



► Factsheet on Technical Note

May 2023

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. 2: Freedom of Association and the Right to Organize²

Key points

- **B1: Burdensome and complex trade union registration procedure**
- **B2: Excessive minimum membership requirements**
- **B3. Restrictions on the multiplicity of trade unions in an establishment and in a group of establishments**
- **B4: Excessive minimum membership requirements in agriculture**
- **B5: Cancellation of trade union registration that do not justify the severity of the act**
- **B6: Excessive sanctions including imprisonment for activities that do not justify the severity of the sanction**
- **B7: Scope of the law**
- **B8: Undue interference in trade union activity.**
- **B9: Undue interference in the right to draw up constitutions freely by providing overly detailed instructions**
- **B10. Excessive restrictions on the right to strike**
- **B11: Severe restrictions on civil liberties**

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.

Introduction

Whereas universal and lasting peace can be established only if it is based upon social justice; And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled...The High Contracting Parties...agree to the following Constitution of the International Labour Organization.³

Unjust labour conditions could lead to social unrest and disruption of world peace. Freedom of association is one of the most essential means of improving the conditions of work and of establishing peace. It is recognized as a “basic human right with universal scope enabling the enjoyment of other rights”.⁴ In June 1998, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference, stated that “all Members, even if they have not ratified the [fundamental] Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights”.⁵ The 1998 Declaration therefore considers to be fundamental the principles enshrined in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The ILO Declaration on Social Justice for a Fair Globalization, 2008, adds that freedom of association is of particular significance for the achievement of the ILO’s four strategic objectives.⁶ The Government of Bangladesh ratified C.87 in 1972.

Key Issues in Bangladesh

The Committee of Experts on the Application of Conventions and Recommendations (CEACR), in its examination of the application of C.87 by the Government of Bangladesh,⁷ pointed out that freedom of association is severely restricted for workers in Bangladesh, from the formation of their organizations, during the exercise of their rights and freedoms and until their organizations cease to exist.

While the Government is making progress on labour law reform, there remain 11 key issues related to freedom of association, which are the following;

Issue B1: Burdensome and complex trade union registration procedure with discretionary powers of the Registrar

[BLA sec. (178)(2)(a)(iii)(iv)(v), 179 (2)(a) and 182; and BLR Forms 55(A) and (B) or (C)]

CEACR Observation on C.87, 2020 (2021):

- CEACR requested the Government to take all necessary measures **to ensure that registration is, both in law and in practice, a simple, objective, rapid and transparent process.**

CEACR Observation on C.87, 2022 (2023):

- CEACR requests the Government to indicate the types of issues found when determining invalid applications and it encourages the Government to continue to engage with the workers’ organizations concerned as regards the functioning of the digitized registration process for their feedback on any obstacles encountered and consideration of measures to redress them.

³ Preamble of the ILO Constitution, adopted in Philadelphia on 10 May 1944.

⁴ Committee of Experts on the Application of Conventions and Recommendations (CEACR), 2012, “General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008: Giving globalization a human face” (ILC.101/III/1B), para.49.

⁵ *Ibid.*, para.50.

⁶ *Ibid.*

⁷ Committee of Experts on the Application of Conventions and Recommendations (CEACR)

- Observation on C.87 for Bangladesh, adopted in 2020 and published at the 109th ILC session in 2021. [Referred to as “CEACR Observation on C.87, 2020 (2021)”. Available at:

https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4060432,103500

- Observation on C.87 for Bangladesh, adopted in 2022 and published for the 110th ILC Session in 2023 [Referred to as “CEACR Observation on C.87, 2022 (2023)”. Available at:

https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4322754,103500

- CEACR encourages the Government to continue to provide comprehensive training to divisional and regional officers who...are responsible for registration, so as to ensure that they have sufficient knowledge and capacity to handle applications for registration rapidly and efficiently, while taking steps to ensure confidentiality of workers and their identity.

► **Relevant ILS and ILO Jurisprudence⁸**

► **Article 2 of C.87:** Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. –

► **CEACR:** "...although the official recognition of an organization through its registration constitutes a relevant aspect of the right to organize, as it is the first measure to be taken so that organizations can fulfil their role effectively, the exercise of legitimate trade union activities should not be dependent upon registration." (General Survey, 2012, para.83).

Issue B2: Excessive minimum membership requirements

B2.1: Minimum membership requirement of 20% to form a trade union in an establishment [BLA sec. 179(2)]

CEACR Observation on C.87, 2022 (2023):

- The Committee notes the Government's indication that the 2018 amendment to the BLA [BLA section 179(2)], reducing the minimum membership requirement to form a trade union and maintain its registration from 30 per cent to 20 per cent of the total number of workers employed in the establishment in which a union is formed, is being applied since its entry into force on 14 November 2018The Committee recalls its previous comment that the 20 per cent threshold is still likely to be excessive, especially in large enterprises, where it constitutes a hurdle to form a union..."

B2.2: Minimum membership requirement of 30% for a trade union formed in a group of establishments. [BLA sec.183(6)]

CEACR Observation on C.87, 2020 (2021):

- "The Committee...observes that a trade union formed in a group of establishments (defined as more than one establishment in a particular area carrying out the same or identical industry) can only be registered if it has as members not less than 30 per cent of the total number of workers employed in all establishments. The Committee observes it as an excessive requirement that unduly restricts the right of workers to establish sectoral or industry unions."⁹
- The same recommendations were repeated in its Observation 2022 (2023).

► **Relevant ILS and ILO Jurisprudence**► **Article 2 of C.87**

► **CEACR:** The minimum membership requirement "is not in itself incompatible with the Convention"; However, "the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered." (General Survey, 2012, para.89). Also, "this criterion should be assessed in relation to the level at which the organisation is to be established (for example at the industry or enterprise level) and the size of the enterprise" (Ibid).

► **The CEACR and the CFA:** "...for the enterprise/establishment level, the minimum membership requirement of 20% is too high, and even 10% is still considered too excessive; while the minimum member of 20 was considered as acceptable (CFA Compilation, 2018, para.446). In the case of sectoral trade unions, minimum 30 members may be acceptable (CFA Compilation, 2018, para.439&444¹⁰)."

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 Observation on C.87, 2020 (2021)

¹⁰ Committee on Freedom of Association, 2018, "Compilation of decisions of the Committee on Freedom of Association, sixth edition.

Issue B3: Restrictions on the multiplicity of trade unions in an establishment and in a group of establishments

[BLA sec. 179(5)]

CEACR Observation on C.87, 2022 (2023):

- The Committee expects that the Government will make progress in the near future in its tripartite review of sections 179(5)¹¹ and 183(1)¹² of the BLA with a view to reducing the minimum membership requirements to a reasonable level, at least for large enterprises...as well as addressing the limits on the number of trade unions in an establishment. (Emphasis original)

► Relevant ILS and ILO Jurisprudence

► Article 2 of C.87:

► **CEACR:** "Although it is generally to the advantage of workers and employers to avoid a proliferation of competing organizations, the right of workers to be able to establish organizations of their own choosing, as set out in Article 2 of the Convention, implies that trade union diversity must remain possible in all cases" (General Survey, 2012, para.92; CFA 2018 Compilation paras 475-501)

Issue B4: Excessive minimum membership requirements in agriculture.

[BLR Rue 167(4)]

CEACR Observation on C.87, 2022 (2023):

- "...Observing that the requirement of even 300 workers to form a union in a group of establishments in one district might still be excessive, especially for workers on small family farms, the Committee requests the Government to provide detailed information on the practical application of this requirement, including the number of unions of agricultural workers registered and the number of workers represented and establishments covered by each of these unions, and trusts that further

measures will be considered to ensure that agricultural workers can exercise their right to organize without hindrance."

Issue B5: Cancellation of trade union registration that do not justify the severity of the act.

[BLA secs. 192, 196(2)(b), read in conjunction with 190(1)(c), (e)-(g), 229, 291(2)-(3) and 299].

CEACR Observation on C.87, 2022 (2023):

- "The Committee expects that the Gov will make progress in the near future in its tripartite review of...section 190 (f) of the BLA...ending the possible cancellation of trade unions that fall below the minimum membership requirements."

► Relevant ILS and ILO Jurisprudence

- The same principles on the minimum membership requirements also apply here.
- **CFA:** Cancellation should be done only by judicial authorities and not by administrative authorities (CFA 2018 Compilation, para.990).
- **CFA:** The reduction in the number of union members to below the legal minimum was the consequence of anti-union dismissals or threats, and requested that the dismissed workers reinstated in their jobs and permit the dissolved trade union to be reconstituted (CFA 2018 Compilation, para.985).

¹¹ Bangladesh Labour Act, Sec.179(5): [No registration shall be provided to more than 3 (three) trade unions] at any time in an establishment or group of establishments.

¹² Bangladesh Labour Act, Sec.183. Registration of trade unions in a group of establishments. (1).....for the purpose of formation of trade union any group of establishments shall be treated as one establishment, and no separate trade union shall be formed in any establishment included in such group of establishments...

Issue B6: Excessive sanctions including imprisonment for activities that do not justify the severity of the sanction.

Issue B6.1: Penalties for illegal industrial actions [BLA sec. 294 and 295]

Issue B6.2: Penalties for “go-slow” [BLA sec. 296]

Issue B6.3: Penalties for activities of unregistered trade unions [BLA sec. 299]

Issue B6.4: Penalties for dual membership of trade unions [BLA sec. 193 and 300]

CEACR Observation on C.87, 2020 (2021):

- “...the Committee observes that the sanctions still include imprisonment for activities that do not justify the severity of the sanction and recalls that it has been requesting the Government to eliminate such penalties from the BLA and to let the penal system address any possible criminal acts” [The same request was repeated in its Observation on C.87, 2022 (2023)].

► Relevant ILS and ILO Jurisprudence

- **CFA:** While emphasizing the importance of conducting legitimate trade union activities in a peaceful manner, the Committee considers that the criminalization of industrial relations is in no way conducive to harmonious and peaceful industrial relations (CFA 2018 Compilation, para.974)
- **CFA:** In the framework of a strike, penal sanctions should only be imposed in the case when violence against persons and property or other serious violations of the ordinary criminal law are committed (CFA 2018 Compilation, para.955).

Issue B7: Scope of the law

Issue B7.1: Restrictions of FOA to numerous sectors and workers [BLA Sec. 1(4), 2(49)(65), and 175]

This includes, among others, Government workers, university teachers and domestic workers (BLA sections 1(4), 2(49) and (65) and 175). And also potentially small farms consisting of less than five workers (section 1(4)(n) and (p) of the BLA).

Issue B7.2: Exclusion of managerial and supervisory staff [BLA sec. 2(49)(65), 175, BLR 2(g) and (j)].

CEACR Observation on C.87, 2022 (2023):

- The Committee however notes with **regret** that the following rules which the Committee had previously requested the Government to address appear not to have been amended in the manner requested: (i) Rule 2(g) and (j) contains a broad definition of administrative and supervisory officers who are excluded from the definition of workers under the BLA and thus from the right to organize.

Issue B7.3: Restriction on organizing in civil aviation [BLA sec. 184(1)].

CEACR Observation on C.87, 2022 (2023):

- The Committee recalls that its previous comments concerned... (ii) one remaining restriction on organizing in civil aviation (section 184(1) – the provision should clarify that trade unions in civil aviation can be formed irrespective of whether they wish to affiliate with international federations or not)

Issue B7.4: Restrictions on organizing of seamen, including trade union monopoly [BLA sec. 185]¹³

► Relevant ILS and ILO Jurisprudence

► Article 2 of C.87

- It may be useful to draw attention to a difference between the general scope of labour law and the scope of law in respect of freedom of association. Labour law applies to and govern an **"employment relationship"** between an employer and a worker or workers; whereas the application of freedom of association is not based on the existence of an "employment relationship" but extends to all workers with **the sole possible exception of members of the armed forces and the police** (see CFA 2018 Compilation, para.387).
- Put in other words, under C.87, "the concept of worker means not only salaried worker, but also independent or autonomous worker" (*Ibid*, para.398) including **domestic workers** (*Ibid*., para.406).

196(2)(b) read in conjunction with 190(1)(c), (e) and (g), 229, 291(2)-(3) and 299).

Issue B8.4: Interference in trade union elections. [BLA sec. 180(1)(a) read in conjunction with sec. 196(2)(d), and sections 180 (b) and 317(4)(d); and BLR Rule 169(4)].**CEACR Observation on C.87, 2022 (2023):**

- The Committee recalls that its previous comments concerned...(vi) interference in trade union elections (BLA section 180(1)(a) read in conjunction with section 196(2)(d), and sections 180(b) and 317(4)(d);
- The Committee however notes with **regret** that the following rules which the Committee had previously requested the Government to address appear not to have been amended in the manner requested:...(iii) Rule 169(4) limits eligibility to a trade union executive committee to permanent workers, which may adversely affect the right of workers' organizations to elect their officers freely.

Issue B8: Undue interference in trade union activity

Issue B8.1: Interference in TU activity by prohibiting TU to function without registration. [BLA sec. 192].

Issue B8.2: Interference in trade union activity by prohibiting inducing workers. [BLA sec. 196(2)(b)].

Issue B8.3: Interference in trade union activities including on membership expulsion [BLA sec. 229(1)].

CEACR Observation on C.87, 2022 (2023):

- The Committee recalls that its previous comments concerned...(v) interference in trade union activity, including cancellation of registration for reasons that do not justify the severity of the act (sections 192,

¹³ This issue was not directly mentioned by the CEACR but is addressed in the National Action Plan (NAP) on the Labour Sector of Bangladesh (2021-2026)

► Relevant ILS and ILO Jurisprudence

► **Article 3 of C.87:** (1) Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes; (2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

► **CFA on eligibility conditions for trade union election** (CFA 2018 Compilation, paras.606-647):

- The matter should be left to the discretion of trade union by-laws and the public authorities should refrain from any intervention;
- Workers do not need to be employed in the establishment or in the occupation or trade at the time of their election;
- Workers do not need to have been a member of the trade union for more than 6 months or 1 year to be eligible;
- Regarding criminal record, "A law which generally prohibits access to trade union office because of any conviction is incompatible with the principles of FOA, when the activity condemned is not prejudicial to the aptitude and integrity required to exercise trade union office".

Issue B9: Undue interference in the right to draw up constitutions freely by providing overly detailed instructions

[BLA sections 179(1) and 188; and BLR Rules 174 and 350].

CEACR Observation on C.87, 2022 (2023):

- "The Committee **regrets** ...The Committee recalls that its previous comments concerned...(vii) interference in the right to draw up constitutions freely by providing overly detailed instructions (sections 179(1) and 188 (in addition, there seems to be a discrepancy in that section 188 gives the DOL the power to register and, under certain circumstances, refuse to register any amendments to the constitution of a trade union and its Executive Council whereas Rule 174 of the BLR only refers to notification of such changes to the DOL who will issue a new certificate)).

- The Committee however notes with **regret** that the following rules which the Committee had previously requested the Government to address appear not to have been amended in the manner requested:...(vi) Rule 350 provides for excessively broad powers of inspection by the Director of Labour.

► Relevant ILS and ILO Jurisprudence

► **Article 3 of C.87:**

► **CFA:** "The principle of freedom of association would often remain a dead letter if workers and employers were required to obtain any kind of previous authorization to enable them to establish an organization. Such authorization could concern...the need to obtain discretionary approval of the constitution or rules of the organization..." (CFA 2018 Compilation, para.419).

Issue B10: Excessive restrictions on the right to strike

[BLA sec. 211(3)–(4) and (8) and 227(c) accompanied by severe penalties (sec. 196(2)(e), 291(2)–(3) and 294–296), BLR Rule 85, Schedule IV, sub-rule 1(h)]

CEACR Observation on C.87, 2022 (2023):

- "The Committee **regrets** ...The Committee recalls that its previous comments concerned...(viii) excessive restrictions on the right to strike (sections 211(3)–(4) and (8) and 227(c) accompanied by severe penalties (sections 196(2)(e), 291(2)–(3) and 294–296)."
- "The Committee however **regrets** that the following rules which the Committee had previously requested the Government to address appear not to have been amended in the manner requested:...(ii) Rule 85, Schedule IV, sub-rule 1(h) prohibits members of the Safety Committee from initiating or participating in an industrial dispute."

► Relevant ILS and ILO Jurisprudence

► ILS on the right to strike¹⁴:

The right to strike is recognized by the ILO's supervisory bodies as *an intrinsic corollary of the right to organize protected by Convention No. 87*, deriving from the right of workers' organizations to formulate their programmes of activities to further and defend the economic and social interests of their members. However, the right to strike is not absolute. It may be subject to certain legal conditions or restrictions, and may even be prohibited in exceptional circumstances: The ILO's supervisory bodies have taken the position that it is admissible to limit or prohibit the right to strike in the following three circumstances: i.e.

Substantive restrictions

(a) Sectoral prohibition: for public servants exercising authority in the name of the State

(b) Essential services: i.e. services which, if interrupted, endanger the life, personal safety / health of whole or part of the population;

(c) Situations of acute national or local crisis, although only for a limited period and solely to the extent necessary to meet the requirements of the situation. This means genuine crisis situations, such as those arising as a result of a serious conflict, insurrection or natural, sanitary or humanitarian disaster, in which the normal conditions for the functioning of society are absent. -And in all these three cases, compensatory guarantees (see below for the details) should be provided for the workers who are thus deprived of the right to strike.

CFA: The responsibility for suspending a strike should not lie with the Government, but with an independent and impartial body which has the confidence of all parties concerned (CFA 2018 Compilation, paras.914-916)

Procedural Restrictions

Legal procedural restrictions are acceptable, if they do not place a substantial limitation on the right to strike.

Issue B11: Severe restrictions on civil liberties.

[Code of Criminal Procedure sec. 54, 167, 176, 202, 330, 302, 348 of the; Evidence Act; and Police Act]

CEACR Observation on C.87, 2022 (2023):

- While taking due note of the various initiatives referred to by the Government (e.g. training and sensitization programs for the personnel of disputes by the Industrial Police, referring specifically to orientation courses on labour rights, labour laws, human rights and workers' federation activities, etc in collaboration with the ILO), ...the Committee observes that the industrial relations climate appears to remain one of little trust with confrontation a regular attribute...The Committee requests the Government **to review all the allegations of violence, harassment and intimidation with the TU-ILS with a view to carrying out the necessary investigations to determine those responsible, punishing the guilty parties and preventing the repetition of any such acts.** The Committee requests the Government to keep it informed of all steps taken in this regard.
- ...concerning the training of the industrial police, the Committee notes with **concern the numerous allegations concerning the expansion of the role of industrial police at the factory level** in such a way as to intimidate and impede workers in the exercise of their freedom of association guaranteed by the Convention. The Committee therefore encourages the Government **to...review their role, with the workers' and employers' organizations concerned, so as to ensure that issues purely concerning labour relations are relegated to the unique authority of the relevant Ministry.** [emphasis original]

¹⁴ i.e. ILO Conventions; and Comments of the ILO supervisory Bodies; General Survey on Freedom of Association and Collective Bargaining, 1994, para. 151; and General Survey, 2012, paras.127-143.

► ILO Brief

Factsheet on Technical Note and Global Good Practices to Align Bangladesh Labour Laws with Selected International Labour Standards (Bangladesh Labour Act and Rules)

► Relevant ILS and ILO Jurisprudence

- **CEACR:** "Freedom of association is a principle with implications that go well beyond the mere framework of labour law. Indeed, in the absence of a democratic system in which fundamental rights and civil liberties are respected, freedom of association cannot be fully developed....*The ILO supervisory bodies have since unceasingly stressed the interdependence between civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations*" [emphasis original] (General Survey, 2012, para.59)

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