁶

Following each inspection, reports were shared with the factory owner, the brands sourcing from the factory and, where a union was registered, with the workers. The factory was then expected to produce a Corrective Action Plan for carrying out repairs, which would have to be checked and agreed with Accord inspectors, under the supervision of the Chief Inspector. By the end of 2014, 500 inspection reports and their related Corrective Action Plans had been agreed upon and published. This figure rose to 1,350 by the end of 2015 and, as of April 2016, stands at 1,453. Thus far, 93 factories have still failed to produce a Corrective Action Plan that meets Accord standards.

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The original inspections carried out by the Accord found a total of 84,174 safety hazards, while the follow-up inspections identified a further 24,364. In total this amounts to 108,538 risks to worker safety. The Chief Inspector designated every single inspected factory as high risk, with the vast majority requiring extensive repairs. Common findings included a lack of adequate fire exits, problems with the structural integrity of the building and unsafe electrical installations. Most of the

¹⁶ This did not include factories that were shared with the Alliance for Bangladesh Worker Safety – a separate programme set up by North American brands. This followed an agreement intended to reduce the burden of duplicate inspection on jointly covered factories. However, the Accord did carry out follow-up inspections at each of these factories and required them to produce a Corrective Action Plan based on findings from both Alliance and Accord inspections, in line with the Accord protocols.

buildings were not constructed in accordance with the original structural design drawings, meaning that many were carrying more load than the buildings were built to withstand.

In 32 factories inspectors identified structural weaknesses so significant as posing a severe and immediate risk to life. These were referred to a Review Panel, which was set up by the Government to assess the need for possible closure of the building. A number of these factories were forced to close, others relocated and the rest were closely monitored to ensure repairs and renovations were done correctly and quickly. In some cases there was a temporary suspension of production or a partial evacuation of the building.

Remediation

With the majority of inspections complete, the key task was to ensure repairs and renovations were completed as soon as possible to reduce and eliminate risks to workers' lives and well-being resulting from building safety defects. The remediation process has been considerably slower than originally anticipated and, in its own quarterly reports, the Accord has highlighted concerns about the apparent delays.

By the end of March 2016, 43.7% of the original issues identified by the inspectors were still in progress and 41.5% have been verified as corrected. A further 14.8% have been marked as "pending verification", where a factory claims a repair has been completed but this has not yet been checked by an inspector.

Follow-up inspections are carried out regularly to verify that repairs that have been reported as done by the factories have actually been completed to an acceptable standard. An average of 23% of the issues marked as done by the factories themselves actually require more work to bring them in line with Accord standards. The hazards that were not identified in the original inspections, but were identified in the follow-up inspections, are marked on the CAPs as "new findings". Of these 56.10% are marked as "in progress", and 32.44% as "corrected".

On average, three years after the Rana Plaza disaster, factories have fixed 56% of the original renovations identified to the required standard. Only one factory has completed all renovations, including new findings. A further six have completed all the renovations that were identified in the original inspection report, but still need to fix the extra hazards that were identified in subsequent checks. 57 factories are "on track" with getting repair work completed; meaning that, although there are still outstanding repairs and renovations, the factories are progressing within the deadlines established by inspectors. The vast majority of factories, 1338 in total, are marked "behind schedule" in getting one or more of their renovations done. 63% of these factories have completed

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or reported as complete less than half of all mandated renovations.

In the early stages of the Accord these delays were caused in part by a shortage

of local expertise, services and materials required to design and implement repairs and renovations quickly. For example, there was a considerable backlog in factories finding experts able to carry out

Detailed Engineering Assessments (DEAs) (required for much of the structural renovations) that met Accord standards. There were also problems in importing items that were not readily available in Bangladesh, such as fire-rated doors.

However, at almost three years into the programme these issues have largely been overcome, and the primary causes of the delays now have more to do with the will of factory owners to comply with Corrective Actions Plans or the interest of brands to take responsibility for monitoring and insisting on the implementation of the Corrective Action Plans by their suppliers.

The labour groups working with the Accord also believe that the lack of financing available to factory owners required to undertake extensive and costly repairs and renovations may be playing a role in slowing down progress. The Corrective Action Plans published by the Accord do indicate whether a finance plan has been agreed to, but do not provide any detail regarding the content of the finance plan. The Accord website states that only 37 of the 1311 factories with a finance plan are reported to have received any kind of financial support from a signatory brand; the remaining factories are self-financing. Even this may not give a true picture of the state of play regarding financial provision as the Accord acknowledge that “the information that has been reported (regarding financing) is sometimes inaccurate or incomplete”.¹⁷

In order to urge factories to dedicate more attention to undertaking repairs the Accord has now implemented an escalation process, which puts on notice those factories that are the worst performers. For those that fail to show progress, the end result of this escalation is for the factory to be terminated as an Accord-listed supplier.

To date 22 factories have been terminated from the Accord as a result of non-compliance.

Under Article 21 of the Accord this means that no signatory brand is permitted to source future products from that factory, or from any other factories owned by the group. To date 22 factories have been terminated from the Accord as a result of non-compliance.

In September 2015 the *Financial Times* reported that the union signatories had also taken the first steps toward invoking the dispute resolution mechanism of the Accord against a number of signatory brands in relation to the slow progress of remediation.¹⁸ The progress of complaints has not been made public.

The witness signatories, who do not have the right to use the dispute resolution mechanism, are instead using the increased transparency available under the Accord to monitor progress and enforce campaigns calling on key brands to demonstrate more rapid progress within their own supply chain. The current focus of this effort is H&M, as the first signatory to the Accord and largest

¹⁷ <http://bangladeshaccord.org/wp-content/uploads/Quarterly-Aggregate-Report-25-February-2016.pdf>.

¹⁸ “Unions censure western brands over Bangladesh factory safety delays”, FT, 1st October 2015, <http://www.ft.com/intl/cms/s/0/7a3822e6-6804-11e5-a155-02b6f8af6a62.html>.

buyer from Bangladesh. Other brands are now also being approached and asked to provide more information on the extent of progress in their own suppliers.

OSH Committees and worker training

Another key part of the Accord agreement was to train workers on building safety issues, to establish Occupational Safety and Health (OSH) Committees in Accord-listed factories and to handle complaints from workers relating to specific safety concerns. Workers can also report any retaliation from their employer resulting from their involvement in OSH Committees, inspections or safety complaints. Findings and corrective actions resulting from these retaliation cases are deemed equivalent to a safety finding, and failure to comply can lead to the termination of a factory by the Accord.

The Accord is now carrying out a programme to support the establishment of OSH Committees only in factories with registered trade unions. In the remaining, non-unionised factories the Accord limits itself to providing training to OSH Committee members if and where such committees are already established.¹⁹ To date, 50 factories have been enrolled in the pilot programme for establishing OSH Committees and 125 trainings have been carried out with OSH committee members.

Conclusion

Developing such an ambitious programme from scratch, in a context where the necessary expertise and experience was scarce, has been challenging, but there is no doubt that much progress has been made. 1600 factories have now been inspected by experts, who are qualified to properly assess issues of structural, fire and electrical safety. The work has been carried out by engineers, case handlers, service providers and contractors from Bangladesh, thereby considerably increasing the in-country capacity to carry out inspections, assessments, reports and repairs going forward.

While the slow progress in remediation of safety defects is concerning, it is perhaps not surprising in an industry which has spent years dealing with a culture in which auditing was largely done in secret, audit fraud was standard practice and there was no compulsion or incentive to act on any findings. The Clean Clothes Campaign and the International Labor Rights Forum, along with the other witness signatories, will continue to push for all factories to be repaired as soon as possible and for future programmes for workplace safety and other workers' rights to follow a similar model of accountability that has now been established under the Accord.

The level of transparency provided through the Accord has given public access to an unprecedented amount of detailed information. This has undoubtedly assisted in maintaining pressure on Accord signatories and the Accord-listed suppliers to make efforts to fix factories.

The involvement of trade unions and workers in the programme has been hampered by a general anti-union sentiment in the country and the failure of the government to enforce union rights.

¹⁹ According to the amended Bangladesh law all factories are supposed to be setting up Worker Participation Committees (WPC) in factories where unions do not exist. Where there is either a trade union or a WPC these bodies are supposed to select members for an OSH Committee.

Nevertheless, many workers have been able to use the Accord to raise safety complaints and to challenge any resulting harassment. The trade union federations who are signatories to the Accord also have access to information about factories they are organising in as well as direct contact to Accord staff who enable concerns to be dealt with.

What remains to be seen is whether the kind of work carried out by the Accord will be continued and built upon past the end of the programme in 2018. The pressure and attention generated after Rana Plaza, which pushed for brands and retailers to sign the Accord, must be maintained. Without this the principles that underlie the effectiveness of the Accord – independence, credibility, transparency, accountability and worker participation – may be eroded or entirely discarded by those brands keen to move back to their comfort zone of corporate-controlled and unaccountable initiatives.

PART 3: Organising and the right to refuse unsafe work²⁰

A major cause of the high death toll at Rana Plaza was the inability of workers to collectively refuse to return to a building that had been ordered closed for safety reasons just one day before. Time after time survivors of the disaster told how they did not want to go to work that day and how frightened they were to be back in a building they knew was unsafe.

In Bangladesh, the right to Freedom of Association is widely violated and few workers are members of a union. When workers do organise unions and use them to try and improve conditions, they regularly face harassment, intimidation and sometimes violent repression. While the right to Freedom of Association is recognised by Bangladesh law, there are numerous legal restrictions or administrative barriers which make the legal registration of unions extremely difficult. Unions can be refused registration on highly arbitrary grounds, aspiring unions face high membership thresholds and the lists of union members are often passed to employers prior to union registration, which subjects the members to possible harassment.

Unsurprisingly, none of the five factories in the Rana Plaza building had a registered union. If they had, it is possible their union representatives could have stated a collective demand

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to refuse to go to work in an unsafe building. They might have been able to contact the authorities and demand an immediate inspection or even gone public with their concerns. As individuals, with no organisation on site which could raise their concerns, the workers felt they had no choice than to do as they were told. Many of them report they were verbally and physically threatened to go to work, others say they were told that refusal to work would result in the loss of a whole month's pay. As most of these workers were already struggling to meet the basic needs of themselves and their families, this presented a stark choice between possibly risking their safety or definitely losing their ability to pay rent, school fees or buy food.

²⁰ This section is largely based on the "Evaluation of the Bangladesh Sustainability Compact," written and published by the ITUC, IndustriALL Global Union and UNI Global Union. Please see this report for further detail: http://www.industriall-union.org/sites/default/files/uploads/documents/Bangladesh/ituc-ia-uni_evaluation_of_the_bangladesh_sustainability_compact_january_2016_final.pdf.

For this reason the post Rana Plaza campaign also called on the Government of Bangladesh to do more to protect the rights of workers to Freedom of Association – a right that is guaranteed under numerous human rights conventions. Freedom of Association in the context of labour relations means that workers are able to organise in democratic and independent organisations and collectively negotiate for better pay and working conditions with their employer. It is seen as an enabling right, one which is the basis upon which other rights can be won and enforced.

f) Labour law reforms

Reform of Bangladesh's labour laws was a key demand directed at the Government of Bangladesh (GOB) by the International Labour Organisation (ILO), the European Union and the US government, among others.

Prior to the collapse of Rana Plaza the ILO made the establishment of a Better Work programme – something strongly supported by brands and retailers and desired by the GOB itself – contingent on the government bringing their labour law in line with ILO core conventions. Following the Rana Plaza collapse, and under significant pressure from the industry and the international community, they later changed this position and agreed to start the programme despite the failure of the government to fully comply with ILO standards.

In 2013 the European Union's Trade Commissioner launched a Global Sustainability Compact, described as a "joint initiative for improving conditions for workers in Bangladeshi garment factories".²¹ The Compact is essentially an agreement between the EU and the Bangladesh government, in which the government agreed to make improvements to labour law and practice, including in relation to trade union rights. The Compact links progress to the review of trade preferences granted to Bangladesh due to its least-developed country status.

In June 2013 the US government suspended preferential trading rights through its Generalized System of Preferences (GSP) programme, which would only be reinstated once a number of criteria on improved freedom of association, among other issues were met.²²

Initially, the Bangladesh government appeared to show some, if limited, willingness to address the concerns regarding freedom of association. An amendment to the 2006 Bangladesh Labour Law was adopted in July 2013, which did include some positive reforms. However, the reforms still fell well short of international standards. The ILO Committee of Experts reported in 2014 that a number of restrictions on freedom of association remained and reconfirmed that position in 2015. The ILO, the EU and the USA have all demanded further reforms to the Labour Law but there is little sign that, as international attention fades, the Bangladesh government has any intention to make such reforms.

A further obstacle to progress was the delay in publishing the implementing rules of the Bangladesh Labour Act. These are the processes by which the laws actually get enforced, yet the government failed to issue them until September 2015 – over two years after the Labour Act amendment was

²¹ http://europa.eu/rapid/press-release_IP-13-667_en.htm.

²² The US government announcement on GSP suspension and the corresponding Bangladesh Action Plan 2013 is available at <http://www.dol.gov/opa/media/press/ilab/ILAB20131494.htm>.

passed into law. This delay prevented a number of initiatives, including the ILO Better Work and the Bangladesh Accord training programmes, from getting underway.

When the rules were finally published there was little in them that represented positive progress; in fact they largely failed to ensure full respect for freedom of association. In some cases they arguably created new restrictions and impediments.

In particular the rules relating to the establishment of worker participation committees provided a possibility for employers to influence the selection of worker representatives. This created the likelihood that such committees would be little more than management-controlled exercises, serving primarily as a method for excluding genuine worker representation through trade unions. The rules also effectively abolished the right to strike, the ultimate power that workers have to enforce negotiations. This violates international labour standards. Lastly, the rules failed to establish much-needed clear criteria and a transparent process for the registering of workplace unions.

Even in the case of the most widely-lauded reform – the abolition of the rule requiring the Labour Ministry to pass the list of union members to the employer as part of the registration process – the impact has been limited. Trade unions continue to express concern that, although this is no longer required, in practice it continues to be done. Only now employers have plausible ground to deny they have such information. Even more worrying is the fact that numerous cases have been reported where workers were interviewed by the Labour Department regarding their union membership *in front of their employer*.

Finally, the Government entirely failed to remove legal restrictions on the right to organise in Export Processing Zones (EPZ), where trade unions are explicitly banned from operating. A new EPZ law which was passed in July 2014 continues to prohibit the formation of trade unions. Only the creation of Worker Welfare Associations (WWAs) is allowed, but they have none of the representative and bargaining rights of genuine unions. Further, WWAs are explicitly prevented, by law, from having any contact with non-governmental organisations, effectively isolating them from any external support mechanisms.

g) Union registration

Another criterion for measuring the ability of workers to form trade unions is the number of workplace trade unions registered with the Joint Directorate of Labour (JDL). Again, the signs were reasonably positive initially after the Rana Plaza disaster. It appeared that the pressure on the GOB to show demonstrable progress did have an impact on the ability of trade unions to register. This, combined with an increased confidence from the trade union federations and a desire to use the limited space which opened up in the months following Rana Plaza, led to an apparently dramatic increase in the number of registered workplace unions.

Between 2010 and 2012 only two factory-level trade unions had been successfully registered in Bangladesh.²³ According to the Solidarity Center, the international arm of the AFL-CIO, in 2013, 84 trade union applications were approved and in 2014 a further 182 unions were able to register. In all, 327 workplace unions were registered between 2013 and 2015.²⁴ The role of female workers in their unions was strengthened as a result of various training and empowerment programs, and women are in the leadership of many of the new workplace unions.

However the trend of successful union registration is now being reversed and the rejection of trade union applications dramatically increased in the last year. The JDL in Dhaka rejected 73% of submitted union applications in 2015, many on apparently arbitrary grounds.²⁵ The Solidarity Center analysed 65 rejection letters and related documentation and concluded that the majority were based on a whole range of arbitrary and unfair grounds.

The lack of transparent rules and guidelines for the assessment of union applications, the lack of any appeals process following a rejection and the apparently arbitrary application of rules and guidelines which are not clearly defined, have long been a cause of concern. It was hoped that the labour law reforms would address these issues. However, rather than creating a more credible and predictable system, the new rules actually increased the requirements on trade unions wishing to register and increased the discretionary power of the JDL to reject applications.

Without reforms to the union registration process it will remain extremely susceptible to undue influence and pressure from the side of management. The process will continue to act as a considerable barrier to the ability of workers to organise and establish unions with legal rights to represent their members at work.

h) Anti-union discrimination and legal impunity

The Bangladesh government has regularly used the fact that 300 new unions were established since the Rana Plaza collapse as proof of an increased respect for freedom of association. Over the last years, however, these newly formed unions, along with those still trying to register, have faced a strong backlash and many have been forced out of existence through a combination of union busting and factory closures.

According to data provided by the Solidarity Center, at least 44 of these new unions have been forced out of the factory through a variety of intimidation tactics, including arbitrary dismissals, forced resignations, the filing of falsified criminal charges as well as threats and the use of physical violence both inside and outside of the factory. Some union leaders have been brutally beaten and

²³ http://www.ilo.org/dhaka/Informationresources/Publicinformation/Pressreleases/WCMS_236042/lang-en/index.htm.

²⁴ <http://www.solidaritycenter.org/3-years-after-rana-plaza-little-change-without-a-union/>.

²⁵ "Worker rights in Bangladesh and the Sustainability Compact: Fragile gains at risk, progress stalled", Solidarity Center, 2016.

hospitalised as a result. The Solidarity Center has documented at least 100 acts of anti-union discrimination in factories where new trade unions have been established.²⁶

In all cases there has been little or no attempt by the authorities to enforce the rights of workers. Rather, in a number of cases the police have instead appeared to work on behalf of the management, sometimes even becoming directly involved themselves in the harassment and intimidation of activists. Such cases rarely make it to the labour court, which is hopelessly backlogged, and the labour inspectorate has failed to ensure the timely reinstatement of workers sacked for their trade union membership. To our knowledge no employer has been prosecuted for anti-union activities.

A further 50 factories with registered unions have now either closed permanently or relocated. Again, in these cases the labour law is rarely followed and workers are arbitrarily terminated without notice or mandatory severance pay. Many union activists have faced blacklisting and find it impossible to find new work. As a result many have been forced to leave the city or industrial area and return to their home villages.

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Even where unions have not yet been busted it remains unclear to which extent they are being allowed to effectively operate. It is one thing for a union to be given permission to exist, but another for factory management to be willing to sit and negotiate with its representatives. A more legitimate measure of whether freedom of association really exists is the number of workplace agreements, known as collective bargaining agreements, which have been signed. Currently only a handful of unions have been able to engage in such negotiations, and even fewer agreements are being fully implemented.

The constant pressure applied to union activists and the risk of union activism, even where the union is recognized, remains one of the most fundamental barriers to real change in working conditions at Bangladesh's garment factories. In turn this perpetuates a situation where workers feel unable to even raise concerns about workplace safety or any other issues, let alone to take collective action to refuse unsafe work.

Conclusion

The importance of ensuring that workers are able to organise and demand improvements in conditions is vital to ensure that workers are safe. Safety, from the perspective of workers, is not limited to the buildings that they work in, or even to the health and safety procedures to prevent injury or occupational disease. A series of interviews with workers conducted by the International Labor Rights Forum and the Bangladesh Center for Worker Solidarity, which were primarily intended to focus on experiences with fire and building safety programmes, revealed that the priority safety

²⁶ For numerous examples of such cases see <http://www.solidaritycenter.org/tag/bangladesh/>.

issues that mattered to workers included the freedom to form trade unions and bargain collectively, without facing retaliation and violence, as well the ability to be safe from sexual harassment and abuse.²⁷

After the collapse of the Rana Plaza building an initial upsurge in union activism could be seen and pressure on the Bangladesh government to improve freedom of association in the country was high. Nevertheless, three years on we can see that these apparent gains have largely been eroded, and that union repression is once again the norm.

Amendments to the labour law have not been as favourable as was originally hoped for and continue to hamper union activism. At least a third of the newly established trade unions have not survived in the still highly repressive atmosphere and an astonishingly high number of new applications to form a trade union are being turned down.

Workers' representation remains of utmost importance for workers in their fight to safeguard their own health and safety. Yet it is clear that, three years after Rana Plaza, the right to freedom of association in Bangladesh is still far from being respected.

²⁷ *Our Voices, Our Safety: Bangladeshi Garment Workers Speak Out*, by the International Labor Rights Forum, December 2015, <http://www.laborrights.org/ourvoicesreport>.